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SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 5, 2013 TO AUGUST 28, 2013

SUPREME COURT
MANILA
2015

Prepared
by

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2015

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PHILIPPINE REPORTS
CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 857

IV. CITATIONS 893

PHILIPPINE REPORTS

Page

Abdulrahman, Hadji Pangsayan T. *vs.*
Guiamaludin A. Sendad 592
Abdulrahman, Hadji Pangsayan T. *vs.* The Office of the
Ombudsman for Mindanao, et al. 592
Amistoso *y* Broca, Anastacio –
People of the Philippines *vs.* 825
Andrade, et al., Grace – Bobby Tan *vs.* 49
Andrade, et al., Grace *vs.* Bobby Tan 49
Ang, Vicente *vs.* Ceferino San Joaquin, Jr., et al. 115
Arcobillas, Mary Sheila – Philippine National Bank *vs.* 75
Asian Construction and Development Corporation –
Sumitomo Corporation *vs.* 788
Asian Construction and Development Corporation *vs.*
Sumitomo Corporation 788
B. Sta. Rita & Co., Inc., et al. *vs.* Angeline M. Gueco 776
Baello, et al., Corazon B. – National Housing Authority *vs.* 171
Baylon, et al., Dr. Carlos C. – Micah P. Espia, et al. *vs.* 208
Bellate, et al., Angeles – Republic of the Philippines *vs.* 60
Bernaldez, et al., Atty. Joseph – Lucena B. Rallos *vs.* 832
Bernardo, et al., Emmanuel – Sanoh Fulton
Phils., Inc., et al. *vs.* 378
Blanco *y* Sangkula, Ryan – People of the Philippines *vs.* 408
Buenaventura, etc., Judge Roberto P. *vs.*
Fe A. Mabalot, etc. 476
Cabrera, et al., Araceli J. *vs.* Angela G. Francisco, et al. 574
Calawag, Flord Nicson *vs.* University of the
Philippines Visayas, et al. 208
Capistrano, Spouses Danilo and Estrella –
Comsavings Bank (now GSIS Family Bank) *vs.* 547
Castells, et al., Maria Lourdes *vs.*
Saudi Arabian Airlines 667
Castro, Bienvenido – Land Bank of the Philippines *vs.* 711
Chua Pue Chin Lee – Lee Pue Liong *a.k.a.* Paul Lee *vs.* 89
City Government of Makati, as represented by
Hon. Mayor Jejomar C. Binay *vs.* Emerita B. Odeña 284
City of Cebu, et al. – Lucena B. Rallos *vs.* 832
Coca-Cola Bottlers Phils., Inc. – Jerome M. Daabay *vs.* 806

Page

Cocofed-Philippine Coconut Producers Federation, Inc. *vs.* Commission on Elections 19
Colambot, Majen – MZR Industries, et al. *vs.* 617
Commission on Audit, represented by its Commissioners – Filomena G. Delos Santos *vs.* 322
Commission on Elections – Cocofed-Philippine Coconut Producers Federation, Inc. *vs.* 19
Commission on Elections, et al. – Cesar G. Manalo *vs.* 339
Commissioner of Internal Revenue – Deutsche Bank AG Manila Branch *vs.* 676
Commissioner of Internal Revenue – J.R.A. Philippines, Inc. *vs.* 566
Comsavings Bank (now GSIS Family Bank) *vs.* Spouses Danilo and Estrella Capistrano 547
Corales, in his official capacity as Municipal Mayor of Nagcarlan, Laguna, et al., Rosendo R. *vs.* Republic of the Philippines, represented by the Commission on Audit, etc. 432
Court of Tax Appeals (Second Division), et al. – Secretary of the Department of Finance *vs.* 38
Daabay, Jerome M. *vs.* Coca-Cola Bottlers Phils., Inc. 806
Delos Santos, Filomena G. *vs.* Commission on Audit, represented by its Commissioners 322
Deutsche Bank AG Manila Branch *vs.* Commissioner of Internal Revenue 676
Dolot, Chairman of Bagong Alyansang Makabayan-Sorsogon, Maricris D. *vs.* Antonio C. Ocampo, Jr., et al. 458
Dolot, Chairman of Bagong Alyansang Makabayan-Sorsogon, Maricris D. *vs.* Hon. Ramon Paje, in his capacity as the Secretary of the Department of Environment and Natural Resources, et al. 458
Dongon, Nathaniel N. *vs.* Rapid Movers and Forwarders Co., Inc. and/or Nicanor E. Jao, Jr. 533
Espia, et al., Micah P. *vs.* Dr. Carlos C. Baylon, et al. 208
Francisco, et al., Angela G. – Araceli J. Cabrera, et al *vs.* 574

Page

Fria, Atty. Josefina C. – The Law Firm of Chavez Miranda and Aseoche, represented by its Founding Partner, Francisco I. Chavez *vs.* 105
Gallery Frames and/or Felipe Bordey, Jr. – Dario Nacar *vs.* 267
Giron, Leila F. – Masayuki Hasegawa *vs.* 364
Gueco, Angeline M. – B. Sta. Rita & Co., Inc., et al. *vs.* 776
Hasegawa, Masayuki *vs.* Leila F. Giron 364
Hur Tin Yang *vs.* People of the Philippines 416
Ining (deceased), Antipolo, survived by Manuel Villanueva, et al. *vs.* Leonardo R. Vega, substituted by Lourdes Vega, et al. 237
Integrated Microelectronics, Inc. *vs.* Adonis A. Pionilla 818
J.R.A. Philippines, Inc. *vs.* Commissioner of Internal Revenue 566
Kutangbato Conventional Trading Multi-Purpose Cooperative – Secretary of the Department of Finance *vs.* 38
Land Bank of the Philippines *vs.* Bienvenido Castro 711
Lee Pue Liong *a.k.a.* Paul Lee *vs.* Chua Pue Chin Lee 89
Mabalot, etc., Fe A. – Judge Roberto P. Buenaventura, etc. *vs.* 476
Malayan Insurance Company, Inc. *vs.* Pap Co., Ltd. (Phil. Branch) 155
Malayang Manggagawa ng Stayfast Phils., Inc. *vs.* National Labor Relations Commission, et al. 500
Malayang Manggagawa ng Stayfast Phils., Inc. *vs.* Stayfast Phils., Inc./Maria Almeida 500
Manalili *y* Jose, Apolinario – People of the Philippines *vs.* 762
Manalo, Cesar G. *vs.* Commission on Elections, et al. 339
Manalo, Cesar G. *vs.* Ernesto M. Miranda 339
Miranda, Ernesto M. – Cesar G. Manalo *vs.* 339
Muertegui, represented by his Attorney-in-Fact Domingo A. Muertegui, Jr., Juanito F. – Spouses Clemencio C. Sabitsana, Jr., and Ma. Rosario M. Sabitsana *vs.* 1
MZR Industries, et al. *vs.* Majen Colambot 617
Nacar, Dario *vs.* Gallery Frames and/or Felipe Bordey, Jr. 267

Page

National Housing Authority *vs.* Corazon B. Baello, et al. 171
National Labor Relations Commission, et al. –
Malayang Manggagawa ng Stayfast Phils., Inc. *vs.* 500
National Union of Bank Employees (NUBE) *vs.*
Philnabank Employees Association (PEMA), et al. 218
Neri, Romulo L. *vs.* Sandiganbayan (Fifth Division), et al. 186
Ng, et al., Spouses Pepito L. and Violeta N. –
Pilar Development Corporation *vs.* 519
Ocampo, Jr., et al., Antonio C. –
Maricris D. Dolot, Chairman of Bagong
Alyansang Makabayan-Sorsogon *vs.* 458
Odeña, Emerita B. – City Government of Makati,
as represented by Hon. Mayor Jejomar C. Binay *vs.* 284
Paje, in his capacity as the Secretary of the Department
of Environment and Natural Resources, et al.,
Hon. Ramon – Maricris D. Dolot, Chairman of
Bagong Alyansang Makabayan-Sorsogon *vs.* 458
Pap Co., Ltd. (Phil. Branch) – Malayan Insurance
Company, Inc. *vs.* 155
People of the Philippines – Antonio B. Sanchez *vs.* 397
Adelaida Soriano *vs.* 352
Hur Tin Yang *vs.* 416
People of the Philippines *vs.* Anastacio Amistoso *y* Broca 825
Ryan Blanco *y* Sangkula 408
Apolinario Manalili *y* Jose 762
Rogelia Jardinel Pepino-Consulta 733
People of the Philippines, et al. – Fely Y. Yalong *vs.* 657
Pepino-Consulta, Rogelia Jardinel –
People of the Philippines *vs.* 733
Philippine National Bank *vs.* Mary Sheila Arcobillas 75
Philnabank Employees Association (PEMA), et al. –
National Union of Bank Employees (NUBE) *vs.* 218
Pilar Development Corporation *vs.* Spouses
Pepito L. Ng and Violeta N. Ng, et al. 519
Pilar Development Corporation *vs.*
The Hon. Court of Appeals, et al. 519
Pionilla, Adonis A – Integrated Microelectronics, Inc. *vs.* 818
Rallos, Lucena B. *vs.* Atty. Joseph Bernaldez, et al. 832

Page

Rallos, Lucena B. *vs.* City of Cebu, et al. 832
Rapid Movers and Forwarders Co., Inc. and/or
Nicanor E. Jao, Jr. – Nathaniel N. Dongon *vs.* 533
Republic of the Philippines *vs.* Angeles Bellate, et al. 60
Luz Reyes-Bakunawa, et al. 629
Dr. Norma S. Lugsanay Uy 254
Republic of the Philippines represented by the
Commission on Audit, etc. – Rosendo R. Corales,
in his official capacity as Municipal Mayor of Nagcarlan,
Laguna, et al. *vs.* 432
Reyes-Bakunawa, et al., Luz –
Republic of the Philippines *vs.* 629
Rural Bank of Buenavista (Agusan Del Norte), Inc.,
represented by Lourdesita E. Parajes –
Virginia M. Venzon *vs.* 607
Sabitsana, Jr., Spouses Clemencio C. and
Ma. Rosario M. Sabitsana vs. Juanito F. Muertegui,
represented by his Attorney-in-Fact Domingo A.
Muertegui, Jr. 1
Salazar, on behalf of deceased Armando L. Salazar,
Nenita P. – Sea Power Shipping Enterprises, Inc.,
and/or Bulk Carriers Limited, et al. *vs.* 693
San Joaquin, Jr., et al., . Ceferino – Vicente Ang *vs.* 115
Sanchez, Antonio B. *vs.* People of the Philippines 397
Sandiganbayan (Fifth Division), et al. –
Romulo L. Neri *vs.* 186
Sanoh Fulton Phils., Inc., et al. *vs.* Emmanuel
Bernardo, et al. 378
Saudi Arabian Airlines – Maria Lourdes D.
Castells, et al. *vs.* 667
Sea Power Shipping Enterprises, Inc., and/or
Bulk Carriers Limited, et al. *vs.* Nenita P. Salazar,
on behalf of deceased Armando L. Salazar 693
Secretary of the Department of Finance *vs.*
Court of Tax Appeals (Second Division), et al. 38
Secretary of the Department of Finance *vs.* Kutangbato
Conventional Trading Multi-Purpose Cooperative 38

Page

Sendad, Guiamaludin A. – Hadji Pangsayan T. Abdulrahman *vs.* 592
Soriano, Adelaida *vs.* People of the Philippines 352
Stayfast Phils., Inc./Maria Almeida – Malayang Manggagawa ng Stayfast Phils., Inc. *vs.* 500
Sumitomo Corporation – Asian Construction and Development Corporation *vs.* 788
Sumitomo Corporation *vs.* Asian Construction and Development Corporation 788
Tan, Bobby – Grace Andrade, et al. *vs.* 49
Tan, Bobby *vs.* Grace Andrade, et al. 49
The Hon. Court of Appeals, et al. – Pilar Development Corporatiion *vs.* 519
The Law Firm of Chavez Miranda and Aseoche, represented by its Founding Partner, Francisco I. Chavez *vs.* Atty. Josefina C. Fria 105
The Monetary Board of the Bangko Sentral ng Pilipinas, et al. – Alfeo Vivas, on his behalf and on behalf of the Shareholders of Eurocredit Community Bank *vs.* 132
The Office of the Ombudsman for Mindanao, et al. – Hadji Pangsayan T. Abdulrahman *vs.* 592
University of the Philippines Visayas, et al. – Flord Nicson Calawag *vs.* 208
Uy, Dr. Norma S. Lugsanay – Republic of the Philippines *vs.* 254
Vega, substituted by Lourdes Vega, et al., Leonardo R. – Antipolo Ining (deceased), survived by Manuel Villanueva, et al. *vs.* 237
Venzon, Virginia M. *vs.* Rural Bank of Buenavista (Agusan Del Norte), Inc., represented by Lourdesita E. Parajes 607
Vivas, on his behalf and on behalf of the Shareholders of Eurocredit Community Bank, Alfeo *vs.* The Monetary Board of the Bangko Sentral ng Pilipinas, et al. 132
Yalong, Fely Y. *vs.* People of the Philippines, et al. 657
Yalong, Fely Y. *vs.* Lucila C. Ylagan 657
Ylagan, Lucila C. – Fely Y. Yalong *vs.* 657

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 181359. August 5, 2013]

SPOUSES CLEMENCIO C. SABITSANA, JR. and MA. ROSARIO M. SABITSANA, *petitioners, vs.* **JUANITO F. MUERTEGUI, represented by his Attorney-in-Fact DOMINGO A. MUERTEGUI, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; JURISDICTION; REGIONAL TRIAL COURTS HAVE JURISDICTION OVER AN ACTION FOR QUIETING OF TITLE REGARDLESS OF THE VALUE OF THE PROPERTY. —** On the question of jurisdiction, it is clear under the Rules that an action for quieting of title may be instituted in the RTCs, regardless of the assessed value of the real property in dispute. Under Rule 63 of the Rules of Court, an action to quiet title to real property or remove clouds therefrom may be brought in the appropriate RTC.

2. **CIVIL LAW; CIVIL CODE; ARTICLE 1544 OF THE CIVIL CODE DOES NOT APPLY TO SALES INVOLVING UNREGISTERED LAND. —** Both the trial court and the CA are, however, wrong in applying Article 1544 of the Civil Code. Both courts seem to have forgotten that the provision does not apply to sales involving unregistered land. Suffice it to state that the issue of the buyer's good or bad faith is relevant only where the subject of the sale is registered land, and the purchaser is buying the same from the registered owner whose title to the land is clean. n such case, the purchaser who relies

on the clean title of the registered owner is protected if he is a purchaser in good faith for value.

3. ID; ID.; LAND REGISTRATION ACT (ACT. NO. 3344); APPLIES TO SALE OF UNREGISTERED LANDS. — What applies in this case is Act No. 3344, as amended, which provides for the system of recording of transactions over unregistered real estate. Act No. 3344 expressly declares that any registration made shall be without prejudice to a third party with a better right.

4. ID.; ID.; PRIOR SALE OF THE LAND *VIA* AN UNNOTARIZED DEED OF SALE PREVAILS OVER A SUBSEQUENT SALE *VIA* A NOTARIZED DOCUMENT; THE FIRST BUYER HAS A BETTER RIGHT TO THE LOT AND THE SUBSEQUENT SALE IS NULL AND VOID. — The sale to respondent Juanito was executed on September 2, 1981 *via* an unnotarized deed of sale, while the sale to petitioners was made *via* a notarized document only on October 17, 1991, or ten years thereafter. Thus, Juanito who was the first buyer has a better right to the lot, while the subsequent sale to petitioners is null and void, because when it was made, the seller Garcia was no longer the owner of the lot. *Nemo dat quod non habet*. The fact that the sale to Juanito was not notarized does not alter anything, since the sale between him and Garcia remains valid nonetheless. Notarization, or the requirement of a public document under the Civil Code, is only for convenience, and not for validity or enforceability. And because it remained valid as between Juanito and Garcia, the latter no longer had the right to sell the lot to petitioners, for his ownership thereof had ceased.

5. ID.; ID.; REGISTRATION OF THE SUBSEQUENT SALE DOES NOT HAVE ANY EFFECT ON THE RIGHTS OF THE FIRST BUYER; REGISTRATION DOES NOT VEST TITLE. — Nor can petitioners' registration of their purchase have any effect on Juanito's rights. The mere registration of a sale in one's favor does not give him any right over the land if the vendor was no longer the owner of the land, having previously sold the same to another even if the earlier sale was unrecorded. Neither could it validate the purchase thereof by petitioners, which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has.

6. ID.; DEFENSE OF PRESCRIPTION, LACHES, AND ESTOPPEL ARE UNAVAILING IF THE CLAIM IS BASED ON A NULL AND VOID DEED OF SALE. — Petitioners' defense of prescription, laches and estoppel are unavailing since their claim is based on a null and void deed of sale. The fact that the Muerteguis failed to interpose any objection to the sale in petitioners' favor does not change anything, nor could it give rise to a right in their favor; their purchase remains void and ineffective as far as the Muerteguis are concerned.

7. ID.; DAMAGES; ATTORNEY'S FEES AND LITIGATION EXPENSES AWARDED IN VIEW OF PETITIONERS' BAD FAITH. — Petitioners' actual and prior knowledge of the first sale to Juanito makes them purchasers in bad faith. It also appears that petitioner Atty. Sabitsana was remiss in his duties as counsel to the Muertegui family. Instead of advising the Muerteguis to register their purchase as soon as possible to forestall any legal complications that accompany unregistered sales of real property, he did exactly the opposite: taking advantage of the situation and the information he gathered from his inquiries and investigation, he bought the very same lot and immediately caused the registration thereof ahead of his clients, thinking that his purchase and prior registration would prevail. The Court cannot tolerate this mercenary attitude. Instead of protecting his client's interest, Atty. Sabitsana practically preyed on him. x x x As the Muertegui family lawyer, he had no right to take a position, using information disclosed to him in confidence by his client, that would place him in possible conflict with his duty. He may not, for his own personal interest and benefit, gamble on his client's word, believing it at one time and disbelieving it the next. He owed the Muerteguis his *undivided* loyalty. He had the duty to protect the client, at all hazards and costs even to himself. x x x From the foregoing disquisition, it can be seen that petitioners are guilty of bad faith in pursuing the sale of the lot despite being apprised of the prior sale in respondent's favor. Moreover, petitioner Atty. Sabitsana has exhibited a lack of loyalty toward his clients, the Muerteguis, and by his acts, jeopardized their interests instead of protecting them. Over and above the trial court's and the CA's findings, this provides further justification for the award of attorney's fees, litigation expenses and costs in favor of the respondent.

APPEARANCES OF COUNSEL

Clemencio C. Sabitsana, Jr. for petitioners.
Francisco Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A lawyer may not, for his own personal interest and benefit, gamble on his client's word, believing it at one time and disbelieving it the next. He owes his client his undivided loyalty.

Assailed in this Petition for Review on *Certiorari*[1] are the January 25, 2007 Decision[2] of the Court of Appeals (CA) which denied the appeal in CA-G.R. CV No. 79250, and its January 11, 2008 Resolution[3] denying petitioner's Motion for Reconsideration.[4]

Factual Antecedents

On September 2, 1981, Alberto Garcia (Garcia) executed an unnotarized Deed of Sale[5] in favor of respondent Juanito Muertegui[6] (Juanito) over a 7,500-square meter parcel of unregistered land (the lot) located in Dalutan Island, Talahid, Almeira, Biliran, Leyte del Norte covered by Tax Declaration (TD) No. 1996 issued in 1985 in Garcia's name.[7]

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[1] *Rollo*, pp. 4-18.

[2] CA *rollo*, pp. 133-146; penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[3] *Id.* at 180-181.

[4] *Id.* at 147-157.

[5] Records, pp. 9-10.

[6] The record discloses that the trial court, the Court of Appeals and even the parties alternately use "Muertegui", "Muertigui", or "Muertigue".

[7] Records, p. 11.

Juanito's father Domingo Muertegui, Sr. (Domingo Sr.) and brother Domingo Jr. took actual possession of the lot and planted thereon coconut and *ipil-ipil* trees. They also paid the real property taxes on the lot for the years 1980 up to 1998.

On October 17, 1991, Garcia sold the lot to the Muertegui family lawyer, petitioner Atty. Clemencio C. Sabitsana, Jr. (Atty. Sabitsana), through a notarized deed of absolute sale.[8] The sale was registered with the Register of Deeds on February 6, 1992.[9] TD No. 1996 was cancelled and a new one, TD No. 5327,[10] was issued in Atty. Sabitsana's name. Although Domingo Jr. and Sr. paid the real estate taxes, Atty. Sabitsana also paid real property taxes in 1992, 1993, and 1999. In 1996, he introduced concrete improvements on the property, which shortly thereafter were destroyed by a typhoon.

When Domingo Sr. passed away, his heirs applied for registration and coverage of the lot under the Public Land Act or Commonwealth Act No. 141. Atty. Sabitsana, in a letter[11] dated August 24, 1998 addressed to the Department of Environment and Natural Resources' CENRO/PENRO office in Naval, Biliran, opposed the application, claiming that he was the true owner of the lot. He asked that the application for registration be held in abeyance until the issue of conflicting ownership has been resolved.

On April 11, 2000, Juanito, through his attorney-in-fact Domingo Jr., filed Civil Case No. B-1097[12] for quieting of title and preliminary injunction, against herein petitioners Atty. Sabitsana and his wife, Rosario, claiming that they bought the lot in bad faith and are exercising acts of possession and ownership over the same, which acts thus constitute a cloud over his title.

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[8] *Id.* at 17.

[9] *Id.* at 24.

[10] *Id.* at 18.

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

[12] With the Regional Trial Court, 8th Judicial Region, Naval, Biliran, Branch 16.

The Complaint[13] prayed, among others, that the Sabitsana Deed of Sale, the August 24, 1998 letter, and TD No. 5327 be declared null and void and of no effect; that petitioners be ordered to respect and recognize Juanito's title over the lot; and that moral and exemplary damages, attorney's fees, and litigation expenses be awarded to him.

In their Answer with Counterclaim,[14] petitioners asserted mainly that the sale to Juanito is null and void absent the marital consent of Garcia's wife, Soledad Corto (Soledad); that they acquired the property in good faith and for value; and that the Complaint is barred by prescription and laches. They likewise insisted that the Regional Trial Court (RTC) of Naval, Biliran did not have jurisdiction over the case, which involved title to or interest in a parcel of land the assessed value of which is merely ₱1,230.00.

The evidence and testimonies of the respondent's witnesses during trial reveal that petitioner Atty. Sabitsana was the Muertegui family's lawyer at the time Garcia sold the lot to Juanito, and that as such, he was consulted by the family before the sale was executed; that after the sale to Juanito, Domingo Sr. entered into actual, public, adverse and continuous possession of the lot, and planted the same to coconut and *ipil-ipil*; and that after Domingo Sr.'s death, his wife Caseldita, succeeded him in the possession and exercise of rights over the lot.

On the other hand, Atty. Sabitsana testified that before purchasing the lot, he was told by a member of the Muertegui family, Carmen Muertegui Davies (Carmen), that the Muertegui family had bought the lot, but she could not show the document of sale; that he then conducted an investigation with the offices of the municipal and provincial assessors; that he failed to find any document, record, or other proof of the sale by Garcia to Juanito, and instead discovered that the lot was still in the name of Garcia; that given the foregoing revelations, he concluded that the Muerteguis were merely bluffing, and that they probably did not want him to buy the property because they were interested

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[13] Records, pp. 1-6.

[14] *Id.* at 20-27.

in buying it for themselves considering that it was adjacent to a lot which they owned; that he then proceeded to purchase the lot from Garcia; that after purchasing the lot, he wrote Caseldita in October 1991 to inform her of the sale; that he then took possession of the lot and gathered *ipil-ipil* for firewood and harvested coconuts and *calamansi* from the lot; and that he constructed a rip-rap on the property sometime in 1996 and 1997.

Ruling of the Regional Trial Court

On October 28, 2002, the trial court issued its Decision[15] which decrees as follows:

> WHEREFORE, in view of the foregoing considerations, this Court finds in favor of the plaintiff and against the defendants, hereby declaring the Deed of Sale dated 2 September 1981 as valid and preferred while the Deed of Absolute Sale dated 17 October 1991 and Tax Declaration No. 5327 in the name of Atty. Clemencio C. Sabitsana, Jr. are VOID and of no legal effect.
>
> The Provincial Assessor and the Municipal Assessor of Naval are directed to cancel Tax Declaration No. 5327 as void and done in bad faith.
>
> Further, Atty. Clemencio C. Sabitsana, Jr. is ordered to pay plaintiff Juanito Muertigui, represented by his attorney-in-fact Domingo Muertigui, Jr. the amount[s] of:
>
> a) ₱30,000.00 [as] attorney's fees;
> b) ₱10,000.00 [as] litigation expenses; and
> c) Costs.
>
> SO ORDERED.[16]

The trial court held that petitioners are not buyers in good faith. Petitioner Atty. Sabitsana was the Muertegui family's lawyer, and was informed beforehand by Carmen that her family had purchased the lot; thus, he knew of the sale to Juanito. After conducting an investigation, he found out that the sale was not registered. With this information in mind, Atty. Sabitsana

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[15] *Id.* at 175-186; penned by Judge Enrique C. Asis.

[16] *Id.* at 185-186.

went on to purchase the same lot and raced to register the sale ahead of the Muerteguis, expecting that his purchase and prior registration would prevail over that of his clients, the Muerteguis. Applying Article 1544 of the Civil Code,[17] the trial court declared that even though petitioners were first to register their sale, the same was not done in good faith. And because petitioners' registration was not in good faith, preference should be given to the sale in favor of Juanito, as he was the first to take possession of the lot in good faith, and the sale to petitioners must be declared null and void for it casts a cloud upon the Muertegui title.

Petitioners filed a Motion for Reconsideration[18] but the trial court denied[19] the same.

Ruling of the Court of Appeals

Petitioners appealed to the CA[20] asserting that the sale to Juanito was null and void for lack of marital consent; that the sale to them is valid; that the lower court erred in applying Article 1544 of the Civil Code; that the Complaint should have been barred by prescription, laches and estoppel; that respondent had no cause of action; that respondent was not entitled to an award of attorney's fees and litigation expenses; and that they should be the ones awarded attorney's fees and litigation expenses.

The CA, through its questioned January 25, 2007 Decision,[21] denied the appeal and affirmed the trial court's Decision *in*

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[17] Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

[18] Records, pp. 187-195.

[19] See Order dated December 18, 2002, *id.* at 209-211.

[20] Docketed as CA-G.R. CV No. 79250.

[21] CA *rollo*, pp. 133-146.

toto. It held that even though the lot admittedly was conjugal property, the absence of Soledad's signature and consent to the deed did not render the sale to Juanito absolutely null and void, but merely voidable. Since Garcia and his wife were married prior to the effectivity of the Family Code, Article 173 of the Civil Code[22] should apply; and under the said provision, the disposition of conjugal property without the wife's consent is not void, but merely voidable. In the absence of a decree annulling the deed of sale in favor of Juanito, the same remains valid.

The CA added that the fact that the Deed of Sale in favor of Juanito was not notarized could not affect its validity. As against the notarized deed of sale in favor of petitioners, the CA held that the sale in favor of Juanito still prevails. Applying Article 1544 of the Civil Code, the CA said that the determining factor is petitioners' good faith, or the lack of it. It held that even though petitioners were first to register the sale in their favor, they did not do so in good faith, for they already knew beforehand of Garcia's prior sale to Juanito. By virtue of Atty. Sabitsana's professional and confidential relationship with the Muertegui family, petitioners came to know about the prior sale to the Muerteguis and the latter's possession of the lot, and yet they pushed through with the second sale. Far from acting in good faith, petitioner Atty. Sabitsana used his legal knowledge to take advantage of his clients by registering his purchase ahead of them.

Finally, the CA declared that Juanito, as the rightful owner of the lot, possessed the requisite cause of action to institute the suit for quieting of title and obtain judgment in his favor, and is entitled as well to an award for attorney's fees and litigation expenses, which the trial court correctly held to be just and equitable under the circumstances.

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[22] Article 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED and the Decision dated October 28, 2002 of the Regional Trial Court, 8th Judicial Region, Branch 16, Naval[,] Biliran, is hereby AFFIRMED. Costs against defendants-appellants.

SO ORDERED.[23]

Issues

Petitioners now raise the following issues for resolution:

I. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE REGIONAL TRIAL COURT DID NOT HAVE JURISDICTION OVER THE CASE IN VIEW OF THE FACT THAT THE ASSESSED VALUE OF THE SUBJECT LAND WAS ONLY ₱1,230.00 (AND STATED MARKET VALUE OF ONLY ₱3,450.00).

II. THE COURT OF APPEALS ERRED IN APPLYING ART. 1544 OF THE CIVIL CODE INSTEAD OF THE PROPERTY REGISTRATION DECREE (P.D. NO. 1529) CONSIDERING THAT THE SUBJECT LAND WAS UNREGISTERED.

III. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE COMPLAINT WAS ALREADY BARRED [BY] LACHES AND THE STATUTE OF LIMITATIONS.

IV. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT ORDERING THE PETITIONERS TO PAY ATTORNEY'S FEES AND LITIGATION EXPENSES TO THE RESPONDENT.[24]

Petitioners' Arguments

Petitioners assert that the RTC of Naval, Biliran did not have jurisdiction over the case. They argue that since the assessed value of the lot was a mere ₱1,230.00, jurisdiction over the case lies with the first level courts, pursuant to Republic Act

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[23] CA *rollo*, p. 146.

[24] *Rollo*, p. 9.

No. 7691,[25] which expanded their exclusive original jurisdiction to include "all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs."[26] Petitioners thus conclude that the Decision in Civil Case No. B-1097 is null and void for lack of jurisdiction.

Petitioners next insist that the lot, being unregistered land, is beyond the coverage of Article 1544 of the Civil Code, and instead, the provisions of Presidential Decree (PD) No. 1529 should apply. This being the case, the Deed of Sale in favor of Juanito is valid only as between him and the seller Garcia, pursuant to Section 113 of PD 1529;[27] it cannot affect petitioners who are not parties thereto.

On the issue of estoppel, laches and prescription, petitioners insist that from the time they informed the Muerteguis in writing about their purchase of the lot, or in October 1991, the latter did not notify them of their prior purchase of the lot, nor did respondent interpose any objection to the sale in their favor. It was only in 1998 that Domingo Jr. showed to petitioners the unnotarized deed of sale. According to petitioners, this seven-year period of silence and inaction on the Muerteguis' part should

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[25] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980." Approved March 25, 1994.

[26] REPUBLIC ACT NO. 7691, Sec. 3.

[27] SECTION 113. Recording of instruments relating to unregistered lands. — No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies. x x x

be taken against them and construed as neglect on their part to assert their rights for an unreasonable length of time. As such, their action to quiet title should be deemed barred by laches and estoppel.

Lastly, petitioners take exception to the award of attorney's fees and litigation expenses, claiming that since there was no bad faith on their part, such award may not be considered just and equitable under the circumstances. Still, an award of attorney's fees should remain the exception rather than the rule; and in awarding the same, there must have been an express finding of facts and law justifying such award, a requirement that is absent in this case.

Petitioners thus pray for the reversal of the questioned CA Decision and Resolution; the dismissal of the Complaint in Civil Case No. B-1097; the deletion of the award of attorney's fees and litigation expenses in respondent's favor; and a declaration that they are the true and rightful owners of the lot.

Respondent's Arguments

Respondent, on the other hand, counters that a suit for quieting of title is one whose subject matter is incapable of pecuniary estimation, and thus falls within the jurisdiction of the RTC. He likewise insists that Article 1544 applies to the case because there is a clear case of double sale of the same property to different buyers, and the bottom line thereof lies in petitioners' lack of good faith in entering into the subsequent sale. On the issue of laches/estoppel, respondent echoes the CA's view that he was persistent in the exercise of his rights over the lot, having previously filed a complaint for recovery of the lot, which unfortunately was dismissed based on technicality.

On the issue of attorney's fees and litigation expenses, respondent finds refuge in Article 2208 of the Civil Code,[28]

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

(1) When exemplary damages are awarded;

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

citing three instances which fortify the award in his favor — petitioners' acts compelled him to litigate and incur expenses to protect his interests; their gross and evident bad faith in refusing to recognize his ownership and possession over the lot; and the justness and equitableness of his case.

Our Ruling

The Petition must be denied.

The Regional Trial Court has jurisdiction over the suit for quieting of title.

On the question of jurisdiction, it is clear under the Rules that an action for quieting of title may be instituted in the RTCs, regardless of the assessed value of the real property in dispute. Under Rule 63 of the Rules of Court,[29] an action to quiet title

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(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[29] RULE 63
DECLARATORY RELIEF AND SIMILAR REMEDIES

Section 1. *Who may file petition.*

Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

to real property or remove clouds therefrom may be brought in the appropriate RTC.

It must be remembered that the suit for quieting of title was prompted by petitioners' August 24, 1998 letter-opposition to respondent's application for registration. Thus, in order to prevent[30] a cloud from being cast upon his application for a title, respondent filed Civil Case No. B-1097 to obtain a declaration of his rights. In this sense, the action is one for declaratory relief, which properly falls within the jurisdiction of the RTC pursuant to Rule 63 of the Rules.

Article 1544 of the Civil Code does not apply to sales involving unregistered land.

Both the trial court and the CA are, however, wrong in applying Article 1544 of the Civil Code. Both courts seem to have forgotten that the provision does not apply to sales involving unregistered land. Suffice it to state that the issue of the buyer's good or bad faith is relevant only where the subject of the sale is registered land, and the purchaser is buying the same from the registered owner whose title to the land is clean. In such case, the purchaser who relies on the clean title of the registered owner is protected if he is a purchaser in good faith for value.[31]

Act No. 3344 applies to sale of unregistered lands.

An action for the reformation of an instrument, **to quiet title to real property or remove clouds therefrom**, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (Emphasis supplied)

[30] CIVIL CODE, Art. 476. Whenever **there is a cloud** on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to **prevent a cloud from being cast** upon title to real property or any interest therein. (Emphases supplied)

[31] *Spouses Ong v. Spouses Olasiman*, 520 Phil. 338, 345-346 (2006).

What applies in this case is Act No. 3344,[32] as amended, which provides for the system of recording of transactions over unregistered real estate. Act No. 3344 expressly declares that any registration made shall be without prejudice to a third party with a better right. The question to be resolved therefore is: who between petitioners and respondent has a better right to the disputed lot?

Respondent has a better right to the lot.

The sale to respondent Juanito was executed on September 2, 1981 *via* an unnotarized deed of sale, while the sale to petitioners was made *via* a notarized document only on October 17, 1991, or ten years thereafter. Thus, Juanito who was the first buyer has a better right to the lot, while the subsequent sale to petitioners is null and void, because when it was made, the seller Garcia was no longer the owner of the lot. *Nemo dat quod non habet*.

The fact that the sale to Juanito was not notarized does not alter anything, since the sale between him and Garcia remains valid nonetheless. Notarization, or the requirement of a public document under the Civil Code,[33] is only for convenience, and not

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[32] AN ACT TO AMEND SECTION ONE HUNDRED AND NINETY-FOUR OF THE ADMINISTRATIVE CODE, AS AMENDED BY ACT NUMBERED TWO THOUSAND EIGHT HUNDRED AND THIRTY-SEVEN, CONCERNING THE RECORDING OF INSTRUMENTS RELATING TO LAND NOT REGISTERED UNDER ACT NUMBERED FOUR HUNDRED AND NINETY-SIX, ENTITLED "THE LAND REGISTRATION ACT", AND FIXING THE FEES TO BE COLLECTED BY THE REGISTER OF DEEDS FOR INSTRUMENTS RECORDED UNDER SAID ACT. Approved December 8, 1926.

[33] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2, and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

for validity or enforceability.[34] And because it remained valid as between Juanito and Garcia, the latter no longer had the right to sell the lot to petitioners, for his ownership thereof had ceased.

Nor can petitioners' registration of their purchase have any effect on Juanito's rights. The mere registration of a sale in one's favor does not give him any right over the land if the vendor was no longer the owner of the land, having previously sold the same to another even if the earlier sale was unrecorded.[35] Neither could it validate the purchase thereof by petitioners, which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has.[36]

Specifically, we held in *Radiowealth Finance Co. v. Palileo*[37] that:

> Under Act No. 3344, registration of instruments affecting unregistered lands is 'without prejudice to a third party with a better right.' The aforequoted phrase has been held by this Court to mean that the mere registration of a sale in one's favor does not give him any right over the land if the vendor was not anymore the owner of the land having previously sold the same to somebody else even if the earlier sale was unrecorded.

Petitioners' defense of prescription, laches and estoppel are unavailing since their claim is based on a null and void deed of sale. The fact that the Muerteguis failed to interpose any objection

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(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

[34] *Estreller v. Ysmael*, G.R. No. 170264, March 13, 2009, 581 SCRA 247, 253.

[35] *Radiowealth Finance Co. v. Palileo*, 274 Phil. 516, 521-522 (1991). See *Spouses Abrigo v. De Vera*, 476 Phil. 645, 652 (2004).

[36] *Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba*, 456 Phil. 569, 578 (2003).

[37] 274 Phil. 516, 521 (1991).

to the sale in petitioners' favor does not change anything, nor could it give rise to a right in their favor; their purchase remains void and ineffective as far as the Muerteguis are concerned.

The award of attorney's fees and litigation expenses is proper because of petitioners' bad faith.

Petitioners' actual and prior knowledge of the first sale to Juanito makes them purchasers in bad faith. It also appears that petitioner Atty. Sabitsana was remiss in his duties as counsel to the Muertegui family. Instead of advising the Muerteguis to register their purchase as soon as possible to forestall any legal complications that accompany unregistered sales of real property, he did exactly the opposite: taking advantage of the situation and the information he gathered from his inquiries and investigation, he bought the very same lot and immediately caused the registration thereof ahead of his clients, thinking that his purchase and prior registration would prevail. The Court cannot tolerate this mercenary attitude. Instead of protecting his client's interest, Atty. Sabitsana practically preyed on him.

Petitioner Atty. Sabitsana took advantage of confidential information disclosed to him by his client, using the same to defeat him and beat him to the draw, so to speak. He rushed the sale and registration thereof ahead of his client. He may not be afforded the excuse that he nonetheless proceeded to buy the lot because he *believed* or *assumed* that the Muerteguis were simply bluffing when Carmen told him that they had already bought the same; this is too convenient an excuse to be believed. As the Muertegui family lawyer, he had no right to take a position, using information disclosed to him in confidence by his client, that would place him in possible conflict with his duty. He may not, for his own personal interest and benefit, gamble on his client's word, believing it at one time and disbelieving it the next. He owed the Muerteguis his *undivided* loyalty. He had the duty to protect the client, at all hazards and costs even to himself.[38]

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[38] *Heirs of Lydio Falame v. Atty. Baguio*, 571 Phil. 428, 442 (2008), citing Agpalo, *The Code of Professional Responsibility for Lawyers*, 1991 1st Edition, p. 199, citing *Watkins v. Sedberry*, 261 U.S. 571, 67 L. ed. 802 (1923).

Petitioner Atty. Sabitsana is enjoined to "look at any representation situation from the point of view that there are possible conflicts, and further to think in terms of impaired loyalty, that is[,] to evaluate if his representation in any way will impair his loyalty to a client."[39]

Moreover, as the Muertegui family's lawyer, Atty. Sabitsana was under obligation to safeguard his client's property, and not jeopardize it. Such is his duty as an attorney, and pursuant to his general agency.[40]

Even granting that Atty. Sabitsana has ceased to act as the Muertegui family's lawyer, he still owed them his loyalty. The termination of attorney-client relation provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client on a matter involving confidential information which the lawyer acquired when he was counsel. The client's confidence once reposed should not be divested by mere expiration of professional employment.[41] This is underscored by the fact that Atty. Sabitsana obtained information from Carmen which he used to his advantage and to the detriment of his client.

From the foregoing disquisition, it can be seen that petitioners are guilty of bad faith in pursuing the sale of the lot despite being apprised of the prior sale in respondent's favor. Moreover, petitioner Atty. Sabitsana has exhibited a lack of loyalty toward his clients, the Muerteguis, and by his acts, jeopardized their interests instead of protecting them. Over and above the trial

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[39] *Id.* at 15, citing Zitrin, Richard A. and Langford, Carol M., *Legal Ethics in the Practice Of Law*, Matthew Bender and Company, Inc., Second Edition, p. 181.

[40] *Presidential Commission on Good Government v. Sandiganbayan*, 495 Phil. 485, 509 (2005).

[41] *Heirs of Lydio Falame v. Atty. Baguio*, *supra* note 38 at 442, citing Agpalo, *The Code of Professional Responsibility for Lawyers*, 1991 1st Edition, p. 167, citing *Nombrado v. Hernandez*, 135 Phil. 5, 9 (1968), *Natam v. Capule*, 91 Phil. 640, 648-649 (1952), *San Jose v. Cruz*, 57 Phil. 792, 794 (1933) and *Hilado v. David*, 84 Phil. 569, 576-577 (1949).

court's and the CA's findings, this provides further justification for the award of attorney's fees, litigation expenses and costs in favor of the respondent.

Thus said, judgment must be rendered in favor of respondent to prevent the petitioners' void sale from casting a cloud upon his valid title.

WHEREFORE, premises considered, the Petition is **DENIED**. The January 25, 2007 Decision and the January 11, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 79250 are **AFFIRMED**. Costs against petitioners.

SO ORDERED.

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

EN BANC

[G.R. No. 207026. August 6, 2013]

COCOFED-PHILIPPINE COCONUT PRODUCERS FEDERATION, INC., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; REPUBLIC ACT NO. 7941 (R.A. 7941); THE ISSUE ON THE VALIDITY OF THE CANCELLATION OF A SECTORAL PARTY'S REGISTRATION IS NOT DEPENDENT ON THE OUTCOME OF THE ELECTIONS; REASON. — In the present case, while the COMELEC counted and tallied the votes in favor of COCOFED showing that it failed to obtain the required number of votes, participation in the 2013 elections was merely one of the reliefs COCOFED prayed for. The validity

of the COMELEC's resolution, cancelling COCOFED's registration, remains a very live issue that is not dependent on the outcome of the elections. Under Section 4 of RA No. 7941, a party-list group already registered "need not register anew" for purposes of every subsequent election, but only needs to file a *manifestation of intent to participate* with the COMELEC. These two acts are different from each other. Under Section 5 of RA No. 7941, an applicant for registration has to file with the COMELEC, not later than ninety (90) days before the election, a verified petition stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations. The applicant is required to submit its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require. Aside from these, the law requires the publication of the applicant's petition in at least two (2) national newspapers of general circulation. The COMELEC then resolves the petition, determining whether the applicant has complied with all the necessary requirements. Under this legal reality, the fact that COCOFED did not obtain sufficient number of votes in the elections does not affect the issue of the validity of the COMELEC's registration.

2. ID.; ID.; ID.; ID.; FAILURE TO SUBMIT THE LIST OF FIVE NOMINEES BEFORE THE ELECTION WARRANTS THE CANCELLATION OF A SECTORAL PARTY'S REGISTRATION.— The law expressly requires the submission of a list containing at least five qualified nominees. x x x As early as February 8, 2012, the COMELEC had informed, through Resolution No. 9359, all registered parties who wished to participate in the May 2013 party-list elections that they "shall file with the [COMELEC] a Manifestation of Intent to participate in the part-list election together with its list of at least five (5) nominees, no later than May 31, 2012[.]" Under Section 6(5) of RA No. 7941, violation of or failure to comply with laws, rules or regulations relating to elections is a ground for the cancellation of registration. However, not every kind of violation automatically warrants the cancellation of a party-list group's registration. Since a reading of the entire Section 6 shows that all the grounds for cancellation actually pertain to the party itself, then the laws, rules and regulations violated to warrant cancellation under Section 6(5) must be one that is

primarily imputable to the party itself and not one that is chiefly confined to an individual member or its nominee. COCOFED's failure to submit a list of *five nominees*, despite ample opportunity to do so before the elections, is a violation imputable to the party under Section 6(5) of RA No. 7941.

3. ID.; ID.; ID.; THE REQUIREMENT IN SECTION 8 OF R.A. 7941 TO SUBMIT A LIST OF FIVE QUALIFIED NOMINEES IS MANDATORY. — [T]he language of Section 8 of RA No. 7941 does not only use the word "shall" in connection with the requirement of submitting a list of nominees; it uses this mandatory term in conjunction with the number of names to be submitted that is couched negatively, *i.e.*, "not less than five." The use of these terms together is a plain indication of legislative intent to make the statutory requirement mandatory for the party to undertake. With the date and manner of submission of the list having been determined by law — a condition precedent for the registration of new party-list groups or for participation in the party-list elections in case of previously registered party-list groups, and was in fact reiterated by the COMELEC through its resolutions — COCOFED cannot now claim good faith, much less dictate its own terms of compliance. Pursuant to the terms of Section 8 of RA No. 7941, the Court cannot leave to the party the discretion to determine the number of nominees it would submit. A contrary view overlooks the fact that the requirement of submission of a list of five nominees is primarily a statutory requirement for the *registration* of party-list groups and the submission of this list is part of a registered party's *continuing compliance* with the law to maintain its registration. A party-list group's previous registration with the COMELEC confers no vested right to the maintenance of its registration. In order to maintain a party in a continuing compliance status, the party must prove not only its continued possession of the requisite qualifications but, equally, must show its compliance with the ***basic*** requirements of the law.

4. ID.; ID.; ID.; ID.; THE FACT THAT A PARTY-LIST GROUP IS ENTITLED ONLY TO THREE SEATS IN CONGRESS, DOES NOT RENDER SECTION 8 OF R.A. 7941 PERMISSIVE IN NATURE. — [T]he fact that a party-list group is entitled to no more than three seats in Congress, regardless of the number of votes it may garner, does not render

Section 8 of RA No. 7941 permissive in nature. On February 21, 2012, the COMELEC, through Resolution No. 9366, again apprised registered party-list groups that its Manifestation of Intent to Participate shall be accompanied by a list of at least five (5) nominees. Under Section 9, Rule 5 of this resolution, the Education and Information Department of the COMELEC shall cause the immediate publication of this list in two national newspapers of general circulation. The publication of the list of nominees does not only serve as the reckoning period of certain remedies and procedures under the resolution. Most importantly, the required publication satisfies the people's constitutional right to information on matters of public concern. The need for submission of the complete list required by law becomes all the more important in a party-list election to apprise the electorate of the individuals behind the party they are voting for. If only to give meaning to the right of the people to elect their representatives on the basis of an informed judgment, then the party-list group must submit a complete list of five nominees because the identity of these five nominees carries critical bearing on the electorate's choice. A post-election completion of the list of nominees defeats this constitutional purpose. Even if a party-list group can only have a maximum of three seats, the requirement of additional two nominees actually addresses the contingencies that may happen during the term of these party-list representatives.

5. ID.; ID.; ID.; ID.; CHANGE OF NAME OR ALTERATION OF THE ORDER OF NAMES IN THE LIST MUST BE MADE WITHIN THE PRESCRIBED PERIOD. — [A]fter the submission of a list of nominees to the COMELEC, the *party itself* has no discretion to change the names or to alter the order of nomination in the list it submitted. While there are instances when a change of name or alteration of the order is allowed, these circumstances focus on the nominee himself, whether voluntary (the nominee withdraws in writing his nomination) or involuntary (the nominee dies or becomes incapacitated). To allow COCOFED to complete the list of its nominees beyond the deadline set by the law would allow the party itself to do indirectly what it cannot do directly.

6. ID.; ID.; ID.; ID.; A PARTY IS NOT ALLOWED TO REFUSE TO SUBMIT A LIST AND CONSIDER IT AS A WAIVER ON ITS PART; REASON. — [A] party is not allowed to

> simply refuse to submit a list containing "not less than five nominees" and consider the deficiency as a waiver on its part. Aside from colliding with the plain text of the law, this interpretation is not in harmony with the statutory policy of enhancing the party-list-groups' chances to compete for and win seats in the legislature, and therefore does not serve as incentive to Filipino citizens belonging to these groups to contribute to the formulation and enactment of appropriate legislation.

APPEARANCES OF COUNSEL

Valmores Valmores & Valmores Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for *certiorari*,[1] with prayer for temporary restraining order and/or *status quo ante* order, challenging the May 10, 2013 omnibus resolution issued by the Commission on Elections (*COMELEC*) in *In the Matter of the Compliance of the Commission on Elections En Banc with the Directives of the Supreme Court in Atong Paglaum, et al. v. Commission on Elections-COCOFED-Philippine Coconut Producers Federation, Inc.*[2]

Petitioner COCOFED-Philippine Coconut Producers Federation, Inc. (*COCOFED*) is an organization and sectoral party whose membership comes from the peasant sector, particularly the coconut farmers and producers.[3] On May 29, 2012, COCOFED manifested with the COMELEC its intent to participate in the party-list elections of May 13, 2013 and

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[1] Under Rule 65, in relation to Rule 64, of the Rules of Court; *rollo*, pp. 3-22.

[2] Docketed as SPP No. 12-202 (PLM); *id.* at 25-37.

[3] *Id.* at 5.

submitted the names of only two nominees — **Atty. Emerito S. Calderon (first nominee)** and Atty. Domingo P. Espina.[4]

On August 23, 2012, the COMELEC conducted a summary hearing, pursuant to COMELEC Resolution No. 9513,[5] to determine whether COCOFED, among several party-list groups that filed manifestations of intent to participate in the May 13, 2013 party-list elections, had continuously complied with the legal requirements.

In its November 7, 2012 resolution, the COMELEC cancelled COCOFED's registration and accreditation as a party-list organization on several grounds.[6] Notably, the Concurring Opinion of Commissioner Christian Lim cited, as additional ground, that since COCOFED submitted only two nominees, then it failed to comply with Section 8 of Republic Act (*RA*) No. 7941[7] that requires the party to submit to COMELEC a list of not less than five nominees.

On December 4, 2012, COCOFED submitted the names of **Charles R. Avila**, in substitution of Atty. Espina, **as its second nominee** and **Efren V. Villaseñor as its third nominee**.[8]

COCOFED, among several others, questioned the COMELEC's cancellation of its registration and accreditation before this Court, with a prayer for the issuance of preliminary injunction and/or

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[4] *Id.* at 4.

[5] In the Matter of: (1) the Automatic Review by the Commission *En Banc* of Pending Petitions for Registration of Party-List Groups; and (2) Setting for Hearing the Accredited Party-List Groups or Organizations which are Existing and which have Filed Manifestations of Intent to Participate in the 2013 National and Local Elections.

[6] (1) [T]hat the party is affiliated with a number of both private and government-owned or controlled coconut agencies and it thus not marginalized; (2) that the party receives assistance from the government in its various programs for the sector it seeks to represent; (3) the party's two nominees does not belong to the sector sought to be represented; *rollo*, p. 32.

[7] An Act Providing for the Election of Party-list Representatives through the Party-list System, and Appropriating Funds therefor.

[8] *Rollo*, p. 38.

temporary restraining order. By reason of the *status quo ante* order issued by the Court, COCOFED's name was included in the printing of the official ballots for the May 13, 2013 elections.

On April 2, 2013, the Court rendered its Decision in *Atong Paglaum, Inc., etc., et al. v. Commission on Elections.*[9] The Court remanded all the petitions to the COMELEC to determine their compliance with the new parameters and guidelines set by the Court in that case. In *Atong Paglaum*, the Court ruled:

> Thus, we remand all the present petitions to the COMELEC. In determining who may participate in the coming 13 May 2013 and subsequent party-list elections, the COMELEC shall adhere to the following parameters:
>
> x x x x x x x x x
>
> 6. National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified.

On May 10, 2013, the COMELEC issued its assailed resolution, maintaining its earlier ruling cancelling COCOFED's registration and accreditation for its failure to comply with the requirement of Section 8 of RA No. 7941, *i.e.*, to submit a list of not less than five nominees.

The COMELEC noted that all existing party-list groups or organizations were on notice as early as February 8, 2012 (when Resolution No. 9359 was promulgated) that upon submission of their respective manifestations of intent to participate, they also needed to submit a list of five nominees.[10] During the hearing on August 23, 2012, the COMELEC pointed out to COCOFED that it had only two nominees.

WHEREFORE, the Commission *En banc* RESOLVES:

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[9] G.R. No. 203766.

[10] In the Matter of the Last Day of Filing of Manifestation of Intent to Participate, and Submission of Names of Nominees under the Party-List System of Representation in Connection with the 2013 National and Local Elections.

A. To **DENY the Manifestations of Intent to Participate**, and **CANCEL the registration and accreditation**, of the following parties, groups, or organizations:

x x x x x x x x x

(3) x x x – COCOFED – Philippine Coconut Producers Federation, Inc.

Accordingly, the foregoing shall be REMOVED from the registry of party-list groups and organizations of the Commission, and shall NOT BE ALLOWED to PARTICIPATE as a candidate for the Party-List System of Representation for the 13 May 2013 Elections and subsequent elections thereafter.[11] (emphases ours)

COCOFED moved for reconsideration only to withdraw its motion later. Instead, on May 20, 2013, COCOFED filed a *Manifestation with Urgent Request to Admit Additional Nominees* with the COMELEC, namely: (i) Felino M. Gutierrez and (ii) Rodolfo T. de Asis.[12]

On May 24, 2013, the COMELEC issued a resolution declaring the cancellation of COCOFED's accreditation final and executory.

THE PETITION

COCOFED argues that the COMELEC gravely abused its discretion in issuing the assailed resolution on the following grounds:

First, the COMELEC's issuance of the assailed resolution violated its right to due process because the COMELEC did not even conduct a summary hearing, as ordered by the Court in *Atong Paglaum*, to give it an opportunity to explain and comply with the requirement. COCOFED submits that the requirement of submitting the names of at least five nominees should not be strictly applied "in light of the nature of party-list representation" which "look[s] to the party, and not [to] the nominees *per se*."[13]

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[11] *Rollo*, p. 36.

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

[13] *Id.* at 15.

Second, its failure to submit the required number of nominees was based on the good faith belief that its submission was sufficient for purposes of the elections and that it could still be remedied since COCOFED could simply submit the names of its additional two nominees. COCOFED adds that the number of nominees becomes significant only "when a party-list organization is able to attain a sufficient number of votes which would qualify it for a seat in the House of Representatives."[14]

Third, the COMELEC violated its right to equal protection of the laws since at least two other party-list groups (ACT-CIS and MTM Phils.) which failed to submit five nominees were included in the official list of party-list groups.

COCOFED prays for the following:

> 2. After giving due course to the instant Petition and after a consideration of the issues, judgment be rendered:
>
> a. ANNULLING and SETTING ASIDE [the COMELEC's assailed resolution];
>
> b. DECLARING petitioner COCOFED x x x to be eligible to participate in the Party-List System of Representation in the 2013 Elections; and
>
> c. ORDERING [the COMELEC] x x x to COUNT and TALLY the votes garnered by petitioner COCOFED[.][15]

RESPONDENT'S COMMENT

The petition is already moot and academic. Despite the issuance of the assailed resolution three days before the elections, COCOFED remained in the ballot and its votes were counted and tallied. As of 8:26:02 a.m. of May 29, 2013, the official results showed that it only received 80,397 votes or 0.36% of the total number of votes cast for the party-list elections. With the reliefs prayed for already performed, nothing more remained for COCOFED to ask.

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[14] *Ibid.*

[15] *Id.* at 21.

At any rate, the COMELEC claims that it did not abuse, much less gravely abuse its discretion, when it maintained its earlier ruling cancelling COCOFED's registration and accreditation; it merely applied the clear requirement of Section 8, in relation to Section 6, of RA No. 7941. The importance of a complete list of five nominees cannot be overemphasized. Based on this list, the COMELEC checks a party's compliance with the other legal requirements, namely: (i) that a person is nominated in only one list; and (ii) that the list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election.

Additionally, the submission of a complete list is mandatory under the terms of Section 8 of RA No. 7941. As we held in *Lokin, Jr. v. Commission on Elections*,[16] the submission of a complete list goes into the right of the voters to know and make intelligent and informed choice.

Lastly, it is not mandatory for the COMELEC to conduct summary evidentiary hearings under the ruling in *Atong Paglaum*.

COURT'S RULING

We DISMISS the petition.

The petition is not moot

A moot and academic case is one that ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value.[17]

In the present case, while the COMELEC counted and tallied the votes in favor of COCOFED showing that it failed to obtain the required number of votes, participation in the 2013 elections was merely one of the reliefs COCOFED prayed for. The validity of the COMELEC's resolution, cancelling COCOFED's

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[16] G.R. Nos. 179431-32 and 180443, June 22, 2010, 621 SCRA 385, 409.

[17] *Deutsche Bank AG v. Court of Appeals*, G.R. No. 193065, February 27, 2012, 667 SCRA 82, 91; and *King v. Court of Appeals*, 514 Phil. 465, 470 (2005).

registration, remains a very live issue that is not dependent on the outcome of the elections.

Under Section 4 of RA No. 7941, a party-list group already registered "need not register anew" for purposes of every subsequent election, but only needs to file a *manifestation of intent to participate* with the COMELEC. These two acts are different from each other.

Under Section 5 of RA No. 7941, an applicant for registration has to file with the COMELEC, not later than ninety (90) days before the election, a verified petition stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations.

The applicant is required to submit its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require. Aside from these, the law requires the publication of the applicant's petition in at least two (2) national newspapers of general circulation. The COMELEC then resolves the petition, determining whether the applicant has complied with all the necessary requirements.

Under this legal reality, the fact that COCOFED did not obtain sufficient number of votes in the elections does not affect the issue of the validity of the COMELEC's registration. A finding that the COMELEC gravely abused its discretion in cancelling COCOFED's registration would entitle it, if it is so minded, to participate in subsequent elections without need of undergoing registration proceedings anew.

This brings us to the issue of whether the COMELEC indeed gravely abused its discretion in issuing the assailed resolution. We hold that it did not.

Failure to submit the list of five nominees before the election warrants the cancellation of its registration

The law expressly requires the submission of a list containing at least five qualified nominees. Section 8 of RA No. 7941 reads:

> Section 8. *Nomination of Party-List Representatives*. Each registered party, organization or coalition **shall submit** to the COMELEC not later than forty-five (45) days before the election a list of names, **not less than five** (5), from which party-list representatives shall be chosen in case it obtains the required number of votes. [emphases and underscores ours; italics supplied]

As early as February 8, 2012, the COMELEC had informed, through Resolution No. 9359,[18] all registered parties who wished to participate in the May 2013 party-list elections that they "shall file with the [COMELEC] a Manifestation of Intent to participate in the part-list election together with its list of at least five (5) nominees, no later than May 31, 2012[.]"

Under Section 6(5) of RA No. 7941, violation of or failure to comply with laws, rules or regulations relating to elections is a ground for the cancellation of registration. However, not every kind of violation automatically warrants the cancellation of a party-list group's registration. Since a reading of the entire Section 6 shows that all the grounds for cancellation actually pertain to the party itself, then the laws, rules and regulations violated to warrant cancellation under Section 6(5) must be one that is *primarily* imputable to the party itself and not one that is chiefly confined to an individual member or its nominee.

COCOFED's failure to submit a list of *five nominees*, despite ample opportunity to do so before the elections, is a violation imputable to the party under Section 6(5) of RA No. 7941.

First, the language of Section 8 of RA No. 7941 does not only use the word "shall" in connection with the requirement of submitting a list of nominees; it uses this mandatory term in conjunction with the number of names to be submitted that is

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[18] In the Matter of the Last Day of Filing of Manifestation of Intent to Participate, and Submission of Names of Nominees under the Party-List System of Representation, in Connection with the 2013 National and Local Elections.

couched negatively, *i.e.*, "not less than five." The use of these terms together is a plain indication of legislative intent to make the statutory requirement mandatory for the party to undertake.[19] With the date and manner of submission[20] of the list having been determined by law — a condition precedent for the registration of new party-list groups or for participation in the party-list elections in case of previously registered party-list groups,[21] and was in fact reiterated by the COMELEC through its resolutions — COCOFED cannot now claim good faith, much less dictate its own terms of compliance.

Pursuant to the terms of Section 8 of RA No. 7941, the Court cannot leave to the party the discretion to determine the number of nominees it would submit. A contrary view overlooks the fact that the requirement of submission of a list of five nominees is primarily a statutory requirement for the *registration* of party-list groups and the submission of this list is part of a registered party's *continuing compliance* with the law to maintain its registration. A party-list group's previous registration with the COMELEC confers no vested right to the maintenance of its

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[19] Statutory Construction, Ruben Agpalo, 5th ed. (2003), p. 337. *Pimentel, Jr. v. Hon. Aguirre*, 391 Phil. 84, 106 (2000).

[20] Section 8 of RA No. 7941 reads:

Section 8. *Nomination of Party-List Representatives.* Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned.

[21] See Section 4, Rule 3 of COMELEC Resolution No. 9366.

registration. In order to maintain a party in a continuing compliance status, the party must prove not only its continued possession of the requisite qualifications but, equally, must show its compliance with the ***basic*** requirements of the law.

Second, while COCOFED's failure to submit a complete list of nominees may not have been among the grounds cited by the COMELEC in earlier cancelling its registration, this is not sufficient to support a finding of grave abuse of discretion. Apart from the clear letter of Section 8 of RA No. 7941 and the COMELEC resolutions issued more or less a year before the 2013 elections, COCOFED's belated submission of a *Manifestation with Urgent Request to Admit Additional Nominees* several days *after* the elections betrays the emptiness of COCOFED's formalistic plea for prior notice.

Section 6 of RA No. 7941 requires the COMELEC to afford "due notice and hearing" before refusing or cancelling the registration of a party-list group as a matter of procedural due process. The Court would have demanded an exacting compliance with this requirement ***if*** the registration or continuing compliance proceeding were strictly in the nature of a judicial or quasi-judicial proceeding.[22] In several cases, however, the Court had already ruled that the registration of party-list groups involves the exercise of the COMELEC's administrative power, particularly its power to enforce and administer all laws related to elections.[23]

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[22] In the exercise of its quasi-judicial function, COMELEC holds hearings and exercises discretion of a judicial nature; it receives evidence, ascertains the facts from these submissions, determine the law and the ***legal rights of the parties***, and on the basis of all these decides on the merits of the case and renders judgment (*Mendoza v. Commission on Elections*, G.R. No. 188308, October 15, 2009, 603 SCRA 692, 710). This is not wholly true in a registration or compliance proceeding where a party-list group simply attempts to prove its possession or continued possession of the requisite qualifications for the purpose of availing the ***privilege*** of participating in an electoral exercise; no real adjudication entailing the exercise of quasi-judicial powers actually takes place (see Separate Opinion of J. Brion in *Atong Paglaum, Inc., etc., et al. v. Commission on Elections*, G.R. No. 203766, April 2, 2013).

[23] *Baytan v. COMELEC*, 444 Phil. 812 (2003); and *Magdalo Para sa Pagbabago v. Commission on Elections*, G.R. No. 190793, June 19, 2012, 673 SCRA 651, 668.

While COCOFED could have complied *after* the elections (as it in fact did), it should have, at the very least, submitted an explanation justifying its inability to comply prior to the elections. However, COCOFED simply chose to ignore the law; this, to us, is a plain disregard of the administrative requirement warranting the cancellation of its registration.

Third, the fact that a party-list group is entitled to no more than three seats in Congress, regardless of the number of votes it may garner,[24] does not render Section 8 of RA No. 7941 permissive in nature.

On February 21, 2012, the COMELEC, through Resolution No. 9366,[25] again apprised registered party-list groups that its Manifestation of Intent to Participate shall be accompanied by a list of at least five (5) nominees. Under Section 9, Rule 5 of this resolution, the Education and Information Department of the COMELEC shall cause the immediate publication of this list in two national newspapers of general circulation.

The publication of the list of nominees does not only serve as the reckoning period of certain remedies and procedures under the resolution.[26] Most importantly, the required publication

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[24] *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*, G.R. Nos. 179271 and 179295, April 21, 2009, 586 SCRA 210, 243.

[25] Rules and Regulations Governing the: 1) Filing of Petitions for Registration; 2) Filing of Manifestation of Intent to Participate; 3) Submission of Names of Nominees; and 4) Filing of Disqualification Cases against Nominees of Party-List Groups or Organizations Participating Under the Party-List System of Representation in Connection with the May 13, 2013 National and Local Elections, and Subsequent Elections thereafter. See Section 4 of Rule 3.

[26] Section 7, Rule 3 of Resolution No. 9366 reads:

SEC. 7. Petition to deny due course to a manifestation of intent to participate. A verified petition seeking to deny due course to a manifestation of intent to participate may be filed with the Office of the Clerk of the Commission, Commission on Elections in Manila, by any interested party within five (5) days from the date of publication of the manifestation of intent to participate on any of the grounds mentioned in Section 2 of Rule 2 for previously registered party-list groups.

satisfies the people's constitutional right to information on matters of public concern.[27] The need for submission of the complete list required by law[28] becomes all the more important in a party-list election to apprise the electorate of the individuals behind the party they are voting for. If only to give meaning to the right of the people to elect their representatives on the basis of an informed judgment, then the party-list group must submit a complete list of five nominees because the identity of these five nominees carries critical bearing on the electorate's choice.[29] A post-election completion of the list of nominees defeats this constitutional purpose.

Even if a party-list group can only have a maximum of three seats, the requirement of additional two nominees actually addresses the contingencies that may happen during the term of these party-list representatives. Section 16 of RA No. 7941 reads:

> Section 16. Vacancy. In case of vacancy in the seats reserved for party-list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the COMELEC by the same party, organization, or coalition, who shall serve for the unexpired term. If the list is

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Section 4, Rule 5 of Resolution No. 9366 reads:

> SEC. 4. When to file petitions. Petitions for denial/cancellation/ disqualification of party-list nominees shall be filed as follows:
>
> a. Petition to deny due course or cancellation of nomination of party-list nominees shall be filed within five (5) days after the publication of the list of nominees[.]

[27] CONSTITUTION, Article III, Section 7.

[28] Section 5(1), Article VI of the 1987 Constitution reads:

> The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

[29] *Lokin, Jr. v. Commission on Elections, supra* note 16, at 409, 412.

exhausted, the party, organization coalition concerned shall submit additional nominees.

While the law allows the submission of additional nominees once the list is exhausted, the exhaustion of the list presupposes prior compliance with the requirement of Section 8 of RA No. 7941. Since the exhaustion of the list is an event that can rarely happen under this interpretation, then the law effectively upholds the people's right to make informed electoral judgments. Again, it is a basic rule of statutory construction that the provisions of the law must not be read in isolation but as a whole, as the law must not be read in truncated parts; its provisions in relation to the whole law and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[30]

Moreover, after the submission of a list of nominees to the COMELEC, the *party itself* has no discretion to change the names or to alter the order of nomination in the list it submitted.[31] While there are instances when a change of name or alteration of the order is allowed, these circumstances focus on the nominee himself, whether voluntary (the nominee withdraws in writing his nomination) or involuntary (the nominee dies or becomes incapacitated). To allow COCOFED to complete the list of its

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[30] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, October 2, 2009, 602 SCRA 159, 164; and *Mactan-Cebu International Airport Authority v. Urgello*, 549 Phil. 302, 322.

[31] Section 8 of RA No. 7941. In *Lokin, Jr. v. Commission on Elections* (*supra* note 16, at 408-409; underscores ours), the Court said: "Section 8 [paragraph 2] does not unduly deprive the party-list organization of its right to choose its nominees, but merely divests it of the right to change its nominees or to alter the order in the list of its nominees' names after submission of the list to the COMELEC x x x allowing the party-list organization to change its nominees through withdrawal of their nominations, or to alter the order of the nominations after the submission of the list of nominees circumvents the voters' demand for transparency." In other words, if the change of nominee is by reason of his or her disqualification, then Section 8, paragraph 2, does not prevent a party-list group from complying with Section 8, paragraph 1.

nominees beyond the deadline set by the law would allow the party itself to do indirectly what it cannot do directly.[32]

Fourth, we cannot discern any valid reason why a party-list group cannot comply with the statutory requirement. The party-list system is a constitutional innovation that would expand opportunities for electoral participation to those who cannot hope to win in the legislative district elections, but who may generate votes nationwide equivalent to what a winner in the legislative district election would garner.[33] In short, the party-list system operates on the theoretical assumption that a party-list group has national constituency whose interests, concerns, or ideologies call for representation in the House of Representatives. We quote with approval the COMELEC's observation:

> If the party cannot even come up with a complete list of five names out of a purported more than one million members, then it is highly doubtful that COCOFED will meet this expectation [to contribute to the formulation and enactment of legislation that is beneficial for the nation as a whole]; and if it cannot even name at least three more people who belongs to, or with sufficient advocacy for, the sector sought to be represented then as a sectoral party or organization, it has already forsaken what it seeks to represent.[34]

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[32] However, to be more consistent with the constitutional intent of reforming the electoral system which already includes the narrower sectoral perspective, a finding of disqualification of a party's nominee should not deprive a party the opportunity to field in qualified nominees. In this manner, the mandatory submission of a list of *at least* five nominees would be harmonized with the provision of Section 8 of RA No. 7941 which prevents a party from changing the names of its nominees. This interpretation too recognizes the fact that the issue of whether a nominee is truly qualified is both a factual *and* legal question which the party-list group itself cannot impeccably guarantee upon submission of the list. The qualification of the nominees may be determined by the COMELEC itself *motu proprio* or in an appropriate proceeding instituted by a proper party under Sections 1 and 2, Rule 5 of COMELEC Resolution No. 9366. See Concurring Opinion of Justice Arturo D. Brion in *Atong Paglaum*.

[33] See Concurring Opinion of Justice Arturo D. Brion in *Atong Paglaum*, p. 28.

[34] COMELEC Omnibus Resolution, pp. 9-10; *rollo*, pp. 33-34.

Given this driving idea, a party is not allowed to simply refuse to submit a list containing "not less than five nominees" and consider the deficiency as a waiver on its part. Aside from colliding with the plain text of the law, this interpretation is not in harmony with the statutory policy of enhancing the party-list-groups' chances to compete for and win seats in the legislature, and therefore does not serve as incentive to Filipino citizens belonging to these groups to contribute to the formulation and enactment of appropriate legislation.[35]

Fifth, while under the 6th parameter in *Atong Paglaum*, the Court said that the disqualification of some of the nominees shall not result in the disqualification of the party-list group "provided that they have at least one nominee who remains qualified," the Court largely considered that —

> petitioners' nominees who do not belong to the sectors they represent may have been disqualified, although they may have a track record of advocacy for their sectors. Likewise, nominees of non-sectoral parties may have been disqualified because they do not belong to any sector. Moreover, a party may have been disqualified because one or more of its nominees failed to qualify, even if the party has at least one remaining qualified nominee. As discussed above, the disqualification of petitioners, and their nominees, under such circumstances is contrary to the 1987 Constitution and R.A. No. 7941.

In fact, almost all of the petitioners in *Atong Paglaum* were disqualified on the ground that the nominees failed to "qualify," as this word was interpreted by the COMELEC.[36] In other words, the Court in no way authorized a party-list group's inexcusable failure, if not outright refusal, to comply with the clear letter of the law on the submission of at least five nominees.

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[35] See Section 2 of RA No. 7941.

[36] Only three petitioners were disqualified on the basis, among others, of having less than five nominees, namely: Abyan Ilonggo Party (withdrawal of three of its five nominees); Agri-Agra na Reporma Para sa Magsasaka ng Pilipinas Movement (only four nominees were submitted to the COMELEC); Alliance for Nationalism and Democracy (only three nominees were submitted to the COMELEC).

In sum, all these reasons negate a finding that the COMELEC gravely abused its discretion in cancelling COCOFED's registration.[37]

WHEREFORE, we hereby **DISMISS** the petition for lack of merit.

SO ORDERED.

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

Velasco, Jr., J., no part because relative is a nominee of a partylist org.

SECOND DIVISION

[G.R. No. 168137. August 7, 2013]

SECRETARY OF THE DEPARTMENT OF FINANCE, *petitioner, vs.* **COURT OF TAX APPEALS (SECOND DIVISION) and KUTANGBATO CONVENTIONAL TRADING MULTI-PURPOSE COOPERATIVE,**[1] *respondents.*

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[37] Grave abuse of discretion is such a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (*Basmala v. Commission on Elections*, G.R. No. 176724, October 6, 2008, 567 SCRA 664; and *Suliguin v. COMELEC*, 520 Phil. 92 (2006).

[1] "Kutang Bato Conventional Trading Multi-Purpose Cooperative" in some parts of the records.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* ASSAILING THE GRANT OF THE MOTION TO RELEASE THE GOOD IS RENDERED MOOT BY THE RENDITION OF A DECISION ON THE MAIN CASE. — [I]t bears to stress that the issues raised in the instant petition have already been rendered moot and academic by virtue of petitioner's own manifestation that the CTA had already rendered a decision on the main case, of which the matter on the propriety of the CTA's grant of KCTMPC's motion to release is but an incident. Records disclose that based on the Entry of Judgment attached to petitioner's Manifestation, the 9th Indorsement was annulled by the CTA for having been issued beyond the reglementary period allowed by law. In effect, Dela Cuesta's ruling lifting the seizure of warrant was declared to be final and executory. More pertinently, the CTA's August 6, 2008 Decision had also become final and executory last August 27, 2008. Therefore, C.T.A. Case No. 7028, including all of the incidents therein, has been laid to rest, altogether barring petitioner to contest the same. Consequently, no practical relief can be granted to petitioner by resolving the instant petition as it only revolves around the CTA's grant of KCTMPC's motion to release, which, as earlier mentioned, is but an incident of the main case. In fine, the petition is deemed as moot.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, NOT A CASE OF. — [T]he CTA correctly observed that the *Geotina* ruling was inapplicable due to the classification of the goods involved therein. As cited by the CTA, CB Circular No. 1389 dated April 13, 1993 classified imports into three (3) categories, namely: (*a*) "freely importable commodities" or those commodities which are neither "regulated" nor "prohibited" and the importation of which may be effected without any prior approval of or clearance from any government agency; (*b*) "regulated commodities" or those commodities the importation of which require clearances/permits from appropriate government agencies; and (*c*) "prohibited commodities" or those commodities the importation of which are not allowed by law. Under Annex 1 of the foregoing circular, rice and corn are enumerated as "regulated" commodities, unlike the goods in the *Geotina* case, which were, at that time, classified

as "prohibited" commodities. Therefore, owing to this divergence, the CTA properly pronounced that the *Geotina* ruling is inapplicable. It is a standing jurisprudential rule that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. An act of a court or tribunal can only be considered to be tainted 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. In order to be qualified as "grave," the abuse of discretion must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law. Finding that this characterization does not fit the CTA's exercise of discretion in this case, the Court holds that no grave abuse of discretion attended its grant of KCTMPC's motion to release.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Francis V. Gustilo for private respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[2] are the Resolutions dated December 21, 2004[3] and April 18, 2005[4] of the Court of Tax Appeals - Second Division (CTA) in C.T.A. Case No. 7028, granting private respondent Kutangbato Conventional Trading Multi-Purpose Cooperative's (KCTMPC) Motion to Release Goods Under Bond[5] (motion to release).

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[2] *Rollo,* pp. 2-42.

[3] *Id.* at 156-157. Issued by Associate Justices Juanito C. Castañeda, Jr., Olga P. Enriquez, and Erlinda P. Uy.

[4] *Id.* at 44-47. Issued by Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, with Associate Justice Olga P. Enriquez dissenting.

[5] *Id.* at 146-148. Dated October 18, 2004.

The Facts

On the strength of a Warrant of Seizure and Detention issued on January 31, 2003 (seizure warrant) by the Bureau of Customs, 4th Collection District, Batangas (BoC), 73 container vans loaded with 29,796 bags of imported rice (subject goods) were seized and detained for alleged violation of Section 2530[6] of Republic Act No. (RA) 1937,[7] otherwise known as the "Tariff and Customs Code of the Philippines" (TCCP).[8] The shipment, which came from Polloc, Cotabato, was destined for Manila on board the inter-island vessel M/V Nossa Senhora de Fatima and was initially intercepted on January 30, 2003 in the Batangas Bay area by the combined elements of the Philippine Coast Guard, Presidential Security Guard, Batangas Customs Police-Enforcement and Security Service, and Customs Intelligence & Investigation Service. Upon inspection, it was discovered that the shipment did not have the required import permit and that the shipment was declared in the Coasting Manifest and Bill of Lading of the vessel as "corn grits," instead of rice, in violation of the TCCP.[9] The seizure was thereafter, docketed as Batangas Seizure Identification No. 02-03.[10]

On February 7, 2003, KCTMPC, claiming ownership over the foregoing shipment, moved to intervene in the seizure proceedings and further sought the quashal of the seizure warrant.[11] In an Order dated March 18, 2003, the BoC granted KCTMPC's motion to intervene but denied its motion to quash seizure warrant.[12]

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[6] *Id.* at 60. In particular, paragraphs (F), (G), (L)1, (L)3, and (L)5, Section 2530 of the TCCP.

[7] "AN ACT TO REVISE AND CODIFY THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES."

[8] *Rollo*, p. 48.

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

[10] *Id.* at 48 and 114.

[11] *Id.* at 49.

[12] *Id.*

The Proceedings Before the BoC and the Department of Finance

After the formal hearing of the case, District Collector of Customs Edward P. Dela Cuesta (Dela Cuesta), rendered a Decision[13] dated April 4, 2003 in favor of KCTMPC, ordering the release of the 73 container vans loaded with the subject goods.

Dela Cuesta found that KCTMPC did not transgress Section 2503 of the TCCP since there was no importation involved but only a transport of local commodities which is beyond the ambit of the TCCP.[14] This is due to the fact that KCTMPC's importation of assorted commodities, including the subject goods, from Labuan, Malaysia for the period of November 10, 2002 to January 26, 2003, had already been cleared under different Informal Import Declarations and Entry Numbers and that the corresponding leviable duties and taxes due thereon had likewise been paid.[15] The subject goods had also been released from the customhouse and hence, had already left the jurisdiction of the BoC.[16] Dela Cuesta also pointed out that KCTMPC was issued a special

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[13] *Id.* at 48-66.

[14] *Id.* at 62-63. According to Dela Cuesta, Section 2503 of the TCCP pertains to misdeclarations/misclassifications on the face of the import entry, and before payment of assessable taxes and duties which does not hold true in the case at bar. In this light, he cites Section 1202 of the TCCP which provides that importation is deemed terminated upon payment of duties and taxes, and after the goods have left the jurisdiction of the customs. The foregoing TCCP provisions pertinently read as follows:

> Sec. 1202. *When Importation Begins and Deemed Terminated*. – Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. **Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles**, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.
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> Sec. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry*. – When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer **on the face of the entry**, x x x. (Emphases supplied)

[15] *Id.* at 61.

[16] *Id.* at 63.

permit/authority by the Regional Secretary of the Department of Trade and Industry, Cotabato City (DTI) and by the Department of Agriculture, *inter alia*, to engage in conventional trading via the Labuan, Malaysia-Singapore-Polloc-Maguindanao trading route for products like grains. The National Food Authority (NFA) equally granted a Grains Business License to KCTMPC, allowing it to engage in the retailing, wholesaling, warehousing, and importing of rice.[17] Considering the foregoing reasons, Dela Cuesta found no sufficient ground to engender a well-founded belief that the 73 container vans containing the subject goods are liable for forfeiture and, as such, ordered them to be released.[18]

As Dela Cuesta's ruling was adverse to the government, then BoC Commissioner, Antonio M. Bernardo, forwarded the case for automatic review to petitioner Secretary of the Department of Finance (petitioner).[19] In the 4th Indorsement[20] dated November 21, 2003 (4th Indorsement) of then Undersecretary of Finance, Maria Gracia M. Pulido-Tan (Pulido-Tan), Dela Cuesta's ruling was reversed and the BoC was ordered to "determine the possible violations or applicable customs rules and regulations, and institute such actions, criminal or otherwise, against the person found to be responsible."[21]

Nonetheless, on January 23, 2004, KCTMPC filed a Motion for Execution,[22] contending that the Decision of Dela Cuesta had already become final and executory in accordance with Section 2313[23] of the TCCP, as amended by RA 7651. Pulido-

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[17] *Id.* at 61 and 64.

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

[19] *Id.* at 67. See 1st Indorsement of Commissioner Antonio M. Bernardo. Pursuant to RA 7651, amending Section 2313 of the TCCP.

[20] *Rollo*, pp. 73-76.

[21] *Id.* at 76.

[22] *Id.* at 78-81.

[23] Sec. 2313. *Review by Commissioner*. – The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification n writing by the Collector of his action or decision, file a written notice to the

Tan denied the said motion through a 9th Indorsement[24] dated April 1, 2004 (9th Indorsement), instructing the BoC to strictly abide by and comply with the 4th Indorsement. Aggrieved, KCTMPC filed a Petition for Review with Prohibition[25] (petition for prohibition) before the CTA, docketed as C.T.A. Case No. 7028.

The Proceedings Before the CTA

In its petition for prohibition, KCTMPC contended that the subject goods are not subject to seizure and forfeiture because the legal requisites for the same are absent and that, pursuant

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Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.

If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision of the automatic appeal within thirty (30) days from receipt of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the records of the case by the Commissioner no decision is rendered or the decision involves imported articles whose published value is Five million pesos (₱5,000,000) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: Provided, further, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs.

[24] *Rollo*, p. 85.

[25] *Id.* at 89-108.

to Section 1202 of the TCCP, the importation of the rice shipment was already terminated upon payment of the duties and taxes due thereon.

Meanwhile, pending resolution of its petition, KCTMPC filed a motion to release[26] which petitioner opposed[27] on the ground that the importation in question demonstrates badges of smuggling since: (*a*) KCTMPC had no clear license to undertake the importation of the subject goods; (*b*) the subject goods were misdeclared as corn grits; (*c*) there is a strong indication that KCTMPC was just being used as a dummy or conduit for Agro Farm, Las Buenas Farm, and SCC Farm that had also laid claim to the rice shipment; (*d*) the subject goods were not imported by KCTMPC itself but by persons who do not possess any authority or license therefor; and (*e*) M/V Nossa Senhora de Fatima curiously deviated from its intended route and attempted to dock at Batangas Port.[28] Also, citing the case of *Geotina v. CTA*[29] (*Geotina*), petitioner argued that the subject goods should be considered as prohibited under Section 102(k) of the TCCP and, as such, should not be released pending final determination of KCTMPC's petition for prohibition.[30]

On December 21, 2004, the CTA issued a Resolution[31] which granted KCTMPC's motion to release. Petitioners moved for reconsideration which was, however, denied in a Resolution[32] dated April 18, 2005.

The CTA ruled that petitioner's reliance on *Geotina* was misplaced since the importation of the articles therein, *i.e.*, apples, were barred under Central Bank Circular (CB Circular) No. 289 dated February 21, 1970. This is, however, untrue for rice

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[26] *Id.* at 146-148.

[27] *Id.* at 149-155. See Opposition dated December 8, 2004.

[28] *Id.* at 150-151.

[29] 148-B Phil. 273 (1971).

[30] *Rollo*, pp. 151-153.

[31] *Id.* at 156-157.

[32] *Id.* at 44-47.

and corn products which are mere "regulated" and not "prohibited" commodities.[33] It further found that the government agency tasked to supervise the importation of the subject goods already confirmed its allowance. In addition, the CTA noted that KCTMPC may, under Section 2301 of the TCCP, secure the release of the subject goods in detention by the filing of a cash bond.[34] Dissatisfied with the CTA's ruling, petitioner filed the instant petition for *certiorari*.

Subsequently, or on August 6, 2008, the CTA rendered a Decision (August 6, 2008 Decision) in C.T.A. Case No. 7028, annulling the 9th Indorsement for having been issued beyond the reglementary period allowed by law. As a result, Dela Cuesta's ruling lifting the seizure warrant had become final and executory. Thereafter, or on August 27, 2008, the CTA's August 6, 2008 Decision had also become final and executory.[35]

The Issue Before the Court

The essential issue in this case is whether or not the CTA committed grave abuse of discretion when it granted KCTMPC's motion to release.

The Court's Ruling

The petition is denied.

At the outset, it bears to stress that the issues raised in the instant petition have already been rendered moot and academic by virtue of petitioner's own manifestation that the CTA had already rendered a decision on the main case,[36] of which the matter on the propriety of the CTA's grant of KCTMPC's motion to release is but an incident.

Records disclose that based on the Entry of Judgment[37] attached to petitioner's Manifestation, the 9th Indorsement was annulled

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

[34] *Id.* at 46-47.

[35] *Id.* at 394 and 397.

[36] Referring to the August 6, 2008 Decision in C.T.A. Case No. 7028.

[37] *Rollo*, p. 397.

by the CTA for having been issued beyond the reglementary period allowed by law. In effect, Dela Cuesta's ruling lifting the seizure of warrant was declared to be final and executory.[38] More pertinently, the CTA's August 6, 2008 Decision had also become final and executory last August 27, 2008.[39] Therefore, C.T.A. Case No. 7028, including all of the incidents therein, has been laid to rest, altogether barring petitioner to contest the same. Consequently, no practical relief can be granted to petitioner by resolving the instant petition as it only revolves around the CTA's grant of KCTMPC's motion to release, which, as earlier mentioned, is but an incident of the main case. In fine, the petition is deemed as moot.[40]

In any event, the Court finds that the CTA did not gravely abuse its discretion when it granted KCTMPC's motion to release since there lies cogent legal bases to support its conclusion that the subject goods were merely "regulated" and not "prohibited" commodities.

Among others, the CTA correctly observed that the *Geotina* ruling was inapplicable due to the classification of the goods involved therein. As cited by the CTA, CB Circular No. 1389 dated April 13, 1993 classified imports into three (3) categories, namely: (*a*) "freely importable commodities" or those commodities which are neither "regulated" nor "prohibited" and the importation of which may be effected without any prior approval of or clearance from any government agency; (*b*) "regulated commodities" or those commodities the importation of which require clearances/ permits from appropriate government agencies; and (*c*) "prohibited

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[38] See Section 2313 of the TCCP; *supra* note 23.

[39] *Rollo*, pp. 394 and 397.

[40] "A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted. It is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced." (*Baldo, Jr. v. Commission on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310-311.)

commodities" or those commodities the importation of which are not allowed by law.[41] Under Annex 1 of the foregoing circular, rice and corn are enumerated as "regulated" commodities, unlike the goods in the *Geotina* case, which were, at that time, classified as "prohibited" commodities.[42] Therefore, owing to this divergence, the CTA properly pronounced that the *Geotina* ruling is inapplicable.

It is a standing jurisprudential rule that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.[43] An act of a court or tribunal can only be considered to be tainted 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.[44] In order to be qualified as "grave," the abuse of discretion must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[45] Finding that this characterization does not fit the CTA's exercise of discretion in this case, the Court holds that no grave abuse of discretion attended its grant of KCTMPC's motion to release.

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[41] *Rollo,* pp. 45-46 and 208.

[42] The pertinent portions of the *Geotina* ruling reads:

The issue reduces itself quite simply and essentially to whether or not the fresh apples in question are "articles of prohibited importation." If so, as the Court holds, then the tax court acted in excess of its jurisdiction in overturning the customs authorities' proper exercise of their jurisdiction under Section 1207 of the Customs Code, in *preventing importation and refusing to allow the discharge of the shipment of apples, which admittedly is not covered by the required Central Bank permit or release certificate*. By the same token, **since the importation of said apples is banned under the cited Central Bank circulars which have the force and effect of law, the tax court acted without authority of law in ordering the commissioner to release the apples to the importer under bond**, for under the very Section 2301 of the customs code invoked by it, "*articles the importation of which is prohibited by law shall not be released under bond.*" (*Geotina v. CTA*, *supra* note 29 at 282-283; emphases supplied.)

[43] *Alberto v. Court of Appeals*, G.R. Nos. 182130 and 182132, June 19, 2013, citing *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340, 344 (1939).

[44] *Yu v. Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348. (Citation omitted)

[45] See *Chua Huat v. Court of Appeals*, 276 Phil. 1, 18 (1991).

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 171904. August 7, 2013]

BOBBY TAN, *petitioner, vs.* **GRACE ANDRADE, PROCESO ANDRADE, JR., CHARITY A. SANTIAGO, HENRY ANDRADE, ANDREW ANDRADE, JASMIN BLAZA, GLORY ANDRADE, MIRIAM ROSE ANDRADE, and JOSEPH ANDRADE,** *respondents.*

[G.R. No. 172017. August 7, 2013]

GRACE ANDRADE, CHARITY A. SANTIAGO, HENRY ANDRADE, ANDREW ANDRADE, JASMIN BLAZA, MIRIAM ROSE ANDRADE, and JOSEPH ANDRADE, *petitioners, vs.* **BOBBY TAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE UPON THE COURT; APPLICATION.— Settled is the rule that when the trial court's factual findings have been affirmed by the CA, said findings are generally conclusive and binding upon the Court, and may no longer be reviewed on Rule 45 petitions. While there exists exceptions to this rule – such as when the CA's and RTC's findings are in conflict with each other – the Court observes that none applies with respect to the ruling

that the subject transaction was one of sale and not an equitable mortgage. Records readily reveal that both the RTC and the CA observed that there is no clear and convincing evidence to show that the parties agreed upon a mortgage. Hence, absent any glaring error therein or any other compelling reason to hold otherwise, this finding should now be deemed as conclusive and perforce must stand.

2. CIVIL LAW; CIVIL CODE; MARRIAGE; CONJUGAL PARTNERSHIP OF GAINS; FOR THE PRESUMPTION THAT ALL PROPERTY OF THE MARRIAGE IS PRESUMED TO BELONG TO CONJUGAL PARTNERSHIP TO APPLY, IT MUST BE PROVED THAT THE PROPERTY WAS INDEED ACQUIRED DURING THE MARRIAGE; FAILURE TO PROVE RENDERED THE SUBJECT LANDS AS EXCLUSIVE PROPERTIES OF A SPOUSE. — Pertinent to the resolution of this second issue is Article 160 of the Civil Code which states that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." For this presumption to apply, the party invoking the same must, however, preliminarily prove that the property was indeed acquired during the marriage. x x x In this case, records reveal that the conjugal partnership of Rosario and her husband was terminated upon the latter's death on August 7, 1978 while the transfer certificates of title over the subject properties were issued on September 28, 1979 and solely in the name of "Rosario *Vda. de* Andrade, of legal age, widow, Filipino." Other than their bare allegation, no evidence was adduced by the Andrades to establish that the subject properties were procured during the coverture of their parents or that the same were bought with conjugal funds. Moreover, Rosario's declaration that she is the absolute owner of the disputed parcels of land in the subject deed of sale was not disputed by her son Proceso, Jr., who was a party to the same. Hence, by virtue of these incidents, the Court upholds the RTC's finding that the subject properties were exclusive or sole properties of Rosario.

3. ID.; LACHES; HAD ALREADY SET IN WHEN A PARTY TOOK FOURTEEN YEARS BEFORE FILING A COMPLAINT FOR RECONVEYANCE.— [T]he Court observes that *laches* had already set in, thereby precluding

the Andrades from pursuing their claim. Case law defines *laches* as the "failure to assert a right for an unreasonable and unexplained length of time, warranting a presumption that the party entitled to assert it has either abandoned or declined to assert it." Records disclose that the Andrades took 14 years before filing their complaint for reconveyance in 1997. The argument that they did not know about the subject transaction is clearly belied by the facts on record. It is undisputed that Proceso, Jr. was a co-vendee in the subject deed of sale, while Henry was an instrumental witness to the Deed of Assignment and Option to Buy both dated July 26, 1983. Likewise, Rosario's sons, Proceso, Jr. and Andrew, did not question the execution of the subject deed of sale made by their mother to Bobby. These incidents can but only lead to the conclusion that they were well-aware of the subject transaction and yet only pursued their claim 14 years after the sale was executed.

APPEARANCES OF COUNSEL

Nathaniel N. Clarus for Bobby Tan.
M.B. Mahinay & Associates for Grace Andrade, *et al.*

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[1] assailing the Decision[2] dated July 26, 2005 and Resolution[3] dated March 3, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 71987 which affirmed with modification

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[1] *Rollo* (G.R. No. 171904), pp. 14-29; *rollo* (G.R. No. 172017), pp. 9-27.

[2] *Rollo* (G.R. No. 171904), pp. 68-78; *rollo* (G.R. No. 172017), pp. 31-41. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring.

[3] *Rollo* (G.R. No. 171904), pp. 130-131; *rollo* (G.R. No. 172017), pp. 40-41. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr., concurring.

the Judgment[4] dated April 6, 2001 of the Regional Trial Court of Cebu City, Branch 19 (RTC) in Civil Case No. CEB 20969.

The Facts

Rosario *Vda. de* Andrade (Rosario) was the registered owner of four parcels of land known as Lots 17, 18, 19, and 20[5] situated in Cebu City (subject properties) which she mortgaged to and subsequently foreclosed by one Simon[6] Diu (Simon).[7] When the redemption period was about to expire, Rosario sought the assistance of Bobby Tan (Bobby) who agreed to redeem the subject properties.[8] Thereafter, Rosario sold the same to Bobby and her son, Proceso Andrade, Jr. (Proceso, Jr.), for ₱100,000.00 as evidenced by a Deed of Absolute Sale[9] dated April 29, 1983 (subject deed of sale). On July 26, 1983, Proceso, Jr. executed a Deed of Assignment,[10] ceding unto Bobby his rights and interests over the subject properties in consideration of ₱50,000.00. The Deed of Assignment was signed by, among others, Henry Andrade (Henry), one of Rosario's sons, as instrumental witness. Notwithstanding the aforementioned Deed of Assignment, Bobby extended an Option to Buy[11] the subject properties in favor of Proceso, Jr., giving the latter until 7:00 in the evening of July 31, 1984 to purchase the same for the sum of ₱310,000.00. When Proceso, Jr. failed to do so, Bobby

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[4] *Rollo* (G.R. No. 171904), pp. 59-63; *rollo* (G.R. No. 172017), pp. 59-63. Penned by Judge Ramon G. Codilla, Jr.

[5] Records, pp. 83-98. Covered by Transfer Certificate of Title (TCT) Nos. 75756, 75755, 75758, and 75757, respectively.

[6] "Simeon" in the CA Decision.

[7] *Rollo* (G.R. No. 171904), p. 60; *rollo* (G.R. No. 172017), p. 60.

[8] *Rollo* (G.R. No. 171904), pp. 69-70; *rollo* (G.R. No. 172017), pp. 32-33.

[9] *Rollo* (G.R. No. 172017), pp. 64-67.

[10] *Id.* at 68-71.

[11] *Id.* at 72-75. The Option to Buy was also signed by, among others, Henry, as instrumental witness.

consolidated his ownership over the subject properties, and the TCTs[12] therefor were issued in his name.

On October 7, 1997, Rosario's children, namely, Grace, Proceso, Jr., Henry, Andrew, Glory, Miriam Rose, Joseph (all surnamed Andrade), Jasmin Blaza, and Charity A. Santiago (Andrades), filed a complaint[13] for reconveyance and annulment of deeds of conveyance and damages against Bobby before the RTC, docketed as Civil Case No. CEB 20969. In their complaint, they alleged that the transaction between Rosario and Bobby (subject transaction) was not one of sale but was actually an equitable mortgage which was entered into to secure Rosario's indebtedness with Bobby. They also claimed that since the subject properties were inherited by them from their father, Proceso Andrade, Sr. (Proceso, Sr.), the subject properties were conjugal in nature, and thus, Rosario had no right to dispose of their respective shares therein. In this light, they argued that they remained as co-owners of the subject properties together with Bobby, despite the issuance of the TCTs in his name.

In his defense, Bobby contended that the subject properties were solely owned by Rosario per the TCTs issued in her name[14] and that he had validly acquired the same upon Proceso, Jr.'s failure to exercise his option to buy back the subject properties.[15] He also interposed the defenses of prescription and *laches* against the Andrades.[16]

The RTC Ruling

On April 6, 2001, the RTC rendered a Judgment[17] dismissing the Andrades' complaint.

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[12] *Rollo* (G.R. No. 171904), pp. 41-48. TCT Nos. 88408, 88409, 88410, and 88411.

[13] *Rollo* (G.R. No. 171904), pp. 30-40; *rollo* (G.R. No. 172017), pp. 42-52.

[14] *Rollo* (G.R. No. 171904), p. 52; *rollo* (G.R. No. 172017), p. 53.

[15] *Rollo* (G.R. No. 171904), pp. 54-55; *rollo* (G.R. No. 172017), pp. 55-56.

[16] *Rollo* (G.R. No. 171904), p. 55; *rollo* (G.R. No. 172017), p. 56.

[17] *Rollo* (G.R. No. 171904), pp. 59-63; *rollo* (G.R. No. 172017), pp. 59-63.

It ruled that the subject transaction was a *bona fide* sale and not an equitable mortgage as can be gleaned from its terms and conditions, noting further that the subject deed of sale was not even questioned by the Andrades at the time of its execution. As Proceso, Jr. failed to exercise his option to buy back the subject properties, the titles thereto were validly consolidated in Bobby's favor, resulting to the issuance of TCTs in his name which are deemed to be conclusive proof of his ownership thereto.[18] As regards the nature of the subject properties, the RTC found that they "appeared to be the exclusive properties of Rosario."[19] Finally, it found that the Andrades' claim over the subject properties had already prescribed and that *laches* had already set in.[20]

Dissatisfied, the Andrades elevated the matter on appeal.

The CA Ruling

On July 26, 2005, the CA rendered the assailed Decision[21] upholding in part the RTC's ruling.

It found that the subject deed of sale was indeed what it purports to be, *i.e.*, a *bona fide* contract of sale. In this accord, it denied the Andrades' claim that the subject transaction was an equitable mortgage since their allegation that the purchase price was unusually low was left unsupported by any evidence. Also, their averment that they have been in continuous possession of the subject properties was belied by the testimony of Andrew Andrade (Andrew) who stated that Bobby was already in possession of the same.[22]

Nevertheless, the CA ruled that the subject properties belong to the conjugal partnership of Rosario and her late husband, Proceso, Sr., and thus, she co-owned the same together with

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[18] *Rollo* (G.R. No. 171904), pp. 62-63; *rollo* (G.R. No. 172017), pp. 62-63.

[19] *Rollo* (G.R. No. 171904), p. 60; *rollo* (G.R. No. 172017), p. 60.

[20] *Rollo* (G.R. No. 171904), p. 63; *rollo* (G.R. No. 172017), p. 63.

[21] *Rollo* (G.R. No. 171904), pp. 68-78; *rollo* (G.R. No. 172017), pp. 31-41.

[22] *Rollo* (G.R. No. 171904), pp. 71-74; *rollo* (G.R. No. 172017), pp. 34-37.

her children, the Andrades.[23] In this respect, the sale was valid only with respect to Rosario's pro-indiviso share in the subject properties and it cannot prejudice the share of the Andrades since they did not consent to the sale.[24] In effect, a resulting trust was created between Bobby and the Andrades[25] and, as such, prescription and/or *laches* has yet to set in so as to bar them from instituting the instant case.[26] Accordingly, the CA ordered Bobby to reconvey to the Andrades their share in the subject properties.[27]

In view of the CA's pronouncement, the parties filed their respective motions for reconsideration. For the Andrades' part, they sought the reconsideration of the CA's finding as to its characterization of the subject transaction as one of sale, insisting that it is actually an equitable mortgage.[28] As for Bobby's part, he maintained that the sale should have covered the entirety of the subject properties and not only Rosario's pro-indiviso share.[29] Both motions for reconsideration were, however, denied by the CA in a Resolution[30] dated March 3, 2006.

Hence, the present consolidated petitions.

Issues Before the Court

The present controversy revolves around the CA's characterization of the subject properties as well as of the subject transaction between Rosario and Bobby.

In G.R. No. 172017, the Andrades submit that the CA erred in ruling that the subject transaction is in the nature of a sale,

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[23] *Rollo* (G.R. No. 171904), p. 74; *rollo* (G.R. No. 172017), p. 37.

[24] *Rollo* (G.R. No. 171904), p. 75; *rollo* (G.R. No. 172017), p. 38.

[25] *Rollo* (G.R. No. 171904), p. 76; *rollo* (G.R. No. 172017), p. 39.

[26] *Rollo* (G.R. No. 171904), pp. 76-77; *rollo* (G.R. No. 172017), pp. 39-40.

[27] *Rollo* (G.R. No. 171904), p. 78; *rollo* (G.R. No. 172017), p. 41.

[28] *Rollo* (G.R. No. 171904), pp. 91-104.

[29] *Id.* at 79-90.

[30] *Rollo* (G.R. No. 171904), pp. 130-131; *rollo* (G.R. No. 172017), pp. 41a-41b.

while in G.R. No. 171904, Bobby contends that the CA erred in ruling that the subject properties are conjugal in nature.

The Court's Ruling

A. Characterization of the subject transaction.

Settled is the rule that when the trial court's factual findings have been affirmed by the CA, said findings are generally conclusive and binding upon the Court, and may no longer be reviewed on Rule 45 petitions.[31] While there exists exceptions to this rule — such as when the CA's and RTC's findings are in conflict with each other[32] — the Court observes that none applies with respect to the ruling that the subject transaction was one of sale and not an equitable mortgage. Records readily reveal that both the RTC and the CA observed that there is no clear and convincing evidence to show that the parties agreed upon a mortgage. Hence, absent any glaring error therein or any other compelling reason to hold otherwise, this finding should now be deemed as conclusive and perforce must stand. As echoed in the case of *Ampo v. CA*:[33]

> x x x Factual findings of the Court of Appeals are conclusive on the parties and not reviewable by this Court – and they carry even more weight when the Court of Appeals affirms the factual findings of the trial court, and in the absence of any showing that the findings complained of are totally devoid of support in the evidence on record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand.[34]

Consequently, the Andrades' petition in **G.R. No. 172017** must therefore be denied.

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[31] *Medalla v. Laxa*, G.R. No. 193362, January 18, 2012, 663 SCRA 461, 465.

[32] See *E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.*, G.R. No. 184850, October 20, 2010, 634 SCRA 363, 374-375.

[33] G.R. No. 169091, February 16, 2006, 482 SCRA 563.

[34] *Id.* at 570.

B. Characterization of the subject properties.

With respect to the nature of the subject properties, the courts *a quo* were at variance such that the RTC, on the one hand, ruled that the said properties were exclusive properties of Rosario,[35] while the CA, on the other hand, pronounced that they are conjugal in nature.[36] In this regard, the consequent course of action would be for the Court to conduct a re-examination of the evidence if only to determine which among the two is correct,[37] as an exception to the proscription in Rule 45 petitions.

Pertinent to the resolution of this second issue is Article 160 of the Civil Code[38] which states that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." For this presumption to apply, the party invoking the same must, however, preliminarily prove that the property was indeed acquired during the marriage. As held in *Go v. Yamane*:[39]

x x x As a *condition sine qua non* for the operation of [Article 160] in favor of the conjugal partnership, the party who invokes

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[35] *Rollo* (G.R. No. 171904), p. 60; *rollo* (G.R. No. 172017), p. 60.

[36] *Rollo* (G.R. No. 171904), p. 74; *rollo* (G.R. No. 172017), p. 37.

[37] "It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: x x x (5) when the findings of facts are conflicting; x x x (7) when the findings are contrary to the trial court; x x x." (*Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.)

[38] This is the law which applies to the present case since the incidents in this case disclose that the marriage between Rosario and Proceso, Sr. was entered into before the effectivity of Executive Order No. 209, otherwise known as the "Family Code of the Philippines."

[39] G.R. No. 160762, May 3, 2006, 489 SCRA 107.

the presumption must first prove that the property was acquired during the marriage.

In other words, the presumption in favor of conjugality does not operate if there is no showing of *when* the property alleged to be conjugal was acquired. Moreover, the presumption may be rebutted only with strong, clear, categorical and convincing evidence. There must be strict proof of the exclusive ownership of one of the spouses, and the burden of proof rests upon the party asserting it.[40] (Citations omitted)

Corollarily, as decreed in *Valdez v. CA*,[41] the presumption under Article 160 cannot be made to apply where there is no showing as to when the property alleged to be conjugal was acquired:

x x x The issuance of the title in the name solely of one spouse is not determinative of the conjugal nature of the property, since there is no showing that it was acquired during the marriage of the Spouses Carlos Valdez, Sr. and Josefina L. Valdez. The presumption under Article 160 of the New Civil Code, that property acquired during marriage is conjugal, does not apply where there is no showing as to when the property alleged to be conjugal was acquired. The presumption cannot prevail when the title is in the name of only one spouse and the rights of innocent third parties are involved. Moreover, when the property is registered in the name of only one spouse and there is no showing as to when the property was acquired by same spouse, this is an indication that the property belongs exclusively to the said spouse.

In this case, there is no evidence to indicate when the property was acquired by petitioner Josefina. Thus, we agree with petitioner Josefina's declaration in the deed of absolute sale she executed in favor of the respondent that she was the absolute and sole owner of the property. x x x.[42]

In this case, records reveal that the conjugal partnership of Rosario and her husband was terminated upon the latter's death

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[40] *Id.* at 116-117.

[41] G.R. No. 140715, September 24, 2004, 439 SCRA 55.

[42] *Id.* at 71.

on August 7, 1978[43] while the transfer certificates of title over the subject properties were issued on September 28, 1979 and solely in the name of "Rosario *Vda. de* Andrade, of legal age, widow, Filipino."[44] Other than their bare allegation, no evidence was adduced by the Andrades to establish that the subject properties were procured during the coverture of their parents or that the same were bought with conjugal funds. Moreover, Rosario's declaration that she is the absolute owner of the disputed parcels of land in the subject deed of sale[45] was not disputed by her son Proceso, Jr., who was a party to the same. Hence, by virtue of these incidents, the Court upholds the RTC's finding[46] that the subject properties were exclusive or sole properties of Rosario.

Besides, the Court observes that *laches* had already set in, thereby precluding the Andrades from pursuing their claim. Case law defines *laches* as the "failure to assert a right for an unreasonable and unexplained length of time, warranting a presumption that the party entitled to assert it has either abandoned or declined to assert it."[47]

Records disclose that the Andrades took 14 years before filing their complaint for reconveyance in 1997. The argument that they did not know about the subject transaction is clearly belied by the facts on record. It is undisputed that Proceso, Jr. was a co-vendee in the subject deed of sale,[48] while Henry was an instrumental witness to the Deed of Assignment[49] and Option to Buy[50] both dated July 26, 1983. Likewise, Rosario's sons,

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[43] TSN, February 1, 2000, p. 7.

[44] Records, pp. 83, 87, 91 and 95.

[45] *Rollo* (G.R. No. 172017), pp. 64-67.

[46] *Rollo* (G.R. No. 171904), p. 60; *rollo* (G.R. No. 172017), p. 60.

[47] *Vda. de Rigonan v. Derecho*, G.R. No. 159571, July 15, 2005, 463 SCRA 627, 648.

[48] *Rollo* (G.R. No. 172017), p. 66.

[49] *Id.* at 70.

[50] *Id.* at 74.

Proceso, Jr. and Andrew, did not question the execution of the subject deed of sale made by their mother to Bobby.[51] These incidents can but only lead to the conclusion that they were well-aware of the subject transaction and yet only pursued their claim 14 years after the sale was executed.

Due to the above-stated reasons, Bobby's petition in **G.R. No. 171904** is hereby granted.

WHEREFORE, the Court hereby (*a*) **GRANTS** the petition of Bobby Tan in G.R. No. 171904; and (*b*) **DENIES** the petition of Grace Andrade, Charity A. Santiago, Henry Andrade, Andrew Andrade, Jasmin Blaza, Miriam Rose Andrade, and Joseph Andrade in G.R. No. 172017. Accordingly, the Decision dated July 26, 2005 and Resolution dated March 3, 2006 of the Court of Appeals in CA-G.R. CV No. 71987 are hereby **REVERSED** and **SET ASIDE**, and the April 6, 2001 Decision of the Regional Trial Court of Cebu City, Branch 19 in Civil Case No. CEB 20969 is **REINSTATED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175685. August 7, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ANGELES BELLATE, and SPOUSES JESUS CABANTO and MARIETA JUANERIO,** *respondents.*

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[51] *Rollo* (G.R. No. 171904), p. 62; *rollo* (G.R. No. 172017) p. 62.

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; FREE PATENT; CERTIFICATE OF TITLE ISSUED PURSUANT TO A FREE PATENT BECOMES INDEFEASIBLE AFTER ONE YEAR FROM THE DATE OF ISSUANCE. — The certificate of title issued pursuant to any grant or patent involving public lands is as conclusive and indefeasible as any other certificate of title issued to private lands in the ordinary or cadastral registration proceedings. It is not subject to collateral attack. Though the certificate of title is conclusive and indefeasible, however, Section 91 of Commonwealth Act No. 141 (The Public Land Act) provides for the cancellation of the concession, title or permit granted for any false statement in the application or omission of facts in the application. Once a patent is registered and the corresponding certificate of title is issued, the land covered by it ceases to be part of the public domain and becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of issuance of such patent.

2. ID.; ID.; ID.; ID.; EXCEPTION; EVEN AFTER THE LAPSE OF ONE YEAR, THE STATE MAY STILL FILE AN ACTION FOR REVERSION BASED ON FRAUD IN THE APPLICATION. — [A]s held in *The Director of Lands v. De Luna, et al.*, even after the lapse of one year, the State may still bring an action under Section 101 of Commonwealth Act No. 141 for the reversion to the public domain of land which has been fraudulently granted to private individuals. The burden of proof rests on the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue. In other words, the Republic has the burden to prove that Angeles committed fraud in his application for free patent.

3. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR SHOW THAT A PARTY DID NOT COMMIT FRAUD IN HIS APPLICATION FOR FREE PATENT WHICH WOULD WARRANT THE ANNULMENT OF GRANTED FREE PATENT AND TITLE. — Based on this report, Eusebia was the original occupant of the 27,930-square-meter parcel of land which was subdivided into different lot numbers. Upon Eusebia's death, her heirs occupied the different portions of the land. Among the heirs who occupied it were Angeles, who

was Eusebia's grandson, and Enriquita, who was Eusebia's great-granddaughter. The report also shows that Angeles constructed his house in a portion of the land as early as 1948. That portion is now known as Lot No. 2624. Conchita, who was Enriquita's mother and Eusebia's granddaughter, constructed a house on a different portion of Eusebia's land in 1965 or 17 years after Angeles constructed her own house. The report also shows that Eusebia's heirs did not formally partition the land among themselves. They merely constructed their respective houses on the land. Simply put, Angeles did not commit fraud in his application for free patent. The report is clear that he applied for free patent with respect to Lot No. 2624 only, not for Eusebia's entire land. It is the same land where he constructed a house in 1965 or about five decades ago. Moreover, the report did not enumerate the other occupants of Lot No. 2624, the land over which Angeles was granted a free patent. In other words, Angeles answered truthfully when he said that there are no other occupants on Lot No. 2624.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eduardo P. Tibo for respondents.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] seeking to reverse and set aside the decision[2] dated December 9, 2005 of the Court of Appeals (*CA*) in CA-G.R. CV No. 65295. The decision denied the appeal of the Republic of the Philippines (*Republic*) from the decision of the Regional Trial Court (*RTC*) of Calbayog City, Branch 32, which dismissed the Republic's

[1] Under Rule 45 of the Rules of Court; *rollo,* pp. 24-38.

[2] Penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justice Isaias P. Dicdican and Associate Justice Apolinario D. Bruselas, Jr.; *id.* at 41-53.

complaint for reversion of land to the mass of public domain and for the annulment of the granted free patent and title.

Factual Antecedents

Respondent Angeles Bellate[3] filed Free Patent Application (*FPA*) No. (VIII-2) 8216 over Lot No. 2624, Cad. 422 on December 28, 1975.[4] The lot has an area of 2,630 square meters and is located in *Barangay* Matobato, Calbayog City. Pursuant to the FPA, the Register of Deeds of Calbayog City issued Original Certificate of Title (*OCT*) No. 1546 on March 27, 1976 in favor of Angeles.[5]

On February 19, 1980, Enriquita Bellate-Quizan[6] filed a protest against Angeles before the Land Management Bureau (formerly, Bureau of Lands).[7] She prayed for the annulment of the FPA in favor of Angeles. She said that the FPA was obtained through fraud and misrepresentation because Angeles did not state the fact that the land had other occupants aside from him.[8]

Meanwhile, Lot No. 2624 was divided into two smaller lots, described as Lot Nos. 2624-A and 2624-B with areas of 2,130 square meters and 500 square meters, respectively.[9] Respondent Jesus Cabanto bought the smaller lot (Lot No. 2624-B) from Angeles.[10] This led to the cancellation of OCT No. 1546, and the issuance of Transfer Certificate of Title (*TCT*) No. 770 for Lot No. 2624-A, in the name of Angeles, and TCT No. 771 for Lot No. 2624-B, in the name of Cabanto.[11]

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[3] "Bellate" also known as Billate or Villate in other documents.

[4] *Rollo*, p. 41.

[5] *Id.* at 42.

[6] "Quizan" also known as Quizon in other documents.

[7] *Supra* note 5.

[8] *Ibid.*

[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*

Acting on Enriquita's protest, the Director of Lands ordered Supervising Land Examiner Jovencio D. Bulan to conduct a formal investigation on Lot No. 2624. He submitted a final investigation report on February 9, 1987.[12]

On the basis of this report, the Republic, through the Office of the Solicitor General, filed a case against Angeles and spouses Cabanto and Marieta Juanerio (*Juanerio*) for the reversion of land to the mass of public domain and for the annulment of the granted free patent and title with the RTC of Calbayog City, Branch 32, on March 9, 1990.[13] The Republic alleged that Angeles committed fraud and misrepresentation in securing his free patent when he stated under oath that Lot No. 2624 was not occupied by any other person, contrary to the investigation report.[14]

The respondents denied the Republic's allegations in the complaint and countered that: 1) the action is barred by prescription; 2) the title of spouses Cabanto and Juanerio had become indefeasible because they were buyers in good faith; and 3) the Republic's complaint failed to state a cause of action.[15]

During the pre-trial, the counsel of the respondents informed the RTC about the pendency of Civil Case No. 137-CC, an action for ownership and recovery of possession of Lot No. 2624-B which respondent Cabanto instituted in the RTC of Calbayog City, Branch 31, against Fideles Quizan, Eduardo Quizan, Preciosa Bellate, Constancio Cabaliza and Uldarico Pania.[16]

During trial, Enriquita testified that Eusebia Bellate was the original occupant of the 27,930-square-meter land located in *Barangay* Matobato, Calbayog City. Eusebia died on September 27, 1924. Eusebia's son, Sotero Bellate, inherited and occupied

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[12] *Ibid.*

[13] Civil Case No. 365.

[14] *Ibid.*

[15] *Ibid.*

[16] *Rollo,* p. 43.

the land until his death on October 15, 1946. Sotero had four children, namely: Angeles, Anecito, Agustin and Conchita, all surnamed Bellate. They succeeded and occupied Eusebia's land. Sotero's two other sons, Anecito and Agustin, were already dead as of January 11, 1943 and August 15, 1975, respectively. Enriquita's mother was Conchita Bellate who died on April 10, 1976. Aside from Enriquita, Conchita had two other children, namely, Fideles and Eduardo.[17]

The RTC Ruling

In its resolution dated March 27, 1991, the RTC dismissed the complaint on the ground of *litis pendentia*.[18] The Republic appealed the case to the CA, which remanded it back to the RTC for trial on the merits.[19]

On October 7, 1996, the RTC dismissed the complaint on the premise that the land which was the subject of dispute was different from the land previously occupied by Eusebia.[20] The RTC held that if the lands were different, then there was no fraud. The RTC based its conclusion on the submitted tax declarations, and on the differences in areas and boundaries of the properties.[21]

The Republic appealed the RTC decision to the CA.

The CA Ruling

The CA did not agree with the RTC's findings on the identity of the properties, but nonetheless denied the appeal in its decision[22] dated December 9, 2005.

The CA pointed out that the identity of the properties involved was never raised in the pleadings. The CA held that Lot No.

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[17] *Id.* at 44.

[18] *Id.* at 43.

[19] *Ibid.*

[20] *Id.* at 46.

[21] *Id.* at 47.

[22] *Supra* note 2.

2624 is part of the 27,930-square-meter lot which Eusebia previously occupied.[23] This land is now occupied by her heirs — Angeles and Enriquita, among them. Despite this finding, the CA still believed that the Republic failed to establish the existence of fraud or misrepresentation by preponderance of evidence. Based on the investigation report, the CA concluded that Angeles did not commit fraud or misrepresentation in his application for free patent since there were no findings that other persons occupied a portion of Lot No. 2624.[24] This finding led the CA to conclude that neither fraud nor misrepresentation was committed.

On January 6, 2006, the Republic filed a motion for reconsideration which the CA denied on December 12, 2006.

The Republic thus sought recourse with this Court through a petition for review on *certiorari* under Rule 45.

The Petition

The Republic raises the following issues:

First, citing *Remalante v. Tibe*,[25] the Republic argues that this petition falls within the exception to the rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45. The Republic emphasizes that the CA and the RTC had conflicting findings of fact, and that the judgment of the CA is premised on a misapprehension of facts.[26]

Second, the Republic argued that Angeles made false statements in his application which, under Section 91 of Commonwealth Act No. 141,[27] constitutes as ground for the cancellation of the

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[23] *Rollo,* pp. 15-18.

[24] *Id.* at 51.

[25] 241 Phil. 930 (1988).

[26] *Rollo,* pp. 88-89.

[27] SECTION 91. The statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and **any false statements therein or omission of facts altering, changing, or modifying the consideration of the facts**

concession, title or permit that was granted. The Republic pointed out that no less than Angeles' own witness, Roberta B. Coquilla, admitted that the property applied for free patent by her father, Angeles, was occupied by Preciosa Bellate, Freddie Bellate and others.[28]

The Case for the Respondents

The respondents sought the denial of the Republic's petition for review on *certiorari* on the ground that the questions involved are not questions of law but of facts which are, as a general rule, not within the ambit of this Court in a petition for review on *certiorari* under Rule 45. [29]

The respondents argued that "[i]t is presumptuous on the part of the [Republic] to say that Jovencio Bulan stated in his report that upon his inspection, he found the houses of the heirs of Angeles Bellate standing on the land in question."[30]

The Issues

The main issues are:

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set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted. It shall be the duty of the Director of Lands, from time to time and whenever he may deem it advisable, to make the necessary investigations for the purpose of ascertaining whether the material facts set out in the application are true, or whether they continue to exist and are maintained and preserved in good faith, and for the purposes of such investigation, the Director of Lands is hereby empowered to issue *subpoenas* and *subpoenas duces tecum* and, if necessary, to obtain compulsory process from the courts. In every investigation made in accordance with this section, the existence of bad faith, fraud, concealment, or fraudulent and illegal modification of essential facts shall be presumed if the grantee or possessor of the land shall refuse or fail to obey a *subpoena* or *subpoena duces tecum* lawfully issued by the Director of Lands or his authorized delegates or agents, or shall refuse or fail to give direct and specific answers to pertinent questions, and on the basis of such presumption, an order of cancellation may issue without further proceedings. [italics supplied; emphasis and underscore ours]

[28] *Rollo,* p. 90.

[29] *Id.* at 100-101.

[30] *Id.* at 101.

I. Whether or not this court may review the case under Rule 45 of the Revised Rules of Court.

II. Whether or not the respondent committed fraud or misrepresentation of facts which would warrant the cancelation of the free patent and certificate of title of the contested land.[31]

The Court's Ruling

We deny the petition for lack of merit.

The court may review the case under Rule 45 of the Revised Rules of Court.

"The jurisdiction of the Supreme Court in cases brought to it from the CA is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive."[32] In several decisions, however, the Court enumerated the exceptional circumstances when the Supreme Court may review the findings of fact of the CA.[33]

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[31] *Id.* at 82 and 100.

[32] *Remalante v. Tibe*, *supra* note 25, at 935, citing *Chan v. Court of Appeals*, No. L-27488, June 30, 1970, 33 SCRA 737.

[33] In *Remalante*, the court enumerated the following exceptions:

(1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures;

(2) when the inference made is manifestly absurd, mistaken or impossible;

(3) when there is grave abuse of discretion in the appreciation of facts;

(4) when the judgment is premised on a misapprehension of facts;

(5) when the findings of fact are conflicting;

(6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee. (*Id*. at 935-936; citations omitted)

In *Sacay v. Sandiganbayan,* 226 Phil. 497, 512 (1986), the court enumerated four more exceptions: "(7) the findings of facts of the Court of Appeals are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) 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) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by [the] evidence on record."

In the present case, we agree with the Republic that the petition falls within the exceptions because the lower courts' findings of fact are conflicting.

Contrary to the respondents' claim, the case of *Fuentes v. CA*[34] is inapplicable. In *Fuentes,* the Court held that "[p]revailing jurisprudence uniformly holds that findings of facts of the trial court, particularly when affirmed by the CA, are binding upon this Court." A review of *Fuentes*, however, reveals that it is not applicable to this case. In *Fuentes*, the RTC of Ozamis City affirmed the Municipal Circuit Trial Court's findings of fact, deleting only the monetary award in favor of the private respondents therein.

In the present petition, however, the CA did not affirm the RTC's findings of facts. The RTC compared the tax declarations and differences in areas and boundaries of the two properties and held:

> Indubitably, the foregoing descriptions of the two parcels of land under Tax Dec. No. 36100 in the name of Angeles Bellate and Tax Dec. No. 24864 in the name of Eusebia Bellate demonstrates (sic) that they are two distinct and separate parcels of land. Correspondingly, **Lot No. 2624 (the property described in Tax Dec. No. 36100), subject of the Free Patent Application of Angeles Bellate and registered in Original Certificate of Title No. 1546 is not the same parcel of land claimed by Enriquita Bellate-Quizan to be that originally owned by the late Eusebia Bellate**.[35] (emphasis ours)

On the other hand, the CA observed:

> We do not however agree with the above-quoted findings of the trial court. To begin with, the identity of the two properties was never raised by the parties in their pleadings, specifically by the defendants-appellants. A perusal of the records would show that the issue raised for determination before the RTC was whether or not Angeles Bellate made false statements in his application for free patent which constitute[s] a ground for the cancellation of his

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[34] 335 Phil. 1163 (1997).

[35] *Rollo,* p. 14.

concession. Moreover, **the final investigation report of Jovencio Bulan established the fact that Lot No. 2624 was part of the 27,930 square-meter parcel of land previously declared for taxation purposes in the name of Eusebia Bellate.** As correctly observed by the Solicitor General, it is only logical that there would be differences in the boundaries and areas after the segregation of Lot No. 2624 from the 27,930 square-meter land.[36] (emphasis ours)

While both the RTC and the CA decisions ruled in favor of the respondents, the Republic correctly observed, however, that the RTC and the CA arrived at contradicting findings of facts. The RTC's findings that Lot No. 2624 was not the same parcel of land originally owned by Eusebia cannot be reconciled with the CA's findings that Lot No. 2624 was part of the 27,930-square-meter land of Eusebia.

Moreover, the parties do not dispute the CA's findings of facts. The Republic is only assailing the CA's conclusion that Angeles did not commit fraud in her application for free patent. Therefore, this Court may review the case.

The respondent did not commit fraud or misrepresentation of facts which would warrant the cancellation of the free patent and certificate of title.

We do not agree with the Republic that Angeles committed false statement or omission of facts when he stated in the application that the land is not claimed or occupied by any other person.

The certificate of title issued pursuant to any grant or patent involving public lands is as conclusive and indefeasible as any other certificate of title issued to private lands in the ordinary or cadastral registration proceedings. It is not subject to collateral attack.[37] Though the certificate of title is conclusive and indefeasible, however, Section 91 of Commonwealth Act No.

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[36] *Id.* at 15.

[37] Peña, *Registration of Land Titles and Deeds* (2008), p. 560, citing *Lopez v. Padilla*, 150-A Phil. 391, 401 (1972).

141 (The Public Land Act) provides for the cancellation of the concession, title or permit granted for any false statement in the application or omission of facts in the application.

Once a patent is registered and the corresponding certificate of title is issued, the land covered by it ceases to be part of the public domain and becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of issuance of such patent.[38] However, as held in *The Director of Lands v. De Luna, et al.*,[39] even after the lapse of one year, the State may still bring an action under Section 101[40] of Commonwealth Act No. 141 for the reversion to the public domain of land which has been fraudulently granted to private individuals.[41] The burden of proof rests on the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue.[42] In other words, the Republic has the burden to prove that Angeles committed fraud in his application for free patent.

In *Libudan v. Gil*,[43] we held:

[T]he fraud must consist in an intentional omission of facts required by law to be stated in the application or a willful statement of a claim against the truth. It must show some specific acts intended to deceive and deprive another of his right. **The fraud must be actual**

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[38] *Baguio v. Republic of the Philippines*, 361 Phil. 374, 379 (1999); and Presidential Decree No. 1529, §32.

[39] 110 Phil. 28, 33 (1960).

[40] The provision reads:

SECTION 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the [Republic] of the Philippines.

[41] *The Director of Lands v. De Luna, et al., supra* note 39, citing *Republic v. Court of Appeals*, 255 SCRA 335 (1996).

[42] *P.T. Cerna Corporation v. Court of Appeals*, G.R. No. 91622, April 6, 1993, 221 SCRA 19, 25.

[43] Nos. L-21163 and L-25495, May 17, 1972, 45 SCRA 17, 27.

and extrinsic, not merely constructive or intrinsic; the evidence thereof must be clear, convincing and more than merely preponderant, because the proceedings which are assailed as having been fraudulent are judicial proceedings which by law, are presumed to have been fair and regular. (Emphasis added)

We re-examined the investigation report[44] prepared by Jovencio Bulan — the person lawfully tasked to make an independent inspection over the disputed land. For clarity, we quote the relevant portions of the investigation report.

OCULAR INSPECTION

The undersigned Investigator made an actual inspection on the premises of the land in question, which are all located in Barangay Matobato, Calbayog City; present in the said inspection were claimant-protestants Enriquita Bellate Quizan, Dionisio Bellate, Eduardo Bellate Quizan, Freddie B. Quizan and the applicant-respondent Angeles Bellate. **The undersigned found that [the] land in question [was] occupied by the following persons:**

1. Lopez Coquilla – occupied and entered the land in question in 1952
2. **Angeles Bellate – Constructed [his] residential house in 1948**
3. Arsenio Camelon – Who failed to estimate the year he entered into the land in question
4. Jesus Cab[a]nto – Who informed the herein Investigator that he entered the land in question in 1975
5. Francisco Ilagan – Constructed his residential house in 1968
6. Alfonsa Coquilla – Constructed her residential house in 1955
7. Uldarico Pana – Constructed his residential house in 1977
8. Pablo Ilagan – Constructed his residential house now owned by Preciosa Bellate in 1980
9. Constancia Cabaliza – Failed to estimate the year [she] entered the land in question

[44] *Rollo,* pp. 49-51.

10. Guillermo dela Vega – Constructed his two-story house in 1963

11. Conchita Bellate – Constructed her residential house in 1965

12. Freddie B. Quizan – Entered and constructed his residential house in 1978

13. And with nine (9) coconut trees estimated to be at three (3) years old during the date of inspection and with some other fruit trees and bananas.

FINDINGS

From the foregoing observation[,] the undersigned found **that the land in question is to be partitioned among the heirs of the late Sotero Bellate, the primitive owner of the land in question:**

1. That said properties are divided by Lots 2528 with an area of 6,280 sq. meters; Lot No. 628 with an area of 2,638 sq. meters; Lot No. 272 with an area of 382 sq. meters; Lot No. 2722 with an area of 230 sq. meters; Lot No. 2723 with an area of 425 sq. meters; Lot No. 2724 with an area of 290 sq. meters; Lot No. 2725 with an area of 259 sq. meters; Lot No. 2726 with an area of 259 sq. meters; Lot No. 2726 with an area of 175 sq. meters; Lot No. 2727 with an area of 1,525 sq. meters; and finally the lot in question 2624, with an area of 2,630 sq. meters, the above-described lots could be divided equally share (sic) and share alike among the heirs of Sotero Bellate as follows:

x x x x x x x x x

provided however, that the area presently occupied by Angeles Bellate where [his] house stands shall be given preference as [his] share and the area shall be determined after the physical division of the land shall have been effective.

Declaring both the claimant-protestant and the applicant-respondent as legal owner of their respective shares over the land in question and each of them to respect the ownership of the other.[45] (emphases and underscores ours)

Based on this report, Eusebia was the original occupant of the 27,930-square-meter parcel of land which was subdivided

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

into different lot numbers. Upon Eusebia's death, her heirs occupied the different portions of the land. Among the heirs who occupied it were Angeles, who was Eusebia's grandson, and Enriquita, who was Eusebia's great-granddaughter. The report also shows that Angeles constructed his house in a portion of the land as early as 1948. That portion is now known as Lot No. 2624. Conchita, who was Enriquita's mother and Eusebia's granddaughter, constructed a house on a different portion of Eusebia's land in 1965 or 17 years after Angeles constructed her own house.

The report also shows that Eusebia's heirs did not formally partition the land among themselves. They merely constructed their respective houses on the land.

Simply put, Angeles did not commit fraud in his application for free patent. The report is clear that he applied for free patent with respect to Lot No. 2624 only, not for Eusebia's entire land. It is the same land where he constructed a house in 1965 or about five decades ago. Moreover, the report did not enumerate the other occupants of Lot No. 2624, the land over which Angeles was granted a free patent. In other words, Angeles answered truthfully when he said that there are no other occupants on Lot No. 2624.

WHEREFORE, premises considered, we **DENY** the petition assailing the decision of the Court of Appeals in CA-G.R. CV No. 65295 for lack of merit. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[*] Designated as additional member per Raffle dated March 18, 2013 vice Justice Mariano del Castillo who took no part due to prior action in the CA.

SECOND DIVISION

[G.R. No. 179648. August 7, 2013]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **MARY SHEILA ARCOBILLAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; FAILURE TO FILE A MOTION FOR RECONSIDERATION IS A FATAL INFIRMITY; THE PROCEEDINGS ENTERTAINING THE PETITION AND THE DECISION RENDERED THEREIN ARE NULL AND VOID. — [T]he Court notes that after PNB received a copy of the August 31, 2004 Decision of the NLRC on October 14, 2004, it did not file any Motion for Reconsideration such that the said Decision became final and executory on October 19, 2004. Instead, PNB went directly to the CA to assail the NLRC Decision through a Petition for *Certiorari* under Rule 65 of the Rules of Court which the said court took cognizance of. x x x [I]t is a well-established rule that "a [M]otion for [R]econsideration is an indispensable condition before an aggrieved party can resort to the special civil action for *certiorari* x x x. The rationale for the rule is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have committed before resort to courts of justice can be had. x x x PNB did not at all allege to which of the x x x exceptions this case falls. Neither did it present any plausible justification for dispensing with the requirement of a prior Motion for Reconsideration before the NLRC. Despite this, the CA still took cognizance of PNB's Petition for *Certiorari* and ignored this significant flaw. It bears to stress that the filing of a Motion for Reconsideration is not a mere technicality of procedure. It is a jurisdictional and mandatory requirement which must be strictly complied with. Thus, PNB's "failure to file a [M]otion for [R]econsideration with the NLRC before availing [itself] of the special civil action for *certiorari* is a fatal infirmity." In view thereof, the CA erred in entertaining the Petition for *Certiorari* filed before it. It follows, therefore, that the proceedings before it and its assailed Decision are

considered null and void. Hence, the final and executory Decision of the NLRC dated August 31, 2004 stands.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; WHERE MISPOSTING OF THE TRANSACTION DOES NOT AMOUNT TO GROSS AND HABITUAL NEGLECT OF DUTY, THOUGH COMMITTED TWICE, THAT WOULD JUSTIFY EMPLOYEE'S DISMISSAL; GROSS NEGLECT OF DUTY, EXPLAINED. — Taking into consideration the circumstances attendant to Arcobillas' infraction, the NLRC correctly affirmed the Labor Arbiter's finding that there was no sufficient basis to hold her guilty of gross and habitual neglect of duty which would justify her termination from employment. To warrant removal from service, the negligence should be gross and habitual. Although it was her second time to commit misposting (*i.e.*, the first misposting was in 1995 while the second misposting was committed in 1998), Arcobillas' act cannot be considered as gross as to warrant her termination from employment. Gross neglect of duty "denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty." It "refers to 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 willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected." As aptly held by the labor tribunals, the misposting was not deliberately done as to constitute as gross negligence. Rather, it was a case of simple neglect brought about by carelessness which, as satisfactorily explained by Arcobillas, was the effect of her heavy workload that day and the headache she was experiencing.

3. ID.; ID.; ID.; ID.; PRINCIPLE OF *RESPONDEAT SUPERIOR* AS A BASIS OF EMPLOYER'S LIABILITY, NOT APPLICABLE IN CASE AT BAR. — As to the modification made by the CA, it may be recalled that it ordered PNB and Arcobillas to share the financial losses of ₱214,641.23 in a 40-60 ratio. It ruled that PNB is partly liable for its loss for being negligent in the selection and supervision of its employees, applying the ruling made by this Court in *The Consolidated Bank & Trust Corp. v. Court of Appeals* and *Philippine Bank of Commerce v. Court of Appeals.* In the said cases, the banks

were made to shoulder part of the loss suffered by its clients due to the negligence of its employees under the principle of *respondeat superior* or command responsibility. The Court ruled that the banks have a fiduciary relationship with its client and must be answerable for any breach in their contractual duties to its clients. We, however, find that the CA erred in applying the ruling in these cases since they involve different sets of facts and are not decisive of the instant case. In both the cited cases, the banks, through their employees, were negligent, and this caused damage to their clients. These differ from the instant case in that the resulting damage here was caused to PNB and not to its clients. And as PNB certainly has the right to expect diligence from its employees and has the prerogative to discipline them for acts inimical to its interests, the NLRC is justified in allocating the loss suffered by it among those employees who proved to be negligent in their respective duties.

4. ID.; ID.; ID.; ID.; EMPLOYEE IS NOT ENTITLED TO AWARDS WHICH SHE FAILED TO APPEAL; SHE IS ENTITLED ONLY TO THE MONETARY AWARDS CONTAINED IN THE LABOR ARBITER'S DECISION. — With respect to Arcobillas' claims for unpaid salaries and other benefits, suffice it to state that the monetary awards granted by the Labor Arbiter as affirmed by the NLRC are already final and binding due to her failure to file an appeal to question these awards. Her contention that she is entitled to affirmative relief since she raised these issues in her Comment to PNB's Petition for *Certiorari* and Memorandum before the CA cannot lie in consonance with our earlier pronouncement that all proceedings before the CA are considered null and void. Moreover, it has been held that "[a]n appellee who is not an appellant may assign errors in [her] brief where [her] purpose is to maintain the judgment, but [she] cannot seek modification or reversal of the judgment or claim affirmative relief unless [she] has also appealed." Thus, we cannot grant her any affirmative relief. The monetary awards to which she is entitled are only confined to those contained in the dispositive portion of the Labor Arbiter's Decision as affirmed by the NLRC, as follows: 1) full backwages inclusive of allowances and other benefits or their monetary equivalent from March 16, 2000 to date of promulgation of this Decision; 2) 13th month pay for the year 1999; 3) unpaid salaries for the period February 2000 to March 15, 2000; and 4) 10% attorney's fee.

APPEARANCES OF COUNSEL

Kenneth A. Alovera for petitioner.
Jose I. Lapak for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"The rule is well-settled that the filing of a [M]otion for [R]econsideration is an indispensable condition to the filing of a special civil action for *certiorari* x x x."[1]

Before us is a Petition for Review on *Certiorari*[2] assailing the November 15, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 00326, which dismissed the Petition for *Certiorari* filed therewith and affirmed with modification the August 31, 2004 Decision[4] of the National Labor Relations Commission (NLRC) in that it ordered petitioner Philippine National Bank (PNB) to shoulder 40% of the financial losses it sustained due to the inadvertent act of misposting committed by its teller, respondent Mary Sheila Arcobillas (Arcobillas), who was ordered to pay the remaining 60%.

Factual Antecedents

On May 15, 1998, the PNB Foreign Currency Denomination-Savings Account (FCD-S/A) No. 305703555-1 of Avelina Nomad-Spoor (Nomad-Spoor) was credited with US$138.00. However, instead of posting its peso equivalent of ₱5,517.10, Arcobillas, the assigned administrative teller at PNB Bacolod-

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[1] *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743, 751 (2002).

[2] *Rollo*, pp. 9-21.

[3] CA *rollo*, pp. 132-139; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

[4] *Id.* at 40-49; penned by Commissioner Edgardo M. Enerlan and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

Lacson branch, erroneously posted US$5,517.10, resulting in an overcredit of US$5,379.10. Said amount was later withdrawn by Nomad-Spoor on May 29, 1998 and June 8, 1998 to the damage of PNB in the amount of ₱214,641.23.

The misposting was discovered only about seven months later. After investigation by PNB's Inspection and Investigation Unit Arcobillas was administratively charged with neglect of duty.[5]

In her Affidavit[6] executed on May 5, 1999, Arcobillas admitted her mistake, apologized for it, and stated that she did not benefit from the unintentional misposting. She narrated that she erroneously posted US$5,517.10, instead of ₱5,517.10, which figure represents the peso value of US$138.00. She honestly believed that the US$5,517.10 was correct because when added to the other on-line dollar transaction of US$1,004.60 the result was US$6,521.70, which tallied with the teller's machine reading. Arcobillas further explained that the heavy workload that day, a Friday coinciding with payroll day, plagued with intermittent power interruptions, brought on a severe headache which greatly affected her work performance.

On February 24, 2000, PNB's Administrative Adjudication Panel found Arcobillas guilty of gross neglect of duty and meted upon her the penalty of forced resignation with benefits, to take effect immediately upon her receipt thereof. Upon denial of her plea for reconsideration, Arcobillas instituted a Complaint[7] for illegal dismissal with money claims against PNB, PNB's Senior Manager Reynald A. Rey and Senior Vice-President Rosauro C. Macalagay.

Ruling of the Labor Arbiter

In a Decision[8] dated December 27, 2002, the Labor Arbiter found no sufficient evidence to establish gross and habitual

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

[6] *Id.* at 18-19.

[7] *Id.* at 15.

[8] *Id.* at 20-30; penned by Labor Arbiter Ma. Wilma M. Kalaw.

negligence. The Labor Arbiter noted (1) Arcobillas' performance rating of "Very Satisfactory" (VS) from January 1994 to December 1997 and her promotion to Bank Teller III in December 1995 despite having been suspended for one month in October 1995 due to the similar infraction of misposting; (2) her garnering a VS rating from January-June 1998 and July-December 1999 despite the pendency of the administrative charge that led to her eventual dismissal; and, (3) that the misposting was committed without malice, bad faith or dishonest motive. The Labor Arbiter also pointed out that the resulting damage could not be solely attributed to Arcobillas. The Bank Accountant, Financial Management Specialist, and those comprising the branch accounting unit failed to observe the bank's internal control measures of validating and verifying the bank's daily transactions. Had they done so, the said misposting could have been discovered at the earliest opportunity. Hence, the decretal portion of the Labor Arbiter's Decision:

> WHEREFORE, in view of the foregoing considerations, respondents PHILIPPINE NATIONAL BANK, REYNALD A. REY and ROSAURO C. MACALAGAY are hereby directed to reinstate complainant MARY SHEILA ARCOBILLAS to her former position without loss of seniority rights plus payment of full backwages inclusive of allowances and other benefits [or] their monetary equivalent from March 16, 2000 to date of promulgation of this Decision; 13th month pay for the year 1999, unpaid salaries for the period February 2000 to March 15, 2000 in the amount of FIVE HUNDRED SIXTY FOUR THOUSAND SEVEN HUNDRED SEVENTY FOUR PESOS and 72/100 (₱564,774.72) plus ten percent (10%) thereof [₱56,477.47] as attorney's fees x x x or in the total amount of SIX HUNDRED TWENTY ONE THOUSAND TWO HUNDRED FIFTY TWO PESOS and 19/100 (₱621,252.19).
>
> SO ORDERED.[9]

Ruling of the National Labor Relations Commission

PNB appealed to the NLRC and argued in its Memorandum on Appeal[10] that malice, bad faith or dishonest motive is not a

[9] *Id.* at 30.

[10] *Id.* at 31-38.

requirement before an employer could validly dismiss its employee on the ground of neglect of duty. It posited that Arcobillas' admission of her negligence and her prior commission of the same infraction of misposting justify her termination from employment for gross and habitual neglect of duty. It argued that the Labor Arbiter's reliance on Arcobillas' performance rating is misplaced because her dismissal is not grounded on loss of trust and confidence.

On August 31, 2004, the NLRC rendered a Decision[11] affirming with modification the Labor Arbiter's Decision. While it concurred with the Labor Arbiter's ruling that there was no sufficient ground to dismiss Arcobillas since the misposting was not deliberately done and hence does not constitute gross and habitual neglect, it nevertheless declared her not entirely faultless and free from any penalty less punitive than termination. The NLRC thus pronounced Arcobillas, as well as those other employees who were remiss in validating/verifying the bank's transactions, equally liable for the financial losses suffered by PNB. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION. As a form of penalty the financial losses of respondents in the amount of ₱214,641.23 should be equally shouldered by complainant and by those who are directly responsible in the validation/verification of complainant's transaction as teller. The misposting done by complainant found by respondent to be gross neglect of duty shall be considered as a final warning that commission of [a] similar offense in the future shall be treated as gross and habitual neglect of duty.
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> All [other] aspects of the decision are hereby affirmed.
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> SO ORDERED.[12]

PNB received a copy of the said Decision on October 14, 2004.[13] Without filing a Motion for Reconsideration, PNB filed a Motion

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[11] *Id.* at 40-49.

[12] *Id.* at 49.

[13] See PNB's Motion for Extension of Time to File Petition for *Certiorari* filed before the CA, *id.* at 2-3.

for Extension of Time to File Petition for *Certiorari*[14] until December 23, 2004. On said date, PNB filed its Petition for *Certiorari*[15] before the CA. Subsequently on May 25, 2005, the NLRC issued an Entry of Final Judgment declaring its August 31, 2004 Decision final and executory as of October 19, 2004.[16]

Ruling of the Court of Appeals

Despite the non-filing of a Motion for Reconsideration with the NLRC, the CA took cognizance of PNB's Petition for *Certiorari*. Nevertheless, it dismissed the same in a Decision[17] dated November 15, 2006. It agreed with the findings of both the Labor Arbiter and the NLRC that Arcobillas' negligence cannot be considered gross and habitual as to warrant her dismissal from employment. First, Arcobillas exercised ordinary diligence in her work when she checked and tallied her on-line dollar transactions with the teller's machine reading. Second, Arcobillas' heavy workload and severe headache mitigated the mistake committed. Third, the misposting was an isolated act of negligence and was not committed repeatedly as to constitute habit. The CA likewise sustained the monetary awards as computed by the Labor Arbiter but modified the NLRC Decision in that it made PNB shoulder 40% of the loss it sustained and Arcobillas to pay the remaining 60% instead of Arcobillas being equally liable with PNB's other employees tasked to validate the teller's transactions. The CA reasoned that PNB is just as negligent in its selection and supervision of employees for it has the fiduciary duty to insure that its employees exercise the highest standard of integrity in the performance of their duties. The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition for *certiorari* is ***DISMISSED***. The assailed Decision dated August 31, 2004 of the National Labor Relations Commission, Fourth Division is hereby ***AFFIRMED with***

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

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

[16] *Id.* at 115.

[17] *Id.* at 132-139.

MODIFICATION in that, the financial loss in the amount of ₱214,641.23 be shared as follows: petitioner must shoulder 40% or ₱85,856.49 while private respondent shoulders 60% or ₱128,784.73 thereof to be paid through regular payroll deductions spread out [over] three (3) years.

All aspects of the decision are hereby ***AFFIRMED***.

SO ORDERED.[18]

PNB filed a Motion for Reconsideration[19] while Arcobillas, a Motion for Partial Reconsideration.[20] Both, were, however, denied by the CA in a Resolution[21] dated August 17, 2007.

Issues

Hence, PNB filed this Petition for Review on *Certiorari* raising the following issues:

1. Whether x x x private respondent's dismissal on the ground of habitual negligence was justified under Article 282 of the Labor Code.

2. Whether x x x the Court of Appeals can correct the evaluation of the evidence by, or the factual findings of the NLRC in a petition for *certiorari*.

3. Whether x x x the Court of Appeals can delve on an issue that was not raised by the parties.[22]

The Parties' Arguments

Aside from insisting that Arcobillas' dismissal on the ground of gross and habitual negligence is justified, PNB argues that the CA exceeded its authority by delving on factual findings when it modified the distribution of PNB's financial losses between it and Arcobillas in a 60-40 ratio, an issue which was not even raised by the parties.

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[18] *Id.* at 139. Emphases in the original.

[19] *Id.* at 154-157.

[20] *Id.* at 140-153.

[21] *Id.* at 179-180.

[22] *Rollo*, p. 13.

On the other hand, Arcobillas, in her Comment,[23] prays that: 1) the distribution of financial loss as decreed by the CA be set aside; 2) PNB be directed to pay the monetary awards granted her by virtue of the NLRC Decision dated August 31, 2004 which has long become final and executory; 3) PNB be ordered to pay her the salaries and benefits unjustly withheld before her illegal dismissal, to wit: unpaid salaries for February 2000 – March 15, 2000, anniversary bonus as of July 21, 1999, millennium bonus due since December 23, 1999, teller's incentive allowance for 1999 and for January 1 – March 15, 2000, hospitalization benefit due in January 2000 and 13th month pay for the year 1999; and, 4) PNB be directed to adjust her longevity pay.

Our Ruling

The assailed CA Decision must be vacated and set aside.

PNB's failure to file a Motion for Reconsideration with the NLRC before filing its Petition for Certiorari before the CA is a fatal infirmity.

At the outset, the Court notes that after PNB received a copy of the August 31, 2004 Decision of the NLRC on October 14, 2004, it did not file any Motion for Reconsideration such that the said Decision became final and executory on October 19, 2004. Instead, PNB went directly to the CA to assail the NLRC Decision through a Petition for *Certiorari* under Rule 65 of the Rules of Court which the said court took cognizance of.

The Court recognizes that "[t]he finality of the NLRC's [D]ecision does not preclude the filing of a [P]etition for *[C]ertiorari* under Rule 65 of the Rules of Court. That the NLRC issues an entry of judgment after the lapse of ten (10) days from the parties' receipt of its [D]ecision will only give rise to the prevailing party's right to move for the execution thereof but will not prevent the CA from taking cognizance of a [P]etition for *[C]ertiorari* on jurisdictional and due process

[23] *Id.* at 51-94.

considerations."[24] However, it is a well-established rule that "a [M]otion for [R]econsideration is an indispensable condition before an aggrieved party can resort to the special civil action for *certiorari* x x x. The rationale for the rule is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have committed before resort to courts of justice can be had. Of course, the rule is not absolute and jurisprudence has laid down exceptions when the filing of a [P]etition for *[C]ertiorari* is proper notwithstanding the failure to file a [M]otion for [R]econsideration,"[25] such as "(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a [M]otion for [R]econsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relied by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and, (i) where the issue raised is one purely of law or where public interest is involved."[26] Here, PNB did not at all allege to which of the above-mentioned exceptions this case falls. Neither did it present any plausible justification for dispensing with the requirement of a prior Motion for Reconsideration before the NLRC.

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[24] *Sarona v. National Labor Relations Commission*, G.R. No. 185280, January 18, 2012, 663 SCRA 394, 413.

[25] *Republic v. Pantranco North Express, Inc. (PNEI)*, G.R. No. 178593, February 15, 2012, 666 SCRA 199, 205.

[26] *Abraham v. National Labor Relations Commission*, 406 Phil. 310, 316 (2001).

Despite this, the CA still took cognizance of PNB's Petition for *Certiorari* and ignored this significant flaw. It bears to stress that the filing of a Motion for Reconsideration is not a mere technicality of procedure.[27] It is a jurisdictional and mandatory requirement which must be strictly complied with.[28] Thus, PNB's "failure to file a [M]otion for [R]econsideration with the NLRC before availing [itself] of the special civil action for *certiorari* is a fatal infirmity."[29] In view thereof, the CA erred in entertaining the Petition for *Certiorari* filed before it. It follows, therefore, that the proceedings before it and its assailed Decision are considered null and void.[30] Hence, the final and executory Decision of the NLRC dated August 31, 2004 stands.

There was no sufficient basis to hold Arcobillas administratively liable for gross and habitual neglect of duty.

Even assuming that the CA could validly entertain PNB's Petition, no sufficient basis exists for the said court to overturn or at the least, modify the NLRC Decision.

Taking into consideration the circumstances attendant to Arcobillas' infraction, the NLRC correctly affirmed the Labor Arbiter's finding that there was no sufficient basis to hold her guilty of gross and habitual neglect of duty which would justify her termination from employment. To warrant removal from service, the negligence should be gross and habitual.[31] Although it was her second time to commit misposting (*i.e.*, the first misposting was in 1995 while the second misposting was committed in 1998), Arcobillas' act cannot be considered as gross as to warrant her termination from employment. Gross

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[27] *Republic v. Pantranco North Express, Inc. (PNEI), supra* at 207.

[28] *Id.*

[29] *Id.*

[30] *AAG Trucking v. Yuag*, G.R. No. 195033, October 12, 2011, 659 SCRA 91, 104.

[31] *Union Motor Corporation v. National Labor Relations Commission*, 487 Phil. 197, 209 (2004).

neglect of duty "denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty."[32] It "refers to 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 willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected."[33] As aptly held by the labor tribunals, the misposting was not deliberately done as to constitute as gross negligence. Rather, it was a case of simple neglect brought about by carelessness which, as satisfactorily explained by Arcobillas, was the effect of her heavy workload that day and the headache she was experiencing.

As to the modification made by the CA, it may be recalled that it ordered PNB and Arcobillas to share the financial losses of ₱214,641.23 in a 40-60 ratio. It ruled that PNB is partly liable for its loss for being negligent in the selection and supervision of its employees, applying the ruling made by this Court in *The Consolidated Bank & Trust Corp. v. Court of Appeals*[34] and *Philippine Bank of Commerce v. Court of Appeals*.[35] In the said cases, the banks were made to shoulder part of the loss suffered by its clients due to the negligence of its employees under the principle of *respondeat superior* or command responsibility. The Court ruled that the banks have a fiduciary relationship with its client and must be answerable for any breach in their contractual duties to its clients.

We, however, find that the CA erred in applying the ruling in these cases since they involve different sets of facts and are not decisive of the instant case. In both the cited cases, the banks, through their employees, were negligent, and this caused damage to their clients. These differ from the instant case in that the resulting damage here was caused to PNB and not to

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[32] *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 721 (2001).

[33] *Golangco v. Atty. Fung*, 535 Phil. 331, 341 (2006).

[34] 457 Phil. 688 (2003).

[35] 336 Phil. 667 (1997).

its clients. And as PNB certainly has the right to expect diligence from its employees[36] and has the prerogative to discipline them for acts inimical to its interests, the NLRC is justified in allocating the loss suffered by it among those employees who proved to be negligent in their respective duties.

With respect to Arcobillas' claims for unpaid salaries and other benefits, suffice it to state that the monetary awards granted by the Labor Arbiter as affirmed by the NLRC are already final and binding due to her failure to file an appeal to question these awards. Her contention that she is entitled to affirmative relief since she raised these issues in her Comment to PNB's Petition for *Certiorari* and Memorandum before the CA cannot lie in consonance with our earlier pronouncement that all proceedings before the CA are considered null and void. Moreover, it has been held that "[a]n appellee who is not an appellant may assign errors in [her] brief where [her] purpose is to maintain the judgment, but [she] cannot seek modification or reversal of the judgment or claim affirmative relief unless [she] has also appealed."[37] Thus, we cannot grant her any affirmative relief. The monetary awards to which she is entitled are only confined to those contained in the dispositive portion of the Labor Arbiter's Decision as affirmed by the NLRC, as follows: 1) full backwages inclusive of allowances and other benefits or their monetary equivalent from March 16, 2000 to date of promulgation of this Decision; 2) 13th month pay for the year 1999; 3) unpaid salaries for the period February 2000 to March 15, 2000; and 4) 10% attorney's fee.

Finally, we note that the NLRC Decision declared that the financial loss be equally shouldered by Arcobillas and "by those who are directly responsible in the validation/verification of [Arcobillas'] transaction as teller."[38] Considering, however,

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[36] *Judy Philippines, Inc. v. National Labor Relations Commission*, 352 Phil. 593, 606 (1998).

[37] *Corinthian Gardens Association, Inc. v. Tanjangco*, G.R. No. 160795, June 27, 2008, 556 SCRA 154, 166.

[38] CA *rollo*, p. 49.

that these other employees were not made parties to this case, then this Decision cannot be enforced with regard to them. In short, this Decision is enforceable only with respect to Arcobillas.

WHEREFORE, the Court of Appeals' Decision dated November 15, 2006 and the Resolution dated August 17, 2007 in CA-G.R. CEB-SP No. 00326 are **VACATED** and **SET ASIDE**. The final and executory Decision dated August 31, 2004 of the National Labor Relations Commission **STANDS**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181658. August 7, 2013]

LEE PUE LIONG *A.K.A.* PAUL LEE, *petitioner, vs.* **CHUA PUE CHIN LEE,** *respondent.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; INTERVENTION OF A PRIVATE PROSECUTOR IN A PERJURY CASE IS ALLOWED WHEN INJURY TO PERSONAL CREDIBILITY AND REPUTATION OF A PARTY AS WELL AS POTENTIAL INJURY TO A CORPORATION ARE UNDENIABLE. — In this case, the statement of petitioner regarding his custody of TCT No. 232238 covering CHI's property and its loss through inadvertence, if found to be perjured is, without doubt, injurious to respondent's personal credibility and reputation insofar as her faithful performance of the duties and responsibilities of a Board Member and Treasurer of CHI. The potential injury to the corporation itself is likewise

undeniable as the court-ordered issuance of a new owner's duplicate of TCT No. 232238 was only averted by respondent's timely discovery of the case filed by petitioner in the RTC. Even assuming that no civil liability was alleged or proved in the perjury case being tried in the MeTC, this Court declared in the early case of *Lim Tek Goan v. Yatco*, cited by both MeTC and CA, that whether public or private crimes are involved, it is erroneous for the trial court to consider the intervention of the offended party by counsel as merely a matter of tolerance. Thus, where the private prosecution has asserted its right to intervene in the proceedings, that right must be respected. The right reserved by the Rules to the offended party is that of intervening for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused. Such intervention, moreover, is always subject to the direction and control of the public prosecutor.

APPEARANCES OF COUNSEL

Mutia Trinidad & Pantanosas Law Offices for petitioner.
Macam Raro Ulep & Partners for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the May 31, 2007 Decision[2] and the January 31, 2008 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 81510. The CA affirmed the Orders[4] dated August 15, 2003 and November 5, 2003 of the Metropolitan

[1] *Rollo*, pp. 10-47.

[2] *Id.* at 159-173. Penned by Associate Justice Regalado E. Maambong with Associate Justices Conrado M. Vasquez, Jr. and Celia C. Librea-Leagogo, concurring.

[3] *Id.* at 190-191.

[4] *Id.* at 68-72. Penned by Judge Ruben Reynaldo G. Roxas.

Trial Court (MeTC) of Manila denying (a) the Omnibus Motion[5] for the exclusion of a private prosecutor in the two criminal cases for perjury pending before the MeTC, and (b) the Motion for Reconsideration[6] of the said order denying the Omnibus Motion, respectively.

The facts follow:

Petitioner Lee Pue Liong, a.k.a. Paul Lee, is the President of Centillion Holdings, Inc. (CHI), a company affiliated with the CKC Group of Companies (CKC Group) which includes the pioneer company Clothman Knitting Corporation (CKC). The CKC Group is the subject of intra-corporate disputes between petitioner and his siblings, including herein respondent Chua Pue Chin Lee, a majority stockholder and Treasurer of CHI.

On July 19, 1999, petitioner's siblings including respondent and some unidentified persons took over and barricaded themselves inside the premises of a factory owned by CKC. Petitioner and other factory employees were unable to enter the factory premises. This incident led to the filing of Criminal Case Nos. 971-V-99, 55503 to 55505 against Nixon Lee and 972-V-99 against Nixon Lee, Andy Lee, Chua Kipsi a.k.a. Jensen Chua and respondent, which are now pending in different courts in Valenzuela City.[7]

On June 14, 1999, petitioner on behalf of CHI (as per the Secretary's Certificate[8] issued by Virginia Lee on even date)

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[5] *Id.* at 97-101.

[6] *Id.* at 135-145.

[7] *Id.* at 13-14, 73-86. Criminal Case No. 55503 for Violation of Section 1 in relation to Section 5 of RA 8294; Criminal Case No. 55504 for Violation of Section 1 par. 2 of RA 8294 (Illegal Possession of Firearms); Criminal Case No. 55505 for Direct Assault; Criminal Case No. 971-V-99 for Violation of Section 3 of PD 1866, as amended by RA 8294 (Illegal Possession of Explosives), and Criminal Case No. 972-V-99 for Violation of Section 3 of PD 1866, as amended by RA 8294.

[8] CA *rollo*, p. 252.

caused the filing of a verified Petition[9] for the Issuance of an Owner's Duplicate Copy of Transfer Certificate of Title (TCT) No. 232238[10] which covers a property owned by CHI. The case was docketed as LRC Record No. 4004 of the Regional Trial Court (RTC) of Manila, Branch 4. Petitioner submitted before the said court an Affidavit of Loss[11] stating that: (1) by virtue of his position as President of CHI, he had in his custody and possession the owner's duplicate copy of TCT No. 232238 issued by the Register of Deeds for Manila; (2) that said owner's copy of TCT No. 232238 was inadvertently lost or misplaced from his files and he discovered such loss in May 1999; (3) he exerted diligent efforts in locating the said title but it had not been found and is already beyond recovery; and (4) said title had not been the subject of mortgage or used as collateral for the payment of any obligation with any person, credit or banking institution. Petitioner likewise testified in support of the foregoing averments during an *ex-parte* proceeding. In its Order[12] dated September 17, 1999, the RTC granted the petition and directed the Register of Deeds of Manila to issue a new Owner's Duplicate Copy of TCT No. 232238 in lieu of the lost one.

Respondent, joined by her brother Nixon Lee, filed an Omnibus Motion praying, among others, that the September 17, 1999 Order be set aside claiming that petitioner knew fully well that respondent was in possession of the said Owner's Duplicate Copy, the latter being the Corporate Treasurer and custodian of vital documents of CHI. Respondent added that petitioner merely needs to have another copy of the title because he planned to mortgage the same with the Planters Development Bank. Respondent even produced the Owner's Duplicate Copy of TCT No. 232238 in open court. Thus, on November 12, 1999, the RTC recalled and set aside its September 17, 1999 Order.[13]

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[9] *Id.* at 247-251.

[10] *Id.* at 253-254.

[11] *Id.* at 257.

[12] *Id.* at 259-260.

[13] Records, Vol. I, pp. 23-24.

In a Complaint-Affidavit[14] dated May 9, 2000 filed before the City Prosecutor of Manila, respondent alleged the following:

1. I am a stockholder, Board Member, and duly elected treasurer of Centillion Holdings, Inc. (CHI), which corporation is duly organized and existing under Philippine laws.

2. As duly elected treasurer of CHI, I was tasked with the custody and safekeeping of all vital financial documents including bank accounts, securities, and land titles.

3. Among the land titles in my custody was the Owner's Duplicate copy of Transfer Certificate of Title No. 232238 registered in the name of CHI.

4. On June 14, 1999, Lee Pue Liong, a.k.a. Paul Lee, filed a VERIFIED PETITION for the issuance of a new owner's duplicate copy of the aforementioned certificate claiming under oath that said duplicate copy was in his custody but was lost.

x x x x x x x x x

5. Paul Lee likewise executed an affidavit of loss stating the same fact of loss, which affidavit he used and presented as exhibit "D".

x x x x x x x x x

6. On August 18, 1999, Paul Lee testified under oath that TCT No. 232238 was inadvertently lost and misplaced from his files.

x x x x x x x x x

7. *Paul Lee made a willful and deliberate assertion of falsehood in his verified petition, affidavit and testimony, as he perfectly knew that I was in possession of the owner's duplicate copy of TCT No. 232238.*

8. I and my brother Nixon Lee opposed the petition of Paul Lee and even produced in open court the owner's duplicate copy of TCT No. 232238.

Such fact was contained in the Order of Branch 4, RTC, Manila, dated November 12, 1999, x x x.

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[14] *Rollo,* pp. 87-88.

9. I and Paul Lee are involved in an intra-corporate dispute, which dispute is now pending with the SEC.

10. Paul Lee needed to have a new owner's duplicate of the aforementioned TCT so that he could mortgage the property covered thereby with the Planters Development Bank, even without my knowledge and consent as well as the consent and knowledge of my brother Nixon Lee who is likewise a shareholder, board member and officer of CHI.

11. If not for the timely discovery of the petition of Paul Lee, with his perjurious misrepresentation, a new owner's duplicate could have been issued.

x x x x x x x x x[15]

(Italics supplied.)

On June 7, 2000, respondent executed a Supplemental Affidavit[16] to clarify that she was accusing petitioner of perjury allegedly committed on the following occasions: (1) by declaring in the VERIFICATION the veracity of the contents in his petition filed with the RTC of Manila concerning his claim that TCT No. 232238 was in his possession but was lost; (2) by declaring under oath in his affidavit of loss that said TCT was lost; and (3) by testifying under oath that the said TCT was inadvertently lost from his files.

The Investigating Prosecutor recommended the dismissal of the case. However, in the Review Resolution[17] dated December 1, 2000 issued by First Assistant City Prosecutor Eufrosino A. Sulla, the recommendation to dismiss the case was set aside. Thereafter, said City Prosecutor filed the Informations[18] docketed as Criminal Case Nos. 352270-71 CR for perjury, punishable under Article 183[19] of the Revised Penal Code, as amended, against petitioner before the MeTC of Manila, Branch 28.

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[15] *Id.*

[16] *Id.* at 89.

[17] *Id.* at 90-92.

[18] *Id.* at 93-96.

[19] Article 183 of the Revised Penal Code provides:

At the trial, Atty. Augusto M. Macam appeared as counsel for respondent and as private prosecutor with the consent and under the control and supervision of the public prosecutor. After the prosecution's presentation of its first witness in the person of Atty. Ronaldo Viesca, Jr.,[20] a lawyer from the Land Registration Authority, petitioner's counsel moved in open court that respondent and her lawyer in this case should be excluded from participating in the case since perjury is a public offense. Said motion was vehemently opposed by Atty. Macam.[21] In its Order[22] dated May 7, 2003, the MeTC gave both the defense and the prosecution the opportunity to submit their motion and comment respectively as regards the issue raised by petitioner's counsel.

Complying with the MeTC's directive, petitioner filed the aforementioned Omnibus Motion[23] asserting that in the crime of perjury punishable under Article 183 of the Revised Penal Code, as amended, there is no mention of any private offended party. As such, a private prosecutor cannot intervene for the prosecution in this case. Petitioner argued that perjury is a crime against public interest as provided under Section 2, Chapter 2, Title IV, Book 2 of the Revised Penal Code, as amended, where the offended party is the State alone. Petitioner posited that

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Art. 183. *False testimony in other cases and perjury in solemn affirmation*. – The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

[20] TSN, April 23, 2003, pp. 1-39; records, Vol. I, pp. 234-272.

[21] TSN, May 7, 2003, pp. 1-10; *id.* at 275-284.

[22] Records, Vol. I, p. 273.

[23] *Supra* note 5.

there being no allegation of damage to private interests, a private prosecutor is not needed. On the other hand, the Prosecution filed its Opposition[24] to petitioner's Omnibus Motion.

The MeTC denied the Omnibus Motion in the Order[25] dated August 15, 2003, as follows:

> [W]hile criminal actions, as a rule, are prosecuted under the direction and control of the public prosecutor, however, an offended party may intervene in the proceeding, personally or by attorney, especially in cases of offenses which cannot be prosecuted except at the instance of the offended party. The only exception to this rule is when the offended party waives his right to [file the] civil action or expressly reserves his right to institute it after the termination of the case, in which case he loses his right to intervene upon the theory that he is deemed to have lost his interest in its prosecution. And, in any event, whenever an offended party intervenes in the prosecution of a criminal action, his intervention must always be subject to the direction and control of the public prosecutor. (*Lim Tek Goan vs. Yatco*, 94 Phil. 197).
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> Apparently, the law makes no distinction between cases that are public in nature and those that can only be prosecuted at the instance of the offended party. In either case, the law gives to the offended party the right to intervene, personally or by counsel, and he is deprived of such right only when he waives the civil action or reserves his right to institute one. Such is not the situation in this case. The case at bar involves a public crime and the private prosecution has asserted its right to intervene in the proceedings, subject to the direction and control of the public prosecutor.[26]

The MeTC also denied petitioner's motion for reconsideration.[27]

Petitioner sought relief from the CA via a petition[28] for *certiorari* with a prayer for the issuance of a writ of preliminary

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[24] Records, Vol. I, pp. 305-317.

[25] *Supra* note 4, at 68-71.

[26] *Id.* at 70.

[27] *Supra* note 4, at 72 and note 6.

[28] *Id.* at 49-67.

injunction and temporary restraining order. Petitioner prayed, among others, for the CA to enjoin the MeTC and respondent from enforcing the MeTC Orders dated August 15, 2003 and November 5, 2003, and likewise to enjoin the MeTC and respondent from further allowing the private prosecutor to participate in the proceedings below while the instant case is pending.

By Decision[29] dated May 31, 2007, the CA ruled in favor of respondent, holding that the presence of the private prosecutor who was under the control and supervision of the public prosecutor during the criminal proceedings of the two perjury cases is not proscribed by the rules. The CA ratiocinated that respondent is no stranger to the perjury cases as she is the private complainant therein, hence, an aggrieved party.[30] Reiterating the MeTC's invocation of our ruling in *Lim Tek Goan v. Yatco*[31] as cited by former Supreme Court Associate Justice Florenz D. Regalado in his Remedial Law Compendium,[32] the CA ruled that "the offended party, who has neither reserved, waived, nor instituted the civil action may intervene, and such right to intervene exists even when no civil liability is involved."[33]

Without passing upon the merits of the perjury cases, the CA declared that respondent's property rights and interests as the treasurer and a stockholder of CHI were disturbed and/or threatened by the alleged acts of petitioner. Further, the CA opined that petitioner's right to a fair trial is not violated because the presence of the private prosecutor in these cases does not exclude the presence of the public prosecutor who remains to have the prosecuting authority, subjecting the private prosecutor to his control and supervision.

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[29] *Supra* note 2.

[30] *Id.* at 167, 169, citing *Rodriguez v. Gadiane*, 527 Phil. 691 (2006).

[31] 94 Phil. 197 (1953).

[32] Volume II, Seventh Revised Edition, p. 236.

[33] *Supra* note 2, at 168.

Petitioner filed a Motion for Reconsideration[34] but the CA denied it under Resolution[35] dated January 31, 2008.

Hence, this petition raising the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT UPHELD THE RESOLUTION OF THE METROPOLITAN TRIAL COURT THAT THERE IS A PRIVATE OFFENDED PARTY IN THE CRIME OF PERJURY, A CRIME AGAINST PUBLIC INTEREST; AND

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT UPHELD THE RESOLUTIONS OF THE *LOWER COURT* WHICH IN TURN UPHELD THE RIGHT OF RESPONDENT, AN ALLEGED STOCKHOLDER OF CHI, TO INTERVENE IN THE CRIMINAL CASE FOR PERJURY AS PRIVATE COMPLAINANT ON BEHALF OF THE CORPORATION WITHOUT ITS AUTHORITY.[36]

Petitioner claims that the crime of perjury, a crime against public interest, does not offend any private party but is a crime which only offends the public interest in the fair and orderly administration of laws. He opines that perjury is a felony where no civil liability arises on the part of the offender because there are no damages to be compensated and that there is no private person injured by the crime.

Petitioner argues that the CA's invocation of our pronouncement in *Lim Tek Goan,* cited by Justice Regalado in his book, is inaccurate since the private offended party must have a civil interest in the criminal case in order to intervene through a private prosecutor. Dissecting *Lim Tek Goan,* petitioner points out that said case involved the crime of grave threats where Lim Tek Goan himself was one of the offended parties.

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[34] *Id.* at 174-187.

[35] *Supra* note 3.

[36] *Supra* note 1, at 18.

Thus, even if the crime of grave threats did not have any civil liability to be satisfied, petitioner claims that Lim Tek Goan, as a matter of right, may still intervene because he was one of the offended parties.

Petitioner submits that the MeTC erred in allowing the private prosecutor to represent respondent in this case despite the fact that the latter was not the offended party and did not suffer any damage as she herself did not allege nor claim in her Complaint-Affidavit and Supplemental Affidavit that she or CHI suffered any damage that may be satisfied through restitution,[37] reparation for the damage caused[38] and indemnification for consequential damages.[39] Lastly, petitioner asserts that respondent is not the proper offended party that may intervene in this case as she was not authorized by CHI. Thus, he prayed, among others, that Atty. Macam or any private prosecutor for that matter be excluded from the prosecution of the criminal cases, and that all proceedings undertaken wherein Atty. Macam intervened be set aside and that the same be taken anew by the public prosecutor alone.[40]

On the other hand, respondent counters that the presence and intervention of the private prosecutor in the perjury cases are not prohibited by the rules, stressing that she is, in fact, an aggrieved party, being a stockholder, an officer and the treasurer of CHI and the private complainant. Thus, she submits that pursuant to our ruling in *Lim Tek Goan* she has the right to intervene even if no civil liability exists in this case.[41]

The petition has no merit.

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "*[e]very person*

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[37] Article 105, REVISED PENAL CODE.

[38] Article 106, *id.*

[39] Article 107, *id.*

[40] Petitioner's Memorandum dated June 10, 2009, *rollo*, pp. 371-406.

[41] Respondent's Memorandum dated June 5, 2009, *id.* at 328-342.

criminally liable x x x is also civilly liable."[42] Underlying this legal principle is the traditional theory that when a person commits a crime, he offends two entities, namely (1) the society in which he lives in or the political entity, called the State, whose law he has violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission.[43]

Section 1, Rule 111 of the Revised Rules of Criminal Procedure, as amended, provides:

> SECTION 1. *Institution of criminal and civil actions*.—(a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged **shall be deemed instituted with the criminal action** unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.
>
> x x x x x x x x x
> (Emphasis supplied)

For the recovery of civil liability in the criminal action, the appearance of a private prosecutor is allowed under Section 16 of Rule 110:

> SEC. 16. *Intervention of the offended party in criminal action*.—Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, **the offended party may intervene by counsel** in the prosecution of the offense. (Emphasis supplied.)

Section 12, Rule 110 of the Revised Rules of Criminal Procedure, as amended, defines an offended party as "the person against whom or against whose property the offense was committed." In *Garcia v. Court of Appeals*,[44] this Court rejected petitioner's theory that it is only the State which is the offended party in public offenses like bigamy. We explained that from the language of Section 12, Rule 10 of the Rules of Court, it

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[42] Article 100, REVISED PENAL CODE.

[43] *Banal v. Judge Tadeo, Jr.*, 240 Phil. 326, 331 (1987).

[44] 334 Phil. 621, 631-632 (1997).

is reasonable to assume that the offended party in the commission of a crime, public or private, is the party to whom the offender is civilly liable, and therefore the private individual to whom the offender is civilly liable is the offended party.

In *Ramiscal, Jr. v. Hon. Sandiganbayan*,[45] we also held that

> Under Section 16, Rule 110 of the Revised Rules of Criminal Procedure, **the offended party may also be a private individual whose person, right, house, liberty or property was *actually* or *directly* injured by the same punishable act or omission of the accused, or that corporate entity which is damaged or injured by the delictual acts complained of**. Such party must be one who has a legal right; a substantial interest in the subject matter of the action as will entitle him to recourse under the substantive law, to recourse if the evidence is sufficient or that he has the legal right to the demand and the accused will be protected by the satisfaction of his civil liabilities. Such interest must not be a mere expectancy, subordinate or inconsequential. The interest of the party must be personal; and not one based on a desire to vindicate the constitutional right of some third and unrelated party.[46] (Emphasis supplied.)

In this case, the statement of petitioner regarding his custody of TCT No. 232238 covering CHI's property and its loss through inadvertence, if found to be perjured is, without doubt, injurious to respondent's personal credibility and reputation insofar as her faithful performance of the duties and responsibilities of a Board Member and Treasurer of CHI. The potential injury to the corporation itself is likewise undeniable as the court-ordered issuance of a new owner's duplicate of TCT No. 232238 was only averted by respondent's timely discovery of the case filed by petitioner in the RTC.

Even assuming that no civil liability was alleged or proved in the perjury case being tried in the MeTC, this Court declared in the early case of *Lim Tek Goan v. Yatco*,[47] cited by both

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[45] 487 Phil. 384 (2004).

[46] *Id.* at 407-408.

[47] *Supra* note 31, at 201. See also Manuel Pamaran, *Revised Rules of Criminal Procedure Annotated*, 2010 Edition, p. 150.

MeTC and CA, that whether public or private crimes are involved, it is erroneous for the trial court to consider the intervention of the offended party by counsel as merely a matter of tolerance. Thus, where the private prosecution has asserted its right to intervene in the proceedings, that right must be respected. The right reserved by the Rules to the offended party is that of intervening for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused. Such intervention, moreover, is always subject to the direction and control of the public prosecutor.[48]

In *Chua v. Court of Appeals*,[49] as a result of the complaint-affidavit filed by private respondent who is also the corporation's Treasurer, four counts of falsification of public documents (Minutes of Annual Stockholder's Meeting) was instituted by the City Prosecutor against petitioner and his wife. After private respondent's testimony was heard during the trial, petitioner moved to exclude her counsels as private prosecutors on the ground that she failed to allege and prove any civil liability in the case. The MeTC granted the motion and ordered the exclusion of said private prosecutors. On *certiorari* to the RTC, said court reversed the MeTC and ordered the latter to allow the private prosecutors in the prosecution of the civil aspect of the criminal case. Petitioner filed a petition for *certiorari* in the CA which dismissed his petition and affirmed the assailed RTC ruling.

When the case was elevated to this Court, we sustained the CA in allowing the private prosecutors to actively participate in the trial of the criminal case. Thus:

> Petitioner cites the case of *Tan, Jr. v. Gallardo*, holding that where from the nature of the offense or where the law defining and punishing the offense charged does not provide for an indemnity, the offended party may not intervene in the prosecution of the offense.
>
> Petitioner's contention lacks merit. Generally, the basis of civil liability arising from crime is the fundamental postulate that every

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[48] *Id.* at 200; *id.* at 149-150, 153.

[49] 485 Phil. 644 (2004).

man criminally liable is also civilly liable. When a person commits a crime he offends two entities namely (1) the society in which he lives in or the political entity called the State whose law he has violated; and (2) the individual member of the society whose person, right, honor, chastity or property has been actually or directly injured or damaged by the same punishable act or omission. **An act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another**. Additionally, what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, whether done intentionally or negligently. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of the crime. The civil action involves the civil liability arising from the offense charged which includes restitution, reparation of the damage caused, and indemnification for consequential damages.

Under the Rules, where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense. Rule 111(a) of the Rules of Criminal Procedure provides that, "[w]hen a criminal action is instituted, the civil action arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action."

Private respondent did not waive the civil action, nor did she reserve the right to institute it separately, nor institute the civil action for damages arising from the offense charged. Thus, we find that the private prosecutors can intervene in the trial of the criminal action.

Petitioner avers, however, that respondent's testimony in the inferior court did not establish nor prove any damages personally sustained by her as a result of petitioner's alleged acts of falsification. **Petitioner adds that since no personal damages were proven therein, then the participation of her counsel as private prosecutors, who were supposed to pursue the civil aspect of a criminal case, is not necessary and is without basis.**

When the civil action is instituted with the criminal action, evidence should be taken of the damages claimed and the court should determine who are the persons entitled to such indemnity. The civil liability

arising from the crime may be determined in the criminal proceedings if the offended party does not waive to have it adjudged or does not reserve the right to institute a separate civil action against the defendant. Accordingly**, if there is no waiver or reservation of civil liability, evidence should be allowed to establish the extent of injuries suffered.**

In the case before us, there was neither a waiver nor a reservation made; nor did the offended party institute a separate civil action. It follows that **evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed, and the private offended party has the right to intervene through the private prosecutors.**[50] (Emphasis supplied; citations omitted.)

In the light of the foregoing, we hold that the CA did not err in holding that the MeTC committed no grave abuse of discretion when it denied petitioner's motion to exclude Atty. Macam as private prosecutor in Crim. Case Nos. 352270-71 CR.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated May 31, 2007 and the Resolution dated January 31, 2008 of the Court of Appeals in CA-G.R. SP No. 81510 are hereby **AFFIRMED and UPHELD**.

With costs against the petitioner.

SO ORDERED.

Sereno, C.J. (Chairperson), Brion,[*] *Bersamin,* and *Reyes, JJ.,* concur.

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[50] *Id.* at 658-660.

[*] Designated additional member per Special Order No. 1497 dated July 31, 2013.

SECOND DIVISION

[G.R. No. 183014. August 7, 2013]

THE LAW FIRM OF CHAVEZ MIRANDA AND ASEOCHE, represented by its Founding Partner, FRANCISCO I. CHAVEZ, *petitioner, vs.* **ATTY. JOSEJINA C. FRIA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; THE TRIAL COURT MAY IMMEDIATELY DISMISS A CRIMINAL CASE IF THE EVIDENCE ON RECORD FAILS TO SHOW PROBABLE CAUSE; ABSENCE OF THE ELEMENTS OF THE CRIME OF OPEN DISOBEDIENCE IS A CLEAR CASE THAT PROBABLE CAUSE DID NOT EXIST. —** Under Section 5(a) of the Revised Rules of Criminal Procedure, a trial court judge may immediately dismiss a criminal case if the evidence on record clearly fails to establish probable cause[.] x x x It must, however, be observed that the judge's power to immediately dismiss a criminal case would only be warranted when the lack of probable cause is clear. In *De Los Santos-Dio v. CA,* the Court illumined that a clear-cut case of lack of probable cause exists when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged[.] x x x Applying these principles to the case at bar would lead to the conclusion that the MTC did not gravely abuse its discretion in dismissing Criminal Case No. 46400 for lack of probable cause. The dismissal ought to be sustained since the records clearly disclose the unmistakable absence of the integral elements of the crime of Open Disobedience.

2. **CRIMINAL LAW; REVISED PENAL CODE; OPEN DISOBEDIENCE; ELEMENTS, ABSENT IN CASE AT BAR. —** While the first element, *i.e.*, that the offender is a judicial or executive officer, concurs in view of Atty. Fria's position as Branch Clerk of Court, the second and third elements of the crime evidently remain wanting. To elucidate, the second element of the crime of Open Disobedience is that there is a judgment, decision, or order of a superior authority made ***within***

> ***the scope of its jurisdiction*** and issued with all legal formalities. In this case, it is undisputed that all the proceedings in Civil Case No. 03-110 have been regarded as null and void due to Branch 203's lack of jurisdiction over the said case. x x x Hence, since it is explicitly required that the subject issuance be made within the scope of a superior authority's jurisdiction, it cannot therefore be doubted that the second element of the crime of Open Disobedience does not exist. Lest it be misunderstood, a court — or any of its officers for that matter — which has no jurisdiction over a particular case has no authority to act at all therein. In this light, it cannot be argued that Atty. Fria had already committed the crime based on the premise that the Court's pronouncement as to Branch 203's lack of jurisdiction came only after the fact. Verily, Branch 203's lack of jurisdiction was not merely a product of the Court's pronouncement in *Reyes*. The said fact is traced to the very inception of the proceedings and as such, cannot be accorded temporal legal existence in order to indict Atty. Fria for the crime she stands to be prosecuted. Proceeding from this discussion, the third element of the crime, *i.e.*, that the offender, without any legal justification, openly refuses to execute the said judgment, decision, or order, which he is duty bound to obey, cannot equally exist. Indubitably, without any jurisdiction, there would be no legal order for Atty. Fria to implement or, conversely, disobey. Besides, as the MTC correctly observed, there lies ample legal justifications that prevented Atty. Fria from immediately issuing a writ of execution. x x x Consequently, the dismissal of Criminal Case No. 46400 for lack of probable cause is hereby sustained.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a direct recourse to the Court from the Regional Trial Court of Muntinlupa City, Branch 276 (RTC), through a petition

for review on *certiorari*,[1] raising a pure question of law. In particular, petitioner The Law Firm of Chavez Miranda and Aseoche (The Law Firm) assails the Resolution[2] dated January 8, 2008 and Order[3] dated May 16, 2008 of the RTC in S.C.A. Case No. 07-096, upholding the dismissal of Criminal Case No. 46400 for lack of probable cause.

The Facts

On July 31, 2006, an Information[4] was filed against respondent Atty. Josejina C. Fria (Atty. Fria), Branch Clerk of Court of the Regional Trial Court of Muntinlupa City, Branch 203 (Branch 203), charging her for the crime of Open Disobedience under Article 231[5] of the Revised Penal Code (RPC). The accusatory portion of the said information reads:

> The undersigned 2nd Assistant City Prosecutor accuses ATTY. JOSEJINA C. FRIA of the crime of Viol. of Article 231 of the Revised Penal Code, committed as follows:
>
> That on or about the 2nd day of February, 2006, or on dates subsequent thereto, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer she being the Branch Clerk of Court of the Regional Trial Court Branch 203, Muntinlupa City, did then and there willfully, unlawfully and feloniously refused openly, without any legal justification to obey the order of the said court which is of superior authority, for the issuance of a writ of execution which is her

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[1] *Rollo,* pp. 31-61.

[2] *Id.* at 9-10. Penned by Acting Presiding Judge Romulo SG. Villanueva.

[3] *Id.* at 27-28.

[4] *Id.* at 243.

[5] Article 231 of the RPC reads:

> ART. 231. *Open Disobedience.* — Any judicial or executive officer who shall openly refuse to execute the judgment, decision, or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of *arresto mayor* in its medium period to *prisión correccional* in its minimum period, temporary special disqualification in its maximum period and a fine not exceeding 1,000 pesos.

ministerial duty to do so in Civil Case No. 03-110 entitled Charles Bernard Reyes, doing business under the name and style *CBH Reyes Architects vs. Spouses Cesar and Mely Esquig and Rosemarie Papas*, which has become final and executory since February 2, 2006, despite requests therefor, if only to execute/enforce said decision dated July 29, 2005 rendered within the scope of its jurisdiction and issued with all the legal formalities, to the damage and prejudice of the plaintiff thereof.

Contrary to law.
Muntinlupa City, July 31, 2006.[6]

Based on the records, the undisputed facts are as follows:

The Law Firm was engaged as counsel by the plaintiff in Civil Case No. 03-110 instituted before Branch 203.[7] On July 29, 2005, judgment was rendered in favor of the plaintiff (July 29, 2005 judgment), prompting the defendant in the same case to appeal. However, Branch 203 disallowed the appeal and consequently ordered that a writ of execution be issued to enforce the foregoing judgment.[8] Due to the denial of the defendant's motion for reconsideration, the July 29, 2005 judgment became final and executory. [9]

In its Complaint-Affidavit[10] dated February 12, 2006, The Law Firm alleged that as early as April 4, 2006, it had been following up on the issuance of a writ of execution to implement the July 29, 2005 judgment. However, Atty. Fria vehemently refused to perform her ministerial duty of issuing said writ.

In her Counter-Affidavit[11] dated June 13, 2006, Atty. Fria posited that the draft writ of execution (draft writ) was not addressed to her but to Branch Sheriff Jaime Felicen (Felicen),

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[6] *Rollo,* p. 243.

[7] *Id.* at 34.

[8] *Id.* at 36.

[9] *Id.* at 36-37.

[10] *Id.* at 192-200.

[11] *Id.* at 202-208.

who was then on leave. Neither did she know who the presiding judge would appoint as special sheriff on Felicen's behalf.[12] Nevertheless, she maintained that she need not sign the draft writ since on April 18, 2006, the presiding judge issued an Order stating that he himself shall sign and issue the same.[13]

On July 31, 2006, the prosecutor issued a Memorandum[14] recommending, *inter alia*, that Atty. Fria be indicted for the crime of Open Disobedience. The corresponding Information was thereafter filed before the Metropolitan Trial Court of Muntinlupa City, Branch 80 (MTC), docketed as Criminal Case No. 46400.

The Proceedings Before the MTC

On September 4, 2006, Atty. Fria filed a Motion for Determination of Probable Cause[15] (motion) which The Law Firm opposed[16] on the ground that the Rules on Criminal Procedure do not empower trial courts to review the prosecutor's finding of probable cause and that such rules only give the trial court judge the duty to determine whether or not a warrant of arrest should be issued against the accused.

Pending resolution of her motion, Atty. Fria filed a Manifestation with Motion[17] dated November 17, 2006, stating that the Court had rendered a Decision in the case of *Reyes v. Balde II* (*Reyes*)[18] — an offshoot of Civil Case No. 03-110 — wherein it was held that Branch 203 had no jurisdiction over the foregoing civil case.[19] In response, The Law Firm filed its

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[12] *Id.* at 204-205.

[13] *Id.* at 206.

[14] *Id.* at 237-242. Issued by 2nd Assistant City Prosecutor Leopoldo B. Macinas and approved by City Prosecutor Edward M. Togonon.

[15] *Id.* at 246-250.

[16] *Id.* at 264-281. See Opposition dated October 10, 2006.

[17] *Id.* at 282-286.

[18] G.R. No. 168384, August 7, 2006, 498 SCRA 186.

[19] *Id.* at 196-197.

Comment/Opposition,[20] contending that Atty. Fria already committed the crime of Open Disobedience 119 days before the *Reyes* ruling was rendered and hence, she remains criminally liable for the afore-stated charge.

In an Omnibus Order[21] dated January 25, 2007, the MTC ordered the dismissal of Criminal Case No. 46400 for lack of probable cause. It found that aside from the fact that Atty. Fria is a judicial officer, The Law Firm failed to prove the existence of the other elements of the crime of Open Disobedience.[22] In particular, the second element of the crime, *i.e.*, that there is a judgment, decision, or order of a superior authority made within the scope of its jurisdiction and issued with all legal formalities, unlikely existed since the Court already declared as null and void the entire proceedings in Civil Case No. 03-110 due to lack of jurisdiction. In this regard, the MTC opined that such nullification worked retroactively to warrant the dismissal of the case and/or acquittal of the accused at any stage of the proceedings.[23]

Dissatisfied, The Law Firm moved for reconsideration[24] which was, however, denied in a Resolution[25] dated July 13, 2007. Accordingly, it elevated the matter on *certiorari*.[26]

The RTC Ruling

In a Resolution[27] dated January 8, 2008, the RTC affirmed the MTC's ruling, finding no grave abuse of discretion on the latter's part since its dismissal of Criminal Case No. 46400 for

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[20] *Rollo*, pp. 287-294. Filed on December 21, 2006.

[21] *Id.* at 296-304. Penned by Presiding Judge Paulino Q. Gallegos.

[22] *Id.* at 302.

[23] *Id.* at 303.

[24] *Id.* at 305-319. Motion for Reconsideration dated February 19, 2007.

[25] *Id.* at 295 and 330.

[26] *Id.* at 335-366.

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

lack of probable cause was "in full accord with the law, facts, and jurisprudence."[28]

Aggrieved, The Law Firm filed a Motion for Reconsideration[29] which was equally denied by the RTC in an Order[30] dated May 16, 2008. Hence, the instant petition.

The Issue Before the Court

The essential issue in this case is whether or not the RTC erred in sustaining the MTC's dismissal of the case for Open Disobedience against Atty. Fria, *i.e.*, Criminal Case No. 46400, for lack of probable cause.

The Court's Ruling

The petition is bereft of merit.

Under Section 5(a) of the Revised Rules of Criminal Procedure, a trial court judge may immediately dismiss a criminal case if the evidence on record clearly fails to establish probable cause, *viz*:

> Sec. 5. *When warrant of arrest may issue*. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause**. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information. (Emphasis and underscoring supplied)

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[28] *Id.* at 10. Dated January 30, 2008.

[29] *Id.* at 11-26.

[30] *Id.* at 27-28.

It must, however, be observed that the judge's power to immediately dismiss a criminal case would only be warranted when the lack of probable cause is clear. In *De Los Santos-Dio v. CA*,[31] the Court illumined that a clear-cut case of lack of probable cause exists when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged, *viz*:

> While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause x x x.
>
> In this regard, so as not to transgress the public prosecutor's authority, it must be stressed that **the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged**. On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.
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> In other words, once the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: (*a*) issue a warrant of arrest, if he finds probable cause; (*b*) **immediately dismiss the case, if the evidence on record clearly fails to establish probable cause**; and (*c*) order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause.[32] (Emphasis and underscoring supplied; citations omitted)

Applying these principles to the case at bar would lead to the conclusion that the MTC did not gravely abuse its discretion in dismissing Criminal Case No. 46400 for lack of probable

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[31] G.R. Nos. 178947 and 179079, June 26, 2013.

[32] *Id*.

cause. The dismissal ought to be sustained since the records clearly disclose the unmistakable absence of the integral elements of the crime of Open Disobedience. While the first element, *i.e.*, that the offender is a judicial or executive officer, concurs in view of Atty. Fria's position as Branch Clerk of Court, the second and third elements of the crime evidently remain wanting.

To elucidate, the second element of the crime of Open Disobedience is that there is a judgment, decision, or order of a superior authority made ***within the scope of its jurisdiction*** and issued with all legal formalities. In this case, it is undisputed that all the proceedings in Civil Case No. 03-110 have been regarded as null and void due to Branch 203's lack of jurisdiction over the said case. This fact has been finally settled in *Reyes* where the Court decreed as follows:

> WHEREFORE, in view of the foregoing, the instant petition is DENIED. x x x The Presiding Judge of the **Regional Trial Court of Muntinlupa City, Branch 203** is PERMANENTLY ENJOINED from proceeding with **Civil Case No. 03-110** and **all the proceedings therein are DECLARED NULL AND VOID**. x x x The Presiding Judge of the Regional trial Court of Muntinlupa City, Branch 203 is further DIRECTED to dismiss Civil Case No. 03-110 for **lack of jurisdiction**.[33] (Emphasis and underscoring supplied)

Hence, since it is explicitly required that the subject issuance be made within the scope of a superior authority's jurisdiction, it cannot therefore be doubted that the second element of the crime of Open Disobedience does not exist. Lest it be misunderstood, a court — or any of its officers for that matter — which has no jurisdiction over a particular case has no authority to act at all therein. In this light, it cannot be argued that Atty. Fria had already committed the crime based on the premise that the Court's pronouncement as to Branch 203's lack of jurisdiction came only after the fact. Verily, Branch 203's lack of jurisdiction was not merely a product of the Court's pronouncement in *Reyes*. The said fact is traced to the very inception of the proceedings and as such, cannot be accorded temporal legal existence in order to indict Atty. Fria for the crime she stands to be prosecuted.

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[33] *Supra* note 18, at 197.

Proceeding from this discussion, the third element of the crime, *i.e.*, that the offender, without any legal justification, openly refuses to execute the said judgment, decision, or order, which he is duty bound to obey, cannot equally exist. Indubitably, without any jurisdiction, there would be no legal order for Atty. Fria to implement or, conversely, disobey. Besides, as the MTC correctly observed, there lies ample legal justifications that prevented Atty. Fria from immediately issuing a writ of execution.[34]

In fine, based on the above-stated reasons, the Court holds that no grave abuse of discretion can be attributed to the MTC as correctly found by the RTC. It is well-settled that 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."[35] Consequently, the dismissal of Criminal Case No. 46400 for lack of probable cause is hereby sustained.

WHEREFORE, the petition is **DENIED**. The Resolution dated January 8, 2008 and Order dated May 16, 2008 of the Regional Trial Court of Muntinlupa City, Branch 276 in S.C.A. Case No. 07-096 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

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[34] *Rollo*, pp. 303-304.

[35] *Yu v. Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

SECOND DIVISION

[G.R. No. 185549. August 7, 2013]

VICENTE ANG, *petitioner, vs.* **CEFERINO SAN JOAQUIN, JR., and DIOSDADO FERNANDEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; EXPLAINED. — "Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay." It is a "dismissal in disguise or an act amounting to dismissal but made to appear as if it were not." Constructive dismissal may likewise exist if an "act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment." "Constructive dismissal exists when the employee involuntarily resigns due to the harsh, hostile, and unfavorable conditions set by the employer." "The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances."

2. ID.; ID.; ID.; ID.; EMPLOYER'S ACT OF TEARING TO PIECES THE EMPLOYEE'S TIME CARD WAS CONSIDERED AN OUTRIGHT TERMINATION OF THE PARTIES' EMPLOYMENT RELATIONSHIP. — The CA is correct in its pronouncement that respondents were constructively dismissed from work. Moreover, by destroying respondents' time cards, Ang discontinued and severed his relationship with respondents. The purpose of a time record is to show an employee's attendance in office for work and to be paid accordingly, taking into account the policy of "no work, no pay". A daily time record is primarily intended to prevent damage or loss to the employer, which could result in instances where it pays an employee for no work done; it is a mandatory requirement for inclusion in the payroll, and in the absence of an employment agreement, it constitutes evidence of

employment. Thus, when Ang tore the respondents' time cards to pieces, he virtually removed them from Virose's payroll and erased all vestiges of respondents' employment; respondents were effectively dismissed from work. The act may be considered an outright — not only symbolic — termination of the parties' employment relationship; the "last straw that finally broke the camel's back", as respondents put it in their Position Paper.

3. ID.; ID.; ID.; ABANDONMENT, NOT ESTABLISHED; EMPLOYEE HAS NO INTENTION TO DISCONTINUE EMPLOYMENT. — For a termination of employment on the ground of abandonment to be valid, the employer "must prove, by substantial evidence, the concurrence of [the employee's] failure to report for work for no valid reason and his categorical intention to discontinue employment." In the present case, it appears that there is no intention to abandon employment; respondents' repeated absence were caused by Ang's oppressive treatment and indifference which respondents simply grew tired of and wanted a break from. Indeed, an employee cannot be expected to work efficiently in an atmosphere where the employer's hostility pervades; certainly, it is too stressful and depressing — the threat of immediate termination from work, if not aggression, is a heavy burden carried on the employee's shoulder. Respondents may have stayed away from work to cool off, but not necessarily to abandon their employment. The fact remains that respondents returned to work, but then their time cards had been torn to pieces.

APPEARANCES OF COUNSEL

Regino Palma Raagas Esguerra and Associates Law Office for petitioner.

Ernesto R. Arellano for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The employer's act of tearing to pieces the employee's time card may be considered an outright — not only symbolic — termination of the parties' employment relationship.

This Petition for Review on *Certiorari*[1] assails the August 29, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 75545 which dismissed the Petition for *Certiorari*[3] in said case, as well as its December 4, 2008 Resolution[4] denying reconsideration thereof.

Factual Antecedents

Petitioner Vicente Ang (Ang) is the proprietor of Virose Furniture and Glass Supply (Virose) in Tayug, Pangasinan, a wholesaler/retailer of glass supplies, jalousies, aluminum windows, table glass, and assorted furniture. Respondents Ceferino San Joaquin, Jr. (San Joaquin) and Diosdado Fernandez (Fernandez) were regular employees of Virose: San Joaquin was hired in 1974 as helper, while Fernandez was employed in 1982 as driver.[5] Respondents have been continuously in Ang's employ without any derogatory record.[6] Each received a daily salary of ₱166.00.[7]

Through the years, San Joaquin — who is Ang's first cousin, their mothers being sisters — became a *pahinante* or delivery helper, and later on an all-around worker of Virose.[8]

On August 24, 1999, respondents attended the court hearing relative to the 41 criminal cases filed by former Virose employee Daniel Abrera (Abrera) against Ang for the latter's non-remittance of Social Security System (SSS) contributions.[9] During that

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[1] *Rollo*, pp. 3-32.

[2] CA *rollo*, pp. 141-166; penned by Associate Justice Regalado E. Maambong and concurred in by Associate Justices Monina Arevalo-Zenarosa and Myrna Dimaranan-Vidal.

[3] *Id.* at 2-26.

[4] *Id.* at 187-188.

[5] Records, p. 24.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 50-51.

[9] *Id.* at 25.

hearing, respondents testified against Ang; it was the second time for San Joaquin to testify, while it was Fernandez's first.[10] Previously, respondents joined Abrera in questioning Ang's procedure in remitting their SSS contributions.[11] After the said hearing Ang began to treat respondents with hostility and antagonism.

On August 28, 1999, Ang's wife, Rosa, instructed a Virose salesclerk to find helpers who would transfer monobloc chairs from the Virose store to her restaurant, Leng-Leng's Foodshop, located just beside the store. The salesclerk instructed San Joaquin to help, but the latter refused, saying that he was not an employee of the restaurant but a glass installer of Virose. A heated argument ensued between San Joaquin on the one hand and Rosa, her son Jonathan, and the salesclerk on the other. San Joaquin left the store, shouting invectives.[12]

On August 30, 1999, San Joaquin returned to the store, only to find out that Ang had torn his DTR to pieces that day while the DTR of Fernandez was torn to pieces by Ang immediately after the August 24, 1999 hearing in which the respondents testified.[13] On the same day, Fernandez reported for work and received a memorandum of even date issued by Ang informing him that he was placed on a one-week suspension for insubordination.[14] The memorandum did not specify the act of insubordination.[15]

On August 31, 1999, respondents filed against Ang Complaints for illegal constructive dismissal with claims for backwages and separation pay.[16] The Complaints were docketed as NLRC Case No. SUB-RAB-1-07-8-0175-99 Pang.

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[10] *Id.*

[11] *Id.* at 26.

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

[13] *Id.* at 25, 72.

[14] *Id.* at 127.

[15] *Id.*

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

On September 5, 1999, Fernandez confronted Ang, demanding that the latter sign certain documents which the former had with him. Ang refused, and Fernandez — who was then intoxicated — left uttering unsavory remarks and threatening to sue Ang.[17]

On September 8, 1999, San Joaquin received a memorandum from Ang dated August 30, 1999, placing the former under preventive suspension and ordering him to explain in writing, within three days, why no disciplinary action should be imposed against him for his refusal to obey the August 28, 1999 instructions to transfer the monobloc chairs.[18]

On September 13, 1999, Fernandez received another memorandum from Ang, ordering him to report for work after being absent for a week.[19]

On September 21, 1999, Ang issued a memorandum terminating San Joaquin's employment.[20]

Ruling of the Labor Arbiter

In their Position Paper,[21] respondents claimed that they were constructively dismissed on August 30, 1999, when the situation in the workplace became extremely unbearable owing to their attendance at the August 24, 1999 hearing of the criminal cases against Ang, where they testified against the latter. They accused Ang of irregularities relative to the remittance of their SSS contributions; subjecting them to verbal abuse; unfair practices — specifically assigning them tasks which were not part of their work; and removing their DTRs and tearing them to pieces, soon after they testified against him in the criminal cases and after complaining of irregularities in the remittance of their SSS contributions. Respondents referred to Ang's act of tearing their

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[17] *Id.* at 54.

[18] *Id.* at 26.

[19] *Id.* at 27.

[20] *Id.*

[21] *Id.* at 23-31.

DTRs to pieces as the "last straw that finally broke the camel's back."[22]

Respondents further argued that Ang's memoranda which he later issued were intended to cover up his illegal acts, an afterthought whose purpose was to conceal Ang's unlawful act of removing and tearing up their time cards.[23]

For his part, Fernandez claimed that the August 30, 1999 memorandum suspending him for insubordination was illegal as it did not specify the act constituting insubordination, the date it was committed, and the particular company policy or rule that was violated. Fernandez further alleged that the September 13, 1999 memorandum which ordered him to report for work after being absent for a week was another prevarication, because he reported for work on three occasions following receipt of the said memorandum, but he could not find his time card. Finally, Fernandez claimed that he did not receive any notice of dismissal from Ang.[24]

Respondents claimed that their relationship with Ang had become so strained that their reinstatement was no longer feasible, and ordering them back to work would only subject them to further harassment and embarrassment.[25] They thus prayed for an award of backwages, separation pay, ₱100,000.00 each as moral and exemplary damages, and 10% attorney's fees.[26]

In his Position Paper,[27] Ang claimed that respondents were disrespectful, disobedient, and that they abandoned their employment, went on absence without leave (AWOL), and failed to respond to his memoranda. They were thus accordingly dismissed for cause, and were not entitled to backwages,

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[22] *Id.* at 25.

[23] *Id.* at 26.

[24] *Id.* at 27.

[25] *Id.* at 28.

[26] *Id.* at 29.

[27] *Id.* at 50-61.

separation pay, damages and attorney's fees. He prayed for the dismissal of the case.

On July 25, 2000, Labor Arbiter Gerardo A. Yulo issued a Decision[28] decreeing as follows:

> WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[29]

The Labor Arbiter held that respondents were unable to show how Ang discriminated against them. He pointed out that respondents cited only two instances of alleged discrimination/reprisal committed against them: the August 28, 1999 incident regarding the transfer of the monobloc chairs and Fernandez's failure to find his DTR when he reported for work following receipt of the September 13, 1999 memorandum; but these were not acts of discrimination/reprisal. The Labor Arbiter found that the order to transfer the chairs to Rosa's restaurant was reasonable considering the exigencies of the moment, and the order was given by the Virose salesclerk; on the contrary, San Joaquin was guilty of insubordination in not carrying out a reasonable order of his employer. As for Fernandez, the Labor Arbiter held that the loss of his time card is not sufficient reason to suppose that his employment had been terminated. Fernandez should have approached the person charged with keeping his time cards so that a new one could be issued, but he did not do so.

The Labor Arbiter added that Ang's issuance of the memoranda does not constitute an afterthought, since it has not been shown that they were issued with knowledge that respondents previously filed Complaints on August 31, 1999. Moreover, the Labor Arbiter found that Ang correctly assumed that respondents were no longer interested in resuming their employment, when they failed to respond to his memoranda and did not report for work.

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[28] *Id.* at 72-85.

[29] *Id.* at 75.

Finally, the Labor Arbiter concluded that respondents were guilty of abandonment of work, and that their accusation of constructive dismissal was false. As such, respondents were not entitled to the awards as prayed for in their Complaints.

Ruling of the National Labor Relations Commission (NLRC)

Respondents filed an Appeal[30] with the NLRC. In a September 30, 2002 Decision,[31] the NLRC decreed, thus:

> WHEREFORE, the Decision of the Labor Arbiter is hereby AFFIRMED and complainants' appeal therefrom is DISMISSED for lack of merit.
>
> SO ORDERED.[32]

The NLRC declared that there was no constructive dismissal. It held that respondents failed to prove that they were constructively dismissed; nor do the facts of the case sufficiently show that they were constructively dismissed from employment.

Respondents moved for reconsideration,[33] but in a November 22, 2002 Resolution,[34] the NLRC denied the same.

Ruling of the Court of Appeals

Respondents went up to the CA via an original Petition for *Certiorari*.[35] On August 29, 2008, the CA issued the assailed Decision,[36] decreeing as follows:

> **WHEREFORE**, in view of the foregoing, finding that petitioners Ceferino San Joaquin and Diosdado A. Fernandez were illegally

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[30] *Id.* at 77-92.

[31] *Id.* at 141-145; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Ireneo B. Bernardo.

[32] *Id.* at 145.

[33] *Id.* at 154-162.

[34] *Id.* at 182-183; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ireneo B. Bernardo and Tito F. Genilo.

[35] CA *rollo*, pp. 2-26.

[36] *Id.* at 141-166.

dismissed, the instant petition for *certiorari* is hereby **GRANTED**. The 30 September 2002 Decision of the National Labor Relations Commission, Third Division is hereby **REVERSED** and **SET ASIDE**.

Private respondent Vicente Ang is hereby ordered to pay petitioners:

1. Separation pay in lieu of reinstatement considering that resentment and enmity have transpired between the parties paving the way for strained relations;

2. Backwages computed from the time of illegal dismissal of San Joaquin and Fernandez from August 30, 1999, both up to the date of the finality of this decision, without qualification or deduction;

3. Attorney's fees in the amount of ten (10) percent of the total amount awarded to petitioners.

This case is hereby remanded to the National Labor Relations Commission for the proper computation of the awards hereinstated, **with DISPATCH**.

No pronouncement as to costs.

SO ORDERED.[37]

The CA held that the Labor Arbiter and the NLRC misappreciated the facts which thus led to the erroneous conclusion that there was no constructive dismissal. It considered Ang's act of tearing the respondents' DTRs or time cards as a categorical indication of their dismissal from employment. The CA declared, thus:

> San Joaquin and Fernandez were constructively dismissed when Ang tore their time cards to pieces thus preventing them from returning to work.[38]

The CA also found that respondents did not abandon their employment, as they both voluntarily reported for work: San Joaquin went to the store on August 30, 1999 after the unfortunate incident of August 28, 1999, only to find out that his time card had been torn to pieces by Ang, while Fernandez reported for

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[37] *Id.* at 164-165. Emphases in the original.

[38] *Id.* at 155.

work and even received a memorandum from Ang placing him under suspension, and this despite the fact that previously, Ang had torn his time card to pieces. It added that the immediate filing of illegal dismissal Complaints by the respondents goes against the very concept of abandonment of work.[39]

The CA further declared that constructive dismissal does not only mean forthright dismissal or diminution in rank, compensation, benefits and privileges; it may be equated with acts of clear discrimination, insensibility or disdain by an employer as to be unbearable on the part of the employee that it forecloses any choice but to forego continued employment.[40] Likewise, dismissal may be defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely.[41] It added that constructive dismissal may occur when by the employer's conduct or behavior, an employee could not reasonably be expected to continue his employment on account of the employer's making his life very difficult, as by vindictive action, harassment, or humiliation, among others.[42]

The CA found unreasonble San Joaquin's assignment to perform tasks related to Ang's other businesses, specifically Rosa's restaurant. It held that assigning San Joaquin to transfer Virose's monobloc chairs for use by Leng-Leng's Foodshop was improper as it was beyond San Joaquin's scope of work.

Petitioner moved for reconsideration,[43] but in its December 4, 2008 Resolution,[44] the CA stood firm in its stance. Hence, the present Petition.

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[39] *Id.*, citing *Villar v. National Labor Relations Commission*, 387 Phil. 706, 714 (2000).

[40] *Id.* at 156, citing *Masagana Concrete Products v. National Labor Relations Commission*, 372 Phil. 459, 478 (1999).

[41] *Id.* at 156-157, citing *Blue Dairy Corporation v. National Labor Relations Commission*, 373 Phil. 179, 186 (1999).

[42] *Id.* at 157, citing *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 746 (2002).

[43] *Id.* at 167-179.

[44] *Id.* at 187-189.

Issues

Petitioner submits the following assignment of errors:

I

THE QUESTIONED DECISION AND RESOLUTION OF THE COURT OF APPEALS REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH AFFIRMED THE DECISION OF THE LABOR ARBITER IS NOT IN ACCORDANCE WITH LAW AND JURISPRUDENCE APPLICABLE TO THE CASE.

II

THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION AND THE LABOR ARBITER AND ORDERING HEREIN PETITIONER TO PAY PRIVATE RESPONDENTS SEPARATION PAY, BACKWAGES AND ATTORNEY'S FEES.

III

WHETHER X X X THE PRIVATE RESPONDENTS HAVE ABANDONED THEIR JOB THERE BEING NO PRAYER FOR REINSTATEMENT IN THEIR COMPLAINT OR WERE THEY DISMISSED ILLEGALLY WHEN AT THE TIME THEY FILED THEIR COMPLAINT THEY WERE STILL VERY MUCH IN THE EMPLOY OF THE HEREIN PETITIONER.[45]

Petitioner's Arguments

In his Petition and Reply,[46] petitioner insists that respondents abandoned their employment; that they are guilty of gross insubordination/disobedience and misconduct, given the manner they conducted themselves during the period in question. He cites that contrary to the CA pronouncement, San Joaquin was an all-around helper who could not refuse to carry out the August 28, 1999 order to transfer monobloc chairs from Virose to Leng-Leng's Foodshop, such being within the scope of San Joaquin's work. Petitioner accuses San Joaquin of arrogance and disrespect

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[45] *Rollo,* pp. 19-20.

[46] *Id.* at 207-216.

when after refusing to carry out the order, the latter shouted invectives at petitioner's wife, Rosa, and left the workplace. His dismissal from employment was thus justified.

Petitioner further cites that he provided housing and assistance to San Joaquin, his cousin; and yet the latter abused petitioner's generosity and rewarded the latter with acts of ingratitude and disrespect.

Petitioner insists that Fernandez abandoned his employment when, after receiving the August 30, 1999 memorandum of suspension for his alleged insubordination and serving out the same, he failed to report for work; and in spite of the September 13, 1999 memorandum ordering him to return to work, Fernandez continued to absent himself from the store. Petitioner likewise charges Fernandez with gross misconduct for the September 5, 1999 incident.

Petitioner claims that his argument that abandonment exists is bolstered by the fact that respondents' respective Complaint and Position Paper contain no prayer for reinstatement.

Respondents' Arguments

In their Comment,[47] respondents cite procedural errors, specifically that the attached copies of the assailed Decision and Resolution of the CA were not certified by the appellate court's Clerk of Court and that the same contained no certification that they were from original copies on file. They echo the appellate court's finding of illegal constructive dismissal, and implore the Court to consider their length of service and lack of a derogatory record. They beg the Court to consider Ang's oppressive conduct which is tied to the criminal cases where they stood as witnesses against the latter, and how such behavior made life in the workplace unbearable for them, which should justify an affirmance of the assailed disposition.

Our Ruling

The Court affirms the CA ruling.

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[47] *Id.* at 192-203.

The Court opts to forego the matter of procedural errors attributed by respondents. This is a labor case whose substantive issues must be addressed, more than anything else. Besides, the nature of the alleged procedural infirmity cannot prod the Court to dismiss the Petition outright without first considering its merits.

When there is a divergence between the findings of facts of the NLRC and that of the CA, there is a need to review the records.[48] In the present case, not only is there a divergence of findings of facts; the conclusions arrived at by the two tribunals are diametrically opposed. For this reason, the doctrine that the findings of specialized administrative agencies or tribunals should be respected must be set aside for a moment.

There is considerable reason to believe that Ang began to treat respondents with disdain and discrimination after the hearing of the criminal cases on August 24, 1999, where respondents testified against him. Indeed, respondents' claim in their Position Paper that Ang began to subject them to verbal abuse, as well as assigning them tasks which were not part of their work, is not far-fetched. All these, respondents claim, are rooted in the 41 charges of estafa pending against Ang, where they were compelled to testify as witnesses for the State. Ang did not successfully dispute this claim; indeed, on this issue, he has remained silent all along. His silence on this issue is telling; considering that upon him lay the burden of proof to show that no illegal dismissal was effected. He should have addressed this issue, which is material and significant to the case as it forms the foundation for respondents' claim of illegal constructive dismissal.

The Court has held before that the filing of criminal charges by and between the employer and employee confirms the existence of strained relations between them.[49] In the instant case, Ang is in danger of being punished for the alleged commission of 41 counts of estafa; worse, respondents testified against him while

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[48] *Best Wear Garments v. De Lemos*, G.R. No. 191281, December 5, 2012.

[49] *RDS Trucking v. National Labor Relations Commission*, 356 Phil. 122, 131 (1998).

they were under his employ, and they join the complainant in said cases in accusing Ang of irregularities relative to the remittance of their SSS contributions. Ang could not reasonably be expected to thank respondents for it, yet he may not be allowed to treat them oppressively either. Nevertheless, the existence of the criminal charges and respondents' testifying against petitioner prove that their relations have been strained, and that respondents' allegations of oppression and abuse are not without basis. It thus became incumbent upon Ang to dispute such claims.

The Court can only imagine how the relationship between Ang and respondents deteriorated to a point where both parties began treating each other with disrespect and hostility, subjecting each other to indignities and resentful acts, thus making the store an insufferable place to be in for respondents, who are mere employees and as such were placed constantly under the mercy of petitioner. But it must be emphasized that this situation was not brought about by respondents; it appears without dispute that it was Ang who started treating the respondents unfairly and oppressively. Respondents' reaction to their employer's oppressive conduct may be explained within the context of human nature and the need to defend oneself against constant abuse. Respondents have stayed long with Ang with no apparent derogatory record — San Joaquin since 1974, while Fernandez was employed in 1982 — that they must be credited with good faith. They merely reacted to the unfair treatment they received from their employer after being called to testify against him in a criminal trial. "Our norms of social justice demand that we credit employees with the presumption of good faith in the performance of their duties, especially (where the employees have served the employer for so long) without any tinge of dishonesty."[50]

This is not to say that respondents' behavior toward Ang should be condoned; indeed it is deplorable that an employee should shout invectives against his employer or that he should show up in the workplace in an intoxicated state. However,

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[50] *Pizza Hut/Progressive Development Corporation v. National Labor Relations Commission*, 322 Phil. 579, 588 (1996). (Words in parentheses supplied)

this only characterizes the extent to which their employer-employee relationship had degenerated, owing to vindictive and oppressive acts perpetrated by the employer. Indeed, it is inconceivable that respondents would suddenly take such a belligerent stance toward petitioner for no reason at all; more so if it indeed is true that Ang provided the land and housing of San Joaquin. Certainly, San Joaquin would not sacrifice his blessings and dare go against Ang — his cousin and provider of employment and shelter — unless he is pushed to the wall by the latter. Yet while gross and abusive conduct on the part of respondents is not tolerated, the Court notes that petitioner's treatment of respondents is equally unacceptable, and is tantamount to constructive dismissal.

"Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay."[51] It is a "dismissal in disguise or an act amounting to dismissal but made to appear as if it were not."[52] Constructive dismissal may likewise exist if an "act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[53] "Constructive dismissal exists when the employee involuntarily resigns due to the harsh, hostile, and unfavorable conditions set by the employer."[54] "The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances."[55]

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[51] *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 634-635.

[52] *Id.* at 635.

[53] *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306 (2001).

[54] *Gilles v. Court of Appeals*, G.R. No. 149273, June 5, 2009, 588 SCRA 298, 316.

[55] *Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 446.

The CA is correct in its pronouncement that respondents were constructively dismissed from work. Moreover, by destroying respondents' time cards, Ang discontinued and severed his relationship with respondents. The purpose of a time record is to show an employee's attendance in office for work and to be paid accordingly, taking into account the policy of "no work, no pay". A daily time record is primarily intended to prevent damage or loss to the employer, which could result in instances where it pays an employee for no work done;[56] it is a mandatory requirement for inclusion in the payroll, and in the absence of an employment agreement, it constitutes evidence of employment. Thus, when Ang tore the respondents' time cards to pieces, he virtually removed them from Virose's payroll and erased all vestiges of respondents' employment; respondents were effectively dismissed from work. The act may be considered an outright — not only symbolic — termination of the parties' employment relationship; the "last straw that finally broke the camel's back", as respondents put it in their Position Paper.

In addition, such tearing of respondents' time cards confirms petitioner's vindictive nature and oppressive conduct, as well as his reckless disregard for respondents' rights.

For a termination of employment on the ground of abandonment to be valid, the employer "must prove, by substantial evidence, the concurrence of [the employee's] failure to report for work for no valid reason and his categorical intention to discontinue employment."[57] In the present case, it appears that there is no intention to abandon employment; respondents' repeated absence were caused by Ang's oppressive treatment and indifference which respondents simply grew tired of and wanted a break from. Indeed, an employee cannot be expected to work efficiently in an atmosphere where the employer's hostility pervades; certainly, it is too stressful and depressing — the threat of

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[56] See *Layug v. Sandiganbayan*, 392 Phil. 691, 707 (2000), citing *Beradio v. Court of Appeals*, 191 Phil. 153, 168 (1981).

[57] *Martinez v. B&B Fish Broker*, G.R. No. 179985, September 18, 2009, 600 SCRA 691, 696.

immediate termination from work, if not aggression, is a heavy burden carried on the employee's shoulder. Respondents may have stayed away from work to cool off, but not necessarily to abandon their employment. The fact remains that respondents returned to work, but then their time cards had been torn to pieces.

Besides, as correctly held by the CA, the immediate filing of the labor case negates the claim of abandonment. Employees who immediately protest their dismissal, as by filing a labor case, cannot logically be said to have abandoned their employment.[58]

Respondents could not be faulted for failing to submit their respective replies to the petitioner's memoranda. By the time they were notified of the same, the labor Complaints had been filed; not to mention that their cause of action is based on constructive dismissal, which they claim occurred even prior to their receipt of the subject memoranda. With the filing of their labor case, the submission of replies to the petitioner's memoranda became an unnecessary exercise.

Likewise, while respondents did not pray for reinstatement, this is no valid indication that they abandoned their employment. It is, on the other hand, proof of strained relations, such that they would seek separation pay and risk unemployment, rather than fight for their reinstatement and maintain themselves under petitioner's employ.

Finally, interest at the rate of 6% *per annum* must be imposed in accordance with Circular No. 799, Series of 2013 of the *Bangko Sentral ng Pilipinas* which took effect July 1, 2013.

WHEREFORE, premises considered, the Petition is **DENIED**. The August 29, 2008 Decision and the December 4, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 75545 are **AFFIRMED with MODIFICATION** in that interest at the rate of 6% *per annum* on the total monetary awards from finality of this Decision until full payment is hereby imposed.

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[58] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 118.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191424. August 7, 2013]

ALFEO D. VIVAS, on his behalf and on behalf of the Shareholders of EUROCREDIT COMMUNITY BANK, *petitioner, vs.* **THE MONETARY BOARD OF THE BANGKO SENTRAL NG PILIPINAS and the PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; BANKING LAWS; THE NEW CENTRAL BANK ACT (R.A. 7653); PETITION FOR *CERTIORARI* IS THE PROPER REMEDY TO ASSAIL ANY ACT OF THE MONETARY BOARD PLACING A BANK UNDER CONSERVATORSHIP, RECEIVERSHIP OR LIQUIDATION. — Vivas availed of the wrong remedy. The MB issued Resolution No. 276, dated March 4, 2010, in the exercise of its power under R.A. No. 7653. Under Section 30 thereof, any act of the MB placing a bank under conservatorship, receivership or liquidation may not be restrained or set aside except on a petition for *certiorari*. Pertinent portions of R.A. 7653 read: Section 30. — x x x. The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court **except** on **petition for *certiorari*** on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The

petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

2. ID.; ID.; ID.; WHERE THE ACT OF THE MONETARY BOARD SOUGHT TO BE ENJOINED IS ALREADY A *FAIT ACCOMPLI,* PROHIBITION DOES NOT LIE. — Granting that a petition for prohibition is allowed, it is already an ineffective remedy under the circumstances obtaining. Prohibition or a "writ of prohibition" is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising a jurisdiction with which they have not been vested by law, and confines them to the exercise of those powers legally conferred. Its office is to restrain subordinate courts, tribunals or persons from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance. x x x Indeed, prohibition is a preventive remedy seeking that a judgment be rendered which would direct the defendant to desist from continuing with the commission of an act perceived to be illegal. As a rule, the proper function of a writ of prohibition is to prevent the doing of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished. Though couched in imprecise terms, this petition for prohibition apparently seeks to prevent the acts of closing of ECBI and placing it under receivership. Resolution No. 276, however, had already been issued by the MB and the closure of ECBI and its placement under receivership by the PDIC were already accomplished. Apparently, the remedy of prohibition is no longer appropriate. Settled is the rule that prohibition does not lie to restrain an act that is already a *fait accompli*.

3. ID.; ID.; THE MONETARY BOARD IS EMPOWERED TO CLOSE A BANK AND PLACE IT UNDER RECEIVERSHIP WITHOUT PRIOR NOTICE AND HEARING. — [I]f circumstances warrant it, the MB may forbid a bank from doing business and place it under receivership *without prior notice and hearing*. x x x The Court, in several cases, upheld the power of the MB to take over banks *without need for prior hearing.* It is not necessary inasmuch as the law entrusts to

the MB the appreciation and determination of whether any or all of the statutory grounds for the closure and receivership of the erring bank are present. The MB, under R.A. No. 7653, has been invested with more power of closure and placement of a bank under receivership for insolvency or illiquidity, or because the bank's continuance in business would probably result in the loss to depositors or creditors.

4. ID.; ID.; ID.; "CLOSE NOW, HEAR LATER" DOCTRINE, EXPLAINED AND APPLIED. — In the case of *Bangko Sentral Ng Pilipinas Monetary Board v. Hon. Antonio-Valenzuela*, the Court reiterated the doctrine of "close now, hear later," stating that it was justified as a measure for the protection of the public interest. x x x The doctrine is founded on practical and legal considerations to obviate unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public. Swift, adequate and determined actions must be taken against financially distressed and mismanaged banks by government agencies lest the public faith in the banking system deteriorate to the prejudice of the national economy. Accordingly, the MB can immediately implement its resolution prohibiting a banking institution to do business in the Philippines and, thereafter, appoint the PDIC as receiver. The procedure for the involuntary closure of a bank is summary and expeditious in nature. Such action of the MB shall be final and executory, but may be later subjected to a judicial scrutiny via a petition for *certiorari* to be filed by the stockholders of record of the bank representing a majority of the capital stock. Obviously, this procedure is designed to protect the interest of all concerned, that is, the depositors, creditors and stockholders, the bank itself and the general public. The protection afforded public interest warrants the exercise of a summary closure. In the case at bench, the ISD II submitted its memorandum, dated February 17, 2010, containing the findings noted during the general examination conducted on ECBI with the cut-off date of September 30, 2009. The memorandum underscored the inability of ECBI to pay its liabilities as they would fall due in the usual course of its business, its liabilities being in excess of the assets held. Also, it was noted that ECBI's continued banking operation would most probably result in the incurrence of additional losses to the prejudice of its depositors and creditors. On top of these, it was found that ECBI had willfully

violated the cease-and-desist order of the MB issued in its June 24, 2009 Resolution, and had disregarded the BSP rules and directives. For said reasons, the MB was forced to issue the assailed Resolution No. 276 placing ECBI under receivership. In addition, the MB stressed that it accorded ECBI ample time and opportunity to address its monetary problem and to restore and improve its financial health and viability but it failed to do so. In light of the circumstances obtaining in this case, the application of the corrective measures enunciated in Section 30 of R.A. No. 7653 was proper and justified. Management take-over under Section 11 of R.A. No. 7353 was no longer feasible considering the financial quagmire that engulfed ECBI showing serious conditions of insolvency and illiquidity. Besides, placing ECBI under receivership would effectively put a stop to the further draining of its assets.

5. REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS, APPLIED. — Even in the absence of such provision, the petition is also dismissible because it simply ignored the doctrine of hierarchy of courts. True, the Court, the *CA* and the *RTC* have original concurrent jurisdiction to issue writs of *certiorari*, prohibition and *mandamus*. The concurrence of jurisdiction, however, does not grant the party seeking any of the extraordinary writs the absolute freedom to file a petition in any court of his choice. The petitioner has not advanced any special or important reason which would allow a direct resort to this Court. Under the Rules of Court, a party may directly appeal to this Court only on *pure questions of law*. In the case at bench, there are certainly factual issues as Vivas is questioning the findings of the investigating team. Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the CA or the RTC, the special action for the obtainment of such writ must be presented to either court. As a rule, the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of *certiorari*, prohibition, or *mandamus* calling for the exercise of its primary jurisdiction. The judicial policy must be observed to prevent an imposition on the precious time and attention of the Court.

6. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF R.A. 7653; THE GRANT OF AUTHORITY TO THE MONETARY BOARD TO CLOSE AND PLACE A BANK UNDER RECEIVERSHIP DOES NOT AMOUNT TO UNDUE DELEGATION OF JUDICIAL POWER. — [T]here is no violation of the non-delegation of legislative power. The rationale for the constitutional proscription is that "legislative discretion as to the substantive contents of the law cannot be delegated. What can be delegated is the discretion to determine *how* the law may be enforced, not *what* the law shall be. The ascertainment of the latter subject is a prerogative of the legislature. This prerogative cannot be abdicated or surrendered by the legislature to the delegate." "There are two accepted tests to determine whether or not there is a valid delegation of legislative power, *viz*, the completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate the only thing he will have to do is enforce it. Under the sufficient standard test, there must be adequate guidelines or stations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative." In this case, under the two tests, there was no undue delegation of legislative authority in the issuance of R.A. No. 7653. To address the growing concerns in the banking industry, the legislature has sufficiently empowered the MB to effectively monitor and supervise banks and financial institutions and, if circumstances warrant, to forbid them to do business, to take over their management or to place them under receivership. The legislature has clearly spelled out the reasonable parameters of the power entrusted to the MB and assigned to it only the manner of enforcing said power. In other words, the MB was given a wide discretion and latitude only as to how the law should be implemented in order to attain its objective of protecting the interest of the public, the banking industry and the economy.

APPEARANCES OF COUNSEL

Adviento Law Center for petitioner.
Office of the General Counsel and Legal Sergal Services, Litigation & Administrative Investigative Group (BSP) for BSP.
Office of the General Counsel (PDIC) for PDIC.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for prohibition with prayer for the issuance of a *status quo ante* order or writ of preliminary injunction ordering the respondents to desist from closing EuroCredit Community Bank, Incorporated *(ECBI)* and from pursuing the receivership thereof. The petition likewise prays that the management and operation of ECBI be restored to its Board of Directors *(BOD)* and its officers.

The Facts

The Rural Bank of Faire, Incorporated *(RBFI)* was a duly registered rural banking institution with principal office in Centro Sur, Sto. Niño, Cagayan. Record shows that the corporate life of RBFI expired on May 31, 2005.[1] Notwithstanding, petitioner Alfeo D. Vivas *(Vivas)* and his principals acquired the controlling interest in RBFI sometime in January 2006. At the initiative of Vivas and the new management team, an internal audit was conducted on RBFI and results thereof highlighted the dismal operation of the rural bank. In view of those findings, certain measures calculated to revitalize the bank were allegedly introduced.[2] On December 8, 2006, the Bangko Sentral ng Pilipinas *(BSP)* issued the Certificate of Authority extending the corporate life of RBFI for another fifty (50) years. The BSP also approved the change of its corporate name to Euro-Credit Community Bank, Incorporated, as well as the increase

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[1] *Rollo*, p. 155.

[2] *Id.* at 8-11.

in the number of the members of its BOD, from five (5) to eleven (11).[3]

Pursuant to Section 28 of Republic Act (R.A.) No. 7653, otherwise known as The New Central Bank Act, the Integrated Supervision Department II *(ISD II)* of the BSP conducted a general examination on ECBI with the cut-off date of December 31, 2007. Shortly after the completion of the general examination, an exit conference was held on March 27, 2008 at the BSP during which the BSP officials and examiners apprised Vivas, the Chairman and President of ECBI, as well as the other bank officers and members of its BOD, of the advance findings noted during the said examination. The ECBI submitted its comments on BSP's consolidated findings and risk asset classification through a letter, dated April 8, 2008.[4]

Sometime in April 2008, the examiners from the Department of Loans and Credit of the BSP arrived at the ECBI and cancelled the rediscounting line of the bank. Vivas appealed the cancellation to BSP.[5] Thereafter, the Monetary Board *(MB)* issued Resolution No. 1255, dated September 25, 2008, placing ECBI under Prompt Corrective Action (PCA) framework because of the following serious findings and supervisory concerns noted during the general examination: 1] negative capital of ₱14.674 million and capital adequacy ratio of negative 18.42%; 2] CAMEL (Capital Asset Management Earnings Liquidity) composite rating of "2" with a Management component rating of "1"; and 3] serious supervisory concerns particularly on activities deemed unsafe or unsound.[6] Vivas claimed that the BSP took the above courses of action due to the joint influence exerted by a certain hostile shareholder and a former BSP examiner.[7]

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[3] *Id.* at 115.

[4] *Id.* at 116.

[5] *Id.* at 12.

[6] *Id.* at 181.

[7] *Id.* at 13.

Through its letter, dated September 30, 2008, the BSP furnished ECBI with a copy of the Report of Examination *(ROE)* as of December 31, 2007. In addition, the BSP directed the bank's BOD and senior management to: 1] infuse fresh capital of ₱22.643 million; 2] book the amount of ₱28.563 million representing unbooked valuation reserves on classified loans and other risks assets on or before October 31, 2008; and 3] take appropriate action necessary to address the violations/exceptions noted in the examination.[8]

Vivas moved for a reconsideration of Resolution No. 1255 on the grounds of non-observance of due process and arbitrariness. The ISD II, on several instances, had invited the BOD of ECBI to discuss matters pertaining to the placement of the bank under PCA framework and other supervisory concerns before making the appropriate recommendations to the MB. The proposed meeting, however, did not materialize due to postponements sought by Vivas.[9]

In its letter, dated February 20, 2009, the BSP directed ECBI to explain why it transferred the majority shares of RBFI without securing the prior approval of the MB in apparent violation of Subsection X126.2 of the Manual of Regulation for Banks *(MORB)*.[10] Still in another letter,[11] dated March 31, 2009, the ISD II required ECBI to explain why it did not obtain the prior approval of the BSP anent the establishment and operation of the bank's sub-offices.

Also, the scheduled March 31, 2009 general examination of the books, records and general condition of ECBI with the cut-off date of December 31, 2008, did not push through. According to Vivas, ECBI asked for the deferment of the examination pending resolution of its appeal before the MB. Vivas believed that he was being treated unfairly because the letter of authority to

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[8] *Id.* at 117-118.

[9] *Id.* at 236-241.

[10] *Id.* at 119-120.

[11] *Id.* at 262.

examine allegedly contained a clause which pertained to the Anti-Money Laundering Law and the Bank Secrecy Act.[12]

The MB, on the other hand, posited that ECBI unjustly refused to allow the BSP examiners from examining and inspecting its books and records, in violation of Sections 25 and 34 of R.A. No. 7653. In its letter,[13] dated May 8, 2009, the BSP informed ECBI that it was already due for another annual examination and that the pendency of its appeal before the MB would not prevent the BSP from conducting another one as mandated by Section 28 of R.A. No. 7653.

In view of ECBI's refusal to comply with the required examination, the MB issued Resolution No. 726,[14] dated May 14, 2009, imposing monetary penalty/fine on ECBI, and referred the matter to the Office of the Special Investigation *(OSI)* for the filing of appropriate legal action. The BSP also wrote a letter,[15] dated May 26, 2009, advising ECBI to comply with MB Resolution No. 771, which essentially required the bank to follow its directives. On May 28, 2009, the ISD II reiterated its demand upon the ECBI BOD to allow the BSP examiners to conduct a general examination on June 3, 2009.[16]

In its June 2, 2009 Letter-Reply,[17] ECBI asked for another deferment of the examination due to the pendency of certain unresolved issues subject of its appeal before the MB, and because Vivas was then out of the country. The ISD II denied ECBI's request and ordered the general examination to proceed as previously scheduled.[18]

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[12] *Id.* at 14.

[13] *Id.* at 263.

[14] *Id.* at 265.

[15] *Id.* at 267-268.

[16] *Id.* at 271.

[17] *Id.* at 272.

[18] *Id.* at 273.

Thereafter, the MB issued Resolution No. 823,[19] dated June 4, 2009, approving the issuance of a cease and desist order against ECBI, which enjoined it from pursuing certain acts and transactions that were considered unsafe or unsound banking practices, and from doing such other acts or transactions constituting fraud or might result in the dissipation of its assets.

On June 10, 2009, the OSI filed with the Department of Justice *(DOJ)* a complaint for Estafa Through Falsification of Commercial Documents against certain officials and employees of ECBI. Meanwhile, the MB issued Resolution No. 1164,[20] dated August 13, 2009, denying the appeal of ECBI from Resolution No. 1255 which placed it under PCA framework. On November 18, 2009, the general examination of the books and records of ECBI with the cut-off date of September 30, 2009, was commenced and ended in December 2009. Later, the BSP officials and examiners met with the representatives of ECBI, including Vivas, and discussed their findings.[21] On December 7, 2009, the ISD II reminded ECBI of the non-submission of its financial audit reports for the years 2007 and 2008 with a warning that failure to submit those reports and the written explanation for such omission shall result in the imposition of a monetary penalty.[22] In a letter, dated February 1, 2010, the ISD II informed ECBI of MB Resolution No. 1548 which denied its request for reconsideration of Resolution No. 726.

On March 4, 2010, the MB issued Resolution No. 276[23] placing ECBI under receivership in accordance with the recommendation of the ISD II which reads:

On the basis of the examination findings as of 30 September 2009 as reported by the Integrated Supervision Department (ISD)

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[19] *Id.* at 275-277.

[20] *Id.* at 282.

[21] *Id.* at 125.

[22] *Id.* at 283.

[23] *Id.* at 50.

II, in its memorandum dated 17 February 2010, which findings showed that the Eurocredit Community Bank, Inc. — a Rural Bank (Eurocredit Bank) (a) is unable to pay its liabilities as they become due in the ordinary course of business; (b) has insufficient realizable assets to meet liabilities; (c) cannot continue in business without involving probable losses to its depositors and creditors; and (d) has willfully violated a cease and desist order of the Monetary Board for acts or transactions which are considered unsafe and unsound banking practices and other acts or transactions constituting fraud or dissipation of the assets of the institution, and considering the failure of the Board of Directors/management of Eurocredit Bank to restore the bank's financial health and viability despite considerable time given to address the bank's financial problems, and that the bank had been accorded due process, the Board, in accordance with Section 30 of Republic Act No. 7653 (The New Central Bank Act), approved the recommendation of ISD II as follows:

1. To prohibit the Eurocredit Bank from doing business in the Philippines and to place its assets and affairs under receivership; and

2. To designate the Philippine Deposit Insurance Corporation as Receiver of the bank.

Assailing MB Resolution No. 276, Vivas filed this petition for prohibition before this Court, ascribing grave abuse of discretion to the MB for prohibiting ECBI from continuing its banking business and for placing it under receivership. The petitioner presents the following

ARGUMENTS:

(a) It is grave abuse of discretion amounting to loss of jurisdiction to apply the general law embodied in Section 30 of the New Central Bank Act as opposed to the specific law embodied in Sections 11 and 14 of the Rural Banks Act of 1992.

(b) Even if it assumed that Section 30 of the New Central Bank Act is applicable, it is still the gravest abuse of discretion amounting to lack or excess of jurisdiction to execute the law with manifest arbitrariness, abuse of discretion, and bad faith, violation of constitutional rights

and to further execute a mandate well in excess of its parameters.

(c) The power delegated in favor of the Bangko Sentral ng Pilipinas to place rural banks under receiverships is unconstitutional for being a diminution or invasion of the powers of the Supreme Court, in violation of Section 2, Article VIII of the Philippine Constitution.[24]

Vivas submits that the respondents committed grave abuse of discretion when they erroneously applied Section 30 of R.A. No. 7653, instead of Sections 11 and 14 of the Rural Bank Act of 1992 or R.A. No. 7353. He argues that despite the deficiencies, inadequacies and oversights in the conduct of the affairs of ECBI, it has not committed any financial fraud and, hence, its placement under receivership was unwarranted and improper. He posits that, instead, the BSP should have taken over the management of ECBI and extended loans to the financially distrained bank pursuant to Sections 11 and 14 of R.A. No. 7353 because the BSP's power is limited only to supervision and management take-over of banks.

He contends that the implementation of the questioned resolution was tainted with arbitrariness and bad faith, stressing that ECBI was placed under receivership without due and prior hearing in violation of his and the bank's right to due process. He adds that respondent PDIC actually closed ECBI even in the absence of any directive to this effect. Lastly, Vivas assails the constitutionality of Section 30 of R.A. No. 7653 claiming that said provision vested upon the BSP the unbridled power to close and place under receivership a hapless rural bank instead of aiding its financial needs. He is of the view that such power goes way beyond its constitutional limitation and has transformed the BSP to a sovereign in its own "kingdom of banks."[25]

The Court's Ruling

The petition must fail.

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

[25] *Id.* at 37.

Vivas Availed of the Wrong Remedy

To begin with, Vivas availed of the wrong remedy. The MB issued Resolution No. 276, dated March 4, 2010, in the exercise of its power under R.A. No. 7653. Under Section 30 thereof, any act of the MB placing a bank under conservatorship, receivership or liquidation may not be restrained or set aside except on a petition for *certiorari*. Pertinent portions of R.A. 7653 read:

> Section 30. —
>
> x x x x x x x x x.
>
> The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court **except** on **petition for *certiorari*** on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.
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> x x x x x x x x x.
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> [Emphases supplied]

Prohibition is already unavailing

Granting that a petition for prohibition is allowed, it is already an ineffective remedy under the circumstances obtaining. Prohibition or a "writ of prohibition" is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising a jurisdiction with which they have not been vested by law, and confines them to the exercise of those powers legally conferred. Its office is to restrain subordinate courts, tribunals or persons from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.[26] In our

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[26] *City Engineer of Baguio v. Baniqued*, G.R. No. 150270, November 26, 2008, 57 SCRA 617, 625.

jurisdiction, the rule on prohibition is enshrined in Section 2, Rule 65 of the Rules on Civil Procedure, to wit:

> Sec. 2. *Petition for prohibition* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that the judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as the law and justice require.
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> x x x x x x x x x.

Indeed, prohibition is a preventive remedy seeking that a judgment be rendered which would direct the defendant to desist from continuing with the commission of an act perceived to be illegal.[27] As a rule, the proper function of a writ of prohibition is to prevent the doing of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished.[28]

Though couched in imprecise terms, this petition for prohibition apparently seeks to prevent the acts of closing of ECBI and placing it under receivership. Resolution No. 276, however, had already been issued by the MB and the closure of ECBI and its placement under receivership by the PDIC were already accomplished. Apparently, the remedy of prohibition is no longer appropriate. Settled is the rule that prohibition does not lie to restrain an act that is already a *fait accompli*.[29]

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[27] *Guerrero v. Domingo*, G.R. No. 156142, March 23, 2011, 646 SCRA 175, 180.

[28] *Cabanero v. Torres,* 61 Phil. 522 (1935); *Agustin v. De la Fuente*, 84 Phil. 525 (1949); *Navarro v. Lardizabal,* 134 Phil. 331 (1968); *Heirs of Eugenia V. Roxas, Inc. v. Intermediate Appellate Court,* 255 Phil. 558 (1989).

[29] *Montes v. Court of Appeals,* 523 Phil. 98, 110 (2006).

The Petition Should Have Been Filed in the CA

Even if treated as a petition for *certiorari*, the petition should have been filed with the CA. Section 4 of Rule 65 reads:

> **Section 4.** *When and where petition filed*. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
>
> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a **quasi-judicial agency,** unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable **only** by the **Court of Appeals.** [Emphases supplied]

That the MB is a quasi-judicial agency was already settled and reiterated in the case of *Bank of Commerce v. Planters Development Bank And Bangko Sentral Ng Pilipinas*.[30]

Doctrine of Hierarchy of Courts

Even in the absence of such provision, the petition is also dismissible because it simply ignored the doctrine of hierarchy of courts. True, the Court, the *CA* and the *RTC* have original concurrent jurisdiction to issue writs of *certiorari*, prohibition and *mandamus*. The concurrence of jurisdiction, however, does not grant the party seeking any of the extraordinary writs the absolute freedom to file a petition in any court of his choice. The petitioner has not advanced any special or important reason

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[30] G.R. Nos. 154470-71, September 24, 2012 , 681 SCRA 521, 555 (citing *United Coconut Planters Bank v. E. Ganzon, Inc.*, G.R. No. 168859, June 30, 2009, 591 SCRA 321, 338-341).

which would allow a direct resort to this Court. Under the Rules of Court, a party may directly appeal to this Court only on *pure questions of law*.[31] In the case at bench, there are certainly factual issues as Vivas is questioning the findings of the investigating team.

Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the CA or the RTC, the special action for the obtainment of such writ must be presented to either court. As a rule, the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of *certiorari*, prohibition, or *mandamus* calling for the exercise of its primary jurisdiction.[32] The judicial policy must be observed to prevent an imposition on the precious time and attention of the Court.

The MB Committed No Grave Abuse of Discretion

In any event, no grave abuse of discretion can be attributed to the MB for the issuance of the assailed Resolution No. 276.

Vivas insists that the circumstances of the case warrant the application of Section 11 of R.A. No. 7353, which provides:

> Sec. 11. The power to supervise the operation of any rural bank by the Monetary Board as herein indicated shall consist in placing limits to the maximum credit allowed to any individual borrower; in prescribing the interest rate, in determining the loan period and loan procedures, in indicating the manner in which technical assistance shall be extended to rural banks, in imposing a uniform accounting system and manner of keeping the accounts and records of rural banks; in instituting periodic surveys of loan and lending

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[31] *Philippine Veterans Bank v. Benjamin Monillas,* 573 Phil. 298, 315 (2008).

[32] *Springfield Development Corp., Inc. v. Hon. Presiding Judge of RTC, Branch 40., Cagayan de Oro City, Misamis Oriental,* 543 Phil. 298, 315 (2007).

procedures, audits, test-check of cash and other transactions of the rural banks; in conducting training courses for personnel of rural banks; and, in general, in supervising the business operations of the rural banks.

The Central Bank shall have the power to enforce the laws, orders, instructions, rules and regulations promulgated by the Monetary Board, applicable to rural banks; to require rural banks, their directors, officers and agents to conduct and manage the affairs of the rural banks in a lawful and orderly manner; and, upon proof that the rural bank or its Board of Directors, or officers are conducting and managing the affairs of the bank in a manner contrary to laws, orders, instructions, rules and regulations promulgated by the Monetary Board or in a manner substantially prejudicial to the interest of the Government, depositors or creditors, to take over the management of such bank when specifically authorized to do so by the Monetary Board after due hearing process until a new board of directors and officers are elected and qualified without prejudice to the prosecution of the persons responsible for such violations under the provisions of Sections 32, 33 and 34 of Republic Act No. 265, as amended.

x x x x x x x x x.

The thrust of Vivas' argument is that ECBI did not commit any financial fraud and, hence, its placement under receivership was unwarranted and improper. He asserts that, instead, the BSP should have taken over the management of ECBI and extended loans to the financially distrained bank pursuant to Sections 11 and 14 of R.A. No. 7353 because the BSP's power is limited only to supervision and management take-over of banks, and not receivership.

Vivas argues that implementation of the questioned resolution was tainted with arbitrariness and bad faith, stressing that ECBI was placed under receivership without due and prior hearing, invoking Section 11 of R.A. No. 7353 which states that the BSP may take over the management of a rural bank after due hearing.[33] He adds that because R.A. No. 7353 is a special

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[33] **Section 11**. The power to supervise the operation of any rural bank by the Monetary Board as herein indicated shall consists in placing limits to the maximum credit allowed to any individual borrower; in prescribing

law, the same should prevail over R.A. No. 7653 which is a general law.

The Court has taken this into account, but it appears from all over the records that ECBI was given every opportunity to be heard and improve on its financial standing. The records disclose that BSP officials and examiners met with the representatives of ECBI, including Vivas, and discussed their findings.[34] There were also reminders that ECBI submit its financial audit reports for the years 2007 and 2008 with a warning that failure to submit them and a written explanation of such omission shall result in the imposition of a monetary penalty.[35] More importantly, ECBI was heard on its motion for reconsideration. For failure of ECBI to comply, the MB came out with Resolution No. 1548 denying its request for reconsideration of Resolution No. 726. Having been heard on its motion for reconsideration, ECBI cannot claim that it was deprived of its right under the Rural Bank Act.

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the interest rate; in determining the loan period and loan procedures; in indicating the manner in which technical assistance shall be extended to rural banks; in imposing a uniform accounting system and manner of keeping the accounts and records of rural banks; in instituting periodic surveys of loan and lending procedures, audits, test-check of cash and other transactions of the rural banks; and, in general in supervising the business operations of the rural banks.

The Central bank shall have the power to enforce the laws, orders, instructions, rules and regulations promulgated by the Monetary Board applicable to rural banks; to require rural banks, their directors, officers and agents to conduct and manage the affairs of the rural banks in a lawful and orderly manner, and, upon proof that the rural bank of its Board of Directors, or officers are conducting and managing the affairs of the banking in a manner contrary to the laws, orders, instructions, rules and regulations promulgated by the Monetary Board or in a manner substantially prejudicial in the interest of the Government, depositors or creditors, to take over the management of such bank when specifically authorized to do so by the Monetary Board ***after due hearing process*** until a new board of directors and officers are elected and qualified without prejudice to the prosecution of the persons for such violations under the provisions of Sections 32, 33 and 34 of Republic Act No. 265, as amended.

[34] *Rollo*, p. 125.

[35] *Id.* at 283.

Close Now, Hear Later

At any rate, if circumstances warrant it, the MB may forbid a bank from doing business and place it under receivership *without prior notice and hearing*. Section 30 of R.A. No. 7653 provides, *viz*:

> Sec. 30. *Proceedings in Receivership and Liquidation.* — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:
>
> (a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
>
> (b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or
>
> (c) cannot continue in business without involving probable losses to its depositors or creditors; or
>
> (d) has wilfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and **without need for prior hearing** forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as **receiver** of the banking institution. [Emphases supplied.]
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> x x x x x x x x x.

Accordingly, there is no conflict which would call for the application of the doctrine that a special law should prevail over a general law. It must be emphasized that R.A .No. 7653 is a later law and under said act, the power of the MB over banks, including rural banks, was increased and expanded. The Court, in several cases, upheld the power of the MB to take over banks *without need for prior hearing.* It is not necessary inasmuch as the law entrusts to the MB the appreciation and determination of whether any or all of the statutory grounds for the closure and receivership of the erring bank are present. The MB, under R.A. No. 7653, has been invested with more

power of closure and placement of a bank under receivership for insolvency or illiquidity, or because the bank's continuance in business would probably result in the loss to depositors or creditors. In the case of *Bangko Sentral Ng Pilipinas Monetary Board v. Hon. Antonio-Valenzuela*,[36] the Court reiterated the doctrine of "close now, hear later," stating that it was justified as a measure for the protection of the public interest. Thus:

> The **"close now, hear later"** doctrine has already been justified as a measure for the protection of the public interest. Swift action is called for on the part of the BSP when it finds that a bank is in dire straits. Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government.[37] [Emphasis supplied]

In *Rural Bank of Buhi, Inc. v. Court of Appeals*,[38] the Court also wrote that

> x x x **due process does not necessarily require a prior hearing;** a hearing or an opportunity to be heard may be subsequent to the closure. One can just imagine the dire consequences of a prior hearing: bank runs would be the order of the day, resulting in panic and hysteria. In the process, fortunes may be wiped out and disillusionment will run the gamut of the entire banking community.[39]

The doctrine is founded on practical and legal considerations to obviate unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the general public.[40] Swift, adequate and determined actions must be taken against financially distressed

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[36] G.R. No. 184778, October 2, 2009, 602 SCRA 698.

[37] *Id.* at 721.

[38] 245 Phil. 263 (1988).

[39] *Id.* at 278.

[40] *Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela*, G.R. No. 184778, October 2, 2009, 602 SCRA 698.

and mismanaged banks by government agencies lest the public faith in the banking system deteriorate to the prejudice of the national economy.

Accordingly, the MB can immediately implement its resolution prohibiting a banking institution to do business in the Philippines and, thereafter, appoint the PDIC as receiver. The procedure for the involuntary closure of a bank is summary and expeditious in nature. Such action of the MB shall be final and executory, but may be later subjected to a judicial scrutiny via a petition for *certiorari* to be filed by the stockholders of record of the bank representing a majority of the capital stock. Obviously, this procedure is designed to protect the interest of all concerned, that is, the depositors, creditors and stockholders, the bank itself and the general public. The protection afforded public interest warrants the exercise of a summary closure.

In the case at bench, the ISD II submitted its memorandum, dated February 17, 2010, containing the findings noted during the general examination conducted on ECBI with the cut-off date of September 30, 2009. The memorandum underscored the inability of ECBI to pay its liabilities as they would fall due in the usual course of its business, its liabilities being in excess of the assets held. Also, it was noted that ECBI's continued banking operation would most probably result in the incurrence of additional losses to the prejudice of its depositors and creditors. On top of these, it was found that ECBI had willfully violated the cease-and-desist order of the MB issued in its June 24, 2009 Resolution, and had disregarded the BSP rules and directives. For said reasons, the MB was forced to issue the assailed Resolution No. 276 placing ECBI under receivership. In addition, the MB stressed that it accorded ECBI ample time and opportunity to address its monetary problem and to restore and improve its financial health and viability but it failed to do so.

In light of the circumstances obtaining in this case, the application of the corrective measures enunciated in Section 30 of R.A. No. 7653 was proper and justified. Management take-over under Section 11 of R.A. No. 7353 was no longer feasible considering the financial quagmire that engulfed ECBI

showing serious conditions of insolvency and illiquidity. Besides, placing ECBI under receivership would effectively put a stop to the further draining of its assets.

No Undue Delegation of Legislative Power

Lastly, the petitioner challenges the constitutionality of Section 30 of R.A. No. 7653, as the legislature granted the MB a broad and unrestrained power to close and place a financially troubled bank under receivership. He claims that the said provision was an undue delegation of legislative power. The contention deserves scant consideration.

Preliminarily, Vivas' attempt to assail the constitutionality of Section 30 of R.A. No. 7653 constitutes collateral attack on the said provision of law. Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally.[41] A collateral attack on a presumably valid law is not permissible. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[42]

Be that as it may, there is no violation of the non-delegation of legislative power. The rationale for the constitutional proscription is that "legislative discretion as to the substantive contents of the law cannot be delegated. What can be delegated is the discretion to determine *how* the law may be enforced, not *what* the law shall be. The ascertainment of the latter subject is a prerogative of the legislature. This prerogative cannot be abdicated or surrendered by the legislature to the delegate."[43]

"There are two accepted tests to determine whether or not there is a valid delegation of legislative power, *viz*, the

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[41] *Gutierrez v. Department of Budget and Management*, G.R. No. 153266, March 18, 2010, 616 SCRA 1, 25.

[42] *Dasmariñas Water District v. Leonardo-De Castro*, G.R. No. 175550, September 17, 2008, 565 SCRA 624, 637.

[43] *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 248 Phil. 762, 771 (1998).

completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate the only thing he will have to do is enforce it. Under the sufficient standard test, there must be adequate guidelines or stations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative."[44]

In this case, under the two tests, there was no undue delegation of legislative authority in the issuance of R.A. No. 7653. To address the growing concerns in the banking industry, the legislature has sufficiently empowered the MB to effectively monitor and supervise banks and financial institutions and, if circumstances warrant, to forbid them to do business, to take over their management or to place them under receivership. The legislature has clearly spelled out the reasonable parameters of the power entrusted to the MB and assigned to it only the manner of enforcing said power. In other words, the MB was given a wide discretion and latitude only as to how the law should be implemented in order to attain its objective of protecting the interest of the public, the banking industry and the economy.

WHEREFORE, the petition for prohibition is **DENIED**.

SO ORDERED.

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

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[44] *Id*.

THIRD DIVISION

[G.R. No. 200784. August 7, 2013]

MALAYAN INSURANCE COMPANY, INC., *petitioner, vs.* **PAP CO., LTD. (PHIL. BRANCH),** *respondent.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE CODE; CONTRACT OF INSURANCE; CONCEALMENT; COMMITTED WHEN THERE IS A TRANSFER OF THE LOCATION OF THE RISK INSURED AGAINST WITHOUT THE INSURER'S NOTICE AND CONSENT; CASE AT BAR. — Considering that the original policy was renewed on an "as is basis," it follows that the renewal policy carried with it the same stipulations and limitations. The terms and conditions in the renewal policy provided, among others, that the location of the risk insured against is at the Sanyo factory in PEZA. The subject insured properties, however, were totally burned at the Pace Factory. Although it was also located in PEZA, Pace Factory was not the location stipulated in the renewal policy. There being an unconsented removal, the transfer was at PAP's own risk. Consequently, it must suffer the consequences of the fire. Thus, the Court agrees with the report of Cunningham Toplis Philippines, Inc., an international loss adjuster which investigated the fire incident at the Pace Factory, which opined that "[g]iven that the location of risk covered under the policy is not the location affected, the policy will, therefore, not respond to this loss/claim." It can also be said that with the transfer of the location of the subject properties, **without notice and without Malayan's consent, after** the renewal of the policy, PAP clearly committed concealment, misrepresentation and a breach of a material warranty. Section 26 of the Insurance Code provides: "Section 26. A neglect to communicate that which a party knows and ought to communicate, is called a concealment." Under Section 27 of the Insurance Code, "a concealment entitles the injured party to rescind a contract of insurance."

2. ID.; ID.; CONTRACT OF FIRE INSURANCE; MAY BE RESCINDED BY THE INSURER IN CASE OF AN

ALTERATION IN THE USE OR CONDITION OF THE THING INSURED; CONDITIONS. — [U]nder Section 168 of the Insurance Code, the insurer is entitled to rescind the insurance contract in case of an alteration in the use or condition of the thing insured. x x x Accordingly, an insurer can exercise its right to rescind an insurance contract when the following conditions are present, to wit: 1) the policy limits the use or condition of the thing insured; 2) there is an alteration in said use or condition; 3) the alteration is without the consent of the insurer; 4) the alteration is made by means within the insured's control; and 5) the alteration increases the risk of loss.

APPEARANCES OF COUNSEL

Villaraza Cruz Marcelo & Angangco for petitioner.
Manuel Y. Fausto, Sr. for respondent.

D E C I S I O N

MENDOZA, *J.*:

Challenged in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the October 27, 2011 Decision[1] of the Court of Appeals *(CA),* which affirmed with modification the September 17, 2009 Decision[2] of the Regional Trial Court, Branch 15, Manila *(RTC),* and its February 24, 2012 Resolution[3] denying the motion for reconsideration filed by petitioner Malayan Insurance Company., Inc. *(Malayan).*

The Facts

The undisputed factual antecedents were succinctly summarized by the CA as follows:

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[1] *Rollo*, pp. 114-128. Penned by Associate Justice Normandie B. Pizarro and concurred in by Amelita B. Tolentino and Associate Justice Rodel V. Zalameda.

[2] *Id.* at 725-730.

[3] *Id.* at 130-131.

On May 13, 1996, Malayan Insurance Company (Malayan) issued Fire Insurance Policy No. F-00227-000073 to PAP Co., Ltd. (PAP Co.) for the latter's machineries and equipment located at Sanyo Precision Phils. Bldg., Phase III, Lot 4, Block 15, PEZA, Rosario, Cavite (Sanyo Building). The insurance, which was for Fifteen Million Pesos (₱15,000,000.00) and effective for a period of one (1) year, was procured by PAP Co. for Rizal Commercial Banking Corporation (RCBC), the mortgagee of the insured machineries and equipment.

After the passage of almost a year but prior to the expiration of the insurance coverage, PAP Co. renewed the policy on an "as is" basis. Pursuant thereto, a renewal policy, Fire Insurance Policy No. F-00227-000079, was issued by Malayan to PAP Co. for the period May 13, 1997 to May 13, 1998.

On October 12, 1997 and during the subsistence of the renewal policy, the insured machineries and equipment were totally lost by fire. Hence, PAP Co. filed a fire insurance claim with Malayan in the amount insured.

In a letter, dated December 15, 1997, Malayan denied the claim upon the ground that, at the time of the loss, the insured machineries and equipment were transferred by PAP Co. to a location different from that indicated in the policy. Specifically, that the insured machineries were transferred in September 1996 from the Sanyo Building to the Pace Pacific Bldg., Lot 14, Block 14, Phase III, PEZA, Rosario, Cavite (Pace Pacific). Contesting the denial, PAP Co. argued that Malayan cannot avoid liability as it was informed of the transfer by RCBC, the party duty-bound to relay such information. However, Malayan reiterated its denial of PAP Co.'s claim. Distraught, PAP Co. filed the complaint below against Malayan.[4]

Ruling of the RTC

On September 17, 2009, the RTC handed down its decision, ordering Malayan to pay PAP Company Ltd *(PAP)* an indemnity for the loss under the fire insurance policy as well as for attorney's fees. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff. Defendant is hereby ordered:

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[4] *Id.* at 115-116.

a) To pay plaintiff the sum of FIFTEEN MILLION PESOS (₱15,000,000.00) as and for indemnity for the loss under the fire insurance policy, plus interest thereon at the rate of 12% per annum from the time of loss on October 12, 1997 until fully paid;

b) To pay plaintiff the sum of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00) as and by way of attorney's fees; [and,]

c) To pay the costs of suit.

SO ORDERED.[5]

The RTC explained that Malayan is liable to indemnify PAP for the loss under the subject fire insurance policy because, although there was a change in the condition of the thing insured as a result of the transfer of the subject machineries to another location, said insurance company failed to show proof that such transfer resulted in the increase of the risk insured against. In the absence of proof that the alteration of the thing insured increased the risk, the contract of fire insurance is not affected per Section 169 of the Insurance Code.

The RTC further stated that PAP's notice to Rizal Commercial Banking Corporation *(RCBC)* sufficiently complied with the notice requirement under the policy considering that it was RCBC which procured the insurance. PAP acted in good faith in notifying RCBC about the transfer and the latter even conducted an inspection of the machinery in its new location.

Not contented, Malayan appealed the RTC decision to the CA basically arguing that the trial court erred in ordering it to indemnify PAP for the loss of the subject machineries since the latter, without notice and/or consent, transferred the same to a location different from that indicated in the fire insurance policy.

Ruling of the CA

On October 27, 2011, the CA rendered the assailed decision which affirmed the RTC decision but deleted the attorney's fees. The decretal portion of the CA decision reads:

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[5] *Id.* at 730.

WHEREFORE, the assailed dispositions are MODIFIED. As modified, Malayan Insurance Company must indemnify PAP Co. Ltd the amount of Fifteen Million Pesos (PhP15,000,000.00) for the loss under the fire insurance policy, plus interest thereon at the rate of 12% per annum from the time of loss on October 12, 1997 until fully paid. However, the Five Hundred Thousand Pesos (PhP500,000.00) awarded to PAP Co., Ltd. as attorney's fees is DELETED. With costs.

SO ORDERED.[6]

The CA wrote that Malayan failed to show proof that there was a prohibition on the transfer of the insured properties during the efficacy of the insurance policy. Malayan also failed to show that its contractual consent was needed before carrying out a transfer of the insured properties. Despite its bare claim that the original and the renewed insurance policies contained provisions on transfer limitations of the insured properties, Malayan never cited the specific provisions.

The CA further stated that even if there was such a provision on transfer restrictions of the insured properties, still Malayan could not escape liability because the transfer was made during the subsistence of the original policy, not the renewal policy. PAP transferred the insured properties from the Sanyo Factory to the Pace Pacific Building *(Pace Factory)* sometime in September 1996. Therefore, Malayan was aware or should have been aware of such transfer when it issued the renewal policy on May 14, 1997. The CA opined that since an insurance policy was a contract of adhesion, any ambiguity must be resolved against the party that prepared the contract, which, in this case, was Malayan.

Finally, the CA added that Malayan failed to show that the transfer of the insured properties increased the risk of the loss. It, thus, could not use such transfer as an excuse for not paying the indemnity to PAP. Although the insurance proceeds were payable to RCBC, PAP could still sue Malayan to enforce its

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[6] *Id.* at 127.

rights on the policy because it remained a party to the insurance contract.

Not in conformity with the CA decision, Malayan filed this petition for review anchored on the following

GROUNDS

I

THE COURT OF APPEALS HAS DECIDED THE CASE IN A MANNER NOT IN ACCORDANCE WITH THE LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT AND THUS RULING IN THE QUESTIONED DECISION AND RESOLUTION THAT PETITIONER MALAYAN IS LIABLE UNDER THE INSURANCE CONTRACT BECAUSE:

A. CONTRARY TO THE CONCLUSION OF THE COURT OF APPEALS, PETITIONER MALAYAN WAS ABLE TO PROVE AND IT IS NOT DENIED, THAT ON THE FACE OF THE RENEWAL POLICY ISSUED TO RESPONDENT PAP CO., THERE IS AN AFFIRMATIVE WARRANTY OR A REPRESENTATION MADE BY THE INSURED THAT THE "LOCATION OF THE RISK" WAS AT THE SANYO BUILDING. IT IS LIKEWISE UNDISPUTED THAT WHEN THE RENEWAL POLICY WAS ISSUED TO RESPONDENT PAP CO., THE INSURED PROPERTIES WERE NOT AT THE SANYO BUILDING BUT WERE AT A DIFFERENT LOCATION, THAT IS, AT THE PACE FACTORY AND IT WAS IN THIS DIFFERENT LOCATION WHEN THE LOSS INSURED AGAINST OCCURRED. THESE SET OF UNDISPUTED FACTS, BY ITSELF ALREADY ENTITLES PETITIONER MALAYAN TO CONSIDER THE RENEWAL POLICY AS AVOIDED OR RESCINDED BY LAW, BECAUSE OF CONCEALMENT, MISREPRESENTATION AND BREACH OF AN AFFIRMATIVE WARRANTY UNDER SECTIONS 27, 45 AND 74 IN RELATION TO SECTION 31 OF THE INSURANCE CODE, RESPECTIVELY.

B. RESPONDENT PAP CO. WAS NEVER ABLE TO SHOW THAT IT DID NOT COMMIT CONCEALMENT, MISREPRESENTATION OR BREACH OF AN

AFFIRMATIVE WARRANTY WHEN IT FAILED TO PROVE THAT IT INFORMED PETITIONER MALAYAN THAT THE INSURED PROPERTIES HAD BEEN TRANSFERRED TO A LOCATION DIFFERENT FROM WHAT WAS INDICATED IN THE INSURANCE POLICY.

C. IN ANY EVENT, RESPONDENT PAP CO. NEVER DISPUTED THAT THERE ARE CONDITIONS AND LIMITATIONS TO THE RENEWAL POLICY WHICH ARE THE REASONS WHY ITS CLAIM WAS DENIED IN THE FIRST PLACE. IN FACT, THE BEST PROOF THAT RESPONDENT PAP CO. RECOGNIZES THESE CONDITIONS AND LIMITATIONS IS THE FACT THAT ITS ENTIRE EVIDENCE FOCUSED ON ITS FACTUAL ASSERTION THAT IT SUPPOSEDLY NOTIFIED PETITIONER MALAYAN OF THE TRANSFER AS REQUIRED BY THE INSURANCE POLICY.

D. MOREOVER, PETITIONER MALAYAN PRESENTED EVIDENCE THAT THERE WAS AN INCREASE IN RISK BECAUSE OF THE UNILATERAL TRANSFER OF THE INSURED PROPERTIES. IN FACT, THIS PIECE OF EVIDENCE WAS UNREBUTTED BY RESPONDENT PAP CO.

II

THE COURT OF APPEALS DEPARTED FROM, AND DID NOT APPLY, THE LAW AND ESTABLISHED DECISIONS OF THE HONORABLE COURT WHEN IT IMPOSED INTEREST AT THE RATE OF TWELVE PERCENT (12%) INTEREST FROM THE TIME OF THE LOSS UNTIL FULLY PAID.

A. JURISPRUDENCE DICTATES THAT LIABILITY UNDER AN INSURANCE POLICY IS NOT A LOAN OR FORBEARANCE OF MONEY FROM WHICH A BREACH ENTITLES A PLAINTIFF TO AN AWARD OF INTEREST AT THE RATE OF TWELVE PERCENT (12%) PER ANNUM.

B. MORE IMPORTANTLY, SECTIONS 234 AND 244 OF THE INSURANCE CODE SHOULD NOT HAVE BEEN APPLIED BY THE COURT OF APPEALS BECAUSE THERE WAS NEVER ANY FINDING THAT PETITIONER MALAYAN UNJUSTIFIABLY REFUSED OR WITHHELD

THE PROCEEDS OF THE INSURANCE POLICY BECAUSE IN THE FIRST PLACE, THERE WAS A LEGITIMATE DISPUTE OR DIFFERENCE IN OPINION ON WHETHER RESPONDENT PAP CO. COMMITTED CONCEALMENT, MISREPRESENTATION AND BREACH OF AN AFFIRMATIVE WARRANTY WHICH ENTITLES PETITIONER MALAYAN TO RESCIND THE INSURANCE POLICY AND/OR TO CONSIDER THE CLAIM AS VOIDED.

III

THE COURT OF APPEALS HAS DECIDED THE CASE IN A MANNER NOT IN ACCORDANCE WITH THE LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT AGREED WITH THE TRIAL COURT AND HELD IN THE QUESTIONED DECISION THAT THE PROCEEDS OF THE INSURANCE CONTRACT IS PAYABLE TO RESPONDENT PAP CO. DESPITE THE EXISTENCE OF A MORTGAGEE CLAUSE IN THE INSURANCE POLICY.

IV

THE COURT OF APPEALS ERRED AND DEPARTED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT HELD IN THE QUESTIONED DECISION AND RESOLUTION THAT THE INTERPRETATION MOST FAVORABLE TO THE INSURED SHALL BE ADOPTED.[7]

Malayan basically argues that it cannot be held liable under the insurance contract because PAP committed concealment, misrepresentation and breach of an affirmative warranty under the renewal policy when it transferred the location of the insured properties without informing it. Such transfer affected the correct estimation of the risk which should have enabled Malayan to decide whether it was willing to assume such risk and, if so, at what rate of premium. The transfer also affected Malayan's ability to control the risk by guarding against the increase of the risk brought about by the change in conditions, specifically the change in the location of the risk.

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[7] *Id.* at 50-54.

Malayan claims that PAP concealed a material fact in violation of Section 27 of the Insurance Code[8] when it did not inform Malayan of the actual and new location of the insured properties. In fact, before the issuance of the renewal policy on May 14, 1997, PAP even informed it that there would be no changes in the renewal policy. Malayan also argues that PAP is guilty of breach of warranty under the renewal policy in violation of Section 74 of the Insurance Code[9] when, contrary to its affirmation in the renewal policy that the insured properties were located at the Sanyo Factory, these were already transferred to the Pace Factory. Malayan adds that PAP is guilty of misrepresentation upon a material fact in violation of Section 45 of the Insurance Code[10] when it informed Malayan that there would be no changes in the original policy, and that the original policy would be renewed on an "as is" basis.

Malayan further argues that PAP failed to discharge the burden of proving that the transfer of the insured properties under the insurance policy was with its knowledge and consent. Granting that PAP informed RCBC of the transfer or change of location of the insured properties, the same is irrelevant and does not bind Malayan considering that RCBC is a corporation vested with separate and distinct juridical personality. Malayan did not consent to be the principal of RCBC. RCBC did not also act as Malayan's representative.

With regard to the alleged increase of risk, Malayan insists that there is evidence of an increase in risk as a result of the unilateral transfer of the insured properties. According to Malayan, the Sanyo Factory was occupied as a factory of

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[8] Section 27. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance.

[9] Section 74. The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

[10] Section 45. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. x x x

automotive/computer parts by the assured and factory of zinc & aluminum die cast and plastic gear for copy machine by Sanyo Precision Phils., Inc. with a rate of 0.449% under 6.1.2 A, while Pace Factory was occupied as factory that repacked silicone sealant to plastic cylinders with a rate of 0.657% under 6.1.2 A.

PAP's position

On the other hand, PAP counters that there is no evidence of any misrepresentation, concealment or deception on its part and that its claim is not fraudulent. It insists that it can still sue to protect its rights and interest on the policy notwithstanding the fact that the proceeds of the same was payable to RCBC, and that it can collect interest at the rate of 12% per annum on the proceeds of the policy because its claim for indemnity was unduly delayed without legal justification.

The Court's Ruling

The Court agrees with the position of Malayan that it cannot be held liable for the loss of the insured properties under the fire insurance policy.

As can be gleaned from the pleadings, it is not disputed that on May 13, 1996, PAP obtained a ₱15,000,000.00 fire insurance policy from Malayan covering its machineries and equipment effective for one (1) year or until May 13, 1997; that the policy expressly stated that the insured properties were located at "Sanyo Precision Phils. Building, Phase III, Lots 4 & 6, Block 15, EPZA, Rosario, Cavite"; that before its expiration, the policy was renewed[11] on an "as is" basis for another year or until May 13, 1998; that the subject properties were later transferred to the Pace Factory also in PEZA; and that on October 12, 1997, during the effectivity of the renewal policy, a fire broke out at the Pace Factory which totally burned the insured properties.

The policy forbade the removal of the insured properties unless sanctioned by Malayan

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[11] *Rollo,* p. 373.

Condition No. 9(c) of the renewal policy provides:

> 9. Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the **sanction** of the company signified by endorsement upon the policy, by or on behalf of the Company:
>
> x x x x x x x x x
>
> (c**) If property insured be removed** to any building or place other than in that which is herein stated to be insured.[12]

Evidently, by the clear and express condition in the renewal policy, the removal of the insured property to any building or place required the consent of Malayan. Any transfer effected by the insured, without the insurer's consent, would free the latter from any liability.

The respondent failed to notify, and to obtain the consent of, Malayan regarding the removal

The records are bereft of any convincing and concrete evidence that Malayan was notified of the transfer of the insured properties from the Sanyo factory to the Pace factory. The Court has combed the records and found nothing that would show that Malayan was duly notified of the transfer of the insured properties.

What PAP did to prove that Malayan was notified was to show that it relayed the fact of transfer to RCBC, the entity which made the referral and the named beneficiary in the policy. Malayan and RCBC might have been sister companies, but such fact did not make one an agent of the other. The fact that RCBC referred PAP to Malayan did not clothe it with authority to represent and bind the said insurance company. After the referral, PAP dealt directly with Malayan.

The respondent overlooked the fact that during the November 9, 2006 hearing,[13] its counsel stipulated in open court that it

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[12] Records, pp. 683-684.

[13] *Rollo*, TSN, November 9, 2006, pp. 614-625.

was Malayan's authorized insurance agent, Rodolfo Talusan, who procured the original policy from Malayan, not RCBC. This was the reason why Talusan's testimony was dispensed with.

Moreover, in the previous hearing held on November 17, 2005,[14] PAP's hostile witness, Alexander Barrera, Administrative Assistant of Malayan, testified that he was the one who procured Malayan's renewal policy, not RCBC, and that RCBC merely referred fire insurance clients to Malayan. He stressed, however, that no written referral agreement exists between RCBC and Malayan. He also denied that PAP notified Malayan about the transfer before the renewal policy was issued. He added that PAP, through Maricar Jardiniano *(Jardiniano)*, informed him that the fire insurance would be renewed on an "as is basis."[15]

Granting that any notice to RCBC was binding on Malayan, PAP's claim that it notified RCBC and Malayan was not indubitably established. At best, PAP could only come up with the hearsay testimony of its principal witness, Branch Manager Katsumi Yoneda *(Mr. Yoneda)*, who testified as follows:

Q What did you do as Branch Manager of Pap Co. Ltd.?
A What I did **I instructed my Secretary**, because these equipment was bank loan and because of the insurance I told my secretary to notify.

Q To notify whom?
A **I told my Secretary to inform the bank**.

Q You are referring to RCBC?
A Yes, sir.

x x x x x x x x x

Q After the RCBC was informed in the manner you stated, what did you do regarding the new location of these properties at Pace Pacific Bldg. insofar as Malayan Insurance Company is concerned?
A After that transfer, we informed the RCBC about the transfer of the equipment and also Malayan Insurance but we were

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[14] *Id.*, TSN, November 17, 2005, pp. 492-562.

[15] *Id.* at 540-541, 559.

not able to contact Malayan Insurance so **I instructed again my secretary to inform Malayan about the transfer**.

Q Who was the secretary you instructed to contact Malayan Insurance, the defendant in this case?
A Dory Ramos.

Q How many secretaries do you have at that time in your office?
A Only one, sir.

Q Do you know a certain Maricar Jardiniano?
A Yes, sir.

Q Why do you know her?
A Because she is my secretary.

Q So how many secretaries did you have at that time?
A Two, sir.

Q What happened with the instruction that you gave to your secretary Dory Ramos about the matter of informing the defendant Malayan Insurance Co of the new location of the insured properties?
A **She informed me** that the notification was already given to Malayan Insurance.

Q Aside from what she told you how did you know that the information was properly relayed by the said secretary, Dory Ramos, to Malayan Insurance?
A I asked her, Dory Ramos, did you inform Malayan Insurance and **she said yes**, sir.

Q Now after you were told by your secretary, Dory Ramos, that she was able to inform Malayan Insurance Company about the transfer of the properties insured to the new location, do you know what happened insofar this information was given to the defendant Malayan Insurance?
A **I heard** that someone from Malayan Insurance came over to our company.

Q Did you come to know who was that person who came to your place at Pace Pacific?
A I do not know, sir.

Q How did you know that this person from Malayan Insurance came to your place?
A **It is according to the report given to me**.

Q Who gave that report to you?
A Dory Ramos.

Q Was that report in writing or verbally done?
A Verbal.[16] [Emphases supplied]

The testimony of Mr. Yoneda consisted of hearsay matters. He obviously had no personal knowledge of the notice to either Malayan or RCBC. PAP should have presented his secretaries, Dory Ramos and Maricar Jardiniano, at the witness stand. His testimony alone was unreliable.

Moreover, the Court takes note of the fact that Mr. Yoneda admitted that the insured properties were transferred to a different location only **after** the renewal of the fire insurance policy.

COURT

Q When did you transfer the machineries and equipments before the renewal or after the renewal of the insurance?
A **After** the renewal.

COURT

Q You understand my question?
A Yes, Your Honor.[17] [Emphasis supplied]

This enfeebles PAP's position that the subject properties were already transferred to the Pace factory before the policy was renewed.

The transfer from the Sanyo Factory to the PACE Factory increased the risk.

The courts below held that even if Malayan was not notified thereof, the transfer of the insured properties to the Pace Factory was insignificant as it did not increase the risk.

Malayan argues that the change of location of the subject properties from the Sanyo Factory to the Pace Factory increased the hazard to which the insured properties were exposed. Malayan wrote:

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[16] *Id.*, TSN, July 14, 2005, pp. 460-464.

[17] *Id.* at 484.

With regards to the exposure of the risk under the old location, this was occupied as factory of automotive/computer parts by the assured, and factory of zinc & aluminum die cast, plastic gear for copy machine by Sanyo Precision Phils., Inc. with a rate of 0.449% under 6.1.2 A. But under Pace Pacific Mfg. Corporation this was occupied as factory that repacks silicone sealant to plastic cylinders with a rate of 0.657% under 6.1.2 A. Hence, there was an increase in the hazard as indicated by the increase in rate.[18]

The Court agrees with Malayan that the transfer to the Pace Factory exposed the properties to a hazardous environment and negatively affected the fire rating stated in the renewal policy. The increase in tariff rate from 0.449% to 0.657% put the subject properties at a greater risk of loss. Such increase in risk would necessarily entail an increase in the premium payment on the fire policy.

Unfortunately, PAP chose to remain completely silent on this very crucial point. Despite the importance of the issue, PAP failed to refute Malayan's argument on the increased risk.

Malayan is entitled to rescind the insurance contract

Considering that the original policy was renewed on an "as is basis," it follows that the renewal policy carried with it the same stipulations and limitations. The terms and conditions in the renewal policy provided, among others, that the location of the risk insured against is at the Sanyo factory in PEZA. The subject insured properties, however, were totally burned at the Pace Factory. Although it was also located in PEZA, Pace Factory was not the location stipulated in the renewal policy. There being an unconsented removal, the transfer was at PAP's own risk. Consequently, it must suffer the consequences of the fire. Thus, the Court agrees with the report of Cunningham Toplis Philippines, Inc., an international loss adjuster which investigated the fire incident at the Pace Factory, which opined that "[g]iven that the location of risk covered under the policy is not the

[18] Records, Vol. II, p. 692.

location affected, the policy will, therefore, not respond to this loss/claim."[19]

It can also be said that with the transfer of the location of the subject properties, **without notice and without Malayan's consent, after** the renewal of the policy, PAP clearly committed concealment, misrepresentation and a breach of a material warranty. Section 26 of the Insurance Code provides:

> Section 26. A neglect to communicate that which a party knows and ought to communicate, is called a concealment.

Under Section 27 of the Insurance Code, "a concealment entitles the injured party to rescind a contract of insurance."

Moreover, under Section 168 of the Insurance Code, the insurer is entitled to rescind the insurance contract in case of an alteration in the use or condition of the thing insured. Section 168 of the Insurance Code provides, as follows:

> Section 68. An alteration in the use or condition of a thing insured from that to which it is limited by the policy made without the consent of the insurer, by means within the control of the insured, and increasing the risks, entitles an insurer to rescind a contract of fire insurance.

Accordingly, an insurer can exercise its right to rescind an insurance contract when the following conditions are present, to wit:

1) the policy limits the use or condition of the thing insured;

2) there is an alteration in said use or condition;

3) the alteration is without the consent of the insurer;

4) the alteration is made by means within the insured's control; and

5) the alteration increases the risk of loss.[20]

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[19] *Id.* at 231.

[20] Rodriguez, *The Insurance Code of the Philippines Annotated*, Fifth Edition, p. 289.

In the case at bench, all these circumstances are present. It was clearly established that the renewal policy stipulated that the insured properties were located at the Sanyo factory; that PAP removed the properties without the consent of Malayan; and that the alteration of the location increased the risk of loss.

WHEREFORE, the October 27, 2011 Decision of the Court of Appeals is hereby **REVERSED** and **SET ASIDE**. Petitioner Malayan Insurance Company, Inc. is hereby declared **NOT** liable for the loss of the insured machineries and equipment suffered by PAP Co., Ltd.

SO ORDERED.

Sereno,[*] *C.J., Velasco, Jr. (Chairperson), Peralta,* and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 200858. August 7, 2013]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **CORAZON B. BAELLO, WILHELMINA BAELLO-SOTTO, and ERNESTO B. BAELLO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; CONCEPT OF CONCLUSIVENESS OF JUDGMENT; APPLIED IN CASE AT BAR. — In this case, the NHA's petition is barred by conclusiveness of judgment which states that — "x x x any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of

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[*] Designated additional member in lieu of Associate Justice Roberto A. Abad, per Raffle dated July 2, 2012.

an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same." We sustain the Court of Appeals in ruling that the main issue raised by the NHA, which it alleged in its Answer before the trial court, is the validity of OCT No. (804) 53839. The validity of OCT No. (804) 53839 had long been settled by this Court in G.R. No. 143230. In that case, the Court ruled that the action to annul OCT No. (804) 53839 was barred by the decision in LRC Case No. 520. The Court noted that the Republic did not oppose Pedro and Nicanora's application for registration in LRC Case No. 520, and neither did it appeal the decision. OCT No. (804) 53839 was issued by the Register of Deeds in 1959 and the Republic did not file any action to nullify the CFI's decision until the NHA filed a complaint for nullity of OCT No. (804) 53839 on 5 November 1993, the case which was the origin of G.R. No. 143230. As pointed out by this Court in G.R. No. 143230, the NHA was already barred from assailing OCT No. (804) 53839 and its derivative titles.

2. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; BUILDER IN BAD FAITH; NOT ENTITLED TO REIMBURSEMENT OF THE EXPENSES INCURRED. — The issue of reimbursement was x x x raised in G.R. No. 143230 where the NHA alleged that the Court of Appeals gravely erred in ruling that it was a builder in bad faith and therefore, not entitled to reimbursement of the improvement it introduced on the property. Article 449 of the Civil Code applies in this case. It states: "Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity." Thus, under Article 449 of the Civil Code, the NHA is not entitled to be reimbursed of the expenses incurred in the development of respondents' property.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Emmanuel M. Basa for respondents.
Kathrin Fe D. Pioquinto for Ernesto Baello, Jr.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the 28 November 2011 Decision[2] and the 27 February 2012 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 93512.

The Antecedent Facts

The facts, gathered from the assailed decision of the Court of Appeals, are as follows:

On 21 September 1951, Pedro Baello (Pedro) and Nicanora Baello (Nicanora) filed an application for registration of a parcel of land with the Court of First Instance (CFI) of Rizal, covering the land they inherited from their mother, Esperanza Baello. The land, situated in Sitio Talisay, Municipality of Caloocan, had an area of 147,972 square meters. The case was docketed as LRC Case No. 520.

On 2 November 1953, the CFI of Rizal rendered its decision confirming the title of the applicants to the land in question. The CFI of Rizal awarded the land to Pedro and Nicanora, *pro indiviso*. Pedro was awarded 2/3 of the land while Nicanora was awarded 1/3. The Republic of the Philippines, through the Director of the Bureau of Lands, did not appeal. The decision became final and executory.

On 27 October 1954, acting on the orders of the CFI of Rizal, the Land Registration Commission issued Decree No. 13400 in favor of "Pedro T. Baello, married to Josefa Caiña" covering the 2/3 portion of the property and in favor of "Nicanora T.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 32-50. Penned by Associate Justice Socorro B. Inting with Associate Justices Fernanda Lampas Peralta and Mariflor Punzalan Castillo, concurring.

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

Baello, married to Manuel J. Rodriguez" covering the remaining 1/3 portion. The Register of Deeds issued Original Certificate of Title (OCT) No. (804) 53839 in favor of Pedro and Nicanora. The property was later subdivided into two parcels of land: Pedro's lot was Lot A (Baello property), with an area of 98,648 square meters, and covered by TCT No. 181493, while Nicanora's lot was Lot B (Rodriguez property), with an area of 49,324 square meters. The subdivision plan was approved on 27 July 1971.

On 3 December 1971, Pedro died intestate, leaving 32 surviving heirs including respondents Corazon B. Baello (Corazon), Wilhelmina Baello-Sotto (Wilhelmina), and Ernesto B. Baello, Jr.[4] (Ernesto), collectively referred to in this case as respondents. On 22 August 1975, Nicanora died intestate. Nicanora's husband died a few days later, on 30 August 1975.

On 30 October 1974, during the martial law regime, President Ferdinand E. Marcos issued Presidential Decree No. 569 creating a committee to expropriate the Dagat-Dagatan Lagoon and its adjacent areas, including the Baello and Rodriguez properties. The government wanted to develop the properties into an industrial/commercial complex and a residential area for the permanent relocation of families affected by the Tondo Foreshore Urban Renewal Project Team. First Lady Imelda R. Marcos also launched the Dagat-Dagatan Project, a showcase program for the homeless. It also covered the Baello and Rodriguez properties. The National Housing Authority (NHA) was tasked to develop the property into a residential area, subdivide it, and award the lots to the beneficiaries.

Thereafter, a truckload of fully-armed military personnel entered the Baello property and ejected the family caretaker at gunpoint. The soldiers demolished the two-storey residential structure and destroyed the fishpond improvements on the Baello property. The NHA then took possession of the Baello and Rodriguez properties. The Baello and Rodriguez heirs, for fear of losing their lives and those of their families, decided to remain

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[4] Erroneously referred to as Francisco in the body of the Court of Appeals' decision.

silent and did not complain. The NHA executed separate conditional contracts to sell subdivision lots in favor of chosen beneficiaries who were awarded 620 lots from the Baello property and 275 lots from the Rodriguez property.

On 13 April 1983, Proclamation No. 2284 was issued declaring the Metropolitan Manila, including the Dagat-Dagatan area, as area for priority development and Urban Land Reform Zones. Again, the Baello and Rodriguez properties were included in the areas covered by the proclamation. On 17 January 1986, Minister of Natural Resources Rodolfo P. Del Rosario issued BFD Administrative Order No. 4-1766 declaring and certifying forestlands in Caloocan City, Malabon, and Navotas, covering an aggregate area of 6,762 hectares, as alienable or disposable for cropland and other purposes.

On 23 February 1987, after the EDSA People Power Revolution, the heirs of Baello executed an extrajudicial partition of Pedro's estate, which included the Baello property. Respondents were issued TCT No. 280647 over an undivided portion, comprising 8,404 square meters, of the Baello property. Corazon and Wilhelmina later sold their shares to Ernesto who was issued TCT No. C-362547 in his name.

On 18 August 1987, the NHA filed an action for eminent domain against the heirs of Baello and Rodriguez before the Regional Trial Court of Caloocan City, Branch 120 (RTC Branch 120). The case was docketed as Civil Case No. C-169. The NHA also secured a writ of possession. In an Order dated 5 September 1990, the RTC Branch 120 dismissed the complaint on the ground of *res judicata* and lack of cause of action. The NHA appealed to the Court of Appeals, docketed as CA-G.R. CV No. 29042. On 21 August 1992, the Court of Appeals affirmed the Order of the RTC Branch 120. The NHA filed a petition for review before this Court, docketed as **G.R. No. 107582**. In a Resolution dated 3 May 1993, this Court denied due course to the petition on the ground that the Court of Appeals did not commit any reversible error in affirming the order of the RTC Branch 120. The NHA filed a motion for reconsideration but

it was denied in a Resolution dated 16 January 1993. The Clerk of Court later made an Entry of Judgment.

On 5 November 1993, the NHA filed a complaint for nullity of OCT No. (804) 53839 issued in the names of Pedro and Nicanora. The case was raffled to the RTC of Caloocan City, Branch 128 (RTC Branch 128) and docketed as Civil Case No. C-16399. In a Resolution dated 17 October 1995, the RTC Branch 128 dismissed the complaint on grounds of estoppel and *res judicata* and because the issue on the legal nature and ownership of the property covered by OCT No. (804) 53839 was already barred by a final judgment in LRC Case No. 520. The NHA appealed to the Court of Appeals, docketed as CA-G.R. CV No. 51592. In a Decision dated 26 January 2000, the Court of Appeals affirmed the decision of the RTC Branch 128. Again, the NHA went to this Court to assail the decision of the Court of Appeals. The case was docketed as **G.R. No. 143230**. In a Decision[5] promulgated on 20 August 2004, this Court denied the NHA's petition for lack of merit. The Court ruled that NHA's action was barred by the decision of the CFI of Rizal in LRC Case No. 520. This Court held that the NHA was already barred from assailing the validity of OCT No. (804) 53839 and its derivative titles based on judicial estoppel.

Meanwhile, on 30 June 1994, during the pendency of Civil Case No. C-16399, respondents filed an action for Recovery of Possession and Damages against the NHA and other respondents,[6] docketed as Civil Case No. C-16578. NHA, in its Answer, alleged that OCT No. (804) 53839, respondents' derivative title, was obtained fraudulently because the land covered was declared alienable and disposable only on 17 January 1986. The case was initially sent to archives, upon joint motion of the parties, pending resolution by this Court of G.R. No. 143230. Trial resumed upon the denial by this Court of the NHA's petition in G.R. No. 143230.[7]

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[5] *National Housing Authority v. Baello,* 480 Phil. 502 (2004).

[6] Spouses Nestor and Evangeline Ponce and several John and Jane Does. The case against the spouses Ponce was subsequently dismissed (*Rollo*, p. 55).

[7] *Id.* at 57.

The Decision of the Trial Court

On 13 May 2009, the Regional Trial Court of Caloocan City, Branch 128 (trial court) rendered its Decision[8] in favor of respondents. The trial court ruled that the dismissal of NHA's complaint for expropriation and for declaration of nullity of OCT No. (804) 53839 in the names of Pedro and Nicanora left NHA with no right to hold possession of respondents' property which was admittedly a part of Pedro's land. The trial court ruled that this Court already declared respondents as the *bona fide* owners of the land and as such, their right to possession and enjoyment of the property becomes indisputable.

The trial court further held that respondents were entitled to compensation equal to the fair rental value of the property, as well as to moral and exemplary damages, for the period NHA was in possession of the property.

The dispositive portion of the trial court's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendant National Housing Authority as follows:
>
> 1. Defendant National Housing Authority and all persons and entities claiming rights under it, is (sic) ordered to surrender and turn over possession of the land embraced in Transfer Certificate of Title No. C-362547 to herein plaintiffs.
>
> 2. Defendant National Housing Authority is ordered to pay the plaintiffs reasonable compensation or fair rental value for the land, starting from the date of demand on September 21, 1993 up to the time it actually surrenders possession of the premises to the plaintiffs at the rate of Fifty Thousand Pesos (Php50,000.00) per month.
>
> 3. The defendant National Housing Authority is likewise ordered to pay as follows:
>
> (a) One Hundred Thousand Pesos (Php100,000.00) as moral damages.
>
> (b) One Hundred Thousand Pesos (Php100,000.00) as exemplary damages.

[8] *Id.* at 54-64. Penned by Presiding Judge Eleanor R. Kwong.

(c) Fifty Thousand Pesos (Php50,000.00) as attorney's fees.

4. The defendant National Housing Authority is ordered to pay the cost of suit.

SO ORDERED.[9]

The NHA appealed the trial court's decision to the Court of Appeals.

The Decision of the Court of Appeals

In its 28 November 2011 Decision, the Court of Appeals denied the NHA's appeal. The Court of Appeals took judicial notice of the rulings of this Court in G.R. No. 107582 and G.R. No. 143230.

The Court of Appeals ruled that the main issue raised by the NHA, that is, the alleged nullity of OCT No. (804) 53839 from which respondents derived their title, was already resolved by this Court in G.R. No. 143230. This Court already declared in G.R. No. 143230 that the NHA was judicially estopped from assailing OCT No. (804) 53839. The Court of Appeals further ruled that this Court already declared that the NHA acted in bad faith when it took possession of respondents' property in 1976 despite knowledge of the ownership of the Baello and Rodriguez heirs. The Court of Appeals also sustained the findings of the trial court that respondents were entitled to moral and exemplary damages as well as attorney's fees.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, foregoing considered, the appeal is hereby DENIED and the March 13, 2009 Decision of the Regional Trial Court of Caloocan City, Branch 128 in Civil Case No. C-16578 is AFFIRMED *in toto*.

SO ORDERED.[10]

The NHA filed a motion for reconsideration.

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[9] *Id.* at 64.

[10] *Id.* at 49.

In its 27 February 2012 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issues

The NHA raised the following issues before this Court:

(1) Whether the Court of Appeals committed a reversible error in finding that the NHA was a builder or possessor in bad faith;

(2) Whether the Court of Appeals committed a reversible error in adopting the facts in G.R. No. 143230 when the case was not tried on the merits; and

(3) Whether the Court of Appeals committed a reversible error in awarding damages to respondents.

The Ruling of this Court

The petition has no merit.

The doctrine of *res judicata* has been explained as follows:

> The rule is that when material facts or questions, which were in issue in a former action and were admitted or judicially determined are conclusively settled by a judgment rendered therein, such facts or questions become *res judicata* and may not again be litigated in a subsequent action between the same parties or their privies regardless of the form of the latter.
>
> Jurisprudence expounds that the concept of *res judicata* embraces two aspects. The first, known as "bar by prior judgment," or "estoppel by verdict," is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second, known as "conclusiveness of judgment," otherwise known as the rule of *auter action pendent*, ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. x x x.[11]

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[11] *Ley Construction & Development Corporation v. Philippine Commercial & International Bank*, G.R. No. 160841, 23 June 2010, 621 SCRA 526, 534-535. Citations omitted.

The Court explained further:

> Conclusiveness of judgment does not require identity of the causes of action for it to work. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. Hence, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action.[12]

In this case, the NHA's petition is barred by conclusiveness of judgment which states that —

> x x x any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[13]

We sustain the Court of Appeals in ruling that the main issue raised by the NHA, which it alleged in its Answer before the trial court, is the validity of OCT No. (804) 53839. The validity of OCT No. (804) 53839 had long been settled by this Court in G.R. No. 143230. In that case, the Court ruled that the action to annul OCT No. (804) 53839 was barred by the decision in LRC Case No. 520. The Court noted that the Republic did not oppose Pedro and Nicanora's application for registration in LRC Case No. 520, and neither did it appeal the decision. OCT No. (804) 53839 was issued by the Register of Deeds in 1959 and the Republic did not file any action to nullify the CFI's decision until the NHA filed a complaint for nullity of OCT No. (804)

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[12] *Id.* at 535-536.

[13] *Spouses Rasdas v. Estenor*, 513, 676, Phil. 664 (2005).

53839 on 5 November 1993, the case which was the origin of G.R. No. 143230. As pointed out by this Court in G.R. No. 143230, the NHA was already barred from assailing OCT No. (804) 53839 and its derivative titles.

The NHA further alleges that the Court of Appeals erroneously declared it as a possessor in bad faith. The NHA alleges that this Court's decision in G.R. No. 143230 affirmed the dismissal by the trial court of the case but there was no proceeding that proved it acted in bad faith. The NHA claims that there was no basis to declare it as a possessor in bad faith. The NHA wants this Court to reverse its decision that had long become final and executory on the ground that the facts in G.R. No. 143230 were not proven in the trial court.

The issue of whether the NHA was a builder in bad faith was one of the issues raised in G.R. No. 143230. In G.R. No. 143230, the Court categorically declared that the NHA was a builder in bad faith. The Court extensively discussed, thus:

> On the last issue, the petitioner avers that the trial and appellate courts erred in not holding that it was a builder in good faith and the respondents as having acted in bad faith. The petitioner avers that it believed in good faith that respondents' property was part and parcel of the Dagat-Dagatan Lagoon owned by the government, and acting on that belief, it took possession of the property in 1976, caused the subdivision of the property and awarded the same to its beneficiaries, in the process spending ₱45,237,000.00. It was only in 1988 when it learned, for the first time, that the respondents owned the property and forthwith petitioner filed its complaint for eminent domain against them. The petitioner further avers that even assuming that it was a builder in bad faith, since the respondents likewise acted in bad faith, the rights of the parties shall be determined in accordance with Article 448 of the New Civil Code, and they shall be considered as both being in good faith. The petitioner, however, posits that any award in its favor as builder in good faith would be premature because its complaint was dismissed by the court *a quo*, and its consequent failure to present evidence to prove the improvements it had made on the property and the value thereof.
>
> The petitioner's arguments do not persuade. In light of our foregoing disquisitions, it is evident that the petitioner acted in

gross bad faith when it took possession of the property in 1976, introduced improvements thereon and disposed of said property despite knowledge that the ownership thereof pertained to the respondents.

In determining whether a builder acted in good faith, the rule stated in Article 526 of the New Civil Code shall apply.

ART. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

In this case, no less than the trial court in Civil Case No. C-169 declared that the petitioner not only acted in bad faith, but also violated the Constitution:

> And the Court cannot disregard the fact that despite persistent urging by the defendants for a negotiated settlement of the properties taken by plaintiff before the present action was filed, plaintiff failed to give even the remaining UNAWARDED lots for the benefit of herein defendants who are still the registered owners. Instead, plaintiff opted to expropriate them after having taken possession of said properties for almost *fourteen (14) years.*
>
> The callous disregard of the Rules and the Constitutional mandate that private property shall not be taken without just compensation and unless it is for public use, is UNSURPRISING, considering the catenna (sic) of repressive acts and wanton assaults committed by the Marcos Regime against human rights and the Constitutional rights of the people which have become a legendary part of history and mankind.
>
> True it is, that the plaintiff may have a laudable purpose in the expropriation of the land in question, as set forth in the plaintiff's cause of action that — "The parcel of land as described in the paragraph immediately preceding, together with the adjoining areas encompassed within plaintiff's Dagat-Dagatan Development Project, are designed to be developed pursuant to the Zonal Improvement Program (ZIP) of the Government, as a site and services project, a vital component of the Urban III loan package of the International Bank for Rehabilitation and Development (World Bank), which is envisioned to provide

affordable solution to the urban problems of shelter, environmental sanitation and poverty and to absorb and ease the impact of immigration from rural areas to over-crowded population centers of Metro Manila and resident middle income families who do not have homelots of their own with the Metro Manila area. x x x."

But the reprehensible and scary manner of the taking of defendants' property in 1976, which, in a manner of speaking, was seizure by the barrel of the gun, is more aptly described by the defendants in the following scenario of 1976, to wit:

1.01. Sometime in the mid-seventies, a truckload of fully-armed military personnel entered the Baello property in Caloocan City [then covered by OCT No. (804) 55839] *(sic)* and, at gunpoint, forcibly ejected the family's caretaker. The soldiers, thereafter, demolished a two-storey residence and destroyed all fishpond improvements found inside the property.

1.02. From this period up till the end of the Marcos misrule, *no decree, no court order, no ordinance* was shown or made known to the defendants to justify the invasion, assault, and occupation of their property. Worse, defendants were not even granted the courtesy of a letter or memorandum that would explain the government's intention on the subject property.

1.03. The military's action, coming as it does at the height of martial law, elicited the expected response from the defendants. Prudence dictated silence. From government news reports, defendants gathered that their land was seized to complement the erstwhile First Lady's Dagat-Dagatan project. Being a pet program of the dictator's wife, defendants realized that a legal battle was both dangerous and pointless.

1.04. Defendants' property thus came under the control and possession of the plaintiff. The NHA went on to award portions of the subject property to dubious beneficiaries who quickly fenced their designated lots and/or erected permanent structures therein. During all this time, no formal communication from the NHA was received by the defendants. The plaintiff acted as if the registered owners or their heirs did not exist at all.

1.05. The celebrated departure of the conjugal dictators in February 1986 kindled hopes that justice may at least come to the Baellos. Verbal inquiries were made on how just

compensation can be obtained from the NHA considering its confiscation of the subject property. The representations proved fruitless.

. . . . . .

Evidently, plaintiff's seizure of defendants' property is an audacious infringement of their rights to DUE PROCESS.

The immediate taking of possession, control and disposition of property without due notice and hearing is violative of due process (*Sumulong vs. Guerrero*, 154 SCRA 461).

On the matter of issuance of writ of possession, the ruling in the Ignacio case as reiterated in Sumulong vs. Guerrero states:

"[I]t is imperative that before a writ of possession is issued by the Court in expropriation proceedings, the following requisites must be met: (1) There must be a Complaint for expropriation sufficient in form and in substance; (2) A provisional determination of just compensation for the properties sought to be expropriated must be made by the trial court on the basis of judicial (not legislative or executive) discretion; and (3) The deposit requirement under Section 2, Rule 67 must be complied with."

. . . . . .

Here, it is even pointless to take up the matter of said requisites for the issuance of writ of possession considering that, as stated, NO complaint was ever filed in Court AT THE TIME of the seizure of defendants' properties.

Recapitulating — that the plaintiff's unlawful taking of defendants' properties is irretrievably characterized by BAD FAITH, patent ARBITRARINESS and grave abuse of discretion, is non-arguable.

The aforequoted findings of the trial court were affirmed by the Court of Appeals and by this Court in G.R. No. 107582.[14]

The Court, in ruling against NHA in G.R. No. 143230, did not contrive the facts of the case but cited exhaustively from the records, belying the NHA's assertion that the facts have no basis at all. This Court likewise pointed out in G.R. No. 143230

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[14] *National Housing Authority v. Baello, supra* note 5, at 530-533.

that the trial court's findings that it cited were affirmed by the Court of Appeals and the Supreme Court in another case, that is, in G.R. No. 107582.

The NHA asserts that respondents did not attempt to claim the property in question and that they negligently slept on their rights. The NHA alleges that respondents justified their inaction by creating a scenario of terror, forcible military take-over, and other falsehoods. The NHA's allegation cannot prevail over findings of this Court in G.R. No. 143230 on the circumstances on how respondents lost their property: that a truckload of fully armed military personnel entered the Baello property; that at gunpoint, the military personnel forcibly ejected the family's caretaker; and that the soldiers demolished the two-storey residential structure and destroyed all the fishpond improvements on the property. It was not a "scenario of terror" created by petitioners but clearly established facts.

The NHA likewise assails the award of damages to respondents. The NHA alleges that it is not liable for damages because it acted in good faith. The NHA further alleges that, granting it is liable, it should only be from the time ownership was transferred to respondents. Further, the NHA claims that it has the right to retain the property until it is reimbursed of the expenses incurred in its development.

Again, it was already established that the NHA acted in bad faith. The NHA also raised the same issue in G.R. No. 143230. Having established that the NHA acted in bad faith, the Court of Appeals did not err in sustaining the award of damages and attorney's fees to respondents.

The issue of reimbursement was also raised in G.R. No. 143230 where the NHA alleged that the Court of Appeals gravely erred in ruling that it was a builder in bad faith and therefore, not entitled to reimbursement of the improvement it introduced on the property.[15] Article 449 of the Civil Code applies in this case. It states:

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[15] *Id.* at 520.

Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity.

Thus, under Article 449 of the Civil Code, the NHA is not entitled to be reimbursed of the expenses incurred in the development of respondents' property.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 28 November 2011 Decision and the 27 February 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 93512.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 202243. August 7, 2013]

ROMULO L. NERI, *petitioner, vs.* **SANDIGANBAYAN (FIFTH DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; COURTS GENERALLY DECLINE JURISDICTION OVER CASES ON THE GROUND OF MOOTNESS; EXCEPTIONS. — While it could very well write finis to this case on the ground of mootness, the actual justiciable controversy requirement for judicial review having ceased to exist with the supervening action of the Fourth Division, the Court has nonetheless opted to address the issue with its constitutional law component tendered in this recourse. The unyielding rule is that courts generally decline jurisdiction over cases on the ground of mootness. But as exceptions to

this general norm, courts will resolve an issue, otherwise moot and academic, when, *inter alia*, a compelling legal or constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public or when, as here, the case is capable of repetition yet evading judicial review.

2. ID.; ID.; CONSOLIDATION; CONCEPTS. — Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously while providing justice to the parties. Toward this end, consolidation and a single trial of several cases in the court's docket or consolidation of issues within those cases are permitted by the rules. As held in *Republic v. Sandiganbayan (Fourth Division)*, citing American jurisprudence, the term "consolidation" is used in three (3) different senses or concepts, thus: "(1) Where all except one of several actions are stayed until one is tried, in which case the judgment [in one] trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (*quasi consolidation*) (2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*) (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (*consolidation for trial*)"

3. ID.; ID.; ID.; DESIGNED TO AVOID MULTIPLICITY OF SUITS, GUARDS AGAINST OPPRESSION AND ABUSE, AND ATTAIN JUSTICE WITH THE LEAST EXPENSE AND VEXATION TO LITIGANTS. — [C]onsolidation x x x is allowed, as Rule 31 of the Rules of Court is entitled "Consolidation or Severance." x x x The counterpart, but narrowed, rule for criminal cases is found in Sec. 22, Rule 119 of the Rules of Court x x x as complemented by Rule XII, Sec. 2 of the Sandiganbayan Revised Internal Rules x x x. Whether as a procedural tool to aid the court in dispatching its official business in criminal or civil cases, the rule allowing

consolidation—in whatsoever sense it is taken, be it as a merger of several causes of actions/cases, in the sense of actual consolidation, or merely joint trial—is designed, among other reasons, to avoid multiplicity of suits, guard against oppression and abuse, attain justice with the least expense and vexation to the litigants.

4. ID.; ID.; ID.; CONSOLIDATION OF TRIAL; WHEN PERMISSIBLE. — Jurisprudence has laid down the requisites for consolidation of trial. As held in *Caños v. Peralta*, joint trial is permissible "where the [actions] arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties."

5. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; ALLEGATIONS THEREIN ARE CRUCIAL TO THE SUCCESS OR FAILURE OF A CRIMINAL PROSECUTION. — Criminal prosecutions primarily revolve around proving beyond reasonable doubt the existence of the elements of the crime charged. As such, they mainly involve questions of fact. There is a question of fact when the doubt or difference arises from the truth or the falsity of the allegations of facts. Put a bit differently, it exists when the doubt or difference arises as to the truth or falsehood of facts or when the inquiry invites calibration of the whole gamut of evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. Since conviction or acquittal in a criminal case hinges heavily on proof that the overt acts constituting, or the elements, of the crime were indeed committed or are present, allegations in the information are crucial to the success or failure of a criminal prosecution. It is for this reason that the information is considered the battle ground in criminal prosecutions.

6. ID.; ACTIONS; CONSOLIDATION; SHOULD NOT BE ORDERED IF IT WOULD UNDERMINE THE ACCUSED'S RIGHT TO SPEEDY DISPOSITION OF CASES. — In *Dacanay*, a case involving a request for separate trial instead of a joint trial, the Court upheld an accused's

right to a speedy trial, guaranteed by Sec. 14 (2), Art. III of the Constitution, over the claim of the prosecution that a joint trial would make the resolution of the case less expensive. In *Dacanay*, Dacanay moved for immediate and separate trial, which the People opposed on the ground that a separate trial, if approved, would entail a repetitive presentation of the same evidence instead of having to present evidence against Dacanay and his co-accused only once at the joint trial. According to the respondent therein, this will result in inconvenience and expense on the part of the Government, the very same reasons given by the prosecution in the case at hand. There, as later in *People v. Sandiganbayan*, We held that the rights of an accused take precedence over minimizing the cost incidental to the resolution of the controversies in question. Clearly then, consolidation, assuming it to be proper owing to the existence of the element of commonality of the lineage of the offenses charged contemplated in Sec. 22 of Rule 119, should be ordered to achieve all the objects and purposes underlying the rule on consolidation, foremost of which, to stress, is the swift dispensation of justice with the least expense and vexation to the parties. It should, however, be denied if it subverts any of the aims of consolidation. And *Dacanay* and *People v. Sandiganbayan* are one in saying, albeit implicitly, that ordering consolidation—likely to delay the resolution of one of the cases, expose a party to the rigors of a lengthy litigation and in the process undermine the accused's right to speedy disposition of cases—constitutes grave abuse of discretion. Not lost on the Court of course and certainly not on the Sandiganbayan's Fourth Division is the resulting absurdity arising from the consolidation of trial where the accused (Neri) in one case would be the prosecution's main witness in the other case.

APPEARANCES OF COUNSEL

Paul P. Lentejas for petitioner.
The Solicitor General for respondents

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Assailed and sought to be nullified in this Petition for *Certiorari*, Prohibition and *Mandamus* under Rule 65, with application for preliminary injunction and a temporary restraining order, are the Resolution[1] dated February 3, 2012 of the Fifth Division of the Sandiganbayan in SB-10-CRM-0099 entitled *People of the Philippines v. Romulo L. Neri*, as well as its Resolution[2] of April 26, 2012 denying petitioner's motion for reconsideration.

The Facts

Petitioner Romulo L. Neri (Neri) served as Director General of the National Economic and Development Authority (NEDA) during the administration of former President Gloria Macapagal-Arroyo.

In connection with what had been played up as the botched Philippine-ZTE[3] National Broadband Network (NBN) Project, the Office of the Ombudsman (OMB), on May 28, 2010, filed with the Sandiganbayan two (2) criminal Informations, the first against Benjamin Abalos, for violation of Section 3(h) of Republic Act No. (RA) 3019, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*, docketed as **SB-10-CRM-0098** (*People v. Abalos*), and eventually raffled to the **Fourth Division** of that court. The second Information against Neri, also for violation of Sec. 3(h), RA 3019, in relation to Sec. 13, Article VII of the 1987 Constitution, was docketed as **SB-10-CRM-0099** (*People v. Neri*) and raffled to the **Fifth Division** of the Sandiganbayan. *Vis-à-vis* the same project, the Ombudsman would also later file an information against Macapagal-Arroyo

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[1] *Rollo*, pp. 41-43. Approved by Associate Justices Roland B. Jurado, Alexander G. Gesmundo, and Alex L. Quiroz.

[2] *Id.* at 44-47.

[3] Stands for Zhing Xing Telecommunications Equipment, Inc.

and another information against her and several others[4] docketed as SB-11-CRM-0467 and SB-11-CRM-0468 to 0469, respectively, all of which ended up, like SB-10-CRM-0098, in the anti-graft court's 4th Division.

The accusatory portion of the Information against Neri reads as follows:

> That during the period from September 2006 to April 2007, or thereabout in Metro Manila x x x and within the jurisdiction of this Honorable Court, the above-named accused x x x being the then Director General of the [NEDA], a Cabinet position and as such, is prohibited by Sec. 13 of Article VII of the 1987 Constitution [from being financially interested in any contract with, or in any franchise or special privilege granted by the Government] but in spite of [said provision], petitioner, while acting as such, x x x directly or indirectly have financial or pecuniary interest in the business transaction between the Government of the Republic of the Philippines and the Zhing Xing Telecommunications Equipment, Inc., a Chinese corporation x x x for the implementation of the Philippine x x x (NBN) Project, which requires the review, consideration and approval of the NEDA, x x x by then and there, meeting, having lunch and playing golf with representatives and/or officials of the ZTE and meeting with the COMELEC Chairman Benjamin Abalos and sending his emissary/ representative in the person of Engineer Rodolfo Noel Lozada to meet Chairman Abalos and Jose De Venecia III, President/General Manager of Amsterdam Holdings, Inc. (AHI) another proponent to implement the NBN Project and discuss matters with them. (*Rollo*, pp. 48-50.)

In the ensuing trial in the *Neri* case following the arraignment and pre-trial proceedings, six (6) individuals took the witness stand on separate dates[5] to testify for the prosecution. Thereafter, the prosecution twice moved for and secured continuance for the initial stated reason that the prosecution is still verifying the exact address of its next intended witness and then that such witness cannot be located at his given address.[6]

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[4] Abalos, Jose Miguel T. Arroyo and Leandro R. Mendoza.

[5] The 6th witness, Edzel Regalado, concluded his testimony on June 23, 2011, records, Vol. 2, p. 119.

[6] Records, Vol. 2, pp. 135, 140.

In the meantime, a pre-trial conference was conducted in the *Abalos* case following which the Fourth Division issued on September 17, 2010 a Pre-Trial Order[7] containing, among other things, a list of witnesses and documents the prosecution intended to present. On October 27, 2010, Neri, whose name appeared high on the list, took the witness stand against Abalos in the *Abalos* case.[8]

On January 3, 2012, in **SB-10-CRM-0099**, the Office of the Special Prosecutor (OSP), OMB, citing Sec. 22, Rule 119 of the Rules of Court in relation to Sec. 2 of the Sandiganbayan Revised Internal Rules, moved for its consolidation with **SB-10-CRM-0098** (*People v. Abalos)*, SB-11-CRM-0467 (*People v. Arroyo, et al*.) and SB-11-0468 to 469 (*People v. Arroyo*). The stated reason proffered: to promote a more expeditious and less expensive resolution of the controversy of cases involving the same business transaction. And in this regard, the prosecution would later manifest that it would be presenting Yu Yong and Fan Yang, then president and finance officer, respectively, of ZTE, as witnesses all in said cases which would entail a substantive expense on the part of government if their testimonies are given separately.[9]

Neri opposed and argued against consolidation, and, as he would later reiterate, contended, among other things that: (a) SB-10-CRM-0099, on one hand, and the other cases, on the other, involve different issues and facts; (b) the desired consolidation is oppressive and violates his rights as an accused; (c) consolidation would unduly put him at risk as he does not actually belong to the Abalos group which had been negotiating with the ZTE officials about the NBN Project; (d) he is the principal witness and, in fact, already finished testifying, in the *Abalos* case; (e) the trial in the *Neri* and *Abalos* cases are both in the advanced stages already; and (f) the motion is but a ploy to further delay

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[7] *Id.*, Vol. 3, pp. 137-145.

[8] *Rollo*, p. 56.

[9] *Id.* at 85, Prosecution's Reply to the Opposition to Motion for Consolidation.

the prosecution of SB-10-CRM-0099, considering the prosecution's failure to present any more witnesses during the last two (2) scheduled hearings.

To the opposition, the prosecution interposed a reply basically advancing the same practical and economic reasons why a consolidation order should issue.

By Resolution dated February 3, 2012, the Sandiganbayan Fifth Division, agreeing with the position thus taken by the OSP, granted the consolidation of SB-10-CRM-0099 with SB-10-CRM-0098, disposing as follows:

> WHEREFORE, the prosecution's Motion to Consolidate is hereby GRANTED. The instant case (SB-10-CRM-0099) is now ordered consolidated with SB-10-CRM-0098, the case with the lower court docket number pending before the Fourth Division of this Court, **subject to the conformity of the said Division**.[10] (Emphasis added.)

According to the Fifth Division, citing *Domdom v. Sandiganbayan*,[11] consolidation is proper inasmuch as the subject matter of the charges in both the *Abalos* and *Neri* cases revolved around the same ZTE-NBN Project. And following the movant's line, the anti-graft court stated that consolidation would allow the government to save unnecessary expenses, avoid multiplicity of suits, prevent delay, clear congested dockets, and simplify the work of the trial court without violating the parties' rights.

Neri sought a reconsideration, but the Fifth Division denied it in its equally assailed April 26, 2012 Resolution.

The Issues

Petitioner Neri is now before the Court on the submission that the assailed consolidation order is void for having been issued with grave abuse of discretion. Specifically, petitioners allege that respondent court gravely erred:

> [A] x x x in ordering a consolidation of the subject criminal cases when the Revised Rules of Criminal Procedure does

[10] *Id.* at 43.

[11] G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528.

not allow a consolidation of criminal cases, only a consolidation of trials or joint trials in appropriate instances.

[B] x x x in ordering the consolidation because petitioner will now be tried for a crime not charged in the information in x x x SB-10-CRM-0099 and this is violative of his constitutional right to be informed of the nature and cause of the accusation against him. Worse, conspiracy was not even charged or alleged in that criminal information.

[C] x x x in ordering the consolidation for it would surely prejudice the rights of petitioner as an accused in x x x SB-10-CRM-0099 because he does not actually belong to the Abalos Group which had been negotiating with the ZTE Officials about the NBN Project.

[D] x x x in ordering the consolidation for it would just delay the trial of the case against the petitioner, as well as that against Abalos, because these cases are already in the advanced stages of the trial. Worse, in the Abalos case, the prosecution has listed 50 witnesses and it has still to present 33 more witnesses while in the case against the petitioner the prosecution (after presenting six witnesses) has no more witnesses to present and is now about to terminate its evidence in chief. Clearly, a consolidation of trial of these two (2) cases would unreasonably and unduly delay the trial of the case against the petitioner in violation of his right to a speedy trial.

[E] x x x in not finding that the proposed consolidation was just a ploy by the prosecution to further delay the prosecution of x x x SB-10-CRM-0099 because during the last two (2) hearings it has failed to present any more prosecution witnesses and there appears to be no more willing witnesses to testify against the petitioner. x x x

[F] x x x in not finding that it would be incongruous or absurd to allow consolidation because petitioner was the principal witness (as he already finished testifying there) against Abalos in x x x SB-10-CRM-0098.[12]

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[12] *Rollo*, pp. 12-13. Original in uppercase.

The Court's Ruling

The petition is meritorious, owing for one on the occurrence of a supervening event in the Sandiganbayan itself. As may be recalled, the assailed resolution of the Sandiganbayan Fifth Division ordering the consolidation of SB-10-CRM-0099 (the *Neri* case) with SB-10-CRM-0098 (the *Abalos* case) pending with the Fourth Division, was subject to the "conformity of the said (4th) Division." On October 19, 2012, the Fourth Division, on the premise that consolidation is addressed to the sound discretion of both the transferring and receiving courts, but more importantly the latter as the same transferred case would be an added workload, issued a Resolution[13] refusing to accept the *Neri* case, thus:

> WHEREFORE, the foregoing premises considered, the Fourth Division RESPECTFULLY DECLINES to accept SB-10-CRM-0099 (Neri case) for consolidation with SB-10-CRM-00998 (Abalos case) pending before it.

The Sandiganbayan Fourth Division wrote to justify, in part, its action:

> The Fourth Division already heard accused Neri testify against the accused in the Abalos case, and in the course of the presentation of his testimony (on direct examination, on cross-examination and based on his reply to the questions from the Court), the individual members of the Fourth Division, based on accused Neri's answers as well as his demeanor on the dock, had already formed their respective individual opinions on the matter of his credibility. Fundamental is the rule x x x that an accused is entitled to nothing less that the cold neutrality of an impartial judge. This Court would not want accused Neri to entertain any doubt in his mind that such formed opinions might impact on the proper disposition of the Neri case where he stands accused himself.[14]

While it could very well write finis to this case on the ground of mootness, the actual justiciable controversy requirement for

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[13] Records, Vol. 3, pp. 182-184. Approved by Associate Justices Gregory S. Ong, Jose R. Hernandez, and Maria Cristina J. Cornejo.

[14] *Id.* at 184.

judicial review having ceased to exist with the supervening action of the Fourth Division, the Court has nonetheless opted to address the issue with its constitutional law component tendered in this recourse.

The unyielding rule is that courts generally decline jurisdiction over cases on the ground of mootness. But as exceptions to this general norm, courts will resolve an issue, otherwise moot and academic, when, *inter alia*, a compelling legal or constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public[15] or when, as here, the case is capable of repetition yet evading judicial review.[16] *Demetria v. Alba* added the following related reason:

> But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future.[17]

The interrelated assignment of errors converged on the propriety, under the premises, of the consolidation of SB-10-CRM-0099 with SB-10-CRM-0098.

Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously while providing justice to the parties.[18] Toward this end, consolidation and a single trial of several cases in the court's docket or consolidation of issues within those cases are permitted by the rules.

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[15] *Integrated Bar of the Philippines v. Atienza*, G.R. No. 175241, February 24, 2010, 613 SCRA 518, 523.

[16] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, *etc.*, May 3, 2006, 489 SCRA 160, 215 (citations omitted); *Acop v. Guingona, Jr.*, G.R. No. 134855, July 2, 2002, 383 SCRA 577.

[17] No. 71977, February 27, 1987, 148 SCRA 208, 212-213.

[18] *Republic v. Sandiganbayan (Fourth Division)*, G.R. No. 152375, December 13, 2011, 662 SCRA 152, 190; citing Wright and Miller, *Federal Practice and Procedure*, Civil 2d Sec. 2381, p. 427.

As held in *Republic v. Sandiganbayan (Fourth Division)*, citing American jurisprudence, the term "consolidation" is used in three (3) different senses or concepts, thus:

> (1) Where all except one of several actions are stayed until one is tried, in which case the judgment [in one] trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (*quasi consolidation*)
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> (2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*)
>
> (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (*consolidation for trial*)[19] (citations and emphasis omitted; italicization in the original.)

To be sure, consolidation, as taken in the above senses, is allowed, as Rule 31 of the Rules of Court is entitled "Consolidation or Severance." And Sec. 1 of Rule 31 provides:

> Section 1. *Consolidation.* – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The counterpart, but narrowed, rule for criminal cases is found in Sec. 22, Rule 119 of the Rules of Court stating:

> Sec. 22. *Consolidation of trials of related offenses.* – Charges for offenses founded on the same facts or forming part of a series of offenses of similar character **may be tried jointly** at the discretion of the court. (Emphasis added.)

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[19] *Id.* at 191-192.

as complemented by Rule XII, Sec. 2 of the Sandiganbayan Revised Internal Rules which states:

> Section 2. *Consolidation of Cases*. — Cases arising from the same incident or series of incidents, or involving common questions of fact and law, may be consolidated in the Division to which the case bearing the lowest docket number is raffled.

Whether as a procedural tool to aid the court in dispatching its official business in criminal or civil cases, the rule allowing consolidation—in whatsoever sense it is taken, be it as a merger of several causes of actions/cases, in the sense of actual consolidation, or merely joint trial—is designed, among other reasons, to avoid multiplicity of suits, guard against oppression and abuse, attain justice with the least expense and vexation to the litigants.[20]

While the assailed resolution is silent as to the resultant effect/s of the consolidation it approved, there is nothing in the records to show that what the prosecution vied for and what the Fifth Division approved went beyond consolidation for trial or joint trial. This conclusion may be deduced from the underscored portion of the following excerpts of the resolution in question, thus:

> In its reply, the prosecution asserted that the rationale behind consolidation of cases is to promote expeditious and less expensive resolution of a controversy than if they **were heard independently and separately**. It is claimed that the [OMB] and [DOJ] have already requested the participation in the hearing of these cases of the ZTE executives, which will entail huge expenses if they will be **presented separately for each case**. x x x
>
> We agree with the prosecution.[21] (Emphasis added.)

Not to be overlooked is the fact that the prosecution anchored its motion for consolidation partly on the aforequoted Sec. 22 of Rule 119 which indubitably speaks of a joint trial.

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[20] *Palanca v. Querubin*, Nos. L-29510-31, November 29, 1969, 30 SCRA 738, 745.

[21] *Rollo*, p. 42.

Given the above perspective, petitioner should now disabuse himself of the unfounded notion that what the Fifth Division intended was a fusion into one criminal proceedings of the *Abalos* and *Neri* cases, where one is unidentifiable from the other, or worse, where he will be tried as co-accused in the *Abalos* case.

This thus brings us to the question of whether a consolidation of trial, under the factual and legal milieu it was ordered, is proper.

Jurisprudence has laid down the requisites for consolidation of trial. As held in *Caños v. Peralta*,[22] joint trial is permissible "where the [actions] arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties." More elaborately, joint trial is proper

> where the offenses charged are similar, related, or connected, or are of the same or similar character or class, or involve or arose out of the same or related or connected acts, occurrences, transactions, series of events, or chain of circumstances, or are based on acts or transactions constituting parts of a common scheme or plan, or are of the same pattern and committed in the same manner, or where there is a common element of substantial importance in their commission, or where the same, or much the same, evidence will be competent and admissible or required in their prosecution, and if not joined for trial the repetition or reproduction of substantially the same testimony will be required on each trial.[23]

In terms of its effects on the prompt disposition of cases, consolidation could cut both ways. It may expedite trial or it could cause delays. Cognizant of this dichotomy, the Court, in *Dacanay v. People*,[24] stated the dictum that "the resulting inconvenience and expense on the part of the government cannot not be given preference over the right to a speedy trial and the

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[22] 201 Phil. 422, 426 (1982); cited in *People v. Sandiganbayan*, G.R. No. 149495, August 21, 2003, 409 SCRA 419, 424.

[23] *Caños v. Peralta*, *id.* at 440.

[24] G.R. No. 101302, January 25, 1995, 240 SCRA 490, 493.

protection of a person's life, liberty or property." Indeed, the right to a speedy resolution of cases can also be affected by consolidation. As we intoned in *People v. Sandiganbayan*, a case involving the denial by the anti-graft court of the prosecution's motion to consolidate a criminal case for indirect bribery with another case for plunder, consolidation should be refused if it will unduly expose a party, private respondent in that instance, to totally unrelated testimonies, delay the resolution of the indirect bribery case, muddle the issues, and expose him to the inconveniences of a lengthy and complicated legal battle in the plunder case. Consolidation, the Court added, has also been rendered inadvisable by supervening events—in particular, if the testimonies sought to be introduced in the joint trial had already been heard in the earlier case.[25]

So it must be here.

Criminal prosecutions primarily revolve around proving beyond reasonable doubt the existence of the elements of the crime charged. As such, they mainly involve questions of fact. There is a question of fact when the doubt or difference arises from the truth or the falsity of the allegations of facts. Put a bit differently, it exists when the doubt or difference arises as to the truth or falsehood of facts or when the inquiry invites calibration of the whole gamut of evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[26]

Since conviction or acquittal in a criminal case hinges heavily on proof that the overt acts constituting, or the elements, of the crime were indeed committed or are present, allegations in the information are crucial to the success or failure of a criminal prosecution. It is for this reason that the information is considered the battle ground in criminal prosecutions. As stressed in *Matrido v. People*:

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[25] *Supra* note 22, at 425-426.

[26] *Santos v. Committee on Claims Settlement*, G.R. No. 158071, April 2, 2009, 583 SCRA 152, 159-160.

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit the crime given in the law in some technical and specific name, but **did he perform the acts alleged in the body of the information in the manner therein set forth**.[27] (Emphasis supplied.)

The overt acts ascribed to the two accused which formed the basis of their indictments under the separate criminal charge sheets can be summarized as follows:

People v. Neri (For Violation of Section 3[h] RA 3019)[28]

1. Directly or indirectly having financial or pecuniary interest in the business transaction between the Government of the Republic of the Philippines (GRP) and ZTE for the implementation of the NBN Project, which requires the review, consideration and approval by the accused, as then NEDA Director General;
2. Meeting, having lunch and playing golf with representatives and/or officials of the ZTE;
3. Meeting with then COMELEC Chairman Benjamin Abalos; and
4. Sending his emissary/representative, Engr. Rodolfo Noel Lozada, to meet Abalos and Jose de Venecia III, President/ General Manager of Amsterdam Holdings Inc. (AHI), another proponent to implement the NBN Project and discuss matters with them.

People v. Abalos (For Violation of Section 3[h], RA 3019)

1. Having financial or pecuniary interest in the business transaction between the GRP and the ZTE for the implementation of the Philippines' NBN;
2. Attending conferences, lunch meetings and golf games with said ZTE officials in China, all expenses paid by

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[27] G.R. No. 179061, July 13, 2009, 592 SCRA 534, 540.

[28] *Rollo*, pp. 49, 50.

them and socializing with them in China and whenever they were here in the Philippines;

3. Offering bribes to petitioner in the amount of PhP 200,000,000 and to Jose de Venecia III President and General Manager of AHI in the amount of USD 10,000,000, being also another proponent to implement said NBN Project of the Government; and
4. Arranging meetings with Secretary Leandro Mendoza of the Department of Transportation and Communications (DOTC).[29]

As can be gleaned from the above summary of charges, the inculpatory acts complained of, the particulars and specifications for each of the cases are dissimilar, even though they were allegedly done in connection with the negotiations for and the implementation of the NBN Project. Due to this variance, the prosecution witnesses listed in the pre-trial order in the *Neri* case are also different from the list of the people's witnesses lined up to testify in the *Abalos* case, albeit some names appear in both the pre-trial orders. This can be easily seen by a simple comparison of the list of witnesses to be presented in the cases consolidated. The witnesses common to both cases are underscored. Thus:

In *People v. Neri*, the following are named as witnesses,[30] *viz*:

1. Benjamin Abalos
2. Jose de Venecia Jr.
3. Jose de Venecia III
4. Rodolfo Noel "Jun" Lozada
5. Dante Madriaga
6. Jarius Bondoc
7. Leo San Miguel
8. Sec. Margarito Teves
9. Representative of the Bureau of Immigration and Deportation;

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[29] *Id.* at 53-54.

[30] Records, Vol. 3, p. 12.

10. Employees of the Wack Wack Golf and Country Club
11. Airline Representatives (2)
12. Raquel Desiderio – DOTC, Asec. Administrative and Legal Affairs
13. Atty. Frederick Fern Belandres, DOTC
14. Atty. Geronimo Quintos
15. Nilo Colinares
16. Elmer Soneja
17. Lorenzo Formoso
18. Records Custodian, DOTC
19. Senate Secretary or any of her duly authorized representative
20. Director General of the Senate Blue Ribbon Committee or any of his duly authorized representative
21. Representative of NEDA;
22. ZTE Officials
23. Ramon Sales
24. Hon. Gloria Macapagal-Arroyo
25. Atty. Jose Miguel Arroyo
26. Others.

In *People v. Abalos*, the following are the listed witnesses,[31] to wit:

1. Atty. Oliver Lozano
2. Mr. Jose De Venecia III
3. Engr. Rodolfo Noel Lozada
4. Engr. Dante Madriaga
5. Secretary Romulo L. Neri
6. Mr. Jarius Bondoc
7. Speaker Jose De Venecia, Jr.
8. Atty. Ernesto B. Francisco
9. Congresswoman Ana Theresa H. Baraquel
10. TESDA Chairman Emmanuel Joel J. Villanueva
11. Mr. Leo San Miguel
12. Secretary Margarito Teves
13. Atty. Raquel T. Desiderio
14. Atty. Frederick Fern M. Belandres

[31] *Rollo*, pp. 125-127.

15. Atty. Geronimo V. Quintos
16. Mr. Nilo Colinares
17. Mr. Elmer A. Soneja
18. Asst. Secretary Lorenzo Formoso
19. Atty. Harry L. Roque
20. Vice-President Teofisto T. Guingona, Jr.
21. Dr. Ma. Dominga B. Padilla
22. Fr. Jose P. Dizon
23. Mr. Roel Garcia
24. Mr. Bebu Bulchand
25. Mr. Renato Constantino, Jr.
26. Mr. Ferdinand R. Gaite
27. Mr. Guillermo Cunanan
28. Mr. Amado Gat Inciong
29. Mr. Rafael V. Mariano
30. Ms. Consuelo J. Paz
31. Atty. Roberto Rafael J. Pulido
32. Antonia P. Barrios, Director III, Senate Legislative Records & Archives Services
33. The Personnel Officer, Human Resource Management Office, Commission on Elections (COMELEC)
34. Representative/s from the Wack-Wack Golf and Country Club, Mandaluyong City
35. Representative/s from the Philippine Airlines (PAL)
36. Representative/s from Cathay Pacific Airways
37. Representative/s from the Cebu Pacific Airlines
38. Representative/s from the COMELEC
39. Representative/s from the National Economic & Development Authority (NEDA)
40. Representative/s from the Board of Investments
41. Representative/s from the Department of Trade and Industry (DTI)
42. Representative/s from the Department of Foreign Affairs (DFA)
43. Representative/s from the Bureau of Immigration
44. Representative/s from the National Bureau of Investigation (NBI)
45. Representative/s from the Securities and Exchange Commission (SEC)

46. Representative/s from the National Statistics Office (NSO)
47. Representative/s from the Embassy of the People's Republic of China to the Philippines
48. Representative/s from the Central Records Division, Office of the Ombudsman
49. Representative/s from the Department of Transportation and Communications (DOTC)
50. Representative/s from the Philippine Senate

The names thus listed in the pre-trial order in the *Abalos* case do not yet include, as aptly observed by the Fourth Division in its adverted October 19, 2012 Resolution,[32] additional names allowed under a subsequent resolution. In all, a total of at least 66 warm bodies were lined up to testify for the prosecution.

It can thus be easily seen that veritably the very situation, the same mischief sought to be avoided in *People v. Sandiganbayan*[33] which justified the non-consolidation of the cases involved therein, would virtually be present should the assailed consolidation be upheld. Applying the lessons of *People v. Sandiganbayan* to the instant case, a consolidation of the *Neri* case to that of *Abalos* would expose petitioner Neri to testimonies which have no relation whatsoever in the case against him and the lengthening of the legal dispute thereby delaying the resolution of his case. And as in *People v. Sandiganbayan*, consolidation here would force petitioner to await the conclusion of testimonies against Abalos, however irrelevant or immaterial as to him (Neri) before the case against the latter may be resolved—a needless, hence, oppressive delay in the resolution of the criminal case against him.

What is more, there is a significant difference in the number of witnesses to be presented in the two cases. In fact, the number of prosecution witnesses in the *Neri* case is just half of that in *Abalos*. Awaiting the completion in due course of the presentation of the witnesses in *Abalos* would doubtless stall the disposition of the case against petitioner as there are more or less thirty-

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[32] Records, Vol. 3, pp. 182-184.

[33] *Supra* note 22.

five (35) prosecution witnesses listed in *People v. Abalos* who are not so listed in *People v. Neri*. In the concrete, this means, in the minimum, awaiting the completion of the testimonies of thirty-five (35) additional witnesses, whose testimonies are unrelated to the charges against him, before the case against petitioner may finally be disposed of, one way or another. Also, petitioner will be exposed to an extra thirty-five (35) irrelevant testimonies which even exceed those relating to his case, since the prosecution only has roughly about twenty-six (26) witnesses for his case. Further still, any delay in the presentation of any of the witnesses in *People v. Abalos* would certainly affect the speedy disposition of the case against petitioner. At the end of the day, the assailed consolidation, instead of contributing to the swift dispensation of justice and affording the parties a just, speedy and inexpensive determination of their cases, would achieve the exact opposite.

Before the Sandigabayan and this Court, petitioner has harped and rued on the possible infringement of his right to speedy trial should consolidation push through, noting in this regard that the *Neri* case is on its advanced stage but with the prosecution unable to continue further with its case after presenting six witnesses.

Petitioner's point is well-taken. In *Dacanay*, a case involving a request for separate trial instead of a joint trial, the Court upheld an accused's right to a speedy trial, guaranteed by Sec. 14 (2), Art. III of the Constitution, over the claim of the prosecution that a joint trial would make the resolution of the case less expensive.[34] In *Dacanay*, Dacanay moved for immediate and separate trial, which the People opposed on the ground that a separate trial, if approved, would entail a repetitive presentation of the same evidence instead of having to present evidence against Dacanay and his co-accused only once at the joint trial. According to the respondent therein, this will result in inconvenience and expense on the part of the Government,[35] the very same reasons

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[34] *Supra* note 24, at 493-494; see also *Mari v. Gonzales*, G.R. No. 187728, September 12, 2011, 657 SCRA 414, 423-426.

[35] *Dacanay*, *id.* at 493.

given by the prosecution in the case at hand. There, as later in *People v. Sandiganbayan*,[36] We held that the rights of an accused take precedence over minimizing the cost incidental to the resolution of the controversies in question.

Clearly then, consolidation, assuming it to be proper owing to the existence of the element of commonality of the lineage of the offenses charged contemplated in Sec. 22 of Rule 119, should be ordered to achieve all the objects and purposes underlying the rule on consolidation, foremost of which, to stress, is the swift dispensation of justice with the least expense and vexation to the parties. It should, however, be denied if it subverts any of the aims of consolidation. And *Dacanay* and *People v. Sandiganbayan* are one in saying, albeit implicitly, that ordering consolidation—likely to delay the resolution of one of the cases, expose a party to the rigors of a lengthy litigation and in the process undermine the accused's right to speedy disposition of cases—constitutes grave abuse of discretion. Not lost on the Court of course and certainly not on the Sandiganbayan's Fourth Division is the resulting absurdity arising from the consolidation of trial where the accused (Neri) in one case would be the prosecution's main witness in the other case.

WHEREFORE, premises considered, the assailed Resolution of the Sandiganbayan Fifth Division dated February 3, 2012 in Criminal Case No. SB-10-CRM-0099 and its Resolution dated April 26, 2012 are hereby **REVERSED** and **SET ASIDE**. Let Criminal Case No. SB-10-CRM-0098 and Criminal Case No. SB-10-CRM-0099 proceed independently and be resolved with dispatch by the Divisions of the Sandiganbayan to which each was originally raffled.

No pronouncement as to costs.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.*, concur.

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[36] *Supra* note 22, at 425.

SECOND DIVISION

[G.R. No. 207412. August 7, 2013]

FLORD NICSON CALAWAG, *petitioner, vs.* **UNIVERSITY OF THE PHILIPPINES VISAYAS and DEAN CARLOS C. BAYLON,** *respondents.*

[G.R. No. 207542. August 7, 2013]

MICAH P. ESPIA, JOSE MARIE F. NASALGA and CHE CHE B. SALCEPUEDES, *petitioners, vs.* **DR. CARLOS C. BAYLON, DR. MINDA J. FORMACION and DR. EMERLINDA ROMAN (to be substituted by Alfredo E. Pascual, being the new UP President), University of the Philippines Board of Regents,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY MANDATORY INJUNCTION; REQUISITES. — "To be entitled to a writ of preliminary injunction, x x x the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage. Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of a writ of preliminary mandatory injunction [presents a fourth requirement: it] is justified only in a clear case, free from doubt or dispute. When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper."

2. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; DOCTRINE OF NECESSARY IMPLICATION; APPLIED IN CASE AT BAR. — By necessary implication, the dean's power to approve includes the power to disapprove the composition of a thesis committee. Thus,

under the UP System's faculty manual, the dean has complete discretion in approving or disapproving the composition of a thesis committee. Harmonizing this provision with the Graduate Program Manual of UP Visayas, and the Guidelines for the Master of Science in Fisheries Program, we agree with the CA's interpretation that the thesis committee's composition needs the approval of the dean after the students have complied with the requisites provided in Article 51 of the Graduate Program Manual and Section IX of the Guidelines for the Master of Science in Fisheries Program.

3. **POLITICAL LAW; EDUCATION; ACADEMIC FREEDOM; GIVES THE INSTITUTIONS OF HIGHER LEARNING THE PREROGATIVE TO ESTABLISH REQUIREMENTS FOR GRADUATION.—** [T]he academic freedom accorded to institutions of higher learning gives them the right to decide for themselves their aims and objectives and how best to attain them. They are given the exclusive discretion to determine who can and cannot study in them, as well as to whom they can confer the honor and distinction of being their graduates. This necessarily includes the prerogative to establish requirements for graduation, such as the completion of a thesis, and the manner by which this shall be accomplished by their students. The courts may not interfere with their exercise of discretion unless there is a clear showing that they have arbitrarily and capriciously exercised their judgment.

4. **ID.; ID.; RIGHT TO EDUCATION; NOT ABSOLUTE.—** [T]he right to education invoked by Calawag cannot be made the basis for issuing a writ of preliminary mandatory injunction. In *Department of Education, Culture and Sports v. San Diego*, we held that the right to education is not absolute. Section 5(e), Article XIV of the Constitution provides that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements." The thesis requirement and the compliance with the procedures leading to it, are part of the reasonable academic requirements a person desiring to complete a course of study would have to comply with.

APPEARANCES OF COUNSEL

Michael Vernon Guerrero for Flord Nicson Calawag.
Rean S. Sy and Levi C. Simora for Micah P. Espia, *et al.*
UPV Legal Office for respondents.

R E S O L U T I O N

BRION, *J.*:

This case involves the consolidated petitions of petitioner Flord Nicson Calawag in G.R. No. 207412 and petitioners Micah P. Espia, Jose Marie F. Nasalga and Che Che B. Salcepuedes in G.R. No. 207542 (*hereinafter collectively known as petitioners*), both assailing the decision[1] dated August 9, 2012 of the Court of Appeals (*CA*) in CA-G.R. CEB-SP No. 05079. The CA annulled the Order[2] of the Regional Trial Court (*RTC*) of Guimbal, Iloilo, Branch 67, granting a writ of preliminary mandatory injunction against respondent Dean Carlos Baylon of the University of the Philippines Visayas (*UP Visayas*).

The petitioners enrolled in the Master of Science in Fisheries Biology at UP Visayas under a scholarship from the Department of Science and Technology-Philippine Council for Aquatic and Marine Research and Development. They finished their first year of study with good grades, and thus were eligible to start their thesis in the first semester of their second year. The petitioners then enrolled in the thesis program, drafted their tentative thesis titles, and obtained the consent of Dr. Rex Baleña to be their thesis adviser, as well as the other faculty members' consent to constitute their respective thesis committees. These details were enclosed in the letters the petitioners sent to Dean Baylon, asking him to approve the composition of their thesis committees. The letter contained the thesis committee members

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[1] *Rollo*, G.R. No. 207412, pp. 83-95; penned by Associate Justice Ramon Paul L. Hernando, and concurred in by Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles.

[2] *Id.* at 60-62; penned by Judge Domingo D. Diamante.

and the thesis adviser's approval of their titles, as well as the approval of Professor Roman Sanares, the director of the Institute of Marine Fisheries and Oceanology.

Upon receipt of the petitioners' letters, Dean Baylon wrote a series of memos addressed to Professor Sanares, questioning the propriety of the thesis topics with the college's graduate degree program. He subsequently disapproved the composition of the petitioners' thesis committees and their tentative thesis topics. According to Dean Baylon, the petitioners' thesis titles connote a historical and social dimension study which is not appropriate for the petitioners' chosen master's degrees. Dean Baylon thereafter ordered the petitioners to submit a two-page proposal containing an outline of their tentative thesis titles, and informed them that he is forming an *ad hoc* committee that would take over the role of the adviser and of the thesis committees.

The petitioners thus filed a petition for *certiorari* and *mandamus* before the RTC, asking it to order Dean Baylon to approve and constitute the petitioners' thesis committees and approve their thesis titles. They also asked that the RTC issue a writ of preliminary mandatory injunction against Dean Baylon, and order him to perform such acts while the suit was pending.

The RTC granted a writ of preliminary mandatory injunction, which Dean Baylon allegedly refused to follow. UP Visayas eventually assailed this order before the CA through a Rule 65 petition for *certiorari*, with prayer for a temporary restraining order (*TRO*).

The CA's Ruling

The CA issued a TRO against the implementation of the RTC's order, holding that the petitioners had no clear right to compel Dean Baylon to approve the composition of their thesis committees as a matter of course. As the college dean, Dean Baylon exercises supervisory authority in all academic matters affecting the college. According to the CA, the petitioners' reliance on Article 51 of the Graduate Program Manual of UP Visayas is misplaced. Article 51 provides:

Art. 51. The composition of the thesis committee shall be approved by the dean of the college/school upon the recommendation of the chairperson of the major department/division/institute. The GPO shall be informed of the composition of the thesis committee and/or any change thereof.[3]

Despite the mandatory language provided for composing the thesis committee under Article 51 of the Graduate Program Manual of UP Visayas, the CA construed it to mean that the Dean's approval is necessary prior to the composition of a thesis committee.

Lastly, the CA held that the case presents issues that are purely academic in character, which are outside the court's jurisdiction. It also noted that Dean Baylon has been accommodating of the petitioners, and that the requirements he imposed were meant to assist them to formulate a proper thesis title and graduate on time.

The Petitions for Review on *Certiorari*

In G.R. No. 207412, Calawag argues that the CA's decision should be set aside for the following reasons:

First, Calawag was entitled to the injunction prayed for, as he has clear rights under the law which were violated by Dean Baylon's actions. These are the right to education, the right to due process, and the right to equal protection under the law. According to Calawag, Dean Baylon violated his right to due process when he added to and changed the requirements for the constitution of his thesis committee, without prior publication of the change in rules. Calawag's right to equal protection of the law, on the other hand, was allegedly violated because only students like him, who chose Dr. Baleña for their thesis adviser, were subjected to the additional requirements imposed by the dean, while the other students' thesis committees were formed without these impositions. Hence, Calawag and the three other petitioners in G.R. No. 207542 were unduly discriminated against.

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[3] *Id.* at 28.

Second, a reading of Executive Order No. 628, s. 1980,[4] and Republic Act No. 9500[5] shows that the college dean's functions are merely administrative, and, hence, the CA erred in its construction of Article 51 of the Graduate Program Manual of UP Visayas, as well as its proclamation that the college dean has supervisory authority over academic matters in the college.

On the other hand, in G.R. No. 207542, petitioners Espia, Nasalga and Salcepuedes argue that the CA's decision should be set aside for the following reasons:

First, the Graduate Program Manual of UP Visayas and the Guidelines for the Master of Science in Fisheries Program are clear in providing that Dean Baylon has a formal duty to approve the composition of the petitioners' thesis committees upon the latter's compliance with several requirements. Thus, when the petitioners complied with these requirements and Dean Baylon still refused to approve the composition of their thesis committees, the petitioners had a right to have him compelled to perform his duty.

Second, Dean Baylon cannot arbitrarily change and alter the manual and the guidelines, and cannot use academic freedom as subterfuge for not performing his duties.

Third, the thesis adviser and the thesis committees, in consultations with the students, have the right to choose the thesis topics, and not the dean.

The Court's Ruling

Having reviewed the arguments presented by the petitioners and the records they have attached to the petitions, we find that the CA did not commit an error in judgment in setting aside the preliminary mandatory injunction that the RTC issued against Dean Baylon. Thus, there could be no basis for the Court's exercise of its discretionary power to review the CA's decision.

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[4] Creating a University of the Philippines in the Visayas as an Autonomous Member of the University of the Philippines System.

[5] University of the Philippines Charter of 2008.

"To be entitled to a writ of preliminary injunction, x x x the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage. Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of a writ of preliminary mandatory injunction [presents a fourth requirement: it] is justified only in a clear case, free from doubt or dispute. When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper."[6]

The CA did not err in ruling that the petitioners failed to show a clear and unmistakable right that needs the protection of a preliminary mandatory injunction. We support the CA's conclusion that the dean has the discretion to approve or disapprove the composition of a thesis committee, and, hence, the petitioners had no right for an automatic approval and composition of their thesis committees.

Calawag's citation of Executive Order No. 628, s. 1980 and Republic Act No. 9500 to show that the dean of a college exercises only administrative functions and, hence, has no ascendancy over the college's academic matters, has no legal ground to stand on. Neither law provides or supports such conclusion, as neither specifies the role and responsibilities of a college dean. The functions and duties of a college dean are outlined in the university's Faculty Manual, which details the rules and regulations governing the university's administration. Section 11.8.2, paragraph b of the Faculty Manual enumerates the powers and responsibilities of a college dean, which include the power to approve the composition of a thesis committee, to wit:

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[6] *China Banking Corporation v. Co*, G.R. No. 174569, September 17, 2008, 565 SCRA 600, 606-607, citing *Gateway Electronics Corporation v. Land Bank of the Philippines*, G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 462; citations omitted, italics supplied.

11.8.2 Administration

x x x x x x x x x

b. Dean/Director of UP System or UP Diliman-based Programs *

The Dean/Director shall be responsible for the planning and implementation of the graduate programs. In particular, the ***Dean/ Director shall exercise the following powers*** and responsibilities based on the recommendations forwarded to him/her, through channels:

x x x x x x x x x

- ***Approve the composition of the Thesis, Dissertation or Special Project** Committees*** and Master's or doctoral examination/oral defense panel for each student[.][7] (emphases and italics ours)

By necessary implication,[8] the dean's power to approve includes the power to disapprove the composition of a thesis committee. Thus, under the UP System's faculty manual, the dean has complete discretion in approving or disapproving the composition of a thesis committee. Harmonizing this provision with the Graduate Program Manual of UP Visayas, and the Guidelines for the Master of Science in Fisheries Program, we agree with the CA's interpretation that the thesis committee's composition needs the approval of the dean after the students have complied with the requisites provided in Article 51 of the Graduate Program Manual and Section IX of the Guidelines for the Master of Science in Fisheries Program.[9]

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[7] University of the Philippines Faculty Manual, p. 254.

[8] The Court has, in several instances, used the doctrine of necessary implication to hold that a statutory provision of the power to approve necessarily implies the power to disapprove or revoke the subject matter of that power. See for instance *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, July 5, 2011, 653 SCRA 154; *Atienza v. Villarosa*, G.R. No. 161081, May 10, 2005, 458 SCRA 385; *Chua v. Civil Service Commission*, G.R. No. 88979, February 7, 1992, 206 SCRA 65; and *Gordon v. Veridiano II*, No. 55230, November 8, 1988, 167 SCRA 51.

[9] IX. THESIS REQUIREMENT

Anent the petitioners' argument that Dean Baylon acted arbitrarily in imposing additional requirements for the composition of the thesis committee, which according to Calawag violated their right to due process, we hold that the dean's authority to approve or disapprove the composition of a thesis committee includes this discretion. We also note the CA's finding that these additional requirements were meant to assist the petitioners in formulating a thesis title that is in line with the college's master of fisheries program. Absent any finding of grave abuse of discretion, we cannot interfere with the exercise of the dean's prerogative without encroaching on the college's academic freedom.

Verily, the academic freedom accorded to institutions of higher learning gives them the right to decide for themselves their aims and objectives and how best to attain them.[10] They are given the exclusive discretion to determine who can and cannot study in them, as well as to whom they can confer the honor and distinction of being their graduates.[11] This necessarily includes the prerogative to establish requirements for graduation, such as the completion of a thesis, and the manner by which this

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A student shall be allowed to enrol in Fisheries 300 (Masteral Thesis) upon completing the academic course requirements with a GWA of 2.00 or better. The student's thesis committee shall be composed of the thesis adviser who shall act as Chairman of the Committee, and two other members. The Thesis Adviser must have published as a senior author at least one (1) scientific article in a journal listed in Current Contents of the Institute of Scientific Information x x x. The faculty serving as Committee Members may or may not have a publication in a current contents-covered journal. The student shall select from a list of advisers who shall come from the home Institute of the student. At least one (1) of the two (2) other members must also come from the same Institute.

The student can proceed to actual thesis work only after defending his Thesis Proposal in a Preliminary Oral Examination.

[10] *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 943 (1975).

[11] *University of the Philippines Board of Regents v. Court of Appeals*, G.R. No. 134625, August 31, 1999, 313 SCRA 404, 423, citing *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, No. L-40779, November 28, 1975, 68 SCRA 277.

shall be accomplished by their students. The courts may not interfere with their exercise of discretion unless there is a clear showing that they have arbitrarily and capriciously exercised their judgment.[12]

Lastly, the right to education invoked by Calawag cannot be made the basis for issuing a writ of preliminary mandatory injunction. In *Department of Education, Culture and Sports v. San Diego*,[13] we held that the right to education is not absolute. Section 5(e), Article XIV of the Constitution provides that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements." The thesis requirement and the compliance with the procedures leading to it, are part of the reasonable academic requirements a person desiring to complete a course of study would have to comply with.

WHEREFORE, the Court resolves to **DENY** giving due course to the petitions in G.R. No. 207412 and G.R. No. 207542.

SO ORDERED.

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

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[12] *Morales v. Board of Regents of the University of the Philippines*, G.R. No. 161172, December 13, 2004, 446 SCRA 227, 229, citing *University of San Carlos v. Court of Appeals*, G.R. No. 79237, October 18, 1988, 166 SCRA 570, 574.

[13] G.R. No. 89572, December 21, 1989, 180 SCRA 533.

THIRD DIVISION

[G.R. No. 174287. August 12, 2013]

NATIONAL UNION OF BANK EMPLOYEES (NUBE), *petitioner, vs.* **PHILNABANK EMPLOYEES ASSOCIATION (PEMA) and PHILIPPINE NATIONAL BANK,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE AND BINDING ON THE PARTIES AND ARE NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS. — Whether there was a valid disaffiliation is a factual issue. It is elementary that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. As a general rule, We are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, except: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (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 CA are premised on the supposed absence of evidence and contradicted by the evidence on record. The Court finds no cogent reason to apply these recognized exceptions.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ORGANIZATIONS; DISAFFILIATION; A LOCAL UNION HAS THE RIGHT TO DISAFFILIATE FROM ITS MOTHER UNION, UNLESS FORBIDDEN UNDER THE LATTER'S CONSTITUTION AND BY-LAWS. — The right of the local union to exercise the right to disaffiliate from its mother union is well settled in this jurisdiction. x x x [T]he right of the local members to withdraw from the federation and to form a new local union depends upon the provisions of the union's constitution, by-laws and charter and, in the absence of enforceable provisions in the federation's constitution preventing disaffiliation of a local union, a local may sever its relationship with its parent. In the case at bar, there is nothing shown in the records nor is it claimed by NUBE that PEMA was expressly forbidden to disaffiliate from the federation nor were there any conditions imposed for a valid breakaway. This being so, PEMA is not precluded to disaffiliate from NUBE after acquiring the status of an independent labor organization duly registered before the DOLE.

3. ID.; ID.; ID.; ID; ID.; ID.; EFFECTS IN CASE AT BAR. — Consequently, by PEMA's valid disaffiliation from NUBE, the vinculum that previously bound the two entities was completely severed. As NUBE was divested of any and all power to act in representation of PEMA, any act performed by the former that affects the interests and affairs of the latter, including the supposed expulsion of Serrana, *et al.*, is rendered without force and effect. Also, in effect, NUBE loses its right to collect all union dues held in its trust by PNB. The moment that PEMA separated from and left NUBE and exists as an independent labor organization with a certificate of registration, the former is no longer obliged to pay dues and assessments to the latter; naturally, there would be no longer any reason or occasion for PNB to continue making deductions.

APPEARANCES OF COUNSEL

Jonathan P. Sale for petitioner.
Remigio D. Saladero, Jr. for PEMA.
Marino M. Buban, Jr. for PNB.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the May 22, 2006 Decision[1] and August 17, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 84606, which reversed the May 27, 2004 Decision[3] of the Secretary of Labor and Employment acting as voluntary arbitrator, the dispositive portion of which states:

> **WHEREFORE**, in light of the foregoing findings, the Bank is hereby **ORDERED** to release all union dues withheld and to continue remitting to NUBE-PNB chapter the members' obligations under the CBA, **LESS** the amount corresponding to the number of non-union members including those who participated in the unsuccessful withdrawal of membership from their mother union.
>
> The parties are enjoined to faithfully comply with the above-mentioned resolution.
>
> With respect to the **URGENT MOTION FOR INTERVENTION** filed by PEMA, the same is hereby denied without prejudice to the rights of its members to bring an action to protect such rights if deemed necessary at the opportune time.
>
> **SO ORDERED**.[4]

We state the facts.

Respondent Philippine National Bank (PNB) used to be a government-owned and controlled banking institution established under Public Act 2612, as amended by Executive Order No. 80 dated December 3, 1986 (otherwise known as *The 1986 Revised*

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[1] Penned by Associate Justice Mario L. Guarina III, with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring; *rollo*, pp. 59-68.

[2] *Rollo*, p. 57.

[3] *Id.* at 70-78.

[4] *Id.* at 78. (Emphasis in the original)

Charter of the Philippine National Bank). Its rank-and-file employees, being government personnel, were represented for collective negotiation by the Philnabank Employees Association (PEMA), a public sector union.

In 1996, the Securities and Exchange Commission approved PNB's new Articles of Incorporation and By-laws and its changed status as a private corporation. PEMA affiliated with petitioner National Union of Bank Employees (NUBE), which is a labor federation composed of unions in the banking industry, adopting the name NUBE-PNB Employees Chapter (NUBE-PEC).

Later, NUBE-PEC was certified as the sole and exclusive bargaining agent of the PNB rank-and-file employees. A collective bargaining agreement (CBA) was subsequently signed between NUBE-PEC and PNB covering the period of January 1, 1997 to December 31, 2001.

Pursuant to Article V on Check-off and Agency Fees of the CBA, PNB shall deduct the monthly membership fee and other assessments imposed by the union from the salary of each union member, and agency fee (equivalent to the monthly membership dues) from the salary of the rank-and-file employees within the bargaining unit who are not union members. Moreover, during the effectivity of the CBA, NUBE, being the Federation union, agreed that PNB shall remit ₱15.00 of the ₱65.00 union dues per month collected by PNB from every employee, and that PNB shall directly credit the amount to NUBE's current account with PNB.[5]

Following the expiration of the CBA, the Philnabank Employees Association-FFW (PEMA-FFW) filed on January 2, 2002 a petition for certification election among the rank-and-file employees of PNB. The petition sought the conduct of a certification election to be participated in by PEMA-FFW and NUBE-PEC.

While the petition for certification election was still pending, two significant events transpired — the independent union registration of NUBE-PEC and its disaffiliation with NUBE.

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[5] CA *rollo*, pp. 45-46.

With a legal personality derived only from a charter issued by NUBE, NUBE-PEC, under the leadership of Mariano Soria, decided to apply for a separate registration with the Department of Labor and Employment (DOLE). On March 25, 2002, it was registered as an independent labor organization under Registration Certificate No. NCR-UR-3-3790-2002.

Thereafter, on June 20, 2003, the Board of Directors of NUBE-PEC adopted a Resolution[6] disaffiliating itself from NUBE. Cited as reasons were as follows:

x x x x x x x x x

WHEREAS, in the long period of time that the Union has been affiliated with NUBE, the latter has miserably failed to extend and provide satisfactory services and support to the former in the form of legal services, training assistance, educational seminars, and the like;

WHEREAS, this failure by NUBE to provide adequate essential services and support to union members have caused the latter to be resentful to NUBE and to demand for the Union's disaffiliation from the former[;]

WHEREAS, just recently, NUBE displayed its lack of regard for the interests and aspirations of the union members by blocking the latter's desire for the early commencement of CBA negotiations with the PNB management[;]

WHEREAS, this strained relationship between NUBE and the Union is no longer conducive to a fruitful partnership between them and could even threaten industrial peace between the Union and the management of PNB.

WHEREAS, under the circumstances, the current officers of the Union have no choice but to listen to the clamor of the overwhelming majority of union members for the Union to disaffiliate from NUBE.[7]

The duly notarized Resolution was signed by Edgardo B. Serrana (President), Rico B. Roma (Vice-President), Rachel

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[6] *Id.* at 29-31.

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

C. Latorre (Secretary), Valeriana S. Garcia (Director/Acting Treasurer), Ruben C. Medrano (Director), and Verlo C. Magtibay (Director). It is claimed that said Resolution was overwhelmingly ratified by about eighty-one percent (81%) of the total union membership.

On June 25, 2003, NUBE-PEC filed a Manifestation and Motion[8] before the Med-Arbitration Unit of DOLE, praying that, in view of its independent registration as a labor union and disaffiliation from NUBE, its name as appearing in the official ballots of the certification election be changed to "Philnabank Employees Association (PEMA)" or, in the alternative, both parties be allowed to use the name "PEMA" but with PEMA-FFW and NUBE-PEC be denominated as "PEMA-Bustria Group" and "PEMA-Serrana Group," respectively.

On the same date, PEMA sent a letter to the PNB management informing its disaffiliation from NUBE and requesting to stop, effective immediately, the check-off of the ₱15.00 due for NUBE.[9]

Acting thereon, on July 4, 2003, PNB informed NUBE of PEMA's letter and its decision to continue the deduction of the ₱15.00 fees, but stop its remittance to NUBE effective July 2003. PNB also notified NUBE that the amounts collected would be held in a trust account pending the resolution of the issue on PEMA's disaffiliation.[10]

On July 11, 2003, NUBE replied that: it remains as the exclusive bargaining representative of the PNB rank-and-file employees; by signing the Resolution (on disaffiliation), the chapter officers have abandoned NUBE-PEC and joined another union; in abandoning NUBE-PEC, the chapter officers have abdicated their respective positions and resigned as such; in joining another union, the chapter officers committed an act of disloyalty to NUBE-PEC and the general membership; the circumstances clearly show that there is an emergency in NUBE-

[8] *Id.* at 32-37.

[9] *Id.* at 63-65.

[10] *Id.* at 66-68; 81.

PEC necessitating its placement under temporary trusteeship; and that PNB should cease and desist from dealing with Serrana, Roma, Latorre, Garcia, Medrano, and Magtibay, who are expelled from NUBE-PEC.[11] With regard to the issue of non-remittance of the union dues, NUBE enjoined PNB to comply with the union check-off provision of the CBA; otherwise, it would elevate the matter to the grievance machinery in accordance with the CBA.

Despite NUBE's response, PNB stood firm on its decision. Alleging unfair labor practice (ULP) for non-implementation of the grievance machinery and procedure, NUBE brought the matter to the National Conciliation and Mediation Board (NCMB) for preventive mediation.[12] In time, PNB and NUBE agreed to refer the case to the Office of the DOLE Secretary for voluntary arbitration. They executed a Submission Agreement on October 28, 2003.[13]

Meantime, the DOLE denied PEMA's motion to change its name in the official ballots. The certification election was finally held on October 17, 2003. The election yielded the following results:

Number of eligible voters	3,742
Number of valid votes cast	2,993
Number of spoiled ballots	72
Total	3,065
Philnabank Employees Association-FFW	289
National Union of Bank Employees (NUBE)-Philippine National Bank (PNB) Chapter	2,683
No Union	21
Total	2,993[14]

On April 28, 2004, PEMA filed before the voluntary arbitrator an Urgent Motion for Intervention,[15] alleging that it stands to

[11] *Id.* at 69-72; 82-83.

[12] *Id.* at 48.

[13] *Id.* at 48; 76.

[14] *Id.* at 38-41.

[15] *Id.* at 42-44.

be substantially affected by whatever judgment that may be issued, because one of the issues for resolution is the validity of its disaffiliation from NUBE. It further claimed that its presence is necessary so that a complete relief may be accorded to the parties. Only NUBE opposed the motion, arguing that PEMA has no legal personality to intervene, as it is not a party to the existing CBA; and that NUBE is the exclusive bargaining representative of the PNB rank-and-file employees and, in dealing with a union other than NUBE, PNB is violating the duty to bargain collectively, which is another form of ULP.[16]

Barely a month after, DOLE Acting Secretary Manuel G. Imson denied PEMA's motion for intervention and ordered PNB to release all union dues withheld and to continue remitting the same to NUBE. The May 27, 2004 Decision opined:

> Before we delve into the merits of the present dispute, it behooves [Us] to discuss in passing the propriety of the MOTION FOR INTERVENTION filed by the Philnabank Employees Association (PEMA) on April 28, 2004, the alleged [break-away] group of NUBE-PNB Chapter.
>
> A cursory reading of the motion reveals a denial thereof is not prejudicial to the individual rights of its members. They are protected by law.
>
> Coming now to the main issues of the case, suffice it to say that after an evaluative review of the record of the case, taking into consideration the arguments and evidence adduced by both parties, We find that indeed no effective disaffiliation took place.
>
> It is well settled that [l]abor unions may disaffiliate from their mother federations to form a local or independent union only during the 60-day freedom period immediately preceding the expiration of the CBA. [*Tanduay Distillery Labor Union v. National Labor Relations Commission, et al.*] However, such disaffiliation must be effected by a majority of the members in the bargaining unit. (*Volkschel Labor Union v. Bureau of Labor Relations*).
>
> Applying the foregoing jurisprudence to the case at bar, it is difficult to believe that a justified disaffiliation took place. While

[16] *Id.* at 48; 96-97.

the record apparently shows that attempts at disaffiliation occurred sometime in June of 2003 x x x the latest result of a certification election dated 17 October 2003 mooted such disaffiliation.

Further, even if for the sake of argument an attempt at disaffiliation occurred, the record is bereft of substantial evidence to support a finding of effective disaffiliation. There might have been a mass withdrawal of the union members from the NUBE-PNB Chapter. The record shows, however, that only 289 out of 3,742 members shifted their allegiance from the mother union. Hence, they constituted a small minority for which reason they could not have successfully severed the local union's affiliation with NUBE.

Thus, since only a minority of the members wanted disaffiliation as shown by the certification election, it can be inferred that the majority of the members wanted the union to remain an affiliate of the NUBE. [*Villar, et al. v. Inciong, et al.*]. There being no justified disaffiliation that took place, the bargaining agent's right under the provision of the CBA on Check-Off is unaffected and still remained with the old NUBE-PNB Chapter. x x x

While it is true that the obligation of an employee to pay union dues is co-terminus with his affiliation [*Philippine Federation of Petroleum Workers v. CIR*], it is equally tenable that when it is shown, as in this case, that the withdrawal from the mother union is not supported by majority of the members, the disaffiliation is unjustified and the disaffiliated minority group has no authority to represent the employees of the bargaining unit. This is the import of the principle laid down in [*Volkschel Labor Union v. Bureau of Labor Relations supra*] and the inverse application of the Supreme Court decision in [*Philippine Federation of Petroleum Workers v. CIR*] regarding entitlement to the check-off provision of the CBA.

As a necessary consequence to our finding that no valid disaffiliation took place, the right of NUBE to represent its local chapter at the PNB, less those employees who are no longer members of the latter, is beyond reproach.

However, the Bank cannot be faulted for not releasing union dues to NUBE at the time when representation status issue was still being threshed out by proper governmental authority. Prudence dictates the discontinuance of remittance of union dues to NUBE under such circumstances was a legitimate exercise of management discretion apparently in order to protect the Bank's business interest. The

suspension of the check-off provision of the CBA, at the instance of the latter made in good faith, under the present circumstances cannot give rise to a right of action. For having been exercised without malice much less evil motive and for not causing actual loss to the National Union of Bank Employees (NUBE), the same act of management [cannot] be penalized.[17]

Aggrieved, PEMA filed before the CA a petition under Rule 43 of the Rules on Civil Procedure with prayer for the issuance of a temporary restraining order (TRO) or writ of preliminary injunction (WPI). On November 2, 2004, the CA denied the application for WPI.[18] PEMA's motion for reconsideration was also denied on February 24, 2005, noting PNB's manifestation that it would submit to the judgment of the CA as to which party it should remit the funds collected from the employees.[19]

On June 21, 2005, however, petitioner again filed an Urgent Motion for the Issuance of a TRO against the June 10, 2005 Resolution of DOLE Acting Secretary Imson, which ordered PNB to properly issue a check directly payable to the order of NUBE covering the withheld funds from the trust account.[20] Considering the different factual milieu, the CA resolved to grant the motion.[21]

Subsequent to the parties' submission of memoranda, the CA promulgated its May 22, 2006 Decision, declaring the validity of PEMA's disaffiliation from NUBE and directing PNB to return to the employees concerned the amounts deducted and held in trust for NUBE starting July 2003 and to stop further deductions in favor of NUBE.[22]

As to the impropriety of denying PEMA's motion for intervention, the CA noted:

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[17] *Rollo,* pp. 75-77.

[18] CA *rollo,* p. 553.

[19] *Id.* at 574.

[20] *Id.* at 583-595.

[21] *Id.* at 597-598.

[22] *Rollo,* p. 67.

x x x Among the rights of the [PEMA] as an affiliate of a federation is to disaffiliate from it. Any case in which this is an issue is then one in which the union has a significant legal interest and as to which it must be heard, irrespective of any residual rights of the members after a decision that might deny a disaffiliation. It is a *non-sequitur* to make the intervention of the union in this case dependent on the question of whether its members can pursue their own agenda under the same constraints.[23]

On the validity of PEMA's disaffiliation, the CA ratiocinated:

The power and freedom of a local union to disaffiliate from its mother union or federation is axiomatic. As *Volkschel vs. Bureau of Labor Relations* [137 SCRA 42] recognizes, a local union is, after all, a separate and voluntary association that under the constitutional guarantee of freedom of expression is free to serve the interests of its members. Such right and freedom invariably include the right to disaffiliate or declare its autonomy from the federation or mother union to which it belongs, subject to reasonable restrictions in the law or the federation's constitution. [*Malayang Samahan ng mga Manggagawa sa M. Greenfield vs. Ramos*, 326 SCRA 428]

Without any restrictive covenant between the parties, [*Volkschel Labor Union vs. Bureau of Labor Relations, supra,* at 48,] it is instructive to look into the state of the law on a union's right to disaffiliate. The voluntary arbitrator alludes to a provision in PD 1391 allowing disaffiliation only within a 60-day period preceding the expiration of the CBA. In *Alliance of Nationalist and Genuine Labor Organization vs. Samahan ng mga Manggagawang Nagkakaisa sa Manila Bay Spinning Mills, etc*. [258 SCRA 371], however, the rule was not held to be iron-clad. *Volkschel* was cited to support a more flexible view that the right may be allowed *as the circumstances warrant*. In *Associated Workers Union-PTGWO vs. National Labor Relations Commission* [188 SCRA 123], the right to disaffiliate was upheld before the onset of the freedom period when it became apparent that there was a shift of allegiance on the part of the majority of the union members.

x x x x x x x x x

As the records show, a majority, indeed a vast majority, of the members of the local union ratified the action of the board to

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[23] *Id.* at 64.

disaffiliate. Our count of the members who approved the board action is, 2,638. If we divide this by the number of eligible voters as per the certification election which is 3,742, the quotient is 70.5%, representing the proportion of the members in favor of disaffiliation. The [PEMA] says that the action was ratified by 81%. Either way, the groundswell of support for the measure was overwhelming.

The respondent NUBE has developed the ingenious theory that if the disaffiliation was approved by a majority of the members, it was neutered by the subsequent certification election in which NUBE-PNB Chapter was voted the sole and exclusive bargaining agent. It is argued that the effects of this change must be upheld as the latest expression of the will of the employees in the bargaining unit. The truth of the matter is that the names of *PEMA* and *NUBE-PNB Chapter* are names of only one entity, the two sides of the same coin. We have seen how NUBE-PNB Employees Chapter evolved into PEMA and competed with Philnabank Employees Association-FFW for supremacy in the certification election. To realize that it was PEMA which entered into the contest, we need only to remind ourselves that PEMA was the one which filed a motion in the certification election case to have its name *PEMA* put in the official ballot. DOLE insisted, however, in putting the name *NUBE-PNB Chapter* in the ballots unaware of the implications of this seemingly innocuous act.[24]

NUBE filed a motion for reconsideration, but it was denied;[25] hence, this petition raising the following issues for resolution:

I. The Secretary of Labor acted without error and without grave abuse of discretion in not giving due course to the urgent motion for intervention filed by PEMA.

II. The Secretary of Labor acted without grave abuse of discretion and without serious error in ruling that PEMA's alleged disaffiliation was invalid.

III. The Secretary of Labor did not commit serious error in ordering the release of the disputed union fees/dues to NUBE-PNB Chapter.

IV. There is no substantial basis for the issuance of a preliminary injunction or temporary restraining order.

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[24] *Id.* at 64-66.

[25] *Id.* at 57, 79-99.

V. Under the Rules of Court, the appeal/petition of PEMA should have been dismissed.

VI. PEMA and NUBE are not one and the same, and the denial by the Secretary of Labor of the motion for intervention was proper.

VII. NUBE-PNB Chapter, not PEMA, has been fighting for PNB rank- and-file interests and rights since PNB's privatization, which is further proof that NUBE-PNB Chapter and PEMA are not one and the same.

VIII. The alleged disaffiliation was not valid as proper procedure was not followed.

IX. NUBE is entitled to check-off.[26]

Stripped of the non-essential, the issue ultimately boils down on whether PEMA validly disaffiliated itself from NUBE, the resolution of which, in turn, inevitably affects the latter's right to collect the union dues held in trust by PNB.

We deny the petition.

Whether there was a valid disaffiliation is a factual issue.[27] It is elementary that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. As a general rule, We are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, except: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of

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[26] *Id.* at 291.

[27] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 663.

fact are conflicting; (6) When the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (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 CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[28] The Court finds no cogent reason to apply these recognized exceptions.

Even a second look at the records reveals that the arguments raised in the petition are bereft of merit.

The right of the local union to exercise the right to disaffiliate from its mother union is well settled in this jurisdiction. In *MSMG-UWP v. Hon. Ramos*,[29] We held:

> A local union has the right to disaffiliate from its mother union or declare its autonomy. A local union, being a separate and voluntary association, is free to serve the interests of all its members including the freedom to disaffiliate or declare its autonomy from the federation which it belongs when circumstances warrant, in accordance with the constitutional guarantee of freedom of association.
>
> The purpose of affiliation by a local union with a mother union [or] a federation
>
> "x x x is to increase by collective action the bargaining power in respect of the terms and conditions of labor. Yet the locals remained the basic units of association, free to serve their own and the common interest of all, subject to the restraints imposed by the Constitution and By-Laws of the Association, and free also to renounce the affiliation for mutual welfare upon the terms laid down in the agreement which brought it into existence."
>
> Thus, a local union which has affiliated itself with a federation is free to sever such affiliation anytime and such disaffiliation cannot

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[28] *Medina v. Court of Appeals*, G.R. No. 137582, August 29, 2012, 679 SCRA 191, 201.

[29] 383 Phil. 329 (2000).

be considered disloyalty. In the absence of specific provisions in the federation's constitution prohibiting disaffiliation or the declaration of autonomy of a local union, a local may dissociate with its parent union.[30]

Likewise, *Philippine Skylanders, Inc. v. National Labor Relations Commission*[31] restated:

The right of a local union to disaffiliate from its mother federation is not a novel thesis unillumined by case law. In the landmark case of *Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc.*, we upheld the right of local unions to separate from their mother federation on the ground that as separate and voluntary associations, local unions do not owe their creation and existence to the national federation to which they are affiliated but, instead, to the will of their members. The sole essence of affiliation is to increase, by collective action, the common bargaining power of local unions for the effective enhancement and protection of their interests. Admittedly, there are times when without succor and support local unions may find it hard, unaided by other support groups, to secure justice for themselves.

Yet the local unions remain the basic units of association, free to serve their own interests subject to the restraints imposed by the constitution and by-laws of the national federation, and free also to renounce the affiliation upon the terms laid down in the agreement which brought such affiliation into existence.

Such dictum has been punctiliously followed since then.[32]

And again, in *Coastal Subic Bay Terminal, Inc. v. Department of Labor and Employment – Office of the Secretary*,[33] this Court opined:

Under the rules implementing the Labor Code, a chartered local union acquires legal personality through the charter certificate issued

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[30] *MSMG-UWP v. Hon. Ramos, supra,* at 368-369.

[31] G.R. No. 127374 and G.R. No. 127431, January 31, 2002, 375 SCRA 369.

[32] *Philippine Skylanders, Inc. v. National Labor Relations Commission, supra,* at 375-376.

[33] 537 Phil. 459 (2006).

by a duly registered federation or national union, and reported to the Regional Office in accordance with the rules implementing the Labor Code. A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members. Mere affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency, where the former acts in representation of the latter. Hence, local unions are considered principals while the federation is deemed to be merely their agent. As such principals, the unions are entitled to exercise the rights and privileges of a legitimate labor organization, including the right to seek certification as the sole and exclusive bargaining agent in the appropriate employer unit.[34]

Finally, the recent case of *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc*[35] ruled:

x x x **[A] local union may disaffiliate at any time from its mother federation, absent any showing that the same is prohibited under its constitution or rule. Such, however, does not result in it losing its legal personality altogether.** Verily, *Anglo-KMU v. Samahan Ng Mga Manggagawang Nagkakaisa Sa Manila Bar Spinning Mills At J.P. Coats* enlightens:

> **A local labor union is a separate and distinct unit** primarily designed to secure and maintain an equality of bargaining power between the employer and their employee-members. **A local union does not owe its existence to the federation with which it is affiliated.** It is a separate and distinct voluntary association owing its creation to the will of its members. **The mere act of affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency where the former acts in representation of the latter.**[36]

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[34] *Coastal Subic Bay Terminal, Inc. v. Department of Labor and Employment – Office of the Secretary*, *supra*, at 470-471. (Citations omitted)

[35] *Supra* note 27.

[36] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, *supra*, at 665-666. (Emphasis and underscoring supplied)

These and many more have consistently reiterated the earlier view that the right of the local members to withdraw from the federation and to form a new local union depends upon the provisions of the union's constitution, by-laws and charter and, in the absence of enforceable provisions in the federation's constitution preventing disaffiliation of a local union, a local may sever its relationship with its parent.[37] In the case at bar, there is nothing shown in the records nor is it claimed by NUBE that PEMA was expressly forbidden to disaffiliate from the federation nor were there any conditions imposed for a valid breakaway. This being so, PEMA is not precluded to disaffiliate from NUBE after acquiring the status of an independent labor organization duly registered before the DOLE.

Also, there is no merit on NUBE's contention that PEMA's disaffiliation is invalid for non-observance of the procedure that union members should make such determination through secret ballot and after due deliberation, conformably with Article 241 (d) of the Labor Code, as amended.[38] Conspicuously, other than citing the opinion of a "recognized labor law authority," NUBE failed to quote a specific provision of the law or rule mandating that a local union's disaffiliation from a federation must comply with Article 241 (d) in order to be valid and effective.

Granting, for argument's sake, that Article 241 (d) is applicable, still, We uphold PEMA's disaffiliation from NUBE.

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[37] *People's Industrial and Commercial Employees and Workers Org. (FFW) v. People's Industrial and Commercial Corp.*, 198 Phil. 166, 178 (1982).

[38] **Art. 241. Rights and conditions of membership in a labor organization. –** The following are the rights and conditions of membership in a labor organization:

x x x x x x x x x

d. The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or *force majeure* renders such secret ballot impractical, in which case, the board of directors of the organization may make the decision in behalf of the general membership;

x x x x x x x x x

First, non-compliance with the procedure on disaffiliation, being premised on purely technical grounds cannot rise above the employees' fundamental right to self-organization and to form and join labor organizations of their own choosing for the purpose of collective bargaining.[39] *Second*, the Article nonetheless provides that when the nature of the organization renders such secret ballot impractical, the union officers may make the decision in behalf of the general membership. In this case, NUBE did not even dare to contest PEMA's representation that "PNB employees, from where [PEMA] [derives] its membership, are scattered from Aparri to Jolo, manning more than 300 branches in various towns and cities of the country," hence, "[to] gather the general membership of the union in a general membership to vote through secret balloting is virtually impossible."[40] It is understandable, therefore, why PEMA's board of directors merely opted to submit for ratification of the majority their resolution to disaffiliate from NUBE. *Third*, and most importantly, NUBE did not dispute the existence of the persons or their due execution of the document showing their unequivocal support for the disaffiliation of PEMA from NUBE. Note must be taken of the fact that the list of PEMA members (identifying themselves as "PEMA-Serrana Group"[41]) who agreed with the board resolution was attached as Annex "H" of PEMA's petition before the CA and covered pages 115 to 440 of the CA *rollo*. While fully displaying the employees' printed name, identification number, branch, position, and signature, the list was left unchallenged by NUBE. No evidence was presented that the union members' ratification was obtained by mistake or through fraud, force or intimidation. Surely, this is not a case where one or two members of the local union decided to disaffiliate from the mother federation, but one where more than a majority of the local union members decided to disaffiliate.

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[39] See *Tropical Hut Employees' Union-CGW v. Tropical Hut Food Market, Inc.*, 260 Phil. 182, 194 (1990) and *Alliance of Nationalist and Genuine Labor Org. v. Samahan ng mga Manggagawang Nagkakaisa sa Manila Bay Spinning Mills*, 327 Phil. 1011, 1016 (1996).

[40] *Rollo*, pp. 272-273.

[41] CA *rollo*, p. 115.

Consequently, by PEMA's valid disaffiliation from NUBE, the vinculum that previously bound the two entities was completely severed. As NUBE was divested of any and all power to act in representation of PEMA, any act performed by the former that affects the interests and affairs of the latter, including the supposed expulsion of Serrana, *et al.*, is rendered without force and effect.

Also, in effect, NUBE loses its right to collect all union dues held in its trust by PNB. The moment that PEMA separated from and left NUBE and exists as an independent labor organization with a certificate of registration, the former is no longer obliged to pay dues and assessments to the latter; naturally, there would be no longer any reason or occasion for PNB to continue making deductions.[42] As we said in *Volkschel Labor Union v. Bureau of Labor Relations*:[43]

> x x x In other words, ALUMETAL [NUBE in this case] is entitled to receive the dues from respondent companies as long as petitioner union is affiliated with it and respondent companies are authorized by their employees (members of petitioner union) to deduct union dues. Without said affiliation, the employer has no link to the mother union. The obligation of an employee to pay union dues is coterminous with his affiliation or membership. "The employees' check-off authorization, even if declared irrevocable, is good only as long as they remain members of the union concerned." A contract between an employer and the parent organization as bargaining agent for the employees is terminated by the disaffiliation of the local of which the employees are members. x x x[44]

On the other hand, it was entirely reasonable for PNB to enter into a CBA with PEMA as represented by Serrana, *et al.* Since PEMA had validly separated itself from NUBE, there would be no restrictions which could validly hinder it from collectively bargaining with PNB.

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[42] See *Philippine Federation of Petroleum Workers (PFPW), et al. v. CIR, et al.*, 147 Phil. 674, 698 (1971).

[43] 221 Phil. 423 (1985).

[44] *Volkschel Labor Union v. Bureau of Labor Relations*, *supra*, at 48-49. (Citations omitted)

WHEREFORE, the foregoing considered, the instant Petition is **DENIED**. The May 22, 2006 Decision and August 17, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 84606, which reversed the May 27, 2004 Decision of the Secretary of Labor and Employment, are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174727. August 12, 2013]

ANTIPOLO INING (deceased), survived by MANUEL VILLANUEVA, TEODORA VILLANUEVA-FRANCISCO, CAMILO FRANCISCO, ADOLFO FRANCISCO, LUCIMO FRANCISCO, JR., MILAGROS FRANCISCO,[*] CELEDONIO FRANCISCO, HERMINIGILDO FRANCISCO; RAMON TRESVALLES, ROBERTO TAJONERA, NATIVIDAD ININGIBEA (deceased) survived by EDILBERTO IBEA, JOSEFA IBEA, MARTHA IBEA, CARMEN IBEA, AMPARO IBEA-FERNANDEZ, HENRY RUIZ, EUGENIO RUIZ and PASTOR RUIZ; DOLORES ININGRIMON (deceased) survived by JESUS RIMON, CESARIA RIMON GONZALES and REMEDIOS RIMON CORDERO; and PEDRO ININGG (deceased) survived by ELISA TAN ININGG (wife) and PEDRO ININGG, JR., *petitioners, vs.* **LEONARDO R. VEGA, substituted by LOURDES VEGA, RESTONILO I. VEGA, CRISPULO M. VEGA,**

[*] Sometimes referred to as Milagrosa Francisco in some parts of the records.

MILBUENA VEGA-RESTITUTO and LENARD VEGA, *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CO-OWNERSHIP; DULY ESTABLISHED IN CASE AT BAR. — [H]aving succeeded to the property as heirs of Gregoria and Romana, petitioners and respondents became co-owners thereof. As co-owners, they may use the property owned in common, provided they do so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. They have the full ownership of their parts and of the fruits and benefits pertaining thereto, and may alienate, assign or mortgage them, and even substitute another person in their enjoyment, except when personal rights are involved. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned. Finally, no prescription shall run in favor of one of the co-heirs against the others so long as he expressly or impliedly recognizes the co-ownership.

2. ID.; ID.; ID.; TITLE MAY PRESCRIBE IN FAVOR OF A CO-OWNER; REQUISITES. — Time and again, it has been held that "a co-owner cannot acquire by prescription the share of the other co-owners, absent any clear repudiation of the co-ownership. In order that the title may prescribe in favor of a co-owner, the following requisites must concur: (1) the co-owner has performed unequivocal acts of repudiation amounting to an ouster of the other co-owners; (2) such positive acts of repudiation have been made known to the other co-owners; and (3) the evidence thereof is clear and convincing."

3. ID.; ID.; ID.; ID.; ID.; REPUDIATION OF THE CO-OWNERSHIP MUST BE EFFECTED BY A CO-OWNER OF THE PROPERTY. — [W]hile it may be argued that Lucimo Sr. performed acts that may be characterized as a repudiation of the co-ownership, the fact is, he is not a co-owner of the property. Indeed, he is not an heir of Gregoria; he is merely Antipolo's son-in-law, being married to Antipolo's daughter Teodora. Under the Family Code, family relations, which is the primary basis for succession, exclude relations by affinity.

> x x x In point of law, therefore, Lucimo Sr. is not a co-owner of the property; Teodora is. Consequently, he cannot validly effect a repudiation of the co-ownership, which he was never part of. For this reason, prescription did not run adversely against Leonardo, and his right to seek a partition of the property has not been lost.

APPEARANCES OF COUNSEL

Julius L. Leonida for petitioners.
Gepty Dela Cruz Morales & Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

One who is merely related by affinity to the decedent does not inherit from the latter and cannot become a co-owner of the decedent's property. Consequently, he cannot effect a repudiation of the co-ownership of the estate that was formed among the decedent's heirs.

Assailed in this Petition for Review on *Certiorari*[1] are the March 14, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 74687 and its September 7, 2006 Resolution[3] denying petitioners' Motion for Reconsideration.[4]

Factual Antecedents

Leon Roldan (Leon), married to Rafaela Menez (Rafaela), is the owner of a 3,120-square meter parcel of land (subject property) in Kalibo, Aklan covered by Original Certificate of

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[1] *Rollo*, pp. 10-52.

[2] CA *rollo*, pp. 97-107; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr.

[3] *Id.* at 136.

[4] *Id.* at 113-120.

Title No. (24071) RO-630[5] (OCT RO-630). Leon and Rafaela died without issue. Leon was survived by his siblings Romana Roldan (Romana) and Gregoria Roldan Ining (Gregoria), who are now both deceased.

Romana was survived by her daughter Anunciacion Vega and grandson, herein respondent Leonardo R. Vega (Leonardo) (also both deceased). Leonardo in turn is survived by his wife Lourdes and children Restonilo I. Vega, Crispulo M. Vega, Milbuena Vega-Restituto and Lenard Vega, the substituted respondents.

Gregoria, on the other hand, was survived by her six children: petitioners Natividad Ining-Ibea (Natividad), Dolores Ining-Rimon (Dolores), Antipolo, and Pedro, Jose, and Amando. Natividad is survived by Edilberto Ibea, Josefa Ibea, Martha Ibea, Carmen Ibea, Amparo Ibea-Fernandez, Henry Ruiz and Pastor Ruiz. Dolores is survived by Jesus Rimon, Cesaria Rimon Gonzales and Remedios Rimon Cordero. Antipolo is survived by Manuel Villanueva, daughter Teodora Villanueva-Francisco (Teodora), Camilo Francisco (Camilo), Adolfo Francisco (Adolfo), Lucimo Francisco, Jr. (Lucimo Jr.), Milagros Francisco, Celedonio Francisco, and Herminigildo Francisco (Herminigildo). Pedro is survived by his wife, Elisa Tan Ining and Pedro Ining, Jr. Amando died without issue. As for Jose, it is not clear from the records if he was made party to the proceedings, or if he is alive at all.

In short, herein petitioners, except for Ramon Tresvalles (Tresvalles) and Roberto Tajonera (Tajonera), are Gregoria's grandchildren or spouses thereof (Gregoria's heirs).

In 1997, acting on the claim that one-half of subject property belonged to him as Romana's surviving heir, Leonardo filed

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[5] Exhibit "A", Folder of Exhibits for the Respondents. The property is alternately referred to in the various pleadings and in the decisions of the trial and appellate courts as "Original Certificate of Title No. RO-630 (24071)," or "Original Certificate of Title No. RO-630 (2407)," or "Original Certificate of Title No. RO-630 (240710)," or "Original Certificate of Title No. 630."

with the Regional Trial Court (RTC) of Kalibo, Aklan Civil Case No. 5275[6] for partition, recovery of ownership and possession, with damages, against Gregoria's heirs. In his Amended Complaint,[7] Leonardo alleged that on several occasions, he demanded the partition of the property but Gregoria's heirs refused to heed his demands; that the matter reached the level of the *Lupon Tagapamayapa*, which issued a certification to file a court action sometime in 1980; that Gregoria's heirs claimed sole ownership of the property; that portions of the property were sold to Tresvalles and Tajonera, which portions must be collated and included as part of the portion to be awarded to Gregoria's heirs; that in 1979, Lucimo Francisco, Sr. (Lucimo Sr.), husband of herein petitioner Teodora, illegally claimed absolute ownership of the property and transferred in his name the tax declaration covering the property; that from 1988, Lucimo Sr. and Teodora have deprived him (Leonardo) of the fruits of the property estimated at ₱1,000.00 per year; that as a result, he incurred expenses by way of attorney's fees and litigation costs. Leonardo thus prayed that he be declared the owner of half of the subject property; that the same be partitioned after collation and determination of the portion to which he is entitled; that Gregoria's heirs be ordered to execute the necessary documents or agreements; and that he (Leonardo) be awarded actual damages in the amount of ₱1,000.00 per year from 1988, attorney's fees of ₱50,000.00, and lawyer's appearance fees of ₱500.00 per hearing.

In their Answer[8] with counterclaim, Teodora, Camilo, Adolfo, Lucimo Jr. and Herminigildo claimed that Leonardo had no cause of action against them; that they have become the sole owners of the subject property through Lucimo Sr. who acquired the same in good faith by sale from Juan Enriquez (Enriquez), who in turn acquired the same from Leon, and Leonardo was aware of this fact; that they were in continuous, actual, adverse, notorious and exclusive possession of the property with a just

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[6] Assigned to Branch 8.

[7] Records, pp. 10-14.

[8] *Id.* at 28-31.

title; that they have been paying the taxes on the property; that Leonardo's claim is barred by estoppel and laches; and that they have suffered damages and were forced to litigate as a result of Leonardo's malicious suit. They prayed that Civil Case No. 5275 be dismissed; that Leonardo be declared to be without any right to the property; that Leonardo be ordered to surrender the certificate of title to the property; and that they be awarded ₱20,000.00 as moral damages, ₱10,000.00 as temperate and nominal damages, ₱20,000.00 as attorney's fees, and double costs.

The other Gregoria heirs, as well as Tresvalles and Tajonera were declared in default.[9]

As agreed during pre-trial, the trial court commissioned Geodetic Engineer Rafael M. Escabarte to identify the metes and bounds of the property.[10] The resulting Commissioner's Report and Sketch,[11] as well as the Supplementary Commissioner's Report,[12] were duly approved by the parties. The parties then submitted the following issues for resolution of the trial court:

1. Whether Leonardo is entitled to a share in Leon's estate;

2. Whether Leon sold the subject property to Lucimo Sr.; and

3. Whether Leonardo's claim has prescribed, or that he is barred by estoppel or laches.[13]

In the meantime, Leonardo passed away and was duly substituted by his heirs, the respondents herein.[14]

During the course of the proceedings, the following additional relevant facts came to light:

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[9] See Order dated September 3, 1997, *id.* at 49.

[10] See Order dated October 30, 1998, *id.* at 151.

[11] Exhibits "5" and "5-1", Folder of Exhibits for the Respondents.

[12] Exhibit "T", *id.*

[13] See Pre-Trial Order dated August 4, 1999, records, pp. 192-193.

[14] *Id.* at 198-199.

1. In 1995, Leonardo filed against petitioners Civil Case No. 4983 for partition with the RTC Kalibo, but the case was dismissed and referred to the Kalibo Municipal Trial Court (MTC), where the case was docketed as Civil Case No. 1366. However, on March 4, 1997, the MTC dismissed Civil Case No. 1366 for lack of jurisdiction and declared that only the RTC can take cognizance of the partition case;[15]

2. The property was allegedly sold by Leon to Enriquez through an unnotarized document dated April 4, 1943.[16] Enriquez in turn allegedly sold the property to Lucimo Sr. on November 25, 1943 via another private sale document;[17]

3. Petitioners were in sole possession of the property for more than 30 years, while Leonardo acquired custody of OCT RO-630;[18]

4. On February 9, 1979, Lucimo Sr. executed an Affidavit of Ownership of Land[19] claiming sole ownership of the property which he utilized to secure in his name Tax Declaration No. 16414 (TD 16414) over the property and to cancel Tax Declaration No. 20102 in Leon's name;[20]

5. Lucimo Sr. died in 1991; and

6. The property was partitioned among the petitioners, to the exclusion of Leonardo.[21]

Ruling of the Regional Trial Court

On November 19, 2001, the trial court rendered a Decision,[22] which decreed as follows:

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[15] *Id.* at 12.

[16] Exhibit "4", Folder of Exhibits for the Petitioners.

[17] Exhibit "9", *id.*

[18] Records, pp. 267-269, 271.

[19] Exhibit "11", Folder of Exhibits for the Petitioners.

[20] Exhibit "12", *id.*

[21] Exhibit "15", *id.*

[22] Records, pp. 262-279; penned by Judge Eustaquio G. Terencio.

WHEREFORE, premises considered, judgment is hereby rendered:

1. Dismissing the complaint on the ground that plaintiffs' right of action has long prescribed under Article 1141 of the New Civil Code;

2. Declaring Lot 1786 covered by OCT No. RO-630 (24071) to be the common property of the heirs of Gregoria Roldan Ining and by virtue whereof, OCT No. RO-630 (24071) is ordered cancelled and the Register of Deeds of the Province of Aklan is directed to issue a transfer certificate of title to the heirs of Natividad Ining, one-fourth (¼) share; Heirs of Dolores Ining, one-fourth (¼) share; Heirs of Antipolo Ining, one-fourth (¼) share; and Heirs of Pedro Ining, one-fourth (¼) share.

For lack of sufficient evidence, the counterclaim is ordered dismissed.

With cost against the plaintiffs.

SO ORDERED.[23]

The trial court found the April 4, 1943 and November 25, 1943 deeds of sale to be spurious. It concluded that Leon never sold the property to Enriquez, and in turn, Enriquez never sold the property to Lucimo Sr., hence, the subject property remained part of Leon's estate at the time of his death in 1962. Leon's siblings, Romana and Gregoria, thus inherited the subject property in equal shares. Leonardo and the respondents are entitled to Romana's share as the latter's successors.

However, the trial court held that Leonardo had only 30 years from Leon's death in 1962 – or up to 1992 – within which to file the partition case. Since Leonardo instituted the partition suit only in 1997, the same was already barred by prescription. It held that under Article 1141 of the Civil Code,[24] an action for partition and recovery of ownership and possession of a parcel of land is a real action over immovable property which

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[23] *Id.* at 278-279.

[24] Art. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

prescribes in 30 years. In addition, the trial court held that for his long inaction, Leonardo was guilty of laches as well. Consequently, the property should go to Gregoria's heirs exclusively.

Respondents moved for reconsideration[25] but the same was denied by the RTC in its February 7, 2002 Order.[26]

Ruling of the Court of Appeals

Only respondents interposed an appeal with the CA. Docketed as CA-G.R. CV No. 74687, the appeal questioned the propriety of the trial court's dismissal of Civil Case No. 5275, its application of Article 1141, and the award of the property to Gregoria's heirs exclusively.

On March 14, 2006, the CA issued the questioned Decision,[27] which contained the following decretal portion:

IN LIGHT OF ALL THE FOREGOING, this appeal is **GRANTED**. The decision of the Regional Trial Court, Br. 8, Kalibo, Aklan in Civil Case No. 5275 is **REVERSED** and **SET ASIDE**. In lieu thereof, judgment is rendered as follows:

1. Declaring ½ portion of Lot 1786 as the share of the plaintiffs as successors-in-interest of Romana Roldan;

2. Declaring ½ portion of Lot 1786 as the share of the defendants as successors-in-interest of Gregoria Roldan Ining;

3. Ordering the defendants to deliver the possession of the portion described in paragraphs 8 and 9 of the Commissioner's Report (Supplementary) to the herein plaintiffs;

4. Ordering the cancellation of OCT No. RO-630 (24071) in the name of Leon Roldan and the Register of Deeds of Aklan is directed to issue transfer certificates of title to the plaintiffs in accordance with paragraphs 8 and 9 of the sketch plan as embodied in the Commissioner's Report (Supplementary) and the remaining portion thereof be adjudged to the defendants.

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[25] Records, pp. 284-286.

[26] *Id.* at 302.

[27] CA *rollo*, pp. 97-107.

Other claims and counterclaims are dismissed.

Costs against the defendants-appellees.

SO ORDERED.[28]

The CA held that the trial court's declaration of nullity of the April 4, 1943 and November 25, 1943 deeds of sale in favor of Enriquez and Lucimo Sr., respectively, became final and was settled by petitioners' failure to appeal the same. Proceeding from the premise that no valid prior disposition of the property was made by its owner Leon and that the property – which remained part of his estate at the time of his death – passed on by succession to his two siblings, Romana and Gregoria, which thus makes the parties herein – who are Romana's and Gregoria's heirs – co-owners of the property in equal shares, the appellate court held that only the issues of prescription and laches were needed to be resolved.

The CA did not agree with the trial court's pronouncement that Leonardo's action for partition was barred by prescription. The CA declared that prescription began to run not from Leon's death in 1962, but from Lucimo Sr.'s execution of the Affidavit of Ownership of Land in 1979, which amounted to a repudiation of his co-ownership of the property with Leonardo. Applying the fifth paragraph of Article 494 of the Civil Code, which provides that "[n]o prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership," the CA held that it was only when Lucimo Sr. executed the Affidavit of Ownership of Land in 1979 and obtained a new tax declaration over the property (TD 16414) solely in his name that a repudiation of his co-ownership with Leonardo was made, which repudiation effectively commenced the running of the 30-year prescriptive period under Article 1141.

The CA did not consider Lucimo Sr.'s sole possession of the property for more than 30 years to the exclusion of Leonardo and the respondents as a valid repudiation of the co-ownership

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[28] *Id.* at 106-107. Emphases in the original.

either, stating that his exclusive possession of the property and appropriation of its fruits – even his continuous payment of the taxes thereon – while adverse as against strangers, may not be deemed so as against Leonardo in the absence of clear and conclusive evidence to the effect that the latter was ousted or deprived of his rights as co-owner with the intention of assuming exclusive ownership over the property, and absent a showing that this was effectively made known to Leonardo. Citing *Bargayo v. Camumot*[29] and *Segura v. Segura*,[30] the appellate court held that as a rule, possession by a co-owner will not be presumed to be adverse to the other co-owners but will be held to benefit all, and that a co-owner or co-heir is in possession of an inheritance *pro-indiviso* for himself and in representation of his co-owners or co-heirs if he administers or takes care of the rest thereof with the obligation to deliver the same to his co-owners or co-heirs, as is the case of a depositary, lessee or trustee.

The CA added that the payment of taxes by Lucimo Sr. and the issuance of a new tax declaration in his name do not prove ownership; they merely indicate a claim of ownership. Moreover, petitioners' act of partitioning the property among themselves to the exclusion of Leonardo cannot affect the latter; nor may it be considered a repudiation of the co-ownership as it has not been shown that the partition was made known to Leonardo.

The CA held further that the principle of laches cannot apply as against Leonardo and the respondents. It held that laches is controlled by equitable considerations and it cannot be used to defeat justice or to perpetuate fraud; it cannot be utilized to deprive the respondents of their rightful inheritance.

On the basis of the above pronouncements, the CA granted respondents' prayer for partition, directing that the manner of partitioning the property shall be governed by the Commissioner's Report and Sketch and the Supplementary Commissioner's Report which the parties did not contest.

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[29] 40 Phil. 857, 872 (1920).

[30] 247-A Phil. 449, 458 (1988).

Petitioners filed their Motion for Reconsideration[31] which the CA denied in its assailed September 7, 2006 Resolution.[32] Hence, the present Petition.

Issues

Petitioners raise the following arguments:

I

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE TRIAL COURT ON THE GROUND THAT LUCIMO FRANCISCO REPUDIATED THE CO-OWNERSHIP ONLY ON FEBRUARY 9, 1979.

II

THE APPELLATE COURT ERRED IN NOT UPHOLDING THE DECISION OF THE TRIAL COURT DISMISSING THE COMPLAINT ON THE GROUND OF PRESCRIPTION AND LACHES.[33]

Petitioners' Arguments

Petitioners insist in their Petition and Reply[34] that Lucimo Sr.'s purchase of the property in 1943 and his possession thereof amounted to a repudiation of the co-ownership, and that Leonardo's admission and acknowledgment of Lucimo Sr.'s possession for such length of time operated to bestow upon petitioners – as Lucimo Sr.'s successors-in-interest – the benefits of acquisitive prescription which proceeded from the repudiation.

Petitioners contend that Leonardo's inaction – from Lucimo Sr.'s taking possession in 1943, up to 1995, when Leonardo filed Civil Case No. 4983 for partition with the RTC Kalibo – amounted to laches or neglect. They add that during the proceedings before the *Lupon Tagapamayapa* in 1980, Leonardo was informed of Lucimo Sr.'s purchase of the property in 1943;

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[31] CA *rollo,* pp. 113-120.

[32] *Id.* at 136.

[33] *Rollo,* p. 40

[34] *Id.* at 278-281.

this notwithstanding, Leonardo did not take action then against Lucimo Sr. and did so only in 1995, when he filed Civil Case No. 4983 – which was eventually dismissed and referred to the MTC. They argue that, all this time, Leonardo did nothing while Lucimo Sr. occupied the property and claimed all its fruits for himself.

Respondents' Arguments

Respondents, on the other hand, argue in their Comment[35] that –

> For purposes of clarity, if [sic] is respectfully submitted that eighteen (18) legible copies has [sic] not been filed in this case for consideration *in banc* [sic] and nine (9) copies in cases heard before a division in that [sic] all copies of pleadings served to the offices concern [sic] where said order [sic] was issued were not furnished two (2) copies each in violation to [sic] the adverse parties [sic] to the clerk of court, Regional Trial Court, Branch 8, Kalibo, Aklan, Philippines; to the Honorable Court of Appeals so that No [sic] action shall be taken on such pleadings, briefs, memoranda, motions, and other papers as fail [sic] to comply with the requisites set out in this paragraph.
>
> The foregoing is confirmed by affidavit of MERIDON F. OLANDESCA, the law secretary of the Petitioner [sic] who sent [*sic*] by Registered mail to Court of Appeals, Twentieth Division, Cebu City; to Counsel for Respondent [sic] and to the Clerk of Court Supreme Court Manila [sic].
>
> These will show that Petitioner has [sic] violated all the requirements of furnishing two (2) copies each concerned party [sic] under the Rule of Courts [sic].[36]

Our Ruling

The Court denies the Petition.

The finding that Leon did not sell the property to Lucimo Sr. had long been settled and had become final for failure

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[35] *Id.* at 259-275.

[36] *Id.* at 272-273.

of petitioners to appeal. Thus, the property remained part of Leon's estate.

One issue submitted for resolution by the parties to the trial court is whether Leon sold the property to Lucimo Sr. The trial court, examining the two deeds of sale executed in favor of Enriquez and Lucimo Sr., found them to be spurious. It then concluded that no such sale from Leon to Lucimo Sr. ever took place. Despite this finding, petitioners did not appeal. Consequently, any doubts regarding this matter should be considered settled. Thus, petitioners' insistence on Lucimo Sr.'s 1943 purchase of the property to reinforce their claim over the property must be ignored. Since no transfer from Leon to Lucimo Sr. took place, the subject property clearly remained part of Leon's estate upon his passing in 1962.

Leon died without issue; his heirs are his siblings Romana and Gregoria.

Since Leon died without issue, his heirs are his siblings, Romana and Gregoria, who thus inherited the property in equal shares. In turn, Romana's and Gregoria's heirs – the parties herein – became entitled to the property upon the sisters' passing. Under Article 777 of the Civil Code, the rights to the succession are transmitted from the moment of death.

Gregoria's and Romana's heirs are co-owners of the subject property.

Thus, having succeeded to the property as heirs of Gregoria and Romana, petitioners and respondents became co-owners thereof. As co-owners, they may use the property owned in common, provided they do so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights.[37] They have the full ownership

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[37] CIVIL CODE, Article 486.

Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other

of their parts and of the fruits and benefits pertaining thereto, and may alienate, assign or mortgage them, and even substitute another person in their enjoyment, except when personal rights are involved.[38] Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.[39] Finally, no prescription shall run in favor of one of the co-heirs against the others so long as he expressly or impliedly recognizes the co-ownership.[40]

For prescription to set in, the repudiation must be done by a co-owner.

Time and again, it has been held that "a co-owner cannot acquire by prescription the share of the other co-owners, absent any clear repudiation of the co-ownership. In order that the title may prescribe in favor of a co-owner, the following requisites must concur: (1) the co-owner has performed unequivocal acts of repudiation amounting to an ouster of the other co-owners; (2) such positive acts of repudiation have been made known to the other co-owners; and (3) the evidence thereof is clear and convincing."[41]

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co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

[38] CIVIL CODE, Article 493.

Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be alloted to him in the division upon the termination of the co-ownership.

[39] CIVIL CODE, Article 494, first paragraph.

No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

[40] CIVIL CODE, Article 494, fifth paragraph.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

[41] *Robles v. Court of Appeals*, 384 Phil. 635, 649-650 (2000).

From the foregoing pronouncements, it is clear that the trial court erred in reckoning the prescriptive period within which Leonardo may seek partition from the death of Leon in 1962. Article 1141 and Article 494 (fifth paragraph) provide that prescription shall begin to run in favor of a co-owner and against the other co-owners only from the time he positively renounces the co-ownership and makes known his repudiation to the other co-owners.

Lucimo Sr. challenged Leonardo's co-ownership of the property only sometime in 1979 and 1980, when the former executed the Affidavit of Ownership of Land, obtained a new tax declaration exclusively in his name, and informed the latter – before the *Lupon Tagapamayapa* – of his 1943 purchase of the property. These apparent acts of repudiation were followed later on by Lucimo Sr.'s act of withholding Leonardo's share in the fruits of the property, beginning in 1988, as Leonardo himself claims in his Amended Complaint. Considering these facts, the CA held that prescription began to run against Leonardo only in 1979 – or even in 1980 – when it has been made sufficiently clear to him that Lucimo Sr. has renounced the co-ownership and has claimed sole ownership over the property. The CA thus concluded that the filing of Civil Case No. 5275 in 1997, or just under 20 years counted from 1979, is clearly within the period prescribed under Article 1141.

What escaped the trial and appellate courts' notice, however, is that while it may be argued that Lucimo Sr. performed acts that may be characterized as a repudiation of the co-ownership, the fact is, he is not a co-owner of the property. Indeed, he is not an heir of Gregoria; he is merely Antipolo's son-in-law, being married to Antipolo's daughter Teodora.[42] Under the Family Code, family relations, which is the primary basis for succession, exclude relations by affinity.

Art. 150. Family relations include those:

(1) Between husband and wife;

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[42] *Rollo*, p. 294.

(2) Between parents and children;

(3) Among other ascendants and descendants; and

(4) Among brothers and sisters, whether of the full or half blood.

In point of law, therefore, Lucimo Sr. is not a co-owner of the property; Teodora is. Consequently, he cannot validly effect a repudiation of the co-ownership, which he was never part of. For this reason, prescription did not run adversely against Leonardo, and his right to seek a partition of the property has not been lost.

Likewise, petitioners' argument that Leonardo's admission and acknowledgment in his pleadings – that Lucimo Sr. was in possession of the property since 1943 – should be taken against him, is unavailing. In 1943, Leon remained the rightful owner of the land, and Lucimo Sr. knew this very well, being married to Teodora, daughter of Antipolo, a nephew of Leon. More significantly, the property, which is registered under the Torrens system and covered by OCT RO-630, is in Leon's name. Leon's ownership ceased only in 1962, upon his death when the property passed on to his heirs by operation of law.

In fine, since none of the co-owners made a valid repudiation of the existing co-ownership, Leonardo could seek partition of the property at any time.

WHEREFORE, the Petition is **DENIED.** The assailed March 14, 2006 Decision and the September 7, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 74687are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198010. August 12, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DR. NORMA S. LUGSANAY UY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; SUBSTANTIAL ERRORS IN THE CIVIL REGISTRY MAY BE CORRECTED AND THE TRUE FACTS ESTABLISHED PROVIDED THE PARTIES AGGRIEVED BY THE ERROR AVAIL THEMSELVES OF THE APPROPRIATE ADVERSARY PROCEEDING. — In this case, respondent sought the correction of entries in her birth certificate, particularly those pertaining to her first name, surname and citizenship. She sought the correction allegedly to reflect the name which she has been known for since childhood, including her legal documents such as passport and school and professional records. She likewise relied on the birth certificates of her full blood siblings who bear the surname "Lugsanay" instead of "Sy" and citizenship of "Filipino" instead of "Chinese." The changes, however, are obviously not mere clerical as they touch on respondent's filiation and citizenship. In changing her surname from "Sy" (which is the surname of her father) to "Lugsanay" (which is the surname of her mother), she, in effect, changes her status from legitimate to illegitimate; and in changing her citizenship from Chinese to Filipino, the same affects her rights and obligations in this country. Clearly, the changes are substantial. It has been settled in a number of cases starting with *Republic v. Valencia* that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. The pronouncement of the Court in that case is illuminating: x x x "What is meant by 'appropriate adversary proceeding?' Black's Law Dictionary defines 'adversary proceeding' as follows: One having opposing parties; contested, as distinguished from an *ex parte* application, one of which the party seeking relief has given legal warning to

the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding."

2. **ID.; ID.; ID.; ID.; TWO SETS OF NOTICES MUST BE GIVEN TO DIFFERENT POTENTIAL OPPOSITORS. —** Respondent's birth certificate shows that her full name is Anita Sy, that she is a Chinese citizen and a legitimate child of Sy Ton and Sotera Lugsanay. In filing the petition, however, she seeks the correction of her first name and surname, her status from "legitimate" to "illegitimate" and her citizenship from "Chinese" to "Filipino." Thus, respondent should have impleaded and notified not only the Local Civil Registrar but also her parents and siblings as the persons who have interest and are affected by the changes or corrections respondent wanted to make. The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken. A reading of Sections 4 and 5, Rule 108 of the Rules of Court shows that the Rules mandate two sets of notices to different potential oppositors: one given to the persons named in the petition and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. Summons must, therefore, be served not for the purpose of vesting the courts with jurisdiction but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses.

3. **ID.; ID.; ID.; ID.; ID.; FAILURE TO IMPLEAD AND NOTIFY AFFECTED OR INTERESTED PARTIES, WHEN EXCUSED. —** While there may be cases where the Court held that the failure to implead and notify the affected or interested parties may be cured by the publication of the notice of hearing, earnest efforts were made by petitioners in bringing to court all possible interested parties. Such failure was likewise excused where the interested parties themselves initiated the corrections proceedings; when there is no actual or presumptive awareness of the existence of the interested parties; or when a party is inadvertently left out.

4. **ID.; ID.; ID.; WHEN SUBSTANTIAL AND CONTROVERSIAL ALTERATIONS ARE INVOLVED, A STRICT COMPLIANCE WITH THE REQUIREMENTS OF RULE 108 OF THE RULES OF COURT IS MANDATED. —** [W]hen a petition

for cancellation or correction of an entry in the civil register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules of Court is mandated. If the entries in the civil register could be corrected or changed through mere summary proceedings and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rebolos Sanchez Quilisadio Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Court of Appeals (CA)[1] Decision[2] dated February 18, 2011 and Resolution[3] dated July 27, 2011 in CA-G.R. CV No. 00238-MIN. The assailed decision dismissed the appeal filed by petitioner Republic of the Philippines and, consequently, affirmed *in toto* the June 28, 2004 Order[4] of the Regional Trial Court (RTC), Branch 27, Gingoog City in Special Proceedings No. 230-2004 granting the Petition for Correction of Entry of Certificate of Live Birth filed by respondent Dr.

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[1] Mindanao Station, Cagayan de Oro City.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Angelita A. Gacutan and Nina G. Antonio-Valenzuela, concurring; *rollo*, pp. 47-61.

[3] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate Laguilles, concurring; *rollo*, pp. 62-63.

[4] Penned by Presiding Judge Rexel N. Pacuribot; records, pp. 27-29.

Norma S. Lugsanay Uy; while the assailed resolution denied petitioner's motion for reconsideration.

The facts of the case are as follows:

On March 8, 2004, respondent filed a Petition for Correction of Entry in her Certificate of Live Birth.[5] Impleaded as respondent is the Local Civil Registrar of Gingoog City. She alleged that she was born on February 8, 1952 and is the illegitimate daughter of Sy Ton and Sotera Lugsanay.[6] Her Certificate of Live Birth[7] shows that her full name is "Anita Sy" when in fact she is allegedly known to her family and friends as "Norma S. Lugsanay." She further claimed that her school records, Professional Regulation Commission (PRC) Board of Medicine Certificate,[8] and passport[9] bear the name "Norma S. Lugsanay." She also alleged that she is an illegitimate child considering that her parents were never married, so she had to follow the surname of her mother.[10] She also contended that she is a Filipino citizen and not Chinese, and all her siblings bear the surname Lugsanay and are all Filipinos.[11]

Respondent allegedly filed earlier a petition for correction of entries with the Office of the Local Civil Registrar of Gingoog City to effect the corrections on her name and citizenship which was supposedly granted.[12] However, the National Statistics Office (NSO) records did not bear such changes. Hence, the petition before the RTC.

On May 13, 2004, the RTC issued an Order[13] finding the petition to be sufficient in form and substance and setting the

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[5] Records, pp. 2-5.

[6] *Id.* at 2.

[7] *Id.* at 6.

[8] *Id.* at 9.

[9] *Id.* at 8.

[10] *Rollo*, pp. 48-49.

[11] *Id.* at 10.

[12] *Id.*

[13] Records, p. 13.

case for hearing, with the directive that the said Order be published in a newspaper of general circulation in the City of Gingoog and the Province of Misamis Oriental at least once a week for three (3) consecutive weeks at the expense of respondent, and that the order and petition be furnished the Office of the Solicitor General (OSG) and the City Prosecutor's Office for their information and guidance.[14] Pursuant to the RTC Order, respondent complied with the publication requirement.

On June 28, 2004, the RTC issued an Order in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is hereby GRANTED. THE CITY CIVIL REGISTRAR OF GINGOOG CITY, or any person acting in his behalf is directed and ordered to effect the correction or change of the entries in the Certificate of Live Birth of petitioner's name and citizenship so that the entries would be:
>
> a) As to petitioner's name:
>
> | | | |
> |---|---|---|
> | First Name | : | NORMA |
> | Middle Name | : | SY |
> | Last Name | : | LUGSANAY |
>
> b) As to petitioner's nationality/citizenship: FILIPINO
>
> SO ORDERED.[15]

The RTC concluded that respondent's petition would neither prejudice the government nor any third party. It also held that the names "Norma Sy Lugsanay" and "Anita Sy" refer to one and the same person, especially since the Local Civil Registrar of Gingoog City has effected the correction. Considering that respondent has continuously used and has been known since childhood as "Norma Sy Lugsanay" and as a Filipino citizen, the RTC granted the petition to avoid confusion.[16]

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[14] *Id.*

[15] *Id.* at 28-29.

[16] *Id.* at 27-28.

On February 18, 2011, the CA affirmed *in toto* the RTC Order. The CA held that respondent's failure to implead other indispensable parties was cured upon the publication of the Order setting the case for hearing in a newspaper of general circulation for three (3) consecutive weeks and by serving a copy of the notice to the Local Civil Registrar, the OSG and the City Prosecutor's Office.[17] As to whether the petition is a collateral attack on respondent's filiation, the CA ruled in favor of respondent, considering that her parents were not legally married and that her siblings' birth certificates uniformly state that their surname is Lugsanay and their citizenship is Filipino.[18] Petitioner's motion for reconsideration was denied in a Resolution dated July 27, 2011.

Hence, the present petition on the sole ground that the petition is dismissible for failure to implead indispensable parties.

Cancellation or correction of entries in the civil registry is governed by Rule 108 of the Rules of Court, to wit:

SEC. 1. *Who may file petition.* – Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.

SEC. 2. *Entries subject to cancellation or correction.* – Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

SEC. 3. *Parties.* – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons

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[17] *Rollo,* p. 15.

[18] *Id.* at 20.

who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

SEC. 4. *Notice and Publication.* – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. *Opposition.* – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

SEC. 6. *Expediting proceedings.* – The court in which the proceeding is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

SEC. 7. *Order*. – After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.[19]

In this case, respondent sought the correction of entries in her birth certificate, particularly those pertaining to her first name, surname and citizenship. She sought the correction allegedly to reflect the name which she has been known for since childhood, including her legal documents such as passport and school and professional records. She likewise relied on the birth certificates of her full blood siblings who bear the surname "Lugsanay" instead of "Sy" and citizenship of "Filipino" instead of "Chinese." The changes, however, are obviously not mere clerical as they touch on respondent's filiation and citizenship. In changing her surname from "Sy" (which is the surname of her father) to "Lugsanay" (which is the surname of her mother), she, in effect, changes her status from legitimate to illegitimate; and in changing her citizenship from Chinese to Filipino, the same affects her

[19] Emphasis supplied.

rights and obligations in this country. Clearly, the changes are substantial.

It has been settled in a number of cases starting with *Republic v. Valencia*[20] that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding.[21] The pronouncement of the Court in that case is illuminating:

> It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding *summary* in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the *appropriate remedy is used*. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. x x x

What is meant by "appropriate adversary proceeding?" Black's Law Dictionary defines "adversary proceeding" as follows:

> One having opposing parties; contested, as distinguished from an *ex parte* application, one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding.[22]

In sustaining the RTC decision, the CA relied on the Court's conclusion in *Republic v. Kho*,[23] *Alba v. Court of Appeals*,[24] and *Barco v. Court of Appeals*,[25] that the failure to implead

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[20] 225 Phil. 408 (1986).

[21] *Republic v. Valencia*, *supra*, at 416.

[22] *Id.* (Citation omitted; italics in the original)

[23] G.R. No. 170340, June 29, 2007, 526 SCRA 177.

[24] 503 Phil. 451 (2005).

[25] 465 Phil. 39 (2004).

indispensable parties was cured by the publication of the notice of hearing pursuant to the provisions of Rule 108 of the Rules of Court. In *Republic v. Kho*,[26] petitioner therein appealed the RTC decision granting the petition for correction of entries despite respondents' failure to implead the minor's mother as an indispensable party. The Court, however, did not strictly apply the provisions of Rule 108, because it opined that it was highly improbable that the mother was unaware of the proceedings to correct the entries in her children's birth certificates especially since the notices, orders and decision of the trial court were all sent to the residence she shared with them.[27]

In *Alba v. Court of Appeals*,[28] the Court found nothing wrong with the trial court's decision granting the petition for correction of entries filed by respondent although the proceedings was not actually known by petitioner. In that case, petitioner's mother and guardian was impleaded in the petition for correction of entries, and notices were sent to her address appearing in the subject birth certificate. However, the notice was returned unserved, because apparently she no longer lived there. Thus, when she allegedly learned of the granting of the petition, she sought the annulment of judgment which the Court denied. Considering that the petition for correction of entries is a proceeding *in rem*, the Court held that acquisition of jurisdiction over the person of the petitioner is, therefore, not required and the absence of personal service was cured by the trial court's compliance with Rule 108 which requires notice by publication.[29]

In *Barco v. Court of Appeals*,[30] the Court addressed the question of whether the court acquired jurisdiction over petitioner and all other indispensable parties to the petition for correction of entries despite the failure to implead them in said case. While

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[26] *Supra* note 23.

[27] *Republic v. Kho, supra* note 23, at 191.

[28] *Supra* note 24.

[29] *Alba v. Court of Appeals, supra* note 24, at 460.

[30] *Supra* note 25.

recognizing that petitioner was indeed an indispensable party, the failure to implead her was cured by compliance with Section 4 of Rule 108 which requires notice by publication. In so ruling, the Court pointed out that the petitioner in a petition for correction cannot be presumed to be aware of all the parties whose interests may be affected by the granting of a petition. It emphasized that the petitioner therein exerted earnest effort to comply with the provisions of Rule 108. Thus, the publication of the notice of hearing was considered to have cured the failure to implead indispensable parties.

In this case, it was only the Local Civil Registrar of Gingoog City who was impleaded as respondent in the petition below. This, notwithstanding, the RTC granted her petition and allowed the correction sought by respondent, which decision was affirmed *in toto* by the CA.

We do not agree with the RTC and the CA.

This is not the first time that the Court is confronted with the issue involved in this case. Aside from *Kho, Alba* and *Barco,* the Court has addressed the same in *Republic v. Coseteng-Magpayo,*[31] *Ceruila v. Delantar,*[32] and *Labayo-Rowe v. Republic.*[33]

In *Republic v. Coseteng-Magpayo,*[34] claiming that his parents were never legally married, respondent therein filed a petition to change his name from "Julian Edward Emerson Coseteng Magpayo," the name appearing in his birth certificate to "Julian Edward Emerson Marquez Lim Coseteng." The notice setting the petition for hearing was published and there being no opposition thereto, the trial court issued an order of general default and eventually granted respondent's petition deleting the entry on the date and place of marriage of parties; correcting his surname from "Magpayo" to "Coseteng"; deleting the entry "Coseteng" for middle name; and deleting the entry "Fulvio

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[31] G.R. No. 189476, February 2, 2011, 641 SCRA 533.

[32] 513 Phil. 237 (2005).

[33] 250 Phil. 300 (1988).

[34] *Supra* note 31.

Miranda Magpayo, Jr." in the space for his father. The Republic of the Philippines, through the OSG, assailed the RTC decision on the grounds that the corrections made on respondent's birth certificate had the effect of changing the civil status from legitimate to illegitimate and must only be effected through an appropriate adversary proceeding. The Court nullified the RTC decision for respondent's failure to comply strictly with the procedure laid down in Rule 108 of the Rules of Court. Aside from the wrong remedy availed of by respondent as he filed a petition for Change of Name under Rule 103 of the Rules of Court, assuming that he filed a petition under Rule 108 which is the appropriate remedy, the petition still failed because of improper venue and failure to implead the Civil Registrar of Makati City and all affected parties as respondents in the case.

In *Ceruila v. Delantar*,[35] the Ceruilas filed a petition for the cancellation and annulment of the birth certificate of respondent on the ground that the same was made as an instrument of the crime of simulation of birth and, therefore, invalid and spurious, and it falsified all material entries therein. The RTC issued an order setting the case for hearing with a directive that the same be published and that any person who is interested in the petition may interpose his comment or opposition on or before the scheduled hearing. Summons was likewise sent to the Civil Register of Manila. After which, the trial court granted the petition and nullified respondent's birth certificate. Few months after, respondent filed a petition for the annulment of judgment claiming that she and her guardian were not notified of the petition and the trial court's decision, hence, the latter was issued without jurisdiction and in violation of her right to due process. The Court annulled the trial court's decision for failure to comply with the requirements of Rule 108, especially the non-impleading of respondent herself whose birth certificate was nullified.

In *Labayo-Rowe v. Republic*,[36] petitioner filed a petition for the correction of entries in the birth certificates of her children,

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[35] *Supra* note 32.

[36] *Supra* note 33.

specifically to change her name from Beatriz V. Labayu/Beatriz Labayo to Emperatriz Labayo, her civil status from "married" to "single," and the date and place of marriage from "1953-Bulan" to "No marriage." The Court modified the trial court's decision by nullifying the portion thereof which directs the change of petitioner's civil status as well as the filiation of her child, because it was the OSG only that was made respondent and the proceedings taken was summary in nature which is short of what is required in cases where substantial alterations are sought.

Respondent's birth certificate shows that her full name is Anita Sy, that she is a Chinese citizen and a legitimate child of Sy Ton and Sotera Lugsanay. In filing the petition, however, she seeks the correction of her first name and surname, her status from "legitimate" to "illegitimate" and her citizenship from "Chinese" to "Filipino." Thus, respondent should have impleaded and notified not only the Local Civil Registrar but also her parents and siblings as the persons who have interest and are affected by the changes or corrections respondent wanted to make.

The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken.[37] A reading of Sections 4 and 5, Rule 108 of the Rules of Court shows that the Rules mandate two sets of notices to different potential oppositors: one given to the persons named in the petition and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties.[38] Summons must, therefore, be served not for the purpose of vesting the courts with jurisdiction but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses.[39]

While there may be cases where the Court held that the failure to implead and notify the affected or interested parties may be

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[37] *Labayo-Rowe v. Republic, supra* note 33, at 301.

[38] *Republic v. Coseteng-Magpayo*, *supra* note 31, at 543.

[39] *Ceruila v. Delantar*, *supra* note 32, at 252.

cured by the publication of the notice of hearing, earnest efforts were made by petitioners in bringing to court all possible interested parties.[40] Such failure was likewise excused where the interested parties themselves initiated the corrections proceedings;[41] when there is no actual or presumptive awareness of the existence of the interested parties;[42] or when a party is inadvertently left out.[43]

It is clear from the foregoing discussion that when a petition for cancellation or correction of an entry in the civil register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules of Court is mandated.[44] If the entries in the civil register could be corrected or changed through mere summary proceedings and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching.[45]

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Court of Appeals Decision dated February 18, 2011 and Resolution dated July 27, 2011 in CA-G.R. CV No. 00238-MIN, are **SET ASIDE**. Consequently, the June 28, 2004 Order of the Regional Trial Court, Branch 27, Gingoog City, in Spl. Proc. No. 230-2004 granting the Petition for Correction of Entry of Certificate of Live Birth filed by respondent Dr. Norma S. Lugsanay Uy, is **NULLIFIED.**

SO ORDERED.

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

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[40] *Id.*

[41] *Republic v. Kho, supra* note 23, at 193.

[42] *Barco v. Court of Appeals, supra* note 25, at 172.

[43] *Republic v. Coseteng-Magpayo, supra* note 31, at 545.

[44] *Id.* at 546.

[45] *Labayo-Rowe v. Republic, supra* note 33, at 307.

EN BANC

[G.R. No. 189871. August 13, 2013]

DARIO NACAR, *petitioner, vs.* **GALLERY FRAMES and/or FELIPE BORDEY, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE RECOMPUTATION OF THE MONETARY CONSEQUENCES THEREOF DOES NOT VIOLATE THE PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENTS. — [U]nder the terms of the decision which is sought to be executed by the petitioner, no essential change is made by a recomputation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared by the Labor Arbiter in that decision. A recomputation (or an original computation, if no previous computation has been made) is a part of the law – specifically, Article 279 of the Labor Code and the established jurisprudence on this provision – that is read into the decision. By the nature of an illegal dismissal case, the reliefs continue to add up until full satisfaction, as expressed under Article 279 of the Labor Code. The recomputation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of monetary consequences of this dismissal is affected, and this is not a violation of the principle of immutability of final judgments. That the amount respondents shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the Labor Arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment

relationship ended so that separation pay and backwages are to be computed up to that point.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PAYMENT OF LEGAL INTERESTS; RULE. — [I]n the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* " as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 – but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*. Corollarily, in the recent case of *Advocates for Truth in Lending, Inc. and Eduardo B. Olaguer v. Bangko Sentral Monetary Board*, this Court affirmed the authority of the BSP-MB to set interest rates and to issue and enforce Circulars when it ruled that "the BSP-MB may prescribe the maximum rate or rates of interest for all loans or renewals thereof or the forbearance of any money, goods or credits, including those for loans of low priority such as consumer loans, as well as such loans made by pawnshops, finance companies and similar credit institutions. It even authorizes the BSP-MB to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries." Nonetheless, with regard to those judgments that have become final and executory prior to July 1, 2013, said judgments shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

APPEARANCES OF COUNSEL

Carlo A. Domingo for petitioner.
Cabio Law Office and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated September 23, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 98591, and the Resolution[2] dated October 9, 2009 denying petitioner's motion for reconsideration.

The factual antecedents are undisputed.

Petitioner Dario Nacar filed a complaint for constructive dismissal before the Arbitration Branch of the National Labor Relations Commission (NLRC) against respondents Gallery Frames (GF) and/or Felipe Bordey, Jr., docketed as NLRC NCR Case No. 01-00519-97.

On October 15, 1998, the Labor Arbiter rendered a Decision[3] in favor of petitioner and found that he was dismissed from employment without a valid or just cause. Thus, petitioner was awarded backwages and separation pay in lieu of reinstatement in the amount of ₱158,919.92. The dispositive portion of the decision, reads:

> With the foregoing, we find and so rule that respondents failed to discharge the burden of showing that complainant was dismissed from employment for a just or valid cause. All the more, it is clear from the records that complainant was never afforded due process before he was terminated. As such, we are perforce constrained to grant complainant's prayer for the payments of separation pay in lieu of reinstatement to his former position, considering the strained relationship between the parties, and his apparent reluctance to be reinstated, computed ***only up to promulgation of this decision*** as follows:

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[1] Penned by Associate Justice Vicente S. E. Veloso, with Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario, concurring; *rollo,* pp. 33-48.

[2] *Id.* at 32.

[3] *Id.* at 79-84.

SEPARATION PAY

Date Hired	=	August 1990
Rate	=	₱198/day
Date of Decision	=	Aug. 18, 1998
Length of Service	=	8 yrs. & 1 month
₱198.00 x 26 days x 8 months	=	₱41,184.00

BACKWAGES

Date Dismissed	=	January 24, 1997
Rate per day	=	₱196.00
Date of Decisions	=	Aug. 18, 1998

a) 1/24/97 to 2/5/98 = 12.36 mos.
₱196.00/day x 12.36 mos. = ₱62,986.56

b) 2/6/98 to 8/18/98 = 6.4 months

Prevailing Rate per day	=	₱62,986.00
₱198.00 x 26 days x 6.4 mos.	=	₱32,947.20
T O T A L	=	₱95.933.76

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WHEREFORE, premises considered, judgment is hereby rendered finding respondents guilty of constructive dismissal and are therefore, ordered:

1. To pay jointly and severally the complainant the amount of sixty-two thousand nine hundred eighty-six pesos and 56/100 (₱62,986.56) Pesos representing his separation pay;

2. To pay jointly and severally the complainant the amount of nine (sic) five thousand nine hundred thirty-three and 36/100 (₱95,933.36) representing his backwages; and

3. All other claims are hereby dismissed for lack of merit.

SO ORDERED.[4]

Respondents appealed to the NLRC, but it was dismissed for lack of merit in the Resolution[5] dated February 29, 2000. Accordingly, the NLRC sustained the decision of the Labor

[4] *Id.* at 82-84. (Emphasis supplied.)

[5] *Id.* at 85-93.

Arbiter. Respondents filed a motion for reconsideration, but it was denied.[6]

Dissatisfied, respondents filed a Petition for Review on *Certiorari* before the CA. On August 24, 2000, the CA issued a Resolution dismissing the petition. Respondents filed a Motion for Reconsideration, but it was likewise denied in a Resolution dated May 8, 2001.[7]

Respondents then sought relief before the Supreme Court, docketed as G.R. No. 151332. Finding no reversible error on the part of the CA, this Court denied the petition in the Resolution dated April 17, 2002.[8]

An Entry of Judgment was later issued certifying that the resolution became final and executory on May 27, 2002.[9] The case was, thereafter, referred back to the Labor Arbiter. A pre-execution conference was consequently scheduled, but respondents failed to appear.[10]

On November 5, 2002, petitioner filed a Motion for Correct Computation, praying that his backwages be computed from the date of his dismissal on January 24, 1997 up to the finality of the Resolution of the Supreme Court on May 27, 2002.[11] Upon recomputation, the Computation and Examination Unit of the NLRC arrived at an updated amount in the sum of ₱471,320.31.[12]

On December 2, 2002, a Writ of Execution[13] was issued by the Labor Arbiter ordering the Sheriff to collect from respondents

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[6] Resolution dated July 24, 2000, *id.* at 94-96.

[7] *Rollo*, p. 35.

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

[9] *Id.* at 36.

[10] *Id.* at 100.

[11] *Id.*

[12] *Id.* at 101.

[13] *Id.* at 97-102.

the total amount of ₱471,320.31. Respondents filed a Motion to Quash Writ of Execution, arguing, among other things, that since the Labor Arbiter awarded separation pay of ₱62,986.56 and limited backwages of ₱95,933.36, no more recomputation is required to be made of the said awards. They claimed that after the decision becomes final and executory, the same cannot be altered or amended anymore.[14] On January 13, 2003, the Labor Arbiter issued an Order[15] denying the motion. Thus, an *Alias* Writ of Execution[16] was issued on January 14, 2003.

Respondents again appealed before the NLRC, which on June 30, 2003 issued a Resolution[17] granting the appeal in favor of the respondents and ordered the recomputation of the judgment award.

On August 20, 2003, an Entry of Judgment was issued declaring the Resolution of the NLRC to be final and executory. Consequently, another pre-execution conference was held, but respondents failed to appear on time. Meanwhile, petitioner moved that an *Alias* Writ of Execution be issued to enforce the earlier recomputed judgment award in the sum of ₱471,320.31.[18]

The records of the case were again forwarded to the Computation and Examination Unit for recomputation, where the judgment award of petitioner was reassessed to be in the total amount of only ₱147,560.19.

Petitioner then moved that a writ of execution be issued ordering respondents to pay him the original amount as determined by the Labor Arbiter in his Decision dated October 15, 1998, pending the final computation of his backwages and separation pay.

On January 14, 2003, the Labor Arbiter issued an *Alias* Writ of Execution to satisfy the judgment award that was due to

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[14] *Id.* at 37.

[15] *Id.* at 103-108.

[16] *Id.* at 109-113.

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

[18] *Id.* at 101.

petitioner in the amount of ₱147,560.19, which petitioner eventually received.

Petitioner then filed a Manifestation and Motion praying for the re-computation of the monetary award to include the appropriate interests.[19]

On May 10, 2005, the Labor Arbiter issued an Order[20] granting the motion, but only up to the amount of ₱11,459.73. The Labor Arbiter reasoned that it is the October 15, 1998 Decision that should be enforced considering that it was the one that became final and executory. However, the Labor Arbiter reasoned that since the decision states that the separation pay and backwages are computed only up to the promulgation of the said decision, it is the amount of ₱158,919.92 that should be executed. Thus, since petitioner already received ₱147,560.19, he is only entitled to the balance of ₱11,459.73.

Petitioner then appealed before the NLRC,[21] which appeal was denied by the NLRC in its Resolution[22] dated September 27, 2006. Petitioner filed a Motion for Reconsideration, but it was likewise denied in the Resolution[23] dated January 31, 2007.

Aggrieved, petitioner then sought recourse before the CA, docketed as CA-G.R. SP No. 98591.

On September 23, 2008, the CA rendered a Decision[24] denying the petition. The CA opined that since petitioner no longer appealed the October 15, 1998 Decision of the Labor Arbiter, which already became final and executory, a belated correction thereof is no longer allowed. The CA stated that there is nothing left to be done except to enforce the said judgment. Consequently,

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[19] *Id.* at 40.

[20] *Id.* at 65-69.

[21] *Id.* at 70-74.

[22] *Id.* at 60-64.

[23] *Id.* at 58-59.

[24] *Id.* at 33-48.

it can no longer be modified in any respect, except to correct clerical errors or mistakes.

Petitioner filed a Motion for Reconsideration, but it was denied in the Resolution[25] dated October 9, 2009.

Hence, the petition assigning the lone error:

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WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED, COMMITTED GRAVE ABUSE OF DISCRETION AND DECIDED CONTRARY TO LAW IN UPHOLDING THE QUESTIONED RESOLUTIONS OF THE NLRC WHICH, IN TURN, SUSTAINED THE MAY 10, 2005 ORDER OF LABOR ARBITER MAGAT MAKING THE DISPOSITIVE PORTION OF THE OCTOBER 15, 1998 DECISION OF LABOR ARBITER LUSTRIA SUBSERVIENT TO AN OPINION EXPRESSED IN THE BODY OF THE SAME DECISION.[26]

Petitioner argues that notwithstanding the fact that there was a computation of backwages in the Labor Arbiter's decision, the same is not final until reinstatement is made or until finality of the decision, in case of an award of separation pay. Petitioner maintains that considering that the October 15, 1998 decision of the Labor Arbiter did not become final and executory until the April 17, 2002 Resolution of the Supreme Court in G.R. No. 151332 was entered in the Book of Entries on May 27, 2002, the reckoning point for the computation of the backwages and separation pay should be on May 27, 2002 and not when the decision of the Labor Arbiter was rendered on October 15, 1998. Further, petitioner posits that he is also entitled to the payment of interest from the finality of the decision until full payment by the respondents.

On their part, respondents assert that since only separation pay and limited backwages were awarded to petitioner by the October 15, 1998 decision of the Labor Arbiter, no more recomputation is required to be made of said awards. Respondents

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[25] *Id.* at 32.

[26] *Id.* at 27.

insist that since the decision clearly stated that the separation pay and backwages are "computed only up to [the] promulgation of this decision," and considering that petitioner no longer appealed the decision, petitioner is only entitled to the award as computed by the Labor Arbiter in the total amount of ₱158,919.92. Respondents added that it was only during the execution proceedings that the petitioner questioned the award, long after the decision had become final and executory. Respondents contend that to allow the further recomputation of the backwages to be awarded to petitioner at this point of the proceedings would substantially vary the decision of the Labor Arbiter as it violates the rule on immutability of judgments.

The petition is meritorious.

The instant case is similar to the case of *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*,[27] wherein the issue submitted to the Court for resolution was the propriety of the computation of the awards made, and whether this violated the principle of immutability of judgment. Like in the present case, it was a distinct feature of the judgment of the Labor Arbiter in the above-cited case that the decision already provided for the computation of the payable separation pay and backwages due and did not further order the computation of the monetary awards up to the time of the finality of the judgment. Also in *Session Delights*, the dismissed employee failed to appeal the decision of the labor arbiter. The Court clarified, thus:

> In concrete terms, the question is whether a re-computation in the course of execution of the labor arbiter's original computation of the awards made, pegged as of the time the decision was rendered and confirmed with modification by a final CA decision, is legally proper. The question is posed, given that the petitioner did not immediately pay the awards stated in the original labor arbiter's decision; it delayed payment because it continued with the litigation until final judgment at the CA level.
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> A source of misunderstanding in implementing the final decision in this case proceeds from the way the original labor arbiter framed his decision. The decision consists essentially of two parts.

[27] G.R. No. 172149, February 8, 2010, 612 SCRA 10.

The *first* is that part of the decision that cannot now be disputed because it has been confirmed with finality. This is the finding of the illegality of the dismissal and the awards of separation pay in lieu of reinstatement, backwages, attorney's fees, and legal interests.

The *second* part is the computation of the awards made. On its face, the computation the labor arbiter made shows that it was time-bound as can be seen from the figures used in the computation. This part, being merely a computation of what the first part of the decision established and declared, can, by its nature, be re-computed. This is the part, too, that the petitioner now posits should no longer be re-computed because the computation is already in the labor arbiter's decision that the CA had affirmed. The public and private respondents, on the other hand, posit that a re-computation is necessary because the relief in an illegal dismissal decision goes all the way up to reinstatement if reinstatement is to be made, or up to the finality of the decision, if separation pay is to be given in lieu reinstatement.

That the labor arbiter's decision, at the same time that it found that an illegal dismissal had taken place, also made a computation of the award, is understandable in light of Section 3, Rule VIII of the then NLRC Rules of Procedure which requires that a computation be made. This Section in part states:

> [T]he Labor Arbiter of origin, in cases involving monetary awards and at all events, as far as practicable, shall embody in any such decision or order the detailed and full amount awarded.

Clearly implied from this original computation is its currency up to the finality of the labor arbiter's decision. As we noted above, this implication is apparent from the terms of the computation itself, and no question would have arisen had the parties terminated the case and implemented the decision at that point.

However, the petitioner disagreed with the labor arbiter's findings on all counts – *i.e.*, on the finding of illegality as well as on all the consequent awards made. Hence, the petitioner appealed the case to the NLRC which, in turn, affirmed the labor arbiter's decision. By law, the NLRC decision is final, reviewable only by the CA on jurisdictional grounds.

The petitioner appropriately sought to nullify the NLRC decision on jurisdictional grounds through a timely filed Rule 65 petition

for *certiorari*. The CA decision, finding that NLRC exceeded its authority in affirming the payment of 13th month pay and indemnity, lapsed to finality and was subsequently returned to the labor arbiter of origin for execution.

It was at this point that the present case arose. Focusing on the core illegal dismissal portion of the original labor arbiter's decision, the implementing labor arbiter ordered the award re-computed; he apparently read the figures originally ordered to be paid to be the computation due had the case been terminated and implemented at the labor arbiter's level. Thus, the labor arbiter re-computed the award to include the separation pay and the backwages due up to the finality of the CA decision that fully terminated the case on the merits. Unfortunately, the labor arbiter's approved computation went beyond the finality of the CA decision (July 29, 2003) and included as well the payment for awards the final CA decision had deleted - specifically, the proportionate 13th month pay and the indemnity awards. Hence, the CA issued the decision now questioned in the present petition.

We see no error in the CA decision confirming that a re-computation is necessary as it essentially considered the labor arbiter's original decision in accordance with its basic component parts as we discussed above. To reiterate, the first part contains the finding of illegality and its monetary consequences; the second part is the computation of the awards or monetary consequences of the illegal dismissal, computed as of the time of the labor arbiter's original decision.[28]

Consequently, from the above disquisitions, under the terms of the decision which is sought to be executed by the petitioner, no essential change is made by a recomputation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared by the Labor Arbiter in that decision.[29] A recomputation (or an original computation, if no previous computation has been made) is a part of the law — specifically, Article 279 of the Labor Code and the established jurisprudence on this provision — that is read into the decision. By the nature

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[28] *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division), supra,* at 21-23.

[29] *Id.* at 25.

of an illegal dismissal case, the reliefs continue to add up until full satisfaction, as expressed under Article 279 of the Labor Code. The recomputation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of monetary consequences of this dismissal is affected, and this is not a violation of the principle of immutability of final judgments.[30]

That the amount respondents shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the Labor Arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[31]

Finally, anent the payment of legal interest. In the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[32] the Court laid down the guidelines regarding the manner of computing legal interest, to wit:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
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> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence

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[30] *Id.* at 25-26.

[31] *Id.* at 26.

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

of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. 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*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[33]

Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2[34] of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799,[35] Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

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[33] *Eastern Shipping Lines, Inc. v. Court of Appeals, supra,* at 95-97. (Citations omitted; italics in the original).

[34] SECTION 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be twelve percent (12%) per annum.

[35] Rate of interest in the absence of stipulation; Dated June 21, 2013.

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

> **Section 1**. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum.*
>
> **Section 2**. In view of the above, Subsection X305.1[36] of the Manual of Regulations for Banks and Sections 4305Q.1,[37] 4305S.3[38] and 4303P.1[39] of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
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> This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties,

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[36] **§ X305.1** ***Rate of interest in the absence of stipulation***. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of expressed contract as to such rate of interest, shall be twelve percent (12%) per annum.

[37] The Section is under Q Regulations or Regulations Governing Non-Bank Financial Institutions Performing Quasi-Banking Functions. It reads:

> **§ 4305Q.1** ***(2008 - 4307Q.6) Rate of interest in the absence of stipulation***. The rate of interest for the loan or forbearance of any money, goods or credit and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be twelve percent (12%) per annum.

[38] The Section is under S Regulations or Regulations Governing Non-Stock Savings and Loan Associations. It reads:

> **§ 4305S.3** ***Interest in the absence of contract***. In the absence of express contract, the rate of interest for the loan or forbearance of any money, goods or credit and the rate allowed in judgment shall be twelve percent (12%) per annum.

[39] The Section is under P Regulations or Regulations Governing Pawnshops. It reads:

> **§ 4303P.1** ***Rate of interest in the absence of stipulation***. The rate of interest for a loan or forbearance of money in the absence of an expressed contract as to such rate of interest, shall be twelve percent (12%) per annum. *(Circular No. 656 dated 02 June 2009)*

the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* – as reflected in the case of *Eastern Shipping Lines*[40] and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 – but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*.

Corollarily, in the recent case of *Advocates for Truth in Lending, Inc. and Eduardo B. Olaguer v. Bangko Sentral Monetary Board*,[41] this Court affirmed the authority of the BSP-MB to set interest rates and to issue and enforce Circulars when it ruled that "the BSP-MB may prescribe the maximum rate or rates of interest for all loans or renewals thereof or the forbearance of any money, goods or credits, including those for loans of low priority such as consumer loans, as well as such loans made by pawnshops, finance companies and similar credit institutions. It even authorizes the BSP-MB to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries."

Nonetheless, with regard to those judgments that have become final and executory prior to July 1, 2013, said judgments shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines*[42] are

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[40] *Supra* note 32, at 95-97.

[41] G.R. No. 192986, January 15, 2013, 688 SCRA 530, 547.

[42] *Supra* note 32.

accordingly modified to embody BSP-MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. 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*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained).

The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

WHEREFORE, premises considered, the Decision dated September 23, 2008 of the Court of Appeals in CA-G.R. SP No. 98591, and the Resolution dated October 9, 2009 are **REVERSED** and **SET ASIDE**. Respondents are **ORDERED to PAY** petitioner:

(1) backwages computed from the time petitioner was illegally dismissed on January 24, 1997 up to May 27, 2002, when the Resolution of this Court in G.R. No. 151332 became final and executory;

(2) separation pay computed from August 1990 up to May 27, 2002 at the rate of one month pay per year of service; and

(3) interest of twelve percent (12%) *per annum* of the total monetary awards, computed from May 27, 2002 to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.

The Labor Arbiter is hereby **ORDERED** to make another recomputation of the total monetary benefits awarded and due to petitioner in accordance with this Decision.

SO ORDERED.

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

EN BANC

[G.R. No. 191661. August 13, 2013]

CITY GOVERNMENT OF MAKATI, as represented by HON. MAYOR JEJOMAR C. BINAY, *petitioner, vs.* **EMERITA B. ODEÑA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS TO THE COURT OF APPEALS UNDER RULE 43; PROPER REMEDY TO ASSAIL THE DECISION OF THE CIVIL SERVICE COMMISSION (CSC); CASE AT BAR. — [F]iling a Rule 43 Petition with the CA is the proper remedy to assail the CSC Resolutions. x x x First, the jurisdiction of the CA over petitions for review under Rule 43 is not limited to judgments and final orders of the CSC, but can extend to appeals from awards, judgments, final orders or resolutions issued by the latter. x x x Second, although the general rule is that an order of execution is not appealable, there are exceptions to this rule. A writ of execution is a direct command of the court to the sheriff to carry out the mandate of the writ, which is normally the enforcement of a judgment. By analogy, the CSC Resolutions were orders of execution and were issued in connection with the implementation of this Court's 2007 Decision. x x x [T]he appeal of the CSC Resolutions under Rule 43 is proper on two (2) points: (1) they varied the 2007 Decision and (2) the judgment debt has been paid or otherwise satisfied. First, the CSC Resolutions have varied the 2007 Decision, considering that instead of directing the payment of backwages for a period not exceeding five (5) years, the CSC ordered petitioner to pay an amount equivalent to almost eight (8) years. Second, the judgment debt arising from the 2007 Decision has been satisfied as respondent has already received payment from petitioner the amount of ₱558,944.19, representing her back salaries not exceeding five (5) years, as computed by petitioner.

2. ID.; ID.; EXECUTION OF JUDGMENTS; RULE THAT ORDER OF EXECUTION IS NOT APPEALABLE; EXCEPTIONS; DISCUSSED. — [T]he general rule is that

an order of execution is not appealable; otherwise, a case would never end. There are exceptions to this rule. This Court in *Banaga v. Majaducon* enumerated the exceptions as follows: x x x Thus, in *Limpin v. Intermediate Appellate Court*, the Court enumerated the exceptional circumstances where a party may elevate the matter of an improper execution for appeal, to wit: **There may, to be sure, be instances when an error may be committed in the course of execution proceedings prejudicial to the rights of a party. These instances, rare though they may be, do call for correction by a superior court, as where —** 1) **the writ of execution varies the judgment;** 2) **there has been a change in the situation of the parties making execution inequitable or unjust;** x x x 6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, **or that the judgment debt has been paid or otherwise satisfied,** or the writ was issued without authority; In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. **That mode of elevation may be either by appeal (writ of error or *certiorari*), or by a special civil action of *certiorari*, prohibition, or *mandamus*.** The aforementioned pronouncement has been reiterated in cases subsequent to the adoption of the 1997 Rules of Civil Procedure. **The Court finds no sound justification to abandon the aforequoted pronouncement insofar as it recognizes the filing of an ordinary appeal as a proper remedy to assail a writ or order issued in connection with the execution of a final judgment, where a factual review in the manner of execution is called for to determine whether the challenged writ or order has indeed varied the tenor of the final judgment.** To rule that a special civil action for *certiorari* constitutes the sole and exclusive remedy to assail a writ or order of execution would unduly restrict the remedy available to a party prejudiced by an improper or illegal execution. It must be borne in mind that the issue in a special civil action for *certiorari* is whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.

3. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; TAKING COGNIZANCE OF RESPONDENT'S LETTER-COMPLAINT IS PROHIBITED APPEAL OF THE 2007 COURT DECISION THAT BY

THEN HAD LONG BECOME FINAL AND EXECUTORY. — The CSC grievously erred in taking cognizance of respondent's Letter-Complaint which was actually a prohibited appeal of the 2007 Decision that by then had long become final and executory. It is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. In the instant case, respondent's Letter-Complaint, clearly geared towards the reversal of this Court's 2007 Decision. x x x [In] the Letter-Complaint, respondent was assailing the award of back wages for a period not exceeding five (5) years as decreed by this Court in the 2007 Decision. In the said Letter-Complaint, respondent expresses her dismay at the seemingly insufficient award of back wages, which were limited to five (5) years *vis-à-vis* the period of almost eight (8) years that she was out of work. The CSC should have realized that it did not have any authority to entertain any attempt to seek the reversal of the 2007 Decision. Indeed, while being well-aware that the 2007 Decision had long become final and executory, and that any such appeal by respondent would be futile and useless, it still erringly took cognizance of the appeal and worse, modified the 2007 Decision, instead of dismissing the Letter-Complaint outright. As the final arbiter of all legal questions properly brought before it, our decision in any given case constitutes the law of that particular case, from which there is no appeal. The 2007 Decision bars a further repeated consideration of the very same issues that have already been settled with finality; more particularly, the illegal dismissal of respondent, as well as the amount of back wages that she was entitled to receive by reason thereof. To once again reopen that issue through a different avenue would defeat the existence of our courts as final arbiters of legal controversies. Having attained finality, the decision is beyond review or modification even by this Court. Every litigation must come to an end once a judgment becomes final, executory and unappealable. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of the latter's case by the execution and satisfaction of the judgment, which is the "life of the law." Thus, the CSC gravely erred in taking cognizance of respondent's appeal of this Court's 2007 Decision

in the guise of a Letter-Complaint. Any proceedings and resolutions arising therefrom should be rendered nugatory.

4. ID.; ID.; ID.; ID.; CSC RESOLUTIONS ARE VOID AND INEFFECTUAL FOR VARYING THE TENOR OF THE 2007 COURT DECISION. — [T]he CSC Resolutions are void and ineffectual for varying the tenor of our 2007 Decision. These Resolutions directed petitioner to pay respondent's back salaries for the entire period of seven (7) years, eight (8) months and twenty-eight (28) days or for the entire period that she had not been reinstated; more specifically, from the time of her illegal dismissal on 15 May 2000 until her early retirement on 13 February 2008, contrary to our 2007 Decision limiting the said award only to five (5) years. It is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable. It 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 this Court. The only recognized exception is the correction of clerical errors; or the making of so-called *nunc pro tunc* entries which cause no prejudice to any party or when the judgment is void. Any amendment or alteration that substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. x x x We have often ruled that when the dispositive portion of a judgment is clear and unequivocal, it must be executed strictly according to its tenor. A definitive judgment is no longer subject to change, revision, amendment or reversal. Upon finality of the judgment, the Court loses its jurisdiction to amend, modify or alter it. The 2007 Decision had been clear and unambiguous to both parties; otherwise, the parties would have filed a motion for its clarification, but neither party did in this case. Thus, the CSC's act of increasing the amount of benefits awarded to respondent was improper. It did not have any authority to modify, let alone increase the said award which has already been adjudged with finality. The CSC has no authority to vary or modify such final and executory judgment. It is merely obliged with becoming modesty to enforce that judgment and has no jurisdiction either to modify in any way or to reverse the same.

5. ID.; ID.; CIVIL SERVICE; RETIREMENT BENEFITS; THE QUITCLAIM EXECUTED BY RESPONDENT IS VOID AND OF NO EFFECT INSOFAR AS IT FORECLOSED HER ENTITLEMENT TO HER RETIREMENT BENEFITS; CASE AT BAR. — We are aware that respondent has already retired. We emphasize that this Decision, as well as our 2007 Decision, pertain mainly to her entitlement to back wages due to her illegal dismissal. We were made aware, however, of a quitclaim that she executed in favor of petitioner, signed after receiving payment of her back wages, and which seemingly included a waiver of her rights to her retirement benefits. We deem it necessary, therefore, to discuss the implications of that quitclaim, with regard not only to the payment of back wages, but also as to her retirement benefits. Petitioner argues that the waiver executed by respondent forecloses any right to receive additional amounts pertaining to her benefits. We cannot sustain petitioner's argument. The waiver made by respondent cannot repudiate her entitlement to her retirement benefits after having served petitioner for almost twenty-eight years (28) or beginning 1980. In our jurisprudence, quitclaims, waivers or releases are looked upon with disfavor. In *Interorient Maritime Enterprises, Inc. v. Remo*, this Court elucidated on the requirements for a waiver of rights to be valid: x x x A reading of the wording of the Release, Waiver and Quitclaim executed by respondent reveals that the waiver **also included her retirement benefits.** x x x We find that respondent's waiver is void and contrary to public policy, insofar as it included therein her entitlement to retirement benefits. The waiver states that petitioner was being discharged from its obligations pertaining not only to the 2007 Decision, but also from those obligations in relation to respondent's previous employment with petitioner. Those obligations in relation to her previous employment erroneously include within its scope her retirement benefits. This waiver, therefore, cannot be countenanced, insofar as it included her retirement benefits. We rule that the said waiver is void in two respects, more particularly the following: (1) there was fraud or deceit on the part of petitioner; and (2) the consideration for the quitclaim was unreasonable. Obviously, the waiver was merely inveigled from respondent, who had been anxiously waiting to receive payment of her back wages as decreed by this Court. Petitioner basically cornered

respondent into signing the same by making its execution a pre-condition before she could receive her back wages. Similarly, the consideration for the quitclaim is unreasonably low, if we consider that she was supposed to receive her retirement benefits as well, computed from the time she started serving petitioner since way back in 1980. The quitclaim basically meant that the ₱558,944.19 she received from petitioner as payment of back wages was likewise in fulfillment of her retirement benefits as well. Needless to state, the quitclaim, in effect, unduly limited the amount of retirement pay that she was supposed to receive from petitioner. The waiver is, therefore, without effect insofar as it foreclosed her entitlement to her retirement benefits. It should not prevent her from receiving her retirement benefits for her employment.

APPEARANCES OF COUNSEL

Kenneth I. Dasal for petitioner.

D E C I S I O N

SERENO, *C.J.*:

This is a Rule 45 Petition for Review on *Certiorari* assailing the Resolution dated 17 March 2010 of the Court Appeals (CA) docketed as CA-G.R. SP No. 108983.[1] The assailed Resolution denied the Motion for Reconsideration filed by petitioner City of Makati (petitioner) of the CA's earlier Resolution dated 23 October 2009[2] that in turn dismissed petitioner's Rule 43 Petition for Review.[3]

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[1] *Rollo*, pp. 58-61, in the case entitled "*City Government of Makati, as rep. by Hon. Mayor Jejomar C. Binay v. Emerita Odeña*." The Resolution was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente.

[2] CA *rollo*, pp. 185-188, CA Decision dated 23 October 2009 in CA-G.R. SP No. 108983. The Decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente.

[3] *Id.*

This case involves respondent Emerita B. Odeña (respondent) who was a teacher previously employed by petitioner. She was illegally dismissed and is now seeking full payment of her backwages and other benefits as she interprets them to be.

FACTS OF THE CASE

Some of the incidents of this case have been previously resolved by this Court in *Elenita S. Binay, in her capacity as Mayor of the City of Makati, Mario Rodriguez and Priscilla Ferrolino v. Emerita Odeña*, docketed as G.R. No. 163683, in a Decision dated 08 June 2007 (hereinafter, the 2007 Decision).[4] This Court ruled therein that respondent had been illegally dismissed and was thus ordered to be reinstated and paid her backwages, computed from date of dismissal up to date of reinstatement, but in no case to exceed five (5) years.[5]

2007 Decision

The factual findings in the 2007 Decision of this Court are summarized as follows:

Respondent had been employed by petitioner as a teacher since 1980. She was a contractual employee up to 30 July 1992 and a casual employee from July 1992 until November 1996. Sometime in 1996, she held the position of Clerk I and was detailed at the Library Department of the Makati High School.

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[4] G.R. No. 163683, 8 June 2007, 524 SCRA 248.

[5] The dispositive portion of the 2007 Decision reads:

"Wherefore the instant Petition is dismissed for lack of merit. The assailed CA Decision dated May 14, 2004 is hereby AFFIRMED. Costs against petitioners." (*Rollo*, p. 28).

In turn, the CA Decision dated May 14, 2004, provides:

"WHEREFORE, the petition is DISMISSED for lack of merit. **CSC Resolution No. 010962 dated May 29, 2001 and CSC Resolution No. 021491 dated November 18, 2002 are affirmed**, without prejudice to the filing of whatever appropriate disciplinary case against Emerita Odeña, and **subject to the modification that payment of her back salaries shall be computed from date of dismissal up to date of reinstatement, but in no case to exceed five (5) years.**" (Emphasis supplied; *rollo*, p. 23)

It was the practice of respondent to sign an Attendance Sheet bearing her name and signature to signify attendance, instead of using a Daily Time Record.

In 2000, she was asked to explain why she supposedly failed to report for work starting in November 1999. She explained that she did not incur those alleged absences and presented the employees' log book as proof of her attendance. Her explanation was disregarded by then education consultant Priscilla Ferrolino.

Thereafter, on 8 June 2000, Mayor Elenita S. Binay issued a Memorandum dropping respondent from the roll of employees, effective at the close of office hours of 15 May 2000, in view of the latter's absences without official leave (AWOL) starting on 10 November 1999. Respondent moved for reconsideration, but her motion was denied. Aggrieved, she appealed to the Civil Service Commission (CSC).

The CSC ruled that the dropping of respondent from the roll of employees was not supported by evidence.[6] It found that she had actually reported for work from November 1999 to May 2000; and that, while she had incurred absences during that period, those were not equivalent to a continuous absence of at least thirty (30) working days.[7] The Attendance Sheet duly complied with regulations,[8] as it indicated her name and signature, as well as times of arrival and departure, and was verified by her immediate supervisor.[9] Furthermore, she could not have received her corresponding salary for the said period if she were indeed absent.

The CSC, by virtue of respondent's illegal dismissal, directed petitioner to: (1) reinstate her; and (2) to pay her back salaries from the time of her separation up to her actual reinstatement.[10]

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[6] *Rollo*, p. 91, CSC Resolution No. 010962 dated 29 May 2001, p. 4.

[7] *Id.* at 92, CSC Resolution No. 010962 dated 29 May 2001, p. 5.

[8] The CSC relied on CSC Memorandum Circular No. 21, Series of 1991. (*See* CSC Resolution No. 010962 dated 29 May 2001, p. 5; *id.* at 92.)

[9] *Id.* at 93; CSC Resolution No. 010962 dated 29 March 2001, p. 6.

[10] *Binay v. Odeña*, *supra* note 4, at 251.

Consequently, petitioner moved for reconsideration, but the motion was denied.[11] Aggrieved, it filed a Rule 43 Petition appealing the findings of the CSC to the CA.[12]

The CA denied the Petition and affirmed that respondent was illegally dismissed.[13] The CA affirmed the CSC Resolutions which ordered the reinstatement of respondent and payment of back salaries, but subject to the modification that an illegally terminated civil service employee, like respondent, is entitled to back salaries **limited to a maximum period of five (5) years**, and not to full salaries from her illegal dismissal up to her reinstatement.[14]

The dispositive portion of the CA Decision provides as follows:

WHEREFORE, the petition is DISMISSED for lack of merit. **CSC Resolution No. 010962 dated May 29, 2001 and CSC Resolution**

WHEREFORE, the appeal of Emerita B. Odena is hereby GRANTED. The Memorandum of Mayor Elenita S. Binay dated June 8, 2000 dropping her from the rolls is hereby set aside. **Accordingly, Odena is hereby reinstated to her former position without loss of seniority rights and other privileges appurtenant to the position. Furthermore, she should be paid her salaries from the time of her separation up to her actual reinstatement.** However, that is without prejudice to whatever disciplinary case which may be commenced against her. (Emphasis supplied.)

[11] *Rollo* (G.R. No. 163683), pp. 32-35.

"WHEREFORE, the motion for reconsideration of former Mayor Elenita S. Binay is hereby DENIED for want of merit. Accordingly, CSC Resolution No. 01-0962 dated May 29, 2011 directing the immediate reinstatement of Emerita B. Odena and the payment of her back salaries and other benefits from the date of her separation from the service up to her actual reinstatement, STANDS." [*Rollo* (G.R. No. 163683), pp. 32-35.]

[12] *Odeña v. Binay*, docketed as CA-G.R. SP No. 74411.

[13] *Rollo*, pp. 31-40; CA Decision dated 14 May 2004. The CA Decision dated 14 May 2004 was penned by Justice Fernanda Lampas-Peralta and concurred in by Justices Salvador J. Valdez, Jr. and Rebecca de Guia-Salvador.

[14] *Id.* at 38; CA Decision dated 14 May 2004, p. 8 in C.A.-G.R. SP No. 74411.

No. 021491 dated November 18, 2002 are affirmed, without prejudice to the filing of whatever appropriate disciplinary case against Emerita Odeña, and **subject to the modification that payment of her back salaries shall be computed from date of dismissal up to date of reinstatement, but in no case to exceed five (5) years.**

SO ORDERED. (Emphasis supplied)[15]

Thereafter, petitioner filed a Petition with this Court[16] arguing that the CA committed serious error in ruling that the respondent had been illegally dismissed.

In its 2007 Decision, this Court dismissed the Petition and affirmed the ruling of the CA in its entirety; more specifically, that respondent had indeed been illegally dismissed and was thus entitled to payment of backwages to be computed from the date of dismissal up to the date of reinstatement, but not exceeding five (5) years.[17]

The dispositive portion of the 2007 Decision in no uncertain terms affirmed the CA Decision without any modification as follows:

WHEREFORE, the instant petition is DISMISSED for lack of merit. The **assailed CA Decision dated May 14, 2004 is hereby AFFIRMED**. Costs against petitioners.

SO ORDERED.[18] (Emphasis supplied)

The Present Case

The 2007 Decision became final. The following events significant to the present Petition occurred after the promulgation of this Court's 2007 Decision:[19]

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[15] *Id.* at 39.

[16] Petitioner City of Makati's Rule 45 Petition was docketed with this Court as *Binay v. Odeña*, G.R. No. 163683.

[17] *Rollo*, pp. 20-30; Decision dated 08 June 2007 penned by retired Justice Antonio Eduardo B. Nachura.

[18] *Id.*

[19] *Id.*

The CSC, upon motion of respondent,[20] directed the incumbent Mayor of Makati to immediately reinstate respondent to her former position and cause the payment of all her salaries and other benefits from the date of her removal from service up to her reinstatement.[21]

The directive, however, was not complied with,[22] which then compelled the CSC to subsequently reiterate its previous order to immediately reinstate respondent.[23]

The directive to reinstate respondent was never complied with. Respondent instead opted to avail herself of early retirement effective 13 February 2008.

Petitioner thereafter paid her the amount of ₱558,944.19, representing her supposed back salaries and other benefits.[24]

In acknowledging receipt of this amount, she signed in favor of petitioner a "Release, Quitclaim, and Waiver" dated 05 May 2008 (Quitclaim).[25]

The Letter-Complaint

Respondent alleges that after realizing that she had been shortchanged by petitioner, she complained to the CSC, asserting that the amount paid her did not correspond to the entire amount she was legally entitled to.[26] She claimed in her Letter-Complaint that the payment made to her, the amount of which corresponded

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[20] CA *rollo*, pp. 124-126; Motion for Execution dated 25 October 2007.

[21] *Id.* at 127-129; CSC Resolution No. 08-0132 dated 28 January 2008. (*See* CSC Resolution No. 082264 dated 8 December 2008, p. 4; *rollo*, p. 44.)

[22] *Id.* at 130-132; Motion for Implementation of CSC Resolution No. 080132 dated 24 February 2008.

[23] CSC Resolution No. 08-1106 dated 18 June 2008. (*See* CSC Resolution No. 082264 dated 8 December 2008, pp. 4-5; *rollo*, pp. 44-45)

[24] As shown by Land Bank Check No. 61756 dated 29 April 2008 (*See* CSC Resolution No. 082264 dated 08 December 2008, p. 5; *rollo*, p. 45).

[25] *Rollo*, p. 172; Release, Quitclaim and Waiver dated 5 May 2008.

[26] CA *rollo*, pp. 196-198, Letter-complaint dated 28 May 2008.

to five years of service, was insufficient to cover her almost eight years of suffering, *viz.*:

Ipinaglaban ko itong karapatang ito at ito ay aking nakamtan sa papel nga lamang dahil hindi ito lubos na kapanalunan. Limang taong kabayaran katumbas ng halos walong (8) taong pagdurusa ko at ng aking pamilya, ito ba ang tamang katarungan na iginawad sa akin ng City Government of Makati? *Proseso po ba ng inyong pamahalaan ang pagpapapirma ng pilit ng Release quit claim at waiver* (See attached 'A&B') *na pag hindi ka pumirma hindi mo makukuha ang iyong kabayaran. Kinontra ko iyon sa pagdagdag ng gusto ko* (See attached 'C&C-1') *ngunit walang nangyari. Nagalit sila, matigas daw ang ulo ko di ko raw makukuha ang nais ko pag di ako sumunod. Pananakot para pumirma lang ako sa waiver* (see attached 'D &D-1') *kasama ba iyon sa Decision ng Korte Suprema? Batas ba iyon ng Civil Service Commission?*

Takot na mamatay sa gutom ang pamilya ko kaya naghihimagsik man ang aking kalooban sa matinding pagtutol ay napilitan akong pirmahan iyon- kapalit ng tsekeng nagkakahalaga ng limang daan at limamput libong piso (₱550,000.00) lamang ***para sa limang (5) taong kabayaran.*** (See attached "E") *Ito ang nangyari noong Mayo 5, 2008 sa opisina ng legal ng City Hall ng Makati.* ***Ito po ba ay angkop na HATOL na inilapat sa akin ng City Government ng Makati? Alam ko hindi ulit makatarungan ang ginawa nilang ito. Hindi makatarungang pagtanggal sa trabaho ang ginawa nila sa akin noon naipanalo ko nga ang aking karapatan ngunit ngayon hindi pa rin makatarungan ang kanilang kabayaran. Hindi sapat ang limang taong (5) kabayaran sa halos magwawalong (8) taong walang hanapbuhay, dapat po bang ako ang umatang ng kakulangan? Nasaan po ba ang tunay na batas?***

x x x x x x x x x

Dahil hindi na ako nagreinstate nagfile ako ng retirement letter effective noong February 13, 2008, petsa nang matanggap ko ang CSC, Resolution No. 08-0132. *Di po ba isa sa mga benepisyo ko na dapat matanggap ay ang GSIS, PAG-IBIG at yung mga leave credits ko? May karapatan po ba ako na makuha ko ang kumpletong leave credits ko simula nang maglingkod ako sa City Government of Makati, hanggang sa petsa ng* reinstatement *ko, kahit ako ay nagfile na ng* early retirement? *Ayon sa legal ng City Government ng Makati, wala daw po akong karapatan sa benepisyong iyon, lalo na yong pitong taon (7) at labing isang (11) buwan na di ko pagpasok*

simula nang tinanggal nila ako sa trabaho, kasi accumulation daw po iyon, di ko naman pinasukan kaya di ako dapat bayaran, proseso din daw po iyon ng gobyerno, gaano po katotoo iyon? Naaangkop po ba iyon sa aking katayuan, sila naman po ang dahilan kung bakit di ako nagtrabaho, bakit ako ang magdudusa, ayon po ba iyon sa desisyon ng korte? Bakit inilagay nila yun sa Release quit claim at waiver na pinapirmahan nila sa akin bilang pagsang-ayon kung iyon ay proseso? Meron bang dapat pangilagan ang City Government ng Makati kaya nila ako pinapirma ng Release quit claim at waiver nang sapilitan?

x x x x x x x x x

Kaya muli po akong maninikluhod upang humingi ng tamang hustisya at mabigyang linaw ang lahat ng katanungan ko sa kung ano ang tunay na batas ng Civil Service Commission. *Sana po ay mabigyan ng makatarungang paglapat ng hustisya ang hamak na kawani na katulad ko nang sa ganon ay hindi na maulit muli, at sana ay mabigyan ng karampatang lunas ang hinaing kong ito at maimplemento nang tama ang* CSC Resolution 08-132 *sa lalong madaling panahon.*[27] (Emphasis supplied.)

The CSC took cognizance of respondent's Letter-Complaint and directed petitioner to file her comment.[28]

In her Comment,[29] petitioner denied the allegations of respondent for being false and baseless. She argued that the 2007 Decision of this Court has become final and executor, and that, under the same, payment of respondent's back salaries shall be limited to five years only. Moreover, respondent had not been forced to sign a Release, Quitclaim and Waiver, as she executed the same voluntarily. While respondent claimed that the amount of ₱550,000 representing five (5)-year back salaries is insufficient, respondent has not submitted the supposed correct amount that she should receive. Furthermore, as to her leave credits, respondent had failed to submit the necessary documents so the city government could start processing the release. Finally,

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[27] *Id.*

[28] CA *rollo*, p. 139; Order dated 8 September 2008.

[29] *Id.* at 142-144; Comment dated 29 September 2008.

as regards the GSIS and PAG-IBIG benefits, petitioner contended that respondent has to personally apply for their release from the said government agencies.

The Ruling of the CSC

The CSC ruled in favor of respondent, and directed petitioner to pay her backwages and other benefits from the period of her illegal dismissal **until her early retirement**, or for a period of seven (7) years, eight (8) months and twenty-eight (28) days.[30]

The CSC, in its Resolution No. 082264,[31] stated that the 5-year limit was inequitable, to wit:

Although it would appear that the Supreme Court in the aforementioned case affirmed the ruling of the Court of Appeals, it is worth noting, however, that there is nothing in the High Court's decision, either in the body or the dispositive portion, that categorically states that Odena is entitled to back salaries and other benefits only for a period not exceeding five (5) years. As such, it is apposite to conclude that Odena is entitled to the payment of her entire back salaries and other benefits from the date of her illegal dismissal up to the date of her retirement, as will be explained later. This is precisely why the Commission, in all its Resolutions promulgated in relation with this case, was consistent in holding that Odena must be paid her back salaries and other benefits from the days of her illegal dismissal up to her reinstatement.

x x x x x x x x x

Admittedly, there are rulings of the Supreme Court where the claims of an illegally dismissed employee were limited only to five (5) years without conditions and qualifications. Such rulings, however, were expressly and explicitly abandoned in subsequent decisions of the High Court.

x x x x x x x x x

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[30] *Rollo*, p. 51; CSC Resolution No. 082264 dated 8 December 2008, p. 11.

[31] *Id.* at 41-51.

But even if the Supreme Court had implicitly intended, in the case of *Binay vs. Odena*, 524 SCRA 248 (2007), that Odena is entitled only to five (5) years of back salaries and other benefits, such will not bar her from claiming payment of the same in full for the entire period she was out from the service as a result of her illegal dismissal. **To limit the entitlement of Odena to only five (5) years of back salaries and other benefits will indubitably cause serious injustice to her inasmuch as the prevailing jurisprudence at the time of promulgation of the *Binay* case, *supra,* is that an illegally dismissed employee who is ordered reinstated by competent authority is entitled to the payment of his/her illegal dismissal up to his/her reinstatement. Thus, even if the Supreme Court indeed intended to limit to only five (5) years the back salaries and other benefits of Odeña, and that said decision had already become final and executory, the same had to yield to the higher interest of justice.** x x x.[32] (Emphases supplied)

The dispositive portion of CSC Resolution No. 082264[33] provides as follows:

WHEREFORE, **the incumbent City Mayor of Makati is hereby directed to recompute the full back salaries and other benefits of Emerita B. Odena which she is entitled for seven (7) years, eight (8) months, and twenty-eight (28) days, the entire period she was out of the service as a result of her illegal dismissal.** Said benefits shall include the allowances, 13th month pay, bonuses, cash gifts, all other monetary benefits which other employees of the City Government of Makati received within the same period, yearly fifteen (15) days sick and fifteen (15) days vacation leave benefits for the same period including commutation of her entire accrued leave credits that she earned prior to her illegal dismissal. **Should there appear, upon re-computation of Odeña's back salaries and other benefit, an excess of the amount of ₱558,944.19 which she already received, said excess must be immediately paid her.**

The City Mayor of Makati is directed to report to the Commission the action he will take to implement the Resolution, within 15 days from receipt hereof. He is likewise reminded that his failure to implement the decision of the Commission shall be reason enough

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[32] *Id.* at 46-47.

[33] *Id.* at 41-51.

to cite him in indirect contempt of the Commission and shall be the basis for the filing of administrative and criminal charges against him before the proper forum.[34] (Emphases supplied)

It is clear from the foregoing that the CSC ignored the 5-year limit imposed on backwages and instead awarded respondent backwages and other benefits equivalent to a period of more than 7 years, pegged from her illegal dismissal in 2000 until her early retirement in 2008.

Petitioner moved for reconsideration,[35] but the CSC denied the motion and affirmed CSC Resolution No. 082264.[36] In Resolution No. 090622,[37] CSC stated that *res judicata* invoked by petitioner must give way to the higher interest of justice, to wit:

> Notably, the issue on the computation of the back salaries and other benefits to which Emerita B. Odeña is entitled to raised by the City Government of Makati in its motion for reconsideration were already discussed and passed upon extensively in the Resolution now being sought to be reconsidered. By sheer necessity, however, be it reiterated and emphasized that **the apparent affirmation by the Supreme Court of the Decision dated May 14, 2004 of the Court of Appeals must not be employed as an instrument to thwart and ultimately defeat the lawful claim of Odeña for the payment in full of her back salaries and other benefits after her illegal dismissal from the service.**
>
> Thus, the doctrine of *res judicata* being invoked by the City Government of Makati must give way to the higher interest of justice. x x x (Emphasis supplied)[38]

The dispositive portion of CSC Resolution No. 090622,[39] which dismissed petitioner's Motion for Reconsideration, states as follows:

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[34] *Id.* at 51.

[35] *Id.* at 136-137, Motion for Reconsideration dated 22 January 2009.

[36] *Id.* at 52-57, CSC Resolution No. 090622 dated 28 April 2009.

[37] *Id.* at 52-57.

[38] *Id.* at 56.

[39] *Id.* at 52-57.

WHEREFORE, the motion for reconsideration of the City Government of Makati is hereby **DENIED** for lack of merit. Accordingly, the directive of the Commission stated in CSC Resolution No. 08-2264 dated December 8, 2008 is **REITERATED** whether the incumbent City Mayor of Makati is **directed to re-compute the full back salaries and other benefits which Emerita B. Odeña is entitled to for a period of seven (7) years, eight (8) months and twenty-eight (28) days.** x x x. (Emphasis supplied)

Thereafter, petitioner filed a Rule 43 Petition with the CA[40] and argued that: (1) the CSC Resolutions were violative of the doctrine of *res judicata*;[41] and (2) the CSC erred in including respondent's retirement as a ground for her entitlement to full back salaries and other benefits, more than what was granted by this Court in its 2007 Decision.[42] Petitioner contended that the cause of action of the case is the entitlement of respondent to back salaries, and therefore, the issues of her retirement and entitlement to other benefits cannot be assailed.[43]

The Ruling of the CA

The CA dismissed the Rule 43 Petition. The CA regarded the CSC Resolutions, issued in relation to respondent's Letter-Complaint, as orders of execution of the final and executory 2007 Decision of this Court.[44] Thus, petitioner's recourse to a Rule 43 Petition was unavailing, because orders of execution cannot be the subject of appeal, the proper remedy being a Rule 65 petition.[45] The CA ruled that:

This notwithstanding, even if such procedural infirmity is to be disregarded, the instant Petition for Review must still be dismissed for being a wrong mode of remedy.

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[40] CA *rollo*, pp. 8-18, Petition dated 9 June 2009.

[41] *Id.* at 12-14.

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

[43] *Id.* at 15.

[44] *Id.* at 185-188, CA Resolution dated 23 October 2009; The earlier case pertaining to *Binay v. Odena*, docketed as G.R. No. 163683.

[45] *Id.* at 186-187, CA Resolution dated 23 October 2009, pp. 2-3.

Section 1(f), Rule 41 of the Revised Rules of Civil Procedure provides that:

> **Section 1. Subject of appeal.** – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> **No appeal may be taken from:**
>
> x x x
>
> **(f) an order of execution;**
>
> x x x
>
> In all the above instances where the judgment or final order is **not appealable**, the aggrieved party may file an appropriate **special civil action under Rule 65**. (Emphasis supplied)

It is thus explicit from the above provision that no appeal may be taken from an order of execution. Instead, such order may be challenged by the aggrieved party by way of a special civil action for *certiorari* under Rule 65 of the Rules of Court.

Here, the instant Petition for review assails the CSC's Resolution No. 082264 dated December 8, 2008 and Resolution No. 090622 dated April 28, 2009 ordering herein petitioner City of Government Makati to re-compute the full back salaries and benefits of private respondent from the time of her illegal dismissal up to her retirement. A cursory reading of the petition, however, reveals that the merits of the illegal dismissal case has already been adjudged with finality by the Supreme Court in a Decision dated June 8, 2007. **The assailed Resolutions of the CSC arose merely as an incident of the execution when the CSC modified the judgment award on account of private respondent's complaint wherein she sought to be paid more than what has been awarded to her by the Supreme Court.**

Such being the case, petitioner's recourse to a Petition for Review is unavailing. The filing of a special civil action for *certiorari* under Rule 65 of the Rules of Court was the proper remedy questioning an order of execution on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction. x x x.[46] (Emphasis supplied)

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[46] *Id.*

Petitioner moved for reconsideration, but the CA denied the motion and affirmed its previous ruling.[47]

The Present Petition

On 8 April 2010, petitioner filed before this Court a Motion for Extension of Time to File Petition for Review on *Certiorari* (Motion for Extension), praying for an additional period of thirty (30) days or until 9 May 2010 within which to file a petition for review on *certiorari*.[48] On 27 April 2010, We denied the Motion for Extension for failing to state material dates.[49] Petitioner received notice of the denial only on 9 June 2010, or one and a half months after its promulgation.[50]

In the meantime, on 7 May 2010, petitioner filed the instant Petition.[51] Thereafter, this Court required respondent to file a comment,[52] notwithstanding the previous denial of petitioner's Motion for Extension.

In her Comment,[53] respondent argued: (1) the CA did not err in considering the CSC Resolutions as execution orders; (2) petitioner failed to properly serve its pleadings upon respondent; (3) respondent is entitled to the moneys awarded her by the CSC; and (4) the Petition was filed out of time, since petitioner's Motion for Extension had been denied by this Court.

In response, petitioner countered as follows:[54] (1) no motion for execution was ever filed before the CSC, since petitioner had already complied with this Court's 2007 Decision by paying

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[47] *Rollo,* pp. 58-61, CA Resolution dated 17 March 2010.

[48] *Id.* at 3-5.

[49] *Id.* at 63.

[50] Registry Return Receipt attached to SC *En Banc* Resolution dated 27 April 2010.

[51] *Rollo,* pp. 7-17.

[52] *Id.* at 62, SC Resolution dated 15 June 2010.

[53] *Id.* at 75-87, Comment dated 21 October 2010.

[54] Reply dated 2 November 2010, (no pagination).

respondent; (2) petitioner had been serving its pleadings at respondent's last address on record; (3) the issue of respondent's benefits had already been settled with finality; and (4) petitioner was notified of this Court's denial of its Motion for Extension only on 9 June 2010, many days after the present Petition had been filed and after this Court had constructively admitted the present Petition by requiring respondent to file her Comment.

ISSUES

Based on the submissions of both parties, the following main issues are presented for resolution by this Court:

1. Whether petitioner undertook an improper remedy when it filed a Rule 43 Petition with the CA to question the Resolutions issued by the CSC; and

2. Whether respondent, after receiving payment from petitioner, is still entitled to the additional amount awarded by the CSC.

Respondent raises the following preliminary procedural matters:

First, she argues that the present Petition was filed out of time, since petitioner's Motion for Extension had been denied, thereby causing the lapse of the original period for filing the Petition.

We dispose of this argument forthwith. While it is true that the Petition was belatedly filed, it may still be admitted and allowed by this Court in the exercise of its discretion,[55] as in fact it effectively did when it required respondent to file her Comment.

Second, respondent argued that petitioner improperly sent its Petition to the wrong address. On the other hand, the latter insisted that it served its Petition at her last address on record. We note that respondent was able to secure a copy of the Petition and intelligently respond thereto. Thus, we adopt the principle

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[55] *Gonzales vda. de Toledo v. Toledo*, 462 Phil. 738 (2003).

that rules of procedure are employed only to help secure and not override substantial justice.[56] If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[57]

The Court's Ruling

We find the instant Petition impressed with merit.

I. Petitioner undertook the correct remedy in assailing the CSC Resolutions by filing a Rule 43 Petition with the Court of Appeals.

Petitioner insists that its filing of a Rule 43 Petition to assail the CSC Resolutions was proper, as these supposedly involved a new subject matter and were thus issued pursuant to CSC's exercise of its quasi-judicial function. They were not merely incidental to the execution of this Court's 2007 Decision.

We rule that filing a Rule 43 Petition with the CA is the proper remedy to assail the CSC Resolutions, but not for the reasons advanced by petitioner.

First, the jurisdiction of the CA over petitions for review under Rule 43 is not limited to judgments and final orders of the CSC, but can extend to appeals from awards, judgments, final orders or resolutions issued by the latter.[58] Section 1, Rule 43 of the Rules, provides in part:

> Section 1. Scope. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or **resolutions** of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the **Civil Service Commission** x x x. (Emphasis supplied.)

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[56] *Soriano, Jr. v. Soriano,* 558 Phil. 627 (2007).

[57] *Id.*

[58] *PAGCOR v. Aumentado, Jr.*, G.R. No. 173634, 22 July 2010, 625 SCRA 241.

In *PAGCOR v. Aumentado, Jr.*,[59] this Court ruled that it is clear from the above-quoted provision that the CA's jurisdiction covers not merely final judgments and final orders of the CSC, but also awards, judgments, final orders or **resolutions** of the CSC.[60]

Second, although the general rule is that an order of execution is not appealable, the CA failed to consider that there are exceptions to this rule, as illustrated in this case.

A writ of execution is a direct command of the court to the sheriff to carry out the mandate of the writ, which is normally the enforcement of a judgment.[61] By analogy, the CSC Resolutions were orders of execution and were issued in connection with the implementation of this Court's 2007 Decision.

It is obvious from both the body and the dispositive portions of the CSC Resolutions that they carried instructions to enforce this Court's 2007 Decision, albeit erroneously made.

The dispositive portion of CSC Resolution No. 082264,[62] directed petitioner to pay respondent's backwages:

> WHEREFORE, **the incumbent City Mayor of Makati is hereby directed to recompute the full back salaries and other benefits of Emerita B. Odeña which she is entitled for seven (7) years, eight (8) months, and twenty-eight (28) days, the entire period she was out of the service as a result of her illegal dismissal.** Said benefits shall include the allowances, 13th month pay, bonuses, cash gifts, all other monetary benefits which other employees of the City Government of Makati received within the same period, yearly fifteen (15) days sick and fifteen (15) days vacation leave benefits for the same period including commutation of her entire accrued leave credits that she earned prior to her illegal dismissal. Should there appear, upon re-computation of Odeña's back salaries and other benefit, an excess of the amount of ₱558,944.19 which she already received, said excess must be immediately paid her.

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[59] *Id.*

[60] *Id.*

[61] *BALLENTINE'S LAW DICTIONARY* (3rd ed.) (LEXIS, 2010).

[62] *Rollo*, pp. 41-51.

The City Mayor of Makati is directed to report to the Commission the action he will take to implement the Resolution, within 15 days from receipt hereof. He is likewise reminded that his failure to implement the decision of the Commission shall be reason enough to cite him in indirect contempt of the Commission and shall be the basis for the filing of administrative and criminal charges against him before the proper forum.[63] (Emphasis supplied)

The directive addressed to petitioner to recompute the amount of full back salaries and other benefits is derived from the enforcement of this Court's 2007 Decision.

In a similar vein, the dispositive portion of CSC Resolution No. 090622,[64] which dismissed petitioner's Motion for Reconsideration of the above Resolution, states as follows:

WHEREFORE, the motion for reconsideration of the City Government of Makati is hereby **DENIED** for lack of merit. Accordingly, the directive of the Commission stated in CSC Resolution No. 08-2264 dated December 8, 2008 is **REITERATED** where the incumbent City Mayor of Makati is directed to re-compute the full back salaries and other benefits of which Emerita B. Odena is entitled to for a period of seven (7) years, eight (8) months, and twenty-eight (28) days. x x x.

Based on the foregoing, the CA was correct in treating the CSC Resolutions as orders of execution that were issued in connection with the implementation of this Court's 2007 Decision. The CA, however erred in dismissing petitioner's Rule 43 Petition for being improper.

To recall, the CA ruled that an order of execution is not appealable under Section 1(f), Rule 41 of the Rules of Court. [65] It reasoned that the correct remedy should have been a special civil action for *certiorari* under Rule 65.[66]

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[63] *Id.* at 51.

[64] *Id.* at 52-57.

[65] *Id.* at 186-187, CA Decision dated 23 October 2009, pp. 2-3.

[66] *Id.* at 186-188, CA Decision dated 23 October 2009, pp. 2-4.

Section 1(f), Rule 41provides, in pertinent part:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x x x x x x

f) An order of execution;

x x x x x x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may **file an appropriate special civil action under Rule 65**. (Emphasis supplied)

Indeed, the general rule is that an order of execution is not appealable; otherwise, a case would never end.[67] The CA, however, failed to consider that there are exceptions to this rule. This Court in *Banaga v. Majaducon*[68] enumerated the exceptions as follows:

Even prior to the promulgation of the 1997 Rules of Civil Procedure, **the rule that no appeal lies from an order or writ directing the execution of a final judgment, for otherwise a case will not attain finality, is not absolute since a party aggrieved by an improper or irregular execution of a judgment is not without a remedy.** Thus, in *Limpin v. Intermediate Appellate Court*, the Court enumerated the exceptional circumstances where a party may elevate the matter of an improper execution for appeal, to wit:

> **There may, to be sure, be instances when an error may be committed in the course of execution proceedings prejudicial to the rights of a party. These instances, rare though they may be, do call for correction by a superior court, as where —**
>
> 1) **the writ of execution varies the judgment;**

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[67] *People v. Estrada*, 130 Phil. 108 (1968).

[68] 526 Phil. 641 (2006).

2) **there has been a change in the situation of the parties making execution inequitable or unjust;**

x x x x x x x x x

6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, **or that the judgment debt has been paid or otherwise satisfied,** or the writ was issued without authority;

In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. **That mode of elevation may be either by appeal (writ of error or *certiorari*), or by a special civil action of *certiorari*, prohibition, or *mandamus*.**

The aforementioned pronouncement has been reiterated in cases subsequent to the adoption of the 1997 Rules of Civil Procedure. **The Court finds no sound justification to abandon the aforequoted pronouncement insofar as it recognizes the filing of an ordinary appeal as a proper remedy to assail a writ or order issued in connection with the execution of a final judgment, where a factual review in the manner of execution is called for to determine whether the challenged writ or order has indeed varied the tenor of the final judgment.**[69] (Emphases supplied)

To rule that a special civil action for *certiorari* constitutes the sole and exclusive remedy to assail a writ or order of execution would unduly restrict the remedy available to a party prejudiced by an improper or illegal execution.[70] It must be borne in mind that the issue in a special civil action for *certiorari* is whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.[71]

In the instant case, the appeal of the CSC Resolutions under Rule 43 is proper on two (2) points: (1) they varied the 2007 Decision and (2) the judgment debt has been paid or otherwise satisfied.

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[69] *Id.* at 649-650.

[70] *Id.* at 650.

[71] *Yasuda v. Court of Appeals*, 386 Phil. 594 (2002).

First, the CSC Resolutions have varied the 2007 Decision, considering that instead of directing the payment of backwages for a period not exceeding five (5) years, the CSC ordered petitioner to pay an amount equivalent to almost eight (8) years.

Second, the judgment debt arising from the 2007 Decision has been satisfied as respondent has already received payment from petitioner the amount of ₱558,944.19, representing her back salaries not exceeding five (5) years, as computed by petitioner.

All these circumstances require a factual review of the manner of the execution of the 2007 Decision, which should have prompted the CA to take cognizance of the appeal. Clearly, these circumstances fall under the above-quoted enumeration of the exceptions to the general rule that an order of execution is not subject to appeal. Thus, the CA committed grave error when it denied petitioner's appeal for being the wrong remedy.

At this juncture, however, a remand of the case to the CA would serve no useful purpose, since the core issue herein—more specifically, whether respondent is entitled to the money awarded to her by the CSC—may already be resolved using the records of the proceedings. A remand would unnecessarily burden the parties with the concomitant difficulties and expenses of another proceeding, in which they would have to present similar arguments and pieces of evidence.

Thus, we deem it proper to resolve the issue of whether respondent is entitled to the amount awarded to her by the CSC. We rule in the negative.

II. Respondent is not entitled to the amount awarded to her by the CSC.

We reverse the ruling of the CSC granting respondent additional amounts pertaining to her back wages equivalent to seven (7) years, eight (8) months and twenty-eight (28) days, or for the entire period that she was not reinstated; more specifically, from the time of her illegal dismissal on 15 May 2000 until her early retirement on 13 February 2008, contrary to our 2007 Decision, which limited the said award only to five (5) years. We reverse based on the following reasons:

1. The Letter-Complaint is a belated attempt to seek the reversal of the 2007 Decision, which should not have been considered by the CSC in the first place. Thus, the CSC Resolutions awarding additional amounts arising therefrom are void and ineffectual.

2. The CSC Resolutions are void and ineffectual for varying the tenor of our 2007 Decision.

3. Petitioner had already complied with this Court's 2007 Decision, and its obligation under the 2007 Decision was extinguished, when it paid respondent the amount of ₱558,944.19 representing her backwages, from the time of illegal dismissal up to reinstatement (in this case, early retirement) for a period not exceeding five (5) years. The amounts awarded by the CSC exceeding this payment is not justified under this Court's 2007 Decision.

To recall, the 2007 Decision, in relation to the CA Decision dated 14 May 2004, directed petitioner to do two things: (1) to reinstate respondent to her former position;[72] and (2) to pay her back wages to be computed from the time of her illegal dismissal until her reinstatement to her former position, but not to exceed five (5) years.

The reinstatement portion was rendered moot by respondent's early retirement effective on 13 February 2008.

To comply with the second directive, the amount of ₱558,944.19 representing the amount of back wages for a period not exceeding five (5) years, as computed by petitioner, was paid to respondent.

We rule, however, that the Quitclaim executed by respondent is void and of no effect and cannot validly foreclose her right to receive amounts pertaining to her early retirement.

A. The Letter-Complaint is a belated attempt to seek the reversal of this Court's 2007 Decision, which should not have been considered by the CSC.

[72] *Supra* note 17.

The CSC grievously erred in taking cognizance of respondent's Letter-Complaint which was actually a prohibited appeal of the 2007 Decision that by then had long become final and executory.

It is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.[73]

In the instant case, respondent's Letter-Complaint, which is clearly geared towards the reversal of this Court's 2007 Decision, states as follows:

Ipinaglaban ko itong karapatang ito at ito ay aking nakamtan sa papel nga lamang dahil hindi ito lubos na kapanalunan. Limang taong kabayaran katumbas ng halos walong (8) taong pagdurusa ko at ng aking pamilya, ito ba ang tamang katarungan na iginawad sa akin ng City Government of Makati? *Proseso po ba ng inyong pamahalaan ang pagpapapirma ng pilit ng Release quit claim at waiver (See attached 'A&B') na pag hindi ka pumirma hindi mo makukuha ang iyong kabayaran. Kinontra ko iyon sa pagdagdag ng gusto ko (See attached 'C&C-1') ngunit walang nangyari. Nagalit sila, matigas daw ang ulo ko di ko raw makukuha ang nais ko pag di ako sumunod. Pananakot para pumirma lang ako sa waiver (see attached 'D &D-1') kasama ba iyon sa Decision ng Korte Suprema? Batas ba iyon ng Civil Service Commission?*

Takot na mamatay sa gutom ang pamilya ko kaya naghihimagsik man ang aking kalooban sa matinding pagtutol ay napilitan akong pirmahan iyon- kapalit ng tsekeng nagkakahalaga ng limang daan at limamput libong piso (₱550,000.00) lamang para sa limang (5) taong kabayaran. (See attached "E") Ito ang nangyari noong Mayo 5, 2008 sa opisina ng legal ng City Hall ng Makati. ***Ito po ba ay angkop na HATOL na inilapat sa akin ng City Government ng Makati? Alam ko hindi ulit makatarungan ang ginawa nilang ito. Hindi makatarungang pagtanggal sa trabaho ang ginawa nila sa akin noon naipanalo ko nga ang aking karapatan ngunit ngayon hindi pa rin makatarungan ang kanilang kabayaran. Hindi sapat ang limang taong (5) kabayaran sa halos magwawalong (8) taong walang hanapbuhay, dapat po bang ako ang umatang ng kakulangan? Nasaan po ba ang tunay na batas?***

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[73] *Panado v. Court of Appeals*, 358 Phil. 593 (1998).

x x x x x x x x x

Kaya muli po akong maninikluhod upang humingi ng tamang hustisya at mabigyang linaw ang lahat ng katanungan ko sa kung ano ang tunay na batas ng Civil Service Commission. Sana po ay mabigyan ng makatarungang paglapat ng hustisya ang hamak na kawani na katulad ko nang sa ganon ay hindi na maulit muli, at sana ay mabigyan ng karampatang lunas ang hinaing kong ito at maimplemento nang tama ang CSC Resolution 08-132 sa lalong madaling panahon.[74] (Emphasis supplied.)

It can be gleaned from the above-quoted portion of the Letter-Complaint that respondent was assailing the award of back wages for a period not exceeding five (5) years as decreed by this Court in the 2007 Decision. In the said Letter-Complaint, respondent expresses her dismay at the seemingly insufficient award of back wages, which were limited to five (5) years *vis-à-vis* the period of almost eight (8) years that she was out of work. The CSC should have realized that it did not have any authority to entertain any attempt to seek the reversal of the 2007 Decision.

Indeed, while being well-aware that the 2007 Decision had long become final and executory, and that any such appeal by respondent would be futile and useless, it still erringly took cognizance of the appeal and worse, modified the 2007 Decision, instead of dismissing the Letter-Complaint outright.

As the final arbiter of all legal questions properly brought before it, our decision in any given case constitutes the law of that particular case, from which there is no appeal.[75] The 2007 Decision bars a further repeated consideration of the very same issues that have already been settled with finality; more particularly, the illegal dismissal of respondent, as well as the amount of back wages that she was entitled to receive by reason thereof.

To once again reopen that issue through a different avenue would defeat the existence of our courts as final arbiters of

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[74] *Supra* note 26.

[75] *Balindong v. Court of Appeals*, 488 Phil. 203 (2004).

legal controversies. Having attained finality, the decision is beyond review or modification even by this Court.[76] Every litigation must come to an end once a judgment becomes final, executory and unappealable.[77] Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of the latter's case by the execution and satisfaction of the judgment, which is the "life of the law."[78]

Thus, the CSC gravely erred in taking cognizance of respondent's appeal of this Court's 2007 Decision in the guise of a Letter-Complaint. Any proceedings and resolutions arising therefrom should be rendered nugatory.

B. The CSC Resolutions are void and ineffectual for varying the tenor of the 2007 Decision.

We likewise rule that the CSC Resolutions are void and ineffectual for varying the tenor of our 2007 Decision. These Resolutions directed petitioner to pay respondent's back salaries for the entire period of seven (7) years, eight (8) months and twenty-eight (28) days or for the entire period that she had not been reinstated; more specifically, from the time of her illegal dismissal on 15 May 2000 until her early retirement on 13 February 2008, contrary to our 2007 Decision limiting the said award only to five (5) years.

It is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable.[79] It 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

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[76] *Toledo-Banaga v. Court of Appeals*, 361 Phil. 1006 (1999).

[77] *Yau v. Silverio*, 567 Phil. 493 (2008).

[78] *De Leon v. Public Estates Authority*, G.R. Nos. 181970 & 182678, 03 August 2010, 626 SCRA 547.

[79] *Agra v. Commission on Audit*, G.R. No. 167807, 06 December 2011, 661 SCRA 563.

attempted to be made by the court rendering it or by this Court.[80] The only recognized exception is the correction of clerical errors; or the making of so-called *nunc pro tunc* entries which cause no prejudice to any party or when the judgment is void.[81] Any amendment or alteration that substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[82]

In the instant case, when the CSC directed petitioner to pay respondent an amount pertaining to her backwages for a period of almost eight (8) years, it erroneously modified the 2007 Decision of this Court. The CSC's directive cannot be considered as mere correction of a clerical error either, since it substantially altered the amount of benefits respondent was entitled to as decreed by this Court.

To recall, an examination of the CA Decision dated 14 May 2004[83] would reveal that it clearly imposed a five-year limit on the amount of back wages that respondent is entitled to receive upon her illegal dismissal. The appellate court ruled in this wise:

> However, as regards the CSC's order to pay Emerita Odeña's "*salaries from the time of her separation up to her actual reinstatement*," the Court deems it appropriate to modify the same. **It is settled that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, not full back salaries from her illegal dismissal up to her reinstatement** (*Marohombsar vs. Court of Appeals*, *326 SCRA 62 [2000]*). Hence, considering that Emerita Odeña was dropped from the rolls effective at the close of office hours of May 15, 2000, her back salaries shall be computed from May 16, 2000 up to date

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[80] *Landbank of the Philippines v. Suntay*, G.R. No. 188376, 14 December 2011, 662 SCRA 614.

[81] *AGG Trucking v. Yuag*, G.R. No. 195033, 12 October 2011, 659 SCRA 91.

[82] *Mandaue Dinghow Dimsum House Co., Inc. v. NLRC*, 571 SCRA 108 (2008).

[83] *Rollo*, pp. 31-40, CA Decision dated 14 May 2004 in C.A.-G.R. SP No. 74411.

of reinstatement, but not to exceed five (5) years.[84] (Emphases supplied)

The five-year limit was also reflected in the dispositive portion of the CA Decision as follows:

WHEREFORE, the petition is DISMISSED for lack of merit. **CSC Resolution No. 010962 dated May 29, 2001**[85] **and CSC Resolution No. 021491 dated November 18, 2002**[86] **are affirmed**, without prejudice to the filing of whatever appropriate disciplinary case against Emerita Odeña, and subject to the modification that payment of her back salaries shall be computed from date of dismissal **up to date of reinstatement, but in no case to exceed five (5) years.**

SO ORDERED. (Emphasis supplied)[87]

The discussion in the 2007 Decision did not mention any qualification pertaining to the five-year limit set by the CA on the amount of back wages to be received by respondent. Likewise, the dispositive portion of the 2007 Decision simply provides as follows:

WHEREFORE, the instant petition is DISMISSED for lack of merit. The **assailed CA Decision dated May 14, 2004 is hereby AFFIRMED**. Costs against petitioners.

SO ORDERED. (Emphasis supplied)

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[84] *Id.* at 38, CA Decision dated 14 May 2004, p. 8 in C.A.-G.R. SP No. 74411.

[85] *Rollo* (G.R. No. 163683), p.3; "WHEREFORE, the appeal of Emerita B. Odena is hereby GRANTED. The Memorandum of Mayor Elenita S. Binay dated June 8, 2000 dropping her from the rolls is hereby set aside. Accordingly, Odena is hereby reinstated to her former position without loss of seniority rights and other privileges appurtenant to the position. Furthermore, she should be paid her salaries from the time of her separation up to her actual reinstatement. However, that is without prejudice to whatever disciplinary case which may be commenced against her." [*See* CSC Resolution No. 010962]

[86] *Id.* at 35; "WHEREFORE, the motion for reconsideration of former Mayor Elenita S. Binay is hereby DENIED for want of merit. Accordingly, CSC Resolution No. 01-0962 dated May 29, 2011 directing the immediate reinstatement of Emerita B. Odena and the payment of her back salaries and other benefits from the date of her separation from the service up to her actual reinstatement, STANDS." [*See* CSC Resolution No. 021491]

[87] *Rollo*, p. 23.

Thus, our 2007 Decision unequivocally affirmed the CA Decision dated 14 May 2004[88] without modification. Since there is no qualification stated in either the body or the dispositive portion, the ordinary and literal meaning of the word "affirm" should prevail, that is, that the CA Decision had been affirmed in its entirety; including the five-year limit imposed by the appellate court.[89] This Court in *Jose Clavano, Inc. v. HLURB*[90] reiterated previous rulings wherein We nullified orders that veered away from the dispositive portion of final judgments:

> **Clearly, there is nothing in the body much less in the dispositive portion of the HLURB Decision nor in the pleadings of the parties from where we may deduce that petitioner must pay for the amounts spent in transferring title to private respondents. It is well-settled that under these circumstances no process may be issued to enforce the asserted legal obligation**. In *De la Cruz Vda. de Nabong v. Sadang* we nullified an order requiring an indemnity bond since the requirement was not contained in the dispositive part of the final judgment. Similarly in *Supercars, Inc. v. Minister of Labor* we set aside the award of backwages for the period that the writ of execution was unserved since the final and executory decision of the Minister of Labor merely directed the reinstatement of the laborers to their former positions. Finally, *David v. Court of Appeals* affirmed the ruling of the Court of Appeals mandating the payment of simple legal interest only with nothing said about compounded interest since the judgment sought to be executed therein ordered the payment of simple legal interest only and held nothing about payment of compounded interest. This Court can do no less than follow these precedents in the instant petition.
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> x x x x x x x x x

Verily, since the Orders in question are a wide departure from and a material amplification of the final and at least executory HLURB Decision, they are *pro tanto* void and absolutely unenforceable for any purpose. It is well settled that after the decision has become final and executory, it can no longer be amended or corrected by

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[88] Docketed as CA G.R. SP No. 74411.

[89] See *Jose Clavano, Inc. v. HLURB*, 428 Phil. 208 (2002).

[90] *Id.* at 224-232.

the court except for clerical errors or mistakes. In *Robles v. Timario* we nullified and set aside the imposition of interest in a subsequent order of the lower court on the ground that the dispositive part of the judgment "absolutely made no mention of any interest on the amount of the judgment, hence there is no ambiguity to be clarified from the statements made in the body of the decision x x x" We shall do the same in the instant case. (Emphasis supplied)

We have often ruled that when the dispositive portion of a judgment is clear and unequivocal, it must be executed strictly according to its tenor.[91] A definitive judgment is no longer subject to change, revision, amendment or reversal. Upon finality of the judgment, the Court loses its jurisdiction to amend, modify or alter it.[92] The 2007 Decision had been clear and unambiguous to both parties; otherwise, the parties would have filed a motion for its clarification, but neither party did in this case. Thus, the CSC's act of increasing the amount of benefits awarded to respondent was improper. It did not have any authority to modify, let alone increase the said award which has already been adjudged with finality.

The CSC has no authority to vary or modify such final and executory judgment. It is merely obliged with becoming modesty to enforce that judgment and has no jurisdiction either to modify in any way or to reverse the same.[93]

C. Petitioner already complied with this Court's 2007 Decision, and its obligation was extinguished, when it paid respondent the amount of ₱558,944.19 representing her backwages for a period not exceeding five (5) years, as computed by petitioner.

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[91] *Montemayor v. Millora*, G.R. No. 168251, 27 July 2011, 54 SCRA 580.

[92] *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, 21 May 2009, 588 SCRA 64.

[93] See *People of Paombong, Bulacan v. Court of Appeals*, G.R. No. 99845, 4 February 1993, 218 SCRA 423.

Petitioner insists that it has complied with this Court's 2007 Decision upon its payment of the amount of ₱558,944.19 to respondent. We agree.

The rule is fundamental, that after a judgment has been fully satisfied, the case is deemed terminated once and for all. It cannot be modified or altered.[94] The CSC gravely erred in modifying a judgment which had in fact already been satisfied even before respondent filed her Letter-Complaint.

As previously stated, the 2007 Decision, in relation to the CA Decision dated 14 May 2004, directed petitioner to do two things: (1) to reinstate respondent to her former position;[95] and (2) to pay her back wages to be computed from the time of her illegal dismissal until her reinstatement to her former position, but not to exceed five (5) years. We rule that these directives have already been complied with prior to the filing of the Letter-Complaint.

Moreover, respondent's reinstatement was rendered moot by the fact of her early retirement. Thus, petitioner could no longer carry out the same.

As earlier discussed, it is undisputed that the respondent received from the petitioner the amount of ₱558,944.19 as backwages. Thus, upon satisfaction of the judgment, any subsequent modification thereof ordered by the CSC was rendered useless and futile.

D. The quitclaim executed by respondent is void and of no effect in terms of foreclosing her rights to receive additional amounts pertaining to her retirement benefits.

We are aware that respondent has already retired. We emphasize that this Decision, as well as our 2007 Decision, pertain mainly to her entitlement to back wages due to her illegal

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[94] *Freeman Inc. vs. SEC*, G.R. No. 110265, 07 July 1994, 233 SCRA 735.

[95] *Supra* note 17.

dismissal. We were made aware, however, of a quitclaim that she executed in favor of petitioner, signed after receiving payment of her back wages, and which seemingly included a waiver of her rights to her retirement benefits. We deem it necessary, therefore, to discuss the implications of that quitclaim, with regard not only to the payment of back wages, but also as to her retirement benefits.

Petitioner argues that the waiver executed by respondent forecloses any right to receive additional amounts pertaining to her benefits.

We cannot sustain petitioner's argument. The waiver made by respondent cannot repudiate her entitlement to her retirement benefits after having served petitioner for almost twenty-eight years (28) or beginning 1980.

In our jurisprudence, quitclaims, waivers or releases are looked upon with disfavor.[96] In *Interorient Maritime Enterprises, Inc. v. Remo,*[97] this Court elucidated on the following requirements for a waiver of rights to be valid:

> To be valid, a Deed of Release, Waiver and/or Quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.

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[96] *Agoy v. NLRC*, 322 Phil. 636 (1996).

[97] G.R. No. 181112, 29 June 2010, 622 SCRA 237, 248.

A reading of the wording of the Release, Waiver and Quitclaim[98] executed by respondent reveals that the waiver **also included her retirement benefits** as follows:

> 1. In accordance with the Decision of the Supreme Court dated June 08, 2007 in SC G.R. 163683, I hereby agree to accept payment in the amount of FIVE HUNDRED FIFTY EIGHT THOUSAND NINE HUNDRED FORTY FOUR AND 19/100 (Php 558,944.19) which is full and total payment pursuant to the said Decision;
>
> 2. It is understood and agreed that with the payment to me of the specified amount, receipt of which is hereby acknowledged, I hereby release and forever discharge the City Government of Makati of all its obligations and liabilities pursuant to the said Decision **and in relation to my previous employment to the City Government of Makati**;
>
> 3. **It is also understood and agreed that the amount paid to me is in full settlement of my benefits, except for the terminal leave earned during the period that I rendered actual service to the City Government of Makati as maybe allowed under the law, and I hereby waive any further action, causes of actions, demands, damages, or any claim whatsoever against the City Government of Makati and its officials**;
>
> 4. Further, I hereby state that I have carefully read and understood the foregoing release, waiver and quitclaim and have signed the same freely and voluntarily. (Emphases supplied)

We find that respondent's waiver is void and contrary to public policy, insofar as it included therein her entitlement to retirement benefits.

The waiver states that petitioner was being discharged from its obligations pertaining not only to the 2007 Decision, but also from those obligations in relation to respondent's previous employment with petitioner. Those obligations in relation to her previous employment erroneously include within its scope her retirement benefits. This waiver, therefore, cannot be countenanced, insofar as it included her retirement benefits.

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[98] *Rollo*, p. 172; Release, Quitclaim and Waiver dated 5 May 2008.

We rule that the said waiver is void in two respects, more particularly the following: (1) there was fraud or deceit on the part of petitioner; and (2) the consideration for the quitclaim was unreasonable.

Obviously, the waiver was merely inveigled from respondent, who had been anxiously waiting to receive payment of her back wages as decreed by this Court. Petitioner basically cornered respondent into signing the same by making its execution a pre-condition before she could receive her back wages.

Similarly, the consideration for the quitclaim is unreasonably low, if we consider that she was supposed to receive her retirement benefits as well, computed from the time she started serving petitioner since way back in 1980. The quitclaim basically meant that the ₱558,944.19 she received from petitioner as payment of back wages was likewise in fulfillment of her retirement benefits as well. Needless to state, the quitclaim, in effect, unduly limited the amount of retirement pay that she was supposed to receive from petitioner. The waiver is, therefore, without effect insofar as it foreclosed her entitlement to her retirement benefits. It should not prevent her from receiving her retirement benefits for her employment.

WHEREFORE, the instant Petition for Review filed by City of Makati is hereby **GRANTED.** The Resolutions dated 23 October 2009 and 17 March 2010 of the Court of Appeals in CA-G.R. SP No. 108983 are **REVERSED.** The Release, Waiver and Quitclaim signed by respondent, however, is without force and effect, and should not foreclose her entitlement to retirement benefits. The City of Makati is hereby likewise directed to immediately pay the same.

SO ORDERED.

Carpio, Velasco, Jr., Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Peralta, J., no part.

Leonardo-de Castro, J., on official leave.

EN BANC

[G.R. No. 198457. August 13, 2013]

FILOMENA G. DELOS SANTOS, JOSEFA A. BACALTOS, NELANIE A. ANTONI, and MAUREEN A. BIEN, *petitioners, vs.* **COMMISSION on AUDIT, represented by its Commissioners,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); POWERS AND DUTIES. —** At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

2. **REMEDIAL LAW; APPEALS; FINDINGS OF THE COA, RESPECTED. —** It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS WHO ARE CUSTODIANS OF GOVERNMENT FUNDS SHALL BE LIABLE FOR THE USE THEREOF ACCORDING TO LAW AND AS PRESCRIBED; VIOLATION THEREIN WARRANTS REFERRAL TO THE OFFICE OF THE OMBUDSMAN FOR PROPER ACTION. — It is a standing rule that public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded against loss or damage, and that they are expended, utilized, disposed of or transferred in accordance with the law and existing regulations, and on the basis of prescribed documents and necessary records. x x x Jurisprudence holds that, absent any showing of bad faith and malice, there is a presumption of regularity in the performance of official duties. However, this presumption must fail in the presence of an explicit rule that was violated. x x x [T]he Court finds that the petitioners herein failed to make a case justifying their non-observance of existing auditing rules and regulations, and of their duties under the MOA. x x x [T]he Court deems it proper to refer this case to the Office of the Ombudsman for the investigation and possible prosecution of any and all criminal offenses related to the irregular disbursement of Cuenco's PDAF.

APPEARANCES OF COUNSEL

Calderon Davide Trinidad Tolentino & Castillo for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court are Decision Nos. 2010-051[2]

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[1] *Rollo,* pp. 2-48.

[2] *Id.* at 50-67. Signed by Chairman Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

and 2011-045,[3] dated April 8, 2010 and August 8, 2011, respectively, of respondent Commission on Audit (CoA) which affirmed Notice of Disallowance (ND) No. 2008-09-01 (SAT)[4] dated September 8, 2008 for the amount of ₱3,386,697.10 and thereby held petitioners Filomena G. Delos Santos, Josefa A. Bacaltos, Nelanie A. Antoni, and Maureen A. Bien (petitioners), *inter alia*, solidarily liable therefor.

The Facts

Sometime in October 2001, then Congressman Antonio V. Cuenco (Cuenco) of the Second District of Cebu City entered into a Memorandum of Agreement[5] (MOA) with the Vicente Sotto Memorial Medical Center (VSMMC or hospital), represented by Dr. Eusebio M. Alquizalas (Dr. Alquizalas), Medical Center Chief, appropriating to the hospital the amount of ₱1,500,000.00 from his Priority Development Assistance Fund (PDAF) to cover the medical assistance of indigent patients under the Tony N' Tommy (TNT) Health Program (TNT Program).[6] It was agreed, *inter alia*, that: (*a*) Cuenco shall identify and recommend the indigent patients who may avail of the benefits of the TNT Program for an amount not exceeding ₱5,000.00 per patient, except those with major illnesses for whom a separate limit may be specified; (*b*) an indigent patient who has been a beneficiary will be subsequently disqualified from seeking further medical assistance; and (*c*) the hospital shall purchase medicines intended for the indigent patients from outside sources if the same are not available in its pharmacy, subject to reimbursement when such expenses are supported by official receipts and other documents.[7] In line with this, Ma. Isabel Cuenco, Project Director of the TNT Program, wrote[8] petitioner Nelanie Antoni (Antoni),

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[3] *Id.* at 68-72. Signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[4] *Id.* at 73-75.

[5] *Id.* at 235-238.

[6] *Id.* at 7 and 50.

[7] *Id.* at 236.

[8] *Id.* at 239.

Pharmacist V of VSMMC, requesting the latter to purchase needed medicines not available at the hospital pharmacy from Sacred Heart Pharmacy or Dell Pharmacy which were supposedly accredited suppliers of the Department of Health. The said request was approved.[9]

The Audit Proceedings

Several years after the enforcement of the MOA, allegations of forgery and falsification of prescriptions and referrals for the availment of medicines under the TNT Program surfaced. On December 14, 2004, petitioner Filomena G. Delos Santos (Delos Santos), who succeeded[10] Dr. Alquizalas, created, through Hospital Order No. 1112,[11] a fact-finding committee to investigate the matter.

Within the same month, Beatriz M. Booc (Booc), State Auditor IV, who was assigned to audit the hospital, came up with her own review of the account for drugs and medicines charged to the PDAF of Cuenco. She furnished Delos Santos the results of her review as contained in Audit Observation Memoranda (AOM) Nos. 2004-21,[12] 2004-21B,[13] and 2004-21C,[14] all dated December 29, 2004, recommending the investigation of the following irregularities:

a. AOM No. 2004-21 x x x involving fictitious patients and falsified prescriptions for anti-rabies and drugs costing ₱3,290,083.29;

b. AOM No. 2004-21B x x x involving issuance of vitamins worth ₱138,964.80 mostly to the staff of VSMMC and TNT Office covering the period January to April 2004; and

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[9] *Id.* Approval indicated on the face of the letter.

[10] *Id.* at 311.

[11] *Id.* at 240.

[12] *Id.* at 241-243.

[13] *Id.* at 244-245.

[14] *Id.* at 246-247.

c. AOM No. 2004-21C x x x covering fictitious patients and falsified prescriptions for other drugs and medicines worth ₱552,853.85 and unpaid falsified prescriptions and referral letters for drugs and medicines costing ₱602,063.50.[15]

Meanwhile, the fact-finding committee created by Delos Santos submitted its Report[16] dated January 18, 2005 essentially affirming the "unseen and unnoticeable" irregularities attendant to the availment of the TNT Program but pointing out, however, that: (*a*) VSMMC was made an "unwilling tool to perpetuate a scandal involving government funds";[17] (*b*) the VSMMC management was completely "blinded" as its participation involved merely "a routinary ministerial duty" in issuing the checks upon receipt of the referral slips, prescriptions, and delivery receipts that appeared on their faces to be regular and complete;[18] and (*c*) the detection of the falsification and forgeries "could not be attained even in the exercise of the highest degree or form of diligence"[19] as the VSMMC personnel were not handwriting experts.

In the initial investigation conducted by the CoA, the results of which were reflected in AOM No. 2005-001[20] dated October 26, 2005, it was found that: (*a*) 133 prescriptions for vaccines, drugs and medicines for anti-rabies allegedly dispensed by Dell Pharmacy costing ₱3,407,108.40, and already paid by VSMMC from the PDAF of Cuenco appeared to be falsified;[21] (*b*) 46 prescriptions for other drugs and medicines allegedly dispensed by Dell Pharmacy costing ₱705,750.50, and already paid by

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[15] *Id.* at 51.

[16] *Id.* at 134-140. Signed by Committee Chairman Virgilio C. Lopez, Vice Chairman Primo Joel S. Alvez, MD, and Members, Roque Anthony Paradela, MD, Maricon M. Esparagoza, and Nelanie A. Antoni.

[17] *Id.* at 135.

[18] *Id.* at 136.

[19] *Id.*

[20] *Id.* at 96 and 248-254.

[21] *Id.* at 248.

VSMMC from the PDAF of Cuenco likewise appeared to be falsified;[22] and (*c*) 25 prescriptions for drugs and medicines allegedly issued by Dell Pharmacy costing ₱602,063.50 were also ascertained to be falsified and have not been paid by VSMMC.[23]

In her Comment/Reply[24] to the aforementioned AOM No. 2005-001 addressed to Leonor D. Boado (Boado), Director of the CoA Regional Office VII in Cebu City, Delos Santos explained that during the initial stage of the implementation of the MOA (*i.e.*, from 2000 to 2002) the hospital screened, interviewed, and determined the qualifications of the patients-beneficiaries through the hospital's social worker.[25] However, sometime in 2002, Cuenco put up the TNT Office in VSMMC, which was run by his own staff who took all *pro forma* referral slips bearing the names of the social worker and the Medical Center Chief, as well as the logbook.[26] From then on, the hospital had no more participation in the said program and was relegated to a mere "bag keeper."[27] Since the benefactor of the funds chose Dell Pharmacy as the sole supplier, anti-rabies medicines were purchased from the said pharmacy and, by practice, no public bidding was anymore required.[28]

Consequently, a special audit team (SAT), led by Team Leader Atty. Federico E. Dinapo, Jr., State Auditor V, was formed pursuant to Legal and Adjudication Office (LAO) Order Nos. 2005-019-A dated August 17, 2005 and 2005-019-B dated March 10, 2006 to conduct a special audit investigation with respect to the findings of Booc and her team.[29] Due to time constraints,

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[22] *Id.* at 249.

[23] *Id.*

[24] *Id.* at 96-101.

[25] *Id.* at 96.

[26] *Id.*

[27] *Id.* at 97.

[28] *Id.* at 101.

[29] *Id.* at 255.

however, AOM No. 2005-001 was no longer included in the SAT focus.[30] On October 15, 2007, the SAT reported[31] the following findings and observations:

1. The provision of National Budget Circular No. 476 dated September 20, 2001 prescribing the guidelines on the release of funds for the PDAF authorized under Republic Act (R.A.) No. 8760, as Reenacted (GAA for CY 2001) were not followed;[32]

2. Existing auditing law, rules and regulations governing procurement of medicines were not followed in the [program's] implementation;[33]

3. The [program's] implementation did not follow the provisions of the MOA by and between [Congressman Cuenco] and the Hospital;[34] and

4. Acts committed in the implementation of the project were as follows:

    a. There were [one hundred thirty-three (133)] falsified prescriptions for anti-rabies vaccines, drugs and medicines [costing] ₱3,345,515.75 [allegedly] dispensed by Dell Pharmacy [were] paid by VSMMC from the [PDAF of Congressman Cuenco];

    b. [Forty-six (46) falsified prescriptions] for other drugs and medicines costing ₱695,410.10 [were likewise reportedly] dispensed by Dell Pharmacy and paid by VSMMC from the [said PDAF] x x x; and

    c. [Twenty-five (25) prescriptions worth] ₱602,063.50 [were also claimed to have been] served by Dell Pharmacy but still unpaid x x x.[35]

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[30] *Id.* at 256.

[31] *Id.* at 255-273.

[32] *Id.* at 259-260.

[33] *Id.* at 261-264.

[34] *Id.* at 264.

[35] *Id.* at 264-265.

Examination by the SAT of the records and interviews with the personnel involved showed that the purported patients-beneficiaries of the TNT Program were mostly non-existent and there was no actual procedure followed except for the mere preparation of payment documents which were found to be falsified as evidenced by the following:

1. Thirteen (13) hospital surgeons disowned the signatures on the prescriptions supporting the claims. Surgeons do not prescribe anti-rabies vaccines; they operate on patients.

2. Almost all of the patients named in the prescriptions were not treated or admitted at the Hospital or in its Out-patient Department. Those whose names appeared on Hospital records were treated at different dates than those appearing on the prescriptions:

PATIENT	TREATED	BILL	DATE OF PRESCRIPTION
Leah Clamon	Nov. 12, 2003	11/11/03	11/03/03
Jean Cañacao	Nov. 30, 2003	11/25/03	11/18/03
Felipe Sumalinog	Dec. 17, 2004	12/10/03	12/08/03
Vicente Perez	Mar. 12, 2004	11/26/03	11/17/03
Vincent Rabaya	Sept. 8, 2003	12/12/03	11/28/03
Rodulfo Cañete	July 24, 2004	01/16/04	01/12/04

3. Full dosages of anti-rabies vaccines were allegedly given to the patients although it is gross error to do so for these medicines are highly perishable. These should be refrigerated and injected immediately and periodically. For instance:

   a. Mr. Vicente Perez received the full dosage on November 26, 2003 and again on November 27, 2003. (Hospital records showed that Mr. Perez was admitted in March 2003 for surgery.)

   b. Mr. Maximo Buaya received the full dosage on January 25 and on February 29, 2004.

   c. Mr. Gregorio Rabago received his full dosage on December 6, 2003.

4. The dates of 80 prescriptions for anti-rabies and 45 for other drugs and medicines are earlier than the dates of the

corresponding delivery receipts. The gaps in the dates ranged from 1 to 47 days. On the other hand, 33 prescriptions for anti-rabies had later dates than the dates of the delivery receipts. The difference in the dates ranged from 1 to 22 days.

5. The Pharmacy Unit still prepared Purchase Request [PR] for the claims Dell [Pharmacy] submitted to that office when the PR is no longer necessary as the medicines have already been taken by the patients.

6. Of the three South District residents personally interviewed by the Team, two denied having sought or received help from the [TNT] Program or being hospitalized at VSMMC for dog bite.

7. The hospital social worker, Ms. Mergin Acido, declared that she was bypassed in the evaluation of the alleged patients for the TNT Office has clerks who "evaluate" the eligibility of the patients. The prescriptions and referral slips were directly forwarded to the Pharmacy Unit for stamping and submission to the Dell Pharmacy. She had no opportunity then to see the patients personally.

8. Mr. Louies James S. Yrastorza has stated under oath the falsity of the claims for payment. He stated that he was ordered to submit to the Pharmacy Unit falsified prescriptions accompanied by referral slips signed by Mr. James Cuenco for non-existing patients. Subsequently, sometime in September 2007 Mr. Yrastorza "clarified" his statements effectively recanting his first oath.

9. The Office of the Provincial Election Supervisor certified that out of the 30 names of the patients randomly selected, only 15 were found listed in the registered voters' database.

10. Prescriptions were stamped "VSMMC" signed/initialed by the Pharmacist who is off duty as shown by the attendance record, *e.g.* Mesdames Arly Capuyan, Norma Chiong, Corazon Quiao, Rowena Rabillas, and Riza Sei[s]mundo.[36]

Subsequently, or on September 8, 2008, the SAT Team Supervisor, Boado, issued ND No. 2008-09-01,[37] disallowing

[36] *Id.* at 265-268.

[37] *Id.* at 73-75.

the amount of ₱3,386,697.10 for the payment of drugs and medicines for anti-rabies with falsified prescription and documents, and holding petitioners, together with other VSMMC officials, solidarily liable therefor.[38] Petitioners' respective participations were detailed as follows: (*a*) for Delos Santos, in her capacity as Medical Center Chief, for signing and approving the disbursement vouchers and checks; (*b*) for petitioner Dr. Josefa A. Bacaltos, in her capacity as Chief Administrative Officer, for certifying in Box A that the expenses were lawful, necessary and incurred in her direct supervision; (*c*) for Antoni, in her capacity as Chief of the Pharmacy Unit, for approving the supporting documents when the imputed delivery of the medicines had already been consummated; (*d*) for petitioner Maureen A. Bien, in her capacity as Hospital Accountant, for certifying in Box B of the disbursement voucher that the supporting documents for the payment to Dell Pharmacy were complete and proper.[39]

Aggrieved, petitioners filed their respective appeals[40] before the CoA which were denied through Decision No. 2010-051[41] dated April 8, 2010, maintaining their solidary liability, to wit:

WHEREFORE, premises considered, the appeal[s] of Dr. Filomena [G]. Delos Santos, Dr. Josefa A. Bacaltos, Ms. Nelanie A. Antoni and Ms. Maureen A. Bien [are] hereby DENIED for lack of merit. However, the appeal of Ms. Corazon Quiao, Ms. Norma Chiong, Ms. Rowena Rabillas and Ms. Riza Seismundo is hereby given due course. Likewise, Ms. Arly Capuyan who is similarly situated is excluded although she did not file her appeal. ND No. 2008-09-01 (SAT) dated September 8, 2008 involving the amount

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[38] *Id.* at 73-74. Also held liable were Ma. Isabel Cuenco, James R. Cuenco, Sisinio Villacin, Jr., Arly Capuyan, Norma Chiong, Corazon Quiao, Rowena Rabillas and Riza Seismundo. It appears that Congressman Cuenco was also named as one of the persons liable but the Officer-in-Charge, LAO-National, excluded him from liability under LAO-N Decision No. 2008-032 dated April 3, 2008 (see also *id.* at 54).

[39] *Id.* at 74.

[40] *Id.* at 54-58.

[41] *Id.* at 50-67.

of ₱3,386,697.10 is hereby affirmed with the modification by excluding therein the names [of] Ms. Corazon Quiao, Ms. Norma Chiong, Ms. Rowena Rabillas, Ms. Riza Seismundo, and Ms. Arly Capuyan as persons liable. **The other persons named liable therein**, *i.e.*, Ma. Isabel Cuenco and Mr. James R. Cuenco, TNT Health Program Directors, and Mr. Sisinio Villacin, Jr., proprietor of Dell Pharmacy, and **herein appellants Delos Santos, Bacaltos, Antoni and Bien remain solidarily liable for the disallowance**.[42] (Emphasis supplied)

The Motion for Reconsideration[43] of the foregoing decision was further denied in Decision No. 2011-045[44] dated August 8, 2011. Hence, the instant petition.

The Issue Before the Court

The essential issue in this case is whether or not the CoA committed grave abuse of discretion in holding petitioners solidarily liable for the disallowed amount of ₱3,386,697.10.

The Court's Ruling

At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.[45]

Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for

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

[43] *Id.* at 79-95.

[44] *Id.* at 68-72.

[45] *Veloso v. COA*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 776.

their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.[46] In this case, the Court finds no grave abuse of discretion on the part of the CoA in issuing the assailed Decisions as will be discussed below.

The CoA correctly pointed out that VSMMC, through its officials, should have been deeply involved in the implementation of the TNT Program as the hospital is a party to the MOA and, as such, has acted as custodian and disbursing agency of Cuenco's PDAF.[47] Further, under the MOA executed between VSMMC and Cuenco, the hospital represented itself as "willing to cooperate/coordinate and monitor the implementation of a Medical Indigent Support Program."[48] More importantly, it undertook to ascertain that "[a]ll payments and releases under [the] program x x x shall be made in accordance with existing government accounting and auditing rules and regulations."[49] It is a standing rule that public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded against loss or damage, and that they are expended, utilized, disposed of or transferred in accordance with the law and existing regulations, and on the basis of prescribed documents

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[46] *Id.* at 777.

[47] *Rollo*, p. 64.

[48] *Id.* at 235.

[49] *Id.* at 237.

and necessary records.[50] However, as pointed out by the SAT, provisions of the National Budget Circular No. (NBC) 476[51] dated September 20, 2001 prescribing the guidelines on the release of funds for a congressman's PDAF authorized under Republic Act No. 8760[52] were not followed in the implementation of the TNT Program, as well as other existing auditing laws, rules and regulations governing the procurement of medicines.

In particular, the TNT Program was not implemented by the appropriate implementing agency, *i.e.*, the Department of Health, but by the office set up by Cuenco. Further, the medicines purchased from Dell Pharmacy did not go through the required public bidding in violation of the applicable procurement laws and rules.[53] Similarly, specific provisions of the MOA itself setting standards for the implementation of the same program were not observed. For instance, only seven of the 133 prescriptions served and paid were within the maximum limit of ₱5,000.00 that an indigent patient can avail of from Cuenco's PDAF. Also, several indigent patients availed of the benefits more than once, again in violation of the provisions of the MOA.[54] Clearly, by allowing the TNT Office and the staff of Cuenco to take over the entire process of availing of the benefits of the TNT Program without proper monitoring and observance of internal control safeguards, the hospital and its accountable officers reneged on their undertaking under the MOA to "cooperate/coordinate and monitor" the implementation of the said health program. They likewise violated paragraph 5[55] of NBC 476 which requires

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[50] See Section 16.1.1, CoA Circular No. 2009-006 dated September 15, 2009.

[51] *Rollo,* pp. 504-506.

[52] "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND, AND FOR OTHER PURPOSES."

[53] *Rollo,* pp. 259-264.

[54] *Id.* at 264.

[55] 5.0 MONITORING

The programs/projects funded under the PDAF shall be included in the regular monitoring activity of the implementing agency. x x x.

a "regular monitoring activity" of all programs and projects funded by the PDAF, as well as Sections 123[56] and 124[57] of Presidential Decree No. 1445,[58] otherwise known as the "Government Auditing Code of the Philippines" (Auditing Code), which mandates the installation, implementation, and monitoring of a "sound system of internal control" to safeguard assets and check the accuracy and reliability of the accounting data.

By way of defense, petitioners nonetheless argue that VSMMC was merely a passive entity in the disbursement of funds under the TNT Program and, thus, invoke good faith in the performance of their respective duties, capitalizing on the failure of the assailed Decisions of the CoA to show that their lapses in the implementation of the TNT Program were attended by malice or bad faith.

The Court is not persuaded.

Jurisprudence holds that, absent any showing of bad faith and malice, there is a presumption of regularity in the performance of official duties. However, this presumption must fail in the presence of an explicit rule that was violated.[59] For instance, in *Reyna v. CoA*[60] (*Reyna*), the Court affirmed the liability of the public officers therein, notwithstanding their proffered claims of good faith, since their actions violated an explicit rule in the Landbank of the Philippines' Manual on Lending Operations.[61]

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[56] Section 123. *Definition of internal control.* Internal control is the plan of organization and all the coordinate methods and measures adopted within an organization or agency to safeguard its assets, check the accuracy and reliability of its accounting data, and encourage adherence to prescribed managerial policies.

[57] Section 124. *Installation.* It shall be the direct responsibility of the agency head to install, implement, and monitor a sound system of internal control.

[58] "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES."

[59] *Reyna v. COA*, G.R. No. 167219, February 8, 2011, 642 SCRA 210, 228.

[60] *Id.* at 224-237.

[61] *Id.*

In similar regard, the Court, in *Casal v. COA*[62] (*Casal*), sustained the liability of certain officers of the National Museum who again, notwithstanding their good faith participated in approving and authorizing the incentive award granted to its officials and employees in violation of Administrative Order Nos. 268 and 29 which prohibit the grant of productivity incentive benefits or other allowances of similar nature unless authorized by the Office of the President.[63] In *Casal*, it was held that, even if the grant of the incentive award was not for a dishonest purpose, the patent disregard of the issuances of the President and the directives of the CoA amounts to gross negligence, making the ["approving officers"] liable for the refund [of the disallowed incentive award].[64]

Just as the foregoing public officers in *Reyna* and *Casal* were not able to dispute their respective violations of the applicable rules in those cases, the Court finds that the petitioners herein have equally failed to make a case justifying their non-observance of existing auditing rules and regulations, and of their duties under the MOA. Evidently, petitioners' neglect to properly monitor the disbursement of Cuenco's PDAF facilitated the validation and eventual payment of 133 falsified prescriptions and fictitious claims for anti-rabies vaccines supplied by both the VSMMC and Dell Pharmacy, despite the patent irregularities borne out by the referral slips and prescriptions related thereto.[65] Had there been an internal control system installed by petitioners, the irregularities would have been exposed, and the hospital would have been prevented from processing falsified claims and unlawfully disbursing funds from the said PDAF. Verily, petitioners cannot escape liability for failing to monitor the procedures implemented by the TNT Office on the ground that Cuenco always reminded them that it was his money.[66] Neither

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[62] 538 Phil. 634 (2006).

[63] *Id.* at 643-644.

[64] *Id.* at 644.

[65] *Rollo,* p. 471.

[66] *Id.* at 82.

may deviations, from the usual procedure at the hospital, such as the admitted bypassing of the VSMMC social worker in the qualification of the indigent-beneficiaries,[67] be justified as "a welcome relief to the already overworked and undermanned section of the hospital."[68]

In this relation, it bears stating that Delos Santos' argument that the practices of the TNT Office were already pre-existing when she assumed her post and that she found no reason to change the same[69] remains highly untenable. Records clearly reveal that she, in fact, admitted that when she was installed as the new Medical Center Chief of VSMMC sometime "in the late 2003," Antoni disclosed to her the irregularities occurring in the hospital specifically on pre-signed and forged prescriptions.[70] Hence, having known this significant information, she and Antoni should have probed into the matter further, and, likewise, have taken more stringent measures to correct the situation. Instead, Delos Santos contented herself with giving oral instructions to resident doctors, training officers, and Chiefs of Clinics not to leave pre-signed prescriptions pads, which Antoni allegedly followed during the orientations for new doctors.[71] But, just the same, the falsification and forgeries continued, and it was only a year after, or in December 2004, that Delos Santos ordered a formal investigation of the attendant irregularities. By then, too much damage had already been done.

All told, petitioners' acts and/or omissions as detailed in the assailed CoA issuances[72] and as aforedescribed reasonably figure into the finding that they failed to faithfully discharge their respective duties and to exercise the required diligence which resulted to the irregular disbursements from Cuenco's PDAF.

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[67] *Id.* at 29.

[68] *Id.* at 30.

[69] *Id.*

[70] *Id.* at 81.

[71] *Id.*

[72] *Id.* at 50-67 and 73-74.

In this light, their liability pursuant to Sections 104[73] and 105[74] of the Auditing Code, as well as Section 16 of the 2009 Rules and Regulations on Settlement of Accounts,[75] as prescribed in CoA Circular No. 2009-006, must perforce be upheld. Truly, the degree of their neglect in handling Cuenco's PDAF and the resulting detriment to the public cannot pass unsanctioned, else the standard of public accountability be loosely protected and even rendered illusory. Towards this end, and in addition to the

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[73] Section 104. Records and reports required by primarily responsible officers. The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be jointly and solidarily liable with the person primarily accountable therefore. x x x.

[74] Section 105. Measure of liability of accountable officers.

x x x x x x x x x

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

[75] Section 16. Determination of Persons Responsible/Liable.

Section 16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

16.1.1 Public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 Public officers who approve or authorize expenditures shall be held liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

x x x x x x x x x

liability of petitioners as adjudged herein, the Court deems it proper to refer this case to the Office of the Ombudsman for the the investigation and possible prosecution of any and all criminal offenses related to the irregular disbursement of Cuenco's PDAF.

WHEREFORE, the petition is hereby **DISMISSED**. Let this case be referred to the Office of the Ombudsman for proper investigation and criminal prosecution of those involved in the irregular disbursement of then Congressman Antonio V. Cuenco's Priority Development Assistance Fund as detailed and described in this Decision.

SO ORDERED.

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

EN BANC

[G.R. No. 201672. August 13, 2013]

CESAR G. MANALO, *petitioner, vs.* **COMMISSION ON ELECTIONS, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT and ERNESTO M. MIRANDA,** *respondents.*

SYLLABUS

POLITICAL LAW; ELECTIONS; PUNONG BARANGAY ELECTIONS; WITH THE DECISION OF THE TRIAL COURT AS TO THE WINNING CANDIDATE REITERATED BY THE COMELEC, THE CASE WAS ORDERED REMANDED TO THE TRIAL COURT FOR EXECUTION OF DECISION. — The *Punong Barangay* Election Protest filed by Manalo against Miranda was clearly

> decided [by the trial court] in Manalo's favor. x x x [Thus,] The Court believes that [Manalo] has won in the *barangay* election of October 25, 2010 even if the Court had included in the appreciation of ballots those which were claimed by the [Miranda]. x x x In his petition (Miranda's) for *certiorari* and prohibition before the COMELEC, x x x the COMELEC itself through its Second Division [ruled:] the contention of [Miranda] that the decision of the public respondent did not clearly establish the defeat of [Miranda] or the victory of the [Manalo] is unfounded. x x x **WHEREFORE**, it is hereby **ORDERED** that: (1) the case be **REMANDED** to the 6th Municipal Circuit Trial Court, Mabalacat and Magalang, Pampanga, for the immediate execution of its decision dated 24 May 2011 in Election Protest No. 10-003, entitled *Cesar G. Manalo,* protestant *v. Ernesto M. Miranda,* protestee. x x x

APPEARANCES OF COUNSEL

Ponciano V. Dela Cruz, Jr. for petitioner.
The Solicitor General for public respondents.
Arnold C. Bayobay for private respondent.

D E C I S I O N

PEREZ, *J.*:

The Case

This Petition for *Certiorari*[1] seeks to reverse, nullify and set aside the Resolutions of Commission on Elections (COMELEC) Second Division dated 22 December 2011[2] and COMELEC *En Banc* dated 17 April 2012[3] which granted respondent Ernesto M. Miranda's Petition for *Certiorari* and Prohibition with Prayer for *Status Quo* or Restraining Order.

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[1] *Rollo*, pp. 3-30; Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Id.* at 34-45.

[3] *Id.* at 47-53.

The Antecedents

Petitioner Cesar G. Manalo (Manalo) and private respondent Ernesto M. Miranda (Miranda) were among the three candidates for *Punong Barangay* of Sta. Maria, Mabalacat, Pampanga during the 2010 *Barangay* and *Sangguniang Kabataan* Synchronized Elections on 25 October 2010. As per records, there were six (6) precincts in *Barangay* Sta. Maria, with a total of 2,302 registered voters, but only 1,605 among them actually voted. After the canvass of votes, the *Barangay* Board of Canvassers of Sta. Maria proclaimed Miranda as the winner and duly elected *Punong Barangay* obtaining 344 votes as against 343 votes obtained by Manalo.[4]

On 4 November 2010, Manalo filed an election protest before the 6th Municipal Circuit Trial Court (MCTC) of Mabalacat and Magalang, Pampanga, contesting the proclamation of Miranda as the winner for *Punong Barangay* on the following grounds: (1) misreading or misappreciation of the ballots; (2) the number of votes reflected in the tally sheet did not reflect the same number of votes-one of the members of the Board of Tellers merely copied what was stated in the tally sheet; (3) the watchers of Manalo were deprived of their right to have an unimpeded view of the ballot being read by the Chairman, of the election return and the tally board being simultaneously accomplished by the poll clerk and the third member, respectively, without touching any of these election documents as mandated in Resolution No. 9030.[5]

Miranda, in his Answer with Counterclaim and Motion to Dismiss filed on 15 November 2010, denied any irregularities and maintained the credibility and regularity of the conduct of the *Barangay* Election under the strict supervision of the COMELEC. In his special and affirmative defense, as well as his motion for dismissal, he asserted that the petition of Manalo was insufficient in form and substance as it failed to allege the specific votes by precinct of the parties. Finally in his counterclaim, Miranda prayed for payment of ₱100,000.00 by way of attorney's fees.

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[4] *Id.* at 54; MCTC Decision.

[5] *Id.* at 54-55.

As Manalo failed to prove any election irregularities in the conduct of election committed by the Board of Tellers, the trial court proceeded with the appreciation of the ballots. Upon tabulation, the results showed that Manalo was the winner of the election having garnered Three Hundred Forty-Four (344) votes, up from 343 votes while herein Miranda got three hundred thirty-three (333) votes, down from 344 votes, or a plurality of 11 votes. On 24 May 2011, the trial court rendered a decision in favor of Manalo and declared him as the true choice for *Punong Barangay* of Sta. Maria, Mabalacat, Pampanga. The dispositive[6] of the decision reads:

WHEREFORE, in view of the foregoing, the Court hereby renders the following judgment:

1. Declaring null and void and thus set aside the proclamation of protestee Ernesto M. Miranda as the elected Punong Barangay of Sta. Maria, Mabalacat, Pampanga made by the Barangay Board of Canvassers on October 25, 2010;

2. Declaring protestant **CESAR MANALO** as the duly elected **PUNONG BARANGAY of Sta. Maria, Mabalacat, Pampanga** on the recent concluded October 25, 2010 Barangay Elections;

3. Protestee Ernesto Miranda is hereby ordered to vacate his seat and to cease and desist from further discharging the duties and functions officially vested in the Office of Punong Barangay of Sta. Maria, Mabalacat, Pampanga which is now and henceforth, unless otherwise disqualified by law, are conferred unto the declared winner and herein protestant CESAR MANALO, who is hereby ordered to act, perform and discharge the duties, functions and responsibilities and all incidents appertaining to and in connection with the office of the Punong Barangay of Barangay Sta. Maria, Mabalacat, Pampanga immediately after he shall have taken his oath of office.

No pronouncement as to damages and attorney's fees for failure of the protestant to adduce evidence relative thereto during the trial.

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

As mandated under Section 7, Rule 14 of A.M. No. 07-4-15-SC, otherwise known as the "Rules of Procedure in Election Contests Before the Court Involving Elective Municipal and Barangay Officials" as soon as the decision becomes final, the clerk of court shall send notices to the Commission on Elections, the Department of Interior and Local Government and the Commission on Audit.

FINALLY, the ballot boxes kept under the Court's custody are hereby ordered for transmittal to the Treasurer's Office of Mabalacat, Pampanga as depository of the election paraphernalia and corresponding keys to the ballot boxes be returned to the designated authorized officers. The protestant is hereby ordered to transmit the same as soon as the decision becomes final and executory.

Immediately on the same day, Miranda filed a Notice of Appeal[7] appealing the Decision of the lower court to the COMELEC.

On 25 May 2011, Manalo filed a Motion for Immediate Execution of Decision Pending Appeal[8] before the lower court citing good reasons[9] to justify immediate execution.

On 2 June 2011, Miranda protested the Motion for Immediate Execution Pending Appeal of Manalo mainly on the basis that no good reason was shown for its immediate execution, as the defeat of the protestee and the victory of the protestant had been clearly established as required under paragraph (2), Section 11, Rule 14 of A.M. No. 07-4-15-SC.[10]

Eventually on 3 June 2011, the trial court issued a Special Order[11] granting Manalo's Motion for Immediate Execution Pending Appeal on the following grounds:

1. The victory of the protestant was clearly established;
2. Public interest demands that the true choice of the electorate must be respected and given meaning; and

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[7] COMELEC records, pp. 43-44; Annex "B".

[8] *Id.* at 45-48; Annex "C".

[9] Pursuant to "good reasons" cited under the case of *Ramas v. COMELEC*, 349 Phil. 857 (1998).

[10] COMELEC records, pp. 49-52; Annex "D".

[11] *Id.* at 53-54; Annex "E".

3. Public policy underlies it as something had to be done to strike the death blow at the pernicious grab-the–proclamation-prolong-the protest technique often, if not invariably resorted to by unscrupulous politicians.[12]

On 22 June 2011, Miranda before the COMELEC filed a Petition for *Certiorari* and Prohibition with Prayer for *Status Quo Ante* or Restraining Order.[13]

The next day on 23 June 2011, the trial court denied the Motion for Reconsideration filed by Miranda to the Special Order granting the execution pending appeal.[14] On 25 June 2011, the trial court issued the contested writ of execution.[15]

On 8 July 2011, COMELEC Second Division, acting on the petition filed by Miranda, issued a Temporary Restraining Order (TRO) against the 24 May 2011 Decision and 3 June 2011 Special Order of the trial court as well as all other acts/incidents relating thereto. A *status quo ante* order was also issued "to restrain any acts that had already been done prior to the filing of petition."[16]

The Motion for Reconsideration[17] filed by Manalo was denied by COMELEC Second Division in an Order dated 9 August 2011.[18]

On 28 October 2011, a Very Urgent *Ex Parte* Motion for Clarification[19] was filed by Manalo praying that the COMELEC Second Division clarify the phrase, *"In the event that the above acts supposed to be restrained had already been done, the parties herein are hereby ordered to maintain the status quo ante prior to the filing of the instant petition,"* in the 8 July 2011 Order.

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[12] Citing *Balajonda v. COMELEC*, 492 Phil. 714 (2005).

[13] COMELEC records, pp. 1-23.

[14] *Id.* at 168; Annex "F".

[15] *Id.* at 166-167.

[16] *Id.* at 79-80.

[17] *Id.* at 83-89.

[18] *Id.* at 102-103.

[19] *Id.* at 170.

On 22 December 2011, the COMELEC Second Division granted the Petition for *Certiorari* and Prohibition filed by Miranda. Notably, in its Resolution, the COMELEC Second Division ruled that the trial court's Decision showed Miranda's defeat and herein Manalo's victory. It said that the trial court complied with rules provided by Section 2, Rule 14 of A.M. No. 07-4-15-SC prescribing specific forms which must be followed in election protests. It was observed that the decision even provided for a tabulation and summary of the total number of votes and those validated, nullified and voided; and computed the total valid votes obtained by each candidate.

However, the Division also invalidated both the Special Order and Writ of Execution.[20] It was explained that the Special Order did not comply with the ruling in *Lim v. COMELEC*[21] which enumerated the instances considered as good reasons to allow execution pending appeal. It ruled further that the writ of execution issued by the trial court violated paragraph (b), Section 11, Rule 14 of A.M. No. 07-4-15-SC which specifies that a writ of execution shall be issued after 20 working days from notice of the special order granting the execution pending appeal. The COMELEC noted that in the case before it, from the time of service of the special order, only 14 workings had passed which rendered the execution of the decision premature.

On 29 December 2011, Manalo filed a Motion for Reconsideration which was denied in a COMELEC *En Banc* Resolution dated 17 April 2012. The COMELEC *En Banc* agreed with the findings that the Special Order is invalid as it failed to specify superior circumstances justifying execution pending appeal and merely lifted the reasons cited in jurisprudence without any explanation as to its applicability to the present case.[22]

Hence, this petition.

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[20] *Id.* at 206-217.

[21] G.R. No. 171952, 8 March 2007, 518 SCRA 1, 5 citing *Fermo v. COMELEC*, 384 Phil. 584, 592 (2000).

[22] COMELEC records, p. 256.

The Issues

Petitioner Manalo prays for the reversal of the resolutions on the following grounds:

I.

THE HONORABLE COMMISSION ON ELECTIONS GRAVELY ERRED IN ISSUING A SIXTY (60) DAYS TEMPORARY RESTRAINING ORDER AND/OR *STATUS QUO ANTE* ORDER ON JULY 8, 2011 WHEN THE ACT SOUGHT TO BE ENJOINED HAS ALREADY BEEN DONE BY THE FACT THAT HEREIN PETITIONER MANALO HAS ALREADY ASSUMED THE POSITION OF PUNONG BARANGAY OF STA. MARIA, MABALACAT, PAMPANGA ON JUNE 24, 2011.

II.

THE HONORABLE COMMISSION ON ELECTIONS GRAVELY AND SERIOUSLY ERRED IN RULING THAT THE LOWER COURT FAILED TO SPECIFY IN ITS SPECIAL ORDER DATED JUNE 3, 2011 SUPERIOR CIRCUMSTANCES JUSTIFYING EXECUTION PENDING APPEAL.

III.

THE HONORABLE COMMISSION ON ELECTIONS GRAVELY AND SERIOUSLY ERRED IN RULING THAT THE PERIOD OF TWENTY (20) DAYS AS ENUNCIATED IN SECTION 11 (B), RULE 14 OF A.M. NO. 07-4-15-SC REFERS TO WORKING DAYS AND NOT CALENDAR DAYS.

IV.

THE HONORABLE COMMISSION ON ELECTIONS SERIOUSLY AND GRAVELY ERRED IN GRANTING RESPONDENT MIRANDA'S PRAYER FOR *STATUS QUO ANTE* ORDER OR RESTRAINING ORDER WITHOUT REQUIRING HEREIN RESPONDENT MIRANDA TO POST A BOND.[23]

An insight into the consequences of the case antecedents could have predicted for petitioner a course other than the present petition. Time and effort could have been saved, for better purposes, for all parties including specially this Court.

[23] *Rollo*, pp. 13-14.

The *Punong Barangay* Election Protest filed by Manalo against Miranda was clearly decided in Manalo's favor. The trial court stated:

> To recapitulate, out of the total number of protested ballots by the protestant of ONE HUNDRED TWENTY-TWO (122) covering six (6) protested precints in Barangay Sta. Maria, Mabalacat, Pampanga, the total number of ballots that have been voided or nullified as per Court's findings is ELEVEN (11) to be deducted from the total number of votes obtained by the protestee and from the two (2) ballots claimed by the protestant only one (1) ballot is found to be valid claim which will be added to the votes obtained by the protestant during the October 25, 2010 Barangay Election.
>
> Thus as shown from the final tally of the result of the Court's appreciation of ballots, protestant **CESAR MANALO** is the true choice for Punong Barangay of Sta. Maria, Mabalacat, Pampanga having garnered THREE HUNDRED FORTY-FOUR (344) votes from 343 votes while herein protestee ERNESTO M. MIRANDA got THREE HUNDRED THIRTY-THREE (333) votes from 344 votes or a plurality of 11 votes in favor of the protestant.[24]

This ruling was pushed into the background when, acting on Manalo's motion for immediate execution of decision pending appeal, the trial court issued a Special Order granting Manalo's prayer for the issuance of a writ of execution pending appeal. While Miranda's motion for reconsideration of the special order was yet pending, he filed with the Comelec a Petition for *Certiorari* and Prohibitions with Prayer for a *Status Quo Ante* or Restraining Order. A day after, Miranda's motion for reconsideration was eventually denied, the trial court pertinently stating that:

> The Court believes that [Manalo] has won in the *barangay* election of October 25, 2010 even if the Court had included in the appreciation of ballots those which were claimed by the [Miranda].[25] (Underlining supplied)

This ruling squarely addressed the argument of Miranda that:

> 3. The decision of the Honorable Court indisputably did not include the appreciation of the ballots of [Manalo] objected by [Miranda]

[24] *Id.* at 70.

[25] *Id.* at 76; Order dated 23 June 2011.

and the adjudication of the stray ballots claimed as valid votes of [Miranda] which were clearly indentified (sic) in the Reports on the Revision of Ballots and in the Protestee's Formal Offer of Evidence, because upon the view of the court, [Miranda] did not interpose a counter-protest, which appears to be an erroneous interpretation of the law and a departure from the established procedural norm in election protest; x x x.[26]

In his petition for *certiorari* and prohibition before the COMELEC, Miranda repeated his argument that the trial court erred when it did not include in the appreciation the ballots that he "claimed." Thus:

In the said Decision, the objections of [Miranda] on some 204 ballots of [Manalo], and the 11 stray ballots claimed by [Miranda] as his valid votes under existing jurisprudence, made during the revision of ballots were not appreciated by public respondent judge, for the wrong reason that [Miranda] did not file a counter-protest.[27]

This point was, once more, directly ruled upon, this time by the COMELEC itself through its Second Division. Thus:

The contention of [Miranda] that the Decision of the public respondent did not clearly establish the defeat of [Miranda] or the victory of the [Manalo] is unfounded.

After a careful examination of public respondent's Decision, we are convinced that there is a clear showing of [Miranda's] defeat and [Manalo's] victory.

Section 2, Rule 14 of A.M. No. 07-4-15-SC prescribes a specific form of the decision which courts must observe, to wit:

SEC. 2. *Form of decision in election protests.* After termination of the revision of ballots and before rendering its decision in an election protest that involved such revision, the court shall examine and appreciate the original ballots. The court, in its appreciation of the ballots and in rendering rulings on objections and claims to ballots of the parties, shall observe the following rules:

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[26] COMELEC records, pp. 49-50.

[27] *Id.* at 115.

(a) On *Marked Ballots* – The court must specify the entries in the ballots that clearly indicate that the intention of the voter is to identify the ballot. The specific markings in the ballots must be illustrated or indicated;

(b) On *Fake or Spurious Ballots* – The court must specify the COMELEC security markings that are not found in the ballots that are considered fake or spurious;

(c) On *Stray Ballots* – The court must specify and state in detail why the ballots are considered stray;

(d) On *Pair or Group of Ballots Written by One or Individual Ballots Written By Two* – When ballots are invalidated on the ground of written by one person, the court must clearly and distinctly specify why the pair or group of ballots has been written by only one person. The specific strokes, figures, or letters indicating that the ballots have been written by one person must be specified. A simple ruling that a pair or group of ballots has been written by one person would not suffice. The same is true when ballots are excluded on the ground of having been written by two persons. The court must likewise take into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistors, in determining the validity of the ballots found to be written by one person, whether the ballots are in pairs or in groups; and

(e) On *Claimed Ballots* – The court must specify the exact basis for admitting or crediting claimed votes to either party.

The Decision complied with the foregoing rule. A tabulation was presented by the public respondent which provided for a detailed ruling on each of the questioned ballots. It discussed why some ballots, *e.g*. Exhibits "C-1", "C-2", "C-3" and "C-5" of Precinct 0467A/0467B, were not considered "marked" ballots and therefore valid for [Miranda]. It also detailed out why some ballots, *e.g.* Exhibits "C-4", "C-22", "C-28", "C-40" of Precinct 0467A/0467B, were considered "marked" ballots and therefore invalid votes for [Miranda]. Furthermore, the specific marks that made the ballots "marked" were duly explained in the Decision.

> In the end, the Decision provided for a summary of the total number of votes that were nullified or voided, thus, must be deducted from [Miranda's] total number of votes as well as the total valid claim that will be added to the votes obtained by [Manalo]. On the basis of this, public respondent made a pronouncement that [Manalo] won the said election, with a plurality of eleven (11) votes.
>
> As correctly argued by the [Manalo], "public respondent thoroughly, meticulously and painstakingly studied and took into consideration all the contentions and evidence adduced by both [Miranda] and [Manalo]. We therefore rule that the victory of [Manalo] and the defeat of [Miranda] are manifest in the Decision. Hence, neither haste nor bias is present herein.[28]

The COMELEC Second Division, however did not find good reason for the issuance of the Special Order of the trial court and further found that the issuance of the Writ of Execution violated the twenty-day waiting period before the Writ of Execution pending appeal can be issued.

The COMELEC Second Division ruling could have ended the case. The TRO order of the COMELEC Second Division dated 8 July 2011 enjoining the trial judge from implementing the Decision, Special Order and Writ of Execution was only for a period of sixty days and had already lapsed when, on 22 December 2011, the COMELEC held that "the victory of the private respondent [Manalo, before the COMELEC] and the defeat of petitioner [Miranda, before the COMELEC] are manifest in the Decision." The said Decision could have been the subject of a motion for remand to the trial court for regular execution of judgment. The issue of propriety of execution pending appeal had, by then, become moot. As it would turn out, Miranda no longer questioned the Resolution of the COMELEC Second Division. It was Manalo himself, the declared winner before the trial court and on appeal before the COMELEC, who chose to file a Motion for Partial Reconsideration insisting on the correctness of the Special Order of Execution Pending Appeal. Fortunately for Manalo, even if Miranda took the opportunity

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

of reiterating, through a Comment and Opposition, his argument that "the form of the decision dated 29 May 2011 of public respondent is fatally defective," the COMELEC *En Banc* rightfully confined itself to the only issue raised in Manalo's Motion for Partial Reconsideration, which is, the validity of the trial court's Special Order for execution pending appeal and the corresponding writ of execution. Not one word was said against the main matter between the parties, which is, the correctness of the trial court's adjudication that Manalo won over Miranda in the 2010 *Barangay* Elections for *Punong Barangay* of Sta. Maria, Mabalacat, Pampanga. Such amounted to a full text of affirmance by the COMELEC *En Banc* of the trial court's decision in favor of Manalo. At that point, Manalo was given another mandate, indeed more authoritative, to have the trial court's decision in his favor regularly, no longer specially, executed. Quite unexplainably, Manalo insisted on a ruling this time from us, on the decisions below on the validity of execution pending appeal. And Miranda, of course, obliged and by his comment to the petition, kept on going the debate on the moot issue. More for an orderly resolution of this election dispute than the personal ambitions of the party, we issued a TRO on 2 April 2013[29] which stated:

> NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, respondents ERNESTO M. MIRANDA, COMMISSION ON ELECTIONS and DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, your agents, representatives, or persons acting in your place or stead, are hereby ordered to **CEASE AND DESIST** from implementing and enforcing the (a) assailed COMELEC Resolution dated 22 December 2011 which granted respondent Ernesto M. Miranda's Petition for *Certiorari* and Prohibition with Prayer for *Status Quo Ante Order* or Restraining Order and (b) assailed COMELEC Resolution dated 17 April 2012 which denied petitioner's Motion for Partial Reconsideration. Accordingly, the parties shall comply with the Decision dated 24 May 2011 and the Special Order dated 3 June 2011, both of the 6th Municipal Circuit Trial Court, Mabalacat and Magalang, Pampanga until further orders form this Court.

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[29] *Rollo*, pp. 82-84.

We now have to make this TRO permanent. The antecedents we recited compel the immediate remand of this case to the 6th MCTC, Mabalacat and Magalang, Pampanga for it to forthwith issue a writ of execution of the decision dated 24 May 2011 in Election Protest No. 10-003, entitled *Cesar G. Manalo*, protestant *v. Ernesto M. Miranda*, protestee.

WHEREFORE, it is hereby **ORDERED** that:

(1) the case be **REMANDED** to the the 6th Municipal Circuit Trial Court, Mabalacat and Magalang, Pampanga, for the immediate execution of its decision dated 24 May 2011 in Election Protest No. 10-003, entitled *Cesar G. Manalo*, protestant *v. Ernesto M. Miranda*, protestee; and

(2) the Temporary Restraining Order issued by this Court on 2 April 2013 be made permanent.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181692. August 14, 2013]

ADELAIDA SORIANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; DISCUSSED. — Compensation is a mode of extinguishing to the concurrent amount, the debts of persons who in their

own right are creditors and debtors of each other. The object of compensation is the prevention of unnecessary suits and payments through the mutual extinction by operation of law of concurring debts. Article 1279 of the Civil Code provides for the requisites for compensation to take effect: ART. 1279. In order that compensation may be proper, it is necessary: (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. x x x With the presence of all the requisites mentioned in Article 1279, legal compensation took effect by operation of law as provided in Article 1290 of the Civil Code, to wit: ART. 1290. When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

APPEARANCES OF COUNSEL

Virgilio J. Cabanlet for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition for review on *certiorari* assailing the May 19, 2005 Decision[1] and January 11, 2008 Resolution[2]

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[1] *Rollo*, pp. 18-36. Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello concurring.

[2] *Id.* at 38-39. Penned by Associate Justice Edgardo A. Camello with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez concurring.

of the Court of Appeals (CA) in CA-G.R. CR No. 23108 insofar as it ordered petitioner to pay ₱74,807 plus interest to private complainant Consolacion R. Alagao.

Petitioner Adelaida Soriano was charged with the crime of estafa on January 30, 1995 under an Information which reads as follows:

> That on September 9, 1994, at more or less 2:00 o'clock [sic] in the afternoon, and days thereafter, at Piaping Puti, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud and cause damage and prejudice by means of deceit, and false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there wil[l]fully, unlawfully and feloniously represent and pretend to the offended party, Consolacion Alagao *y* Regala, who was then canvassing for buyers of her one (1) truck load of corn grits containing 398 sacks, that she (accused Adelaida Soriano) was engaged in the business of buying corn grits, among others from the public under the business style of A & R Soriano Trading, paying it in cash, with place of business located at Piaping Puti, Macab[a]lan, this City; that due to accused['s] representation, said offended party was persuaded and convinced to sell her own corn grits to the former, which cereals came all the way from Old Nungnungan, Don Carlos, Bukidnon; that after unloading said 398 sacks of corn grains in the establishment of said Adelaida Soriano, said accused did not pay offended party for the said goods delivered, but instead she let offended party to sign a Cash Voucher, making it appear thereat that offended party has received the sum of ₱85,607.00, when in truth and in fact accused has not paid the same; that inspite of that misrepresented entries in the Cash Voucher above-cited, the accused further directed to collect the same amount from a neighbor of the offended party in Old Nungnungan, above-mentioned; that perplexed about the actions of Mrs. Adelaida Soriano, offended party proceeded to demand payment from her but the accused failed to pay her monetary obligation [to] the offended party as the accused and her business establishment disappeared from Piaping Puti, Macabalan, this City after the incident, and transferred to an unknown location; that she could not also get back the said 398 sacks of corn grits anymore because the accused had disposed of it already; thus misapplying, misappropriating and converting the said sum of ₱85,607.00 the value of 398 sacks of

corn grits, to her own gain and benefit, to the damage and prejudice of the said offended party, in the aforestated sum of ₱85,607.00, Philippine currency.

Contrary to and in violation to Article 315, par. 2(a), of the Revised Penal Code, as amended.[3]

When arraigned, petitioner pleaded not guilty.[4]

During pre-trial, the following transpired:

1. Parties admitted that on September 9, 1993, private complainant Consolacion Alagao borrowed cash from the accused in the amount of ₱10,000, guaranteed by a titled land, owned by her daughter Evelyn Alagao;

2. Parties also agreed that the aforesaid debt was fully paid with corn grains by the private complainant in February, 1994;

3. Parties also agreed that subsequent to this transaction, private complainant's daughter Evelyn Alagao executed a Contract of Loan secured by Real Estate Mortgage now marked Exh. "1" for the defense, to secure the payment of ₱40,000.00 which private complainant admitted to have received ₱51,730.00 in the form of fertilizers and cash advances[:]

Fertilizers & Pioneer corn seeds (Exh. "A")	₱17,910.00
110 bags chicken dung (Chicken manure)	6,600.00
Hauling expense of th[e]se materials	1,570.00
Additional fertilizers (As shown in Exh. "B")	9,550.00

and several cash advances as follows:

2-7-94	₱4,000.00
2-14-94	2,000.00
3-3-94	2,000.00
No date	100.00
5-1-94	2,000.00

[3] Records, pp. 1-2.

[4] *Id.* at 57.

5-6-94 ----------	2,000.00	
7-19-94 ----------	500.00	
7-20-94 ----------	500.00	
(but which accused claimed [to be] ₱1,500.00)		
9-10-94 ----------	3,000.00	16,100.00
	Total	₱51,730.00

4. That private complainant claimed that x x x on August 17, 1994, she delivered a 10-wheeler corn grains (sic) to the accused which parties agreed [was] worth more than ₱80,000.00. And the private complainant claimed having paid the accused partially in the amount of ₱8,060.00 which accused denied. The latter claimed that no payment was ever made because the corn grains were owned by private complainant and another person and that private complainant and companion were paid of the worth of the delivery;

5. Parties agreed that on September 9, 1994 at 2:00 o'clock (sic) in the afternoon[,] there was a delivery by the private complainant with her companions, corn grains worth ₱85,607.00. Private complainant claimed that she was only paid ₱3,000.00 and which accused claimed that she did not pay her because that delivery was in payment of her account and the ₱3,000.00 which she received was advanced payment of whatever remaining after paying her previous accounts to the accused;

6. Parties agreed that there was a Cash Voucher of the amount of corn grains delivered to the accused on September 9, 1994, now marked [as] Exh. "C".[5] (Emphasis and underscoring supplied.)

Trial on the merits ensued.

Based on the evidence presented and what transpired during the pre-trial, the facts are:

On February 18, 1994, Evelyn Alagao (Evelyn), daughter of private complainant Consolacion Alagao (Alagao), as borrower-mortgagor, executed a "*Contract of Loan Secured by Real Estate Mortgage with Special Power to Sell Mortgage Property without Judicial Proceedings*"[6] in favor of petitioner as lender-mortgagee.

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[5] *Id.* at 59-60.

[6] Exh. "1", Exhibits for Accused, pp. 1-2.

The instrument provides for a ₱40,000 loan secured by a parcel of land covered by Original Certificate of Title No. P-6254,[7] located in Old Nongnongan, Don Carlos, Bukidnon, registered in Evelyn's name. It likewise provides that the loan was to be paid two years from the date of execution of the contract, **or on February 18, 1996**, and that Evelyn agrees to give petitioner ¼ of every harvest from her cornland until the full amount of the loan has been paid, starting from the first harvest. Based on Alagao's testimony, the first harvest was made only in September 1994.[8] Petitioner on the other hand claims that from the time the loan was obtained until September 1994, there were already four harvests. During pre-trial, it was admitted by Alagao that she did not only receive ₱40,000 as provided in the contract of loan but ₱51,730 in the form of fertilizers and cash advances.[9]

On September 9, 1994, Alagao and some companions delivered 398 sacks of corn grains to petitioner. Petitioner prepared a voucher indicating that Alagao had received the amount of ₱85,607 as full payment for the 398 sacks of corn grains. Alagao signed said voucher even if she only received ₱3,000.[10] According to Alagao, 64 of the 398 sacks will serve as partial payment of her ₱40,000 loan with petitioner while the remaining balance will come from the ₱85,607 cash she was supposed to receive as payment for the corn grains delivered so she can redeem her daughter's land title.[11]

On March 16, 1999, the Regional Trial Court (RTC) of Misamis Oriental, Branch 40, rendered a decision[12] finding petitioner guilty beyond reasonable doubt of the crime of estafa. The *fallo* of the RTC decision reads:

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[7] Exh. "E", Exhibits for Plaintiff, pp. 5-6.

[8] TSN, September 11, 1996, p. 14.

[9] Records, p. 59.

[10] TSN, September 10, 1996, pp. 8-9; Exh. "C", Exhibits for Plaintiff, p. 3.

[11] TSN, November 5, 1996, pp. 16-17.

[12] Records, pp. 170-177. Penned by Acting Judge Rodrigo F. Lim, Jr.

WHEREFORE, IN VIEW OF THE FOREGOING PREMISES, accused Adelaida Soriano is hereby found guilty beyond reasonable doubt of the crime of Estafa as defined and penalized under Article 315, par. 2(a) of the Revised Penal Code, and is hereby sentenced to suffer imprisonment of Four (4) Years, Two (2) Months and One (1) day of *Prision Correccional*, as minimum, to Thirteen (13) Years, Four (4) Months of *Reclusion Temporal*, as maximum and, is hereby further ordered to pay the offended party in this case the amount of ₱85,607.00 representing the value of the 398 sacks of corn grains. Costs against the accused.

SO ORDERED.[13]

Petitioner's conviction, however, was set aside by the CA in the assailed decision. The CA disposed as follows:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court of Misamis Oriental, Branch 40, dated 16 March 1999 in Criminal Case No. 95-41 is REVERSED and SET ASIDE. Appellant ADELAIDA SORIANO is ACQUITTED of the crime charged on the ground of reasonable doubt. However, Appellant ADELAIDA SORIANO is hereby ordered to pay private complainant CONSOLACION R. ALAGAO the sum of seventy-four thousand, eight hundred seven pesos (₱74,807.00) as payment for the remaining balance of the cash value of the 398 sacks of corn grains, *plus* legal interest at the rate of 12% per annum computed from 9 September 1994 until fully paid.

SO ORDERED.[14]

The CA ruled that the prosecution failed to establish that petitioner made false pretenses, fraudulent acts or fraudulent means to induce Alagao to deliver to her the 398 sacks of corn grains. In fact, in Alagao's testimony, she admitted that she delivered the corn grains to petitioner because the latter was demanding payment from her and she wanted to pay her obligation of ₱40,000 to petitioner so that she could get back the title of her daughter's mortgaged property and the balance of the total cash value of the 398 sacks of corn. Thus, the CA held, in the absence of deceit, petitioner's liability is only civil.

[13] *Id.* at 177.

[14] *Rollo*, p. 35.

In determining petitioner's civil liability, the CA deducted from ₱85,607 – the total value of the 398 sacks of corn grains delivered to petitioner – the ₱3,000 petitioner had paid Alagao and the ₱7,800 which the CA considered as the value of the 64 sacks of corn grains which Alagao intended as partial payment for the ₱40,000 loan, thus leaving the balance of ₱74,807.

Unsatisfied, petitioner is now before this Court questioning her civil liability. She assigns to the CA the following errors:

1) The Court of Appeals committed error in the computation of petitioner's civil liability as it failed to apply correctly the principle of set-off or compensation.

2) The Court of Appeals, in applying set-off or compensation, erroneously placed private complainant's indebtedness to petitioner at ₱40,000.00 instead of ₱51,730.00 as found by it and as stipulated during pre-trial.

3) The Court of [A]ppeals omitted to off-set the amount equivalent to ¼ share of the harvest (or ₱57,200.00) against petitioner's indebtedness to private complainant in the amount of ₱85,607.00 despite admission by private complainant.[15]

Petitioner argues that while the CA found her indebted to Alagao in the sum of ₱85,607, it only offset ₱40,000 instead of ₱51,730 which was the amount stipulated during pre-trial. Petitioner contends that the compensation should be as follows:

Petitioner's indebtedness:	[Alagao's] Indebtedness:
₱85,607.00 (value of 398 sacks)	₱51,730.00 (instead of ₱40,000.00)
- 3,000.00 (cash payment)	- 7,800.00 (value of 64 sacks)
₱82,607.00	₱43,930.00
- 7,800.00 (value of 64 sacks)	
₱74,807.00 (as correctly found by the Court of Appeals)[16]	

[15] *Id.* at 12.

[16] *Id.*

Thus, deducting Alagao's indebtedness of ₱43,930 from petitioner's indebtedness amounting to ₱74,807, petitioner's remaining indebtedness should only be ₱30,877.

Petitioner likewise argues that the CA also failed to consider Alagao's obligation to deliver to her ¼ of every harvest. Petitioner claims that her ¼ share in the harvest amounted to ₱57,200 for four harvests. Therefore, applying the principle of set off, it is Alagao who is indebted to petitioner in the amount of ₱26,323 (₱57,200 minus ₱30,877).

Respondent on the other hand contends that the amount of loan extended to Alagao was ₱40,000 and not ₱51,730 as claimed by petitioner. Moreover, the entire value of the 398 sacks of corn grains should not be set off with Alagao's loan since (1) the loan was not yet due and demandable at the time of delivery of the 398 sacks of corn grains in September 1994; and (2) only 154 of the 398 sacks of corn grains belong to Alagao. Respondent also claims that ₱13,765.95[17] should be considered as the correct value of the 64 sacks intended by Alagao as partial payment for the loan and not ₱7,800 as found by the CA.

The petition is partly meritorious.

Compensation is a mode of extinguishing to the concurrent amount, the debts of persons who in their own right are creditors and debtors of each other. The object of compensation is the prevention of unnecessary suits and payments through the mutual extinction by operation of law of concurring debts.[18] Article 1279 of the Civil Code provides for the requisites for compensation to take effect:

ART. 1279. In order that compensation may be proper, it is necessary:

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[17] Computed as follows: ₱13,765.95 = $\frac{₱85,607.00}{398 \text{ sacks}}$ x 64 sacks. *Rollo*, pp. 73-74.

[18] *Nadela v. Engineering and Construction Corporation of Asia (ECCO-ASIA)*, 510 Phil. 653, 666 (2005), citing *PNB MADECOR v. Uy*, 415 Phil. 348, 359 (2001), Art. 1278, CIVIL CODE and *Compañia General de Tabacos v. French and Unson*, 39 Phil. 34, 51 (1918).

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

This Court rules that all the above requisites for compensation are present in the instant case.

First, petitioner and Alagao are debtors and creditors of each other. It is undisputable that petitioner and Alagao owe each other sums of money. Petitioner owes ₱85,607 for the value of the corn grains delivered to her by Alagao in September 1994 while Alagao owes petitioner ₱51,730 by virtue of a loan extended by the latter in February 1994.

Second, both debts consist in a sum of money. There is no issue as to the ₱85,607 debt by petitioner that it consists a sum of money. As to the ₱51,730 received by Alagao from petitioner, though what was extended by petitioner consists of cash advances and fertilizers, there is no dispute that said amount is payable in money.

Third, both debts are due. Upon delivery of the 398 sacks to petitioner, she was under the obligation to pay for the value thereof as buyer. As to Alagao's debt, the contract of loan provided that it is payable in February 1996. Though it was not yet due in September 1994 when she delivered the 398 sacks of corn grains to petitioner, it eventually became due at the time of trial of the instant case.

Fourth, both debts are liquidated and demandable. A debt is liquidated when the amount is known or is determinable by

inspection of the terms and conditions of relevant documents.[19] There is no dispute that the value of the 398 sacks of corn grains is ₱85,607. As to Alagao's debt, we disagree with respondent People that the loan amount is only ₱40,000 since during pre-trial, Alagao herself admitted that she did not only receive ₱40,000 but ₱51,730 in the form of cash advances and fertilizers from petitioner. It is well settled that an admission made in a stipulation of facts at pre-trial by the parties is considered a judicial admission and, under the Rules of Court, requires no proof. Such admission may be controverted only by a showing that it was made through a palpable mistake or that no such admission was made.[20]

And lastly, neither of the debts are subject of a controversy commenced by a third person. There are no third-party claims with respect to Alagao's ₱51,730 loan. As to petitioner's ₱85,607 debt representing the 398 sacks of corn grains, Alagao claims that she is not the sole owner of all the 398 sacks. This claim of Alagao, however, was never substantiated and a perusal of the information for estafa shows that the subject corn grains are all owned by her. Moreover, the alleged other owners have not commenced any action to protect their claim over it. Thus, the ₱85,607 debt cannot be considered subject of a controversy by a third person.

With the presence of all the requisites mentioned in Article 1279, legal compensation took effect by operation of law as provided in Article 1290 of the Civil Code, to wit:

> ART. 1290. When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

Thus, the computation of petitioner's civil liability should be as follows:

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[19] *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071 & 181415, July 7, 2009, 592 SCRA 169, 196.

[20] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 545.

Value of the 398 sacks of corn grains	₱85,607
Cash payment by petitioner upon delivery	- 3,000
	₱82,607
Alagao's debt	- 51,730
Petitioner's net civil liability to Alagao	**₱30,877**

With respect to the ¼ share in the harvest due to petitioner as provided in the contract of loan, the same cannot be considered in the legal compensation of the debts of the parties since it does not consist in a sum of money, said share being in the form of harvests. More importantly, it is not yet liquidated. There is still a dispute as to how many harvests were made from the time of the execution of contract of loan up to the time the action was commenced against petitioner and even when the principal obligation became due in February 1996. Thus, the harvests due petitioner is not capable of determination.

WHEREFORE, the May 19, 2005 Decision and January 11, 2008 Resolution of the Court of Appeals in CA-G.R. CR No. 23108 are hereby **AFFIRMED with MODIFICATION**. Petitioner Adelaida Soriano is hereby ordered to pay ₱30,877 as payment for the remaining balance of the cash value of the 398 sacks of corn grains, plus legal interest at the rate of 6%[21] per annum computed from finality of this Decision until its full satisfaction.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Brion,[*] *Bersamin,* and *Reyes, JJ.,* concur.

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[21] Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 issued on June 21, 2013.

[*] Designated additional member per Special Order No. 1497 dated July 31, 2013.

SECOND DIVISION

[G.R. No. 184536. August 14, 2013]

MASAYUKI HASEGAWA, *petitioner, vs.* **LEILA F. GIRON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURT OF APPEALS; JURISDICTION; PROPER COURT TO REVIEW THE RESOLUTION ON FINDINGS OF PROBABLE CAUSE ISSUED BY THE DOJ THROUGH A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; ELUCIDATED.— The elementary rule is that the Court of Appeals has jurisdiction to review the resolution issued by the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction. The grant by the Court of Appeals of the *certiorari* petition is a determination that the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal complaint for kidnapping and serious illegal detention for lack of probable cause.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DECISION WHETHER OR NOT TO DISMISS A CRIMINAL COMPLAINT DEPENDS ON THE SOUND DISCRETION OF THE PROSECUTOR; MAY BE ASSAILED ONLY IN CASE OF GRAVE ABUSE OF DISCRETION; CASE AT BAR.— The decision whether or not to dismiss the criminal complaint against the accused depends on the sound discretion of the prosecutor. Courts will not interfere with the conduct of preliminary investigations, or reinvestigations, or in the determination of what constitutes sufficient probable cause for the filing of the corresponding information against an offender. Courts are not empowered to substitute their own judgment for that of the executive branch. Differently stated, as the matter of whether to prosecute or not is purely discretionary on his part, courts cannot compel a public prosecutor to file the corresponding information, upon a complaint, where he finds the evidence before him insufficient

to warrant the filing of an action in court. In sum, the prosecutor's findings on the existence of probable cause are not subject to review by the courts, unless these are patently shown to have been made with grave abuse of discretion. We find such reason for judicial review here present. We sustain the appellate court's reversal of the ruling of the Secretary of the DOJ. x x x The Investigating Prosecutor has set the parameters of probable cause too high. Her findings dealt mostly with what respondent had done or failed to do after the alleged crime was committed. She delved into evidentiary matters that could only be passed upon in a full-blown trial where testimonies and documents could be fairly evaluated in according with the rules of evidence. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level. By taking into consideration the defenses raised by petitioner, the Investigating Prosecutor already went into the strict merits of the case.

3. ID.; ID.; ID.; PROBABLE CAUSE; ELUCIDATED.— Probable 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. It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, 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. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and

definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It must be mentioned, though, that in order to arrive at probable cause, the elements of the crime charged should be present.

4. CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS.— The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code are: 1. the offender is a private individual; 2. he kidnaps or detains another or in any other manner deprives the latter of his liberty; 3. the act of detention or kidnapping is illegal; and 4. in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.

APPEARANCES OF COUNSEL

Roberto Sebastian S. Reodica, III for petitioner.
Fortun Narvasa & Salazar for respondent.

D E C I S I O N

PEREZ, *J.*:

This petition for review on *certiorari* seeks to nullify the Decision[1] dated 30 June 2008 and Resolution[2] dated 18 September

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Rebecca De Guia-Salvador and Vicente S.E. Veloso, concurring. *Rollo,* pp. 16-33.

[2] *Id.* at 36.

2008 of the Court of Appeals in CA-G.R. SP No. 100091. The appellate court reversed and set aside the Resolutions of the Department of Justice (DOJ), which dismissed respondent Leila F. Giron's complaint for kidnapping and serious illegal detention against petitioner Masayuki Hasegawa.

On 16 September 2006, respondent filed a Complaint-Affidavit for Kidnapping and Serious Illegal Detention against petitioner and several John Does. Respondent alleged that sometime on December 2005, she and her officemate, Leonarda Marcos (Marcos) filed a complaint against their employer Pacific Consultants International, J.F. Cancio & Associates, Jaime F. Cancio, Tesa Tagalo and petitioner for illegal salary deductions, non-payment of 13th month pay, and non-remittance of SSS contributions. Respondent averred that since the filing of said complaint, they have been subjected to threats and verbal abuse by petitioner to pressure them to withdraw the complaint. Respondent had also filed separate complaints for grave threats, grave coercion, slander and unjust vexation against petitioner. Said cases are pending before the Metropolitan Trial Court (MeTC) of Pasay City.

Respondent recalled that on 17 July 2006, she received a call from an alleged messenger of her counsel who requested for a meeting at Harrison Plaza Mall in Manila. She asked Marcos to accompany her. While respondent and Marcos were on their way to Harrison Plaza Mall, they noticed a black Pajero car parked in front of the Package B Building inside the Light Rail Transit Authority (LRTA) compound, the place where both of them work. When they reached the mall, they went inside the SM Department Store to buy a few things. They then noticed two men following them. Respondent immediately called a close friend and reported the incident. Thereafter, respondent and Marcos went out of the department store and stood near the food stalls to make another phone call. Respondent suddenly felt a man's gun being pushed against the right side of her body. She panicked and her mind went blank. Respondent and Marcos were taken at gunpoint and pushed inside a black Pajero.[3]

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[3] *Id.* at 160-161.

While inside the vehicle, they were blindfolded and gagged. They were taunted and repeatedly threatened by their abductors into withdrawing the case against petitioner. When her blindfold was loosened, respondent was able to take a good look at her surroundings. She noticed that the car was parked in a warehouse with concrete walls and high roof. She also saw four vehicles parked outside. She finally saw three men wearing bonnets over their faces: the first one, seated beside her; the second one, seated in front; and the third one, was standing near the parked vehicles.[4]

Before respondent and Marcos were released, they were once again threatened by a man who said: "*pag tinuloy nyo pa kaso kay Hasegawa, may paglalagyan na kayo, walang magsusumbong sa pulis, pag nalaman namin na lumapit kayo, babalikan namin kayo*." They were released at around 11:00 p.m. on 18 July 2006 and dropped off in Susana Heights in Muntinlupa.[5]

In a separate Affidavit, Marcos corroborated respondent's account of the alleged kidnapping. Marcos added that while she was in captivity, her blindfold was loosened and she was able to see petitioner inside one of the vehicles parked nearby, talking to one of their abductors, whom she noticed to be wearing bonnets.[6]

Petitioner, in his Counter-Affidavit, denied the accusation of kidnapping and serious illegal detention against him. Petitioner categorically stated that he had nothing to do with the kidnapping; that he was neither the "brains" nor a "participant" in the alleged crimes; that he did not know the alleged kidnappers; and, that he was not present inside one of the vehicles talking with one of the abductors at the place alleged by Marcos.[7]

Petitioner also pointed out several supposed inconsistencies and improbabilities in the complaint, such as:

1. Respondent and Marcos claim that petitioner has continuously warned them about withdrawing the complaint

[4] *Id.* at 162.

[5] *Id.*

[6] *Id.* at 432-435.

[7] *Id.* at 174.

since its filing on December 2005 but petitioner only came to know about the complaint on 8 May 2006;

2. After being set free by their alleged abductors, respondent and Marcos did not immediately report the matter to the police either in Manila or Muntinlupa;

3. It is strange that respondent and Marcos did not know who their lawyer's messenger is and did not find it unusual that their lawyer would call for a meeting in Harrison Plaza Mall instead of at his office;

4. Petitioner wondered how respondent and Marcos could remember and distinguish the alleged black Pajero used by their captors to be the same black Pajero they saw in the parking lot of LRTA Package B Building;

5. It is incredible that the two alleged abductors were able to enter SM Department Store with guns in their possession;

6. It is an act contrary to human nature that upon noticing two men following them, respondent and Marcos went outside the department store to make a phone call, instead of staying inside the department store;

7. Marcos never mentioned that respondent's mobile phone was ringing while they were inside the vehicle;

8. The alleged statements made by the kidnappers demanding withdrawal of complaint against petitioner are hearsay;

9. It is unimaginable that petitioner was supposedly allowed to text and Marcos was allowed to call someone on her mobile phone;

10. It was very convenient for Marcos to mention that she saw petitioner inside one of the vehicles talking to one of the abductors. If indeed petitioner is involved in the kidnapping, he would never allow his identity to be exposed;

11. Respondent and Marcos did not report to the Philippine National Police what had happened to them. Only respondent wrote a letter to the National Bureau of Investigation (NBI),

two weeks later, detailing her ordeal. And only respondent filed the instant case two months later; and

12. Respondent and Marcos continued to work after their alleged kidnapping.[8]

Petitioner asserted that respondent and Marcos are extorting money from him because the instant case was filed right after the negotiations to settle the civil aspect of the three cases they filed with the Bureau of Immigration and Deportation (BID), National Labor Relations Commission (NLRC) and MeTC Pasay failed.[9]

Petitioner's personal driver, Edamar Valentino, corroborated petitioner's statement that on 17 and 18 July 2006, he drove petitioner at 7:30 a.m. and brought him home after work as was his usual schedule.[10]

In a Resolution[11] dated 5 January 2007, Senior State Prosecutor Emilie Fe M. De Los Santos dismissed the complaint for lack of probable cause.

Respondent filed an appeal from the Resolution of the prosecutor dismissing her complaint. In her Petition for Review before the DOJ, respondent claimed that the Investigating Prosecutor gravely erred when she recommended the dismissal of the case against petitioner despite overwhelming evidence showing the existence of probable cause. She thus prayed for the reversal of the Resolution of the Investigating Prosecutor.

Finding no basis to overturn the findings of the Investigating Prosecutor, then Secretary of Justice Raul M. Gonzales dismissed the petition on 11 April 2007.

Respondent's motion for reconsideration having been denied by the DOJ, she filed a petition for *certiorari* before the Court

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[8] *Id.* at 175-183.

[9] *Id.* at 46.

[10] *Id.* at 48.

[11] *Id.* at 228-241.

of Appeals. On 30 June 2008, the Court of Appeals granted the petition, reversed and set aside the Resolutions of the DOJ and ordered the filing of an Information for Kidnapping and Serious Illegal Detention against petitioner. The Court of Appeals found that "the Secretary [of Justice] arrogated upon himself the functions of the judge by demanding more than a sampling, but for pieces of evidence that were understandably not there yet, being suited to a trial proper."[12] The appellate court went on to state that the prosecutor usurped the duties belonging to the court when she "overstretched her duties and applied the standards, not of ordinary prudence and cautiousness, nor of mere 'reasonable belief' and probability, but of a full-blown trial on the merits, where rules on admissibility of testimonies and other evidence strictly apply."[13]

The motion for reconsideration of the petitioner was denied by the Court of Appeals in its Resolution[14] dated 18 September 2008. Hence, the instant petition attributing the following errors to the Court of Appeals, to wit:

I.

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN REVERSING THE FINDING OF THE SECRETARY OF JUSTICE THAT NO PROBABLE CAUSE EXISTS IN THE INSTANT CASE.

II.

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN GRANTING RESPONDENT'S PETITION FOR *CERTIORARI* DESPITE RAISING QUESTIONS OF FACT AND BEING UNMERITORIOUS.

III.

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN RULING THAT RESPONDENT'S PETITION FOR *CERTIORARI*

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[12] *Id.* at 30.

[13] *Id.* at 30-31.

[14] *Id.* at 36.

IS THE PROPER MODE OF APPEAL FROM JUDGMENTS OF THE SECRETARY OF JUSTICE.[15]

Petitioner insists that there was no showing that the Secretary of Justice acted with grave abuse of discretion in ruling that no probable cause exists to indict him for the crimes charged. Petitioner asserts that the Secretary of Justice clearly and sufficiently explained the reasons why no probable cause exists in this case. Petitioner faults the appellate court for also having done what it has charged the Secretary of Justice of doing, *i.e.*, deliberating point by point the issues and arguments raised by the parties in its Decision. Petitioner also faults the appellate court for overlooking the fact that the kidnapping and serious illegal detention charges are but the fourth in a series of successive cases filed by respondent against petitioner, all of which were dismissed by the BID, NLRC and MeTC of Pasay City. Petitioner argues that a review of facts and evidence made by the appellate court is not the province of the extraordinary remedy of *certiorari*. Finally, petitioner contends that the appellate court should have dismissed outright respondent's petition for *certiorari* for failure to exhaust administrative remedies and for being the wrong mode of appeal.

We had initially denied this petition, but upon motion for reconsideration of the petitioner, we decided to reconsider said denial and to give it due course.[16]

Directed to file her Comment, respondent counters that in preliminary investigation cases, such as that done in this case, there is, as yet no occasion for the parties to display their full and exhaustive evidence, as a mere finding that the kidnapping might have been committed by petitioner is already sufficient.

The elementary rule is that the Court of Appeals has jurisdiction to review the resolution issued by the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court on the ground

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[15] *Id.* at 58.

[16] *Id.* at 680.

that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[17]

The grant by the Court of Appeals of the *certiorari* petition is a determination that the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal complaint for kidnapping and serious illegal detention for lack of probable cause.

The decision whether or not to dismiss the criminal complaint against the accused depends on the sound discretion of the prosecutor. Courts will not interfere with the conduct of preliminary investigations, or reinvestigations, or in the determination of what constitutes sufficient probable cause for the filing of the corresponding information against an offender. Courts are not empowered to substitute their own judgment for that of the executive branch. Differently stated, as the matter of whether to prosecute or not is purely discretionary on his part, courts cannot compel a public prosecutor to file the corresponding information, upon a complaint, where he finds the evidence before him insufficient to warrant the filing of an action in court. In sum, the prosecutor's findings on the existence of probable cause are not subject to review by the courts, unless these are patently shown to have been made with grave abuse of discretion.[18] We find such reason for judicial review here present. We sustain the appellate court's reversal of the ruling of the Secretary of the DOJ.

Probable 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. It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong

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[17] *Chong v. Dela Cruz*, G.R. No. 184948, 21 July 2009, 593 SCRA 311, 314-315.

[18] *Baviera v. Prosecutor Paglinawan*, 544 Phil. 107, 120-121 (2007).

suspicion, that a thing is so. The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, 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.[19]

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[20]

It must be mentioned, though, that in order to arrive at probable cause, the elements of the crime charged should be present.[21]

The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code are:

1. the offender is a private individual;
2. he kidnaps or detains another or in any other manner deprives the latter of his liberty;

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[19] *Metropolitan Bank & Trust Company v. Gonzales*, G.R. No. 180165, 7 April 2009, 584 SCRA 631, 640-641 citing *Yu v. Sandiganbayan*, 410 Phil. 619, 627 (2001).

[20] *Fenequito v. Vergara, Jr.*, G.R. No. 172829, 18 July 2012, 677 SCRA 113, 120-121 citing *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, 30 July 2008, 560 SCRA 518, 534-535.

[21] *Sy Tiong Shiou v. Sy Chim*, G.R. No. 174168, 30 March 2009, 582 SCRA 517, 530.

3. the act of detention or kidnapping is illegal; and
4. in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.

All elements were sufficiently averred in the complaint-affidavit to engender a well-founded belief that a crime may have been committed and petitioner may have committed it. Respondent, an office worker, claimed that she and her friend were taken at gunpoint by two men and forcibly boarded into a vehicle. They were detained for more than 24-hours. Whether or not the accusations would result in a conviction is another matter. It is enough, for purposes of the preliminary investigation that the acts complained of constitute the crime of kidnapping and serious illegal detention.

The findings of the Investigating Prosecutor rest on lack of *prima facie* evidence against petitioner. That the kidnapping and serious illegal detention charge is a mere fabrication was based on the Investigating Prosecutor's observations, as follows: First, no law enforcement agency has investigated the complaint and indorsed the same to the prosecution office for preliminary investigation as is the usual procedure for grave offenses. Second, the other victim, Marcos, did not file a case against petitioner. Third, respondent continued to report to work at the LRTA compound where the supposed mastermind also works. Fourth, there was the unexplained absence of report of the alleged incident to any police or law enforcement agencies which taints the trustworthiness of respondent's allegations. Fifth, respondents' theory on the motive for her kidnapping has been shown to be fallacious. Sixth, respondent's propensity to file a string of cases against petitioner supports the contention that all these are part of her corrupt scheme to extort money from petitioner. And seventh, vital witnesses for the respondent such as the NBI agent assigned to her complaint and her other officemates who could have corroborated her story were not presented.

The Investigating Prosecutor has set the parameters of probable cause too high. Her findings dealt mostly with what respondent had done or failed to do after the alleged crime was committed. She delved into evidentiary matters that could only be passed upon in a full-blown trial where testimonies and documents could be fairly evaluated in according with the rules of evidence. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[22] By taking into consideration the defenses raised by petitioner, the Investigating Prosecutor already went into the strict merits of the case. As aptly stated by the appellate court:

> That the NBI or other prosecutor agencies of the government neglected to act on the petitioner's complaint can hardly constitute evidence that the incident did not in fact happen, or was merely fabricated or invented to extort money from the private respondent. Instead of faulting the complainants and questioning their motivations, the strong arm of the State might be better off investigating non-feasance in public office.
>
> In any event, the perceived inconsistencies are more imaginary than real, delving as it does on minor, ambiguous and inconsequential matters that may yet be properly addressed in a full-dress court hearing. We thus agree with the petitioner's assertion on the lack of any legal or factual basis for the public respondent's refusal to apply the rule that a positive declaration is superior to a negative averment. It is well to recall that the nullity of a resolution may be shown not only by what patently appears on its face, but also by the documentary and the testimonial evidence found in the records of the case, upon which such ruling is based.

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[22] *Clay & Feather International, Inc. v. Lichaytoo*, G.R. No. 193105, 30 May 2011, 649 SCRA 516, 525-526 citing *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 49-50 (2005) and *Quiambao v. Hon. Desierto*, 481 Phil. 852, 866 (2004).

True, discretion lies with the investigator to believe more the respondent's alibi, or to shoot down the credibility of the complainant as well as the testimony of her witnesses. Still, she may not, as here, turn a blind eye to evidence upon formidable evidence mounting to show the acts complained of. Such cavalier disregard of the complainants' documents and attestations may otherwise be the "arbitrary, whimsical and capricious" emotion described in the term, "grave abuse[."]

It may not even matter that the respondent presented his own counter-arguments in avoidance of the complaints, assuming he also did so adeptly, convincingly; far crucial is discerning that the task transcended mere discovery of the likelihood or the "probability" that a crime was committed, but ventured into weighing evidence beyond any reasonable doubt. Indeed, the respondent Secretary arrogated upon himself the functions of the judge by demanding more than a sampling, but for pieces of evidence that were understandably not there yet, being suited to a trial proper.[23]

Thus, did the Court of Appeals detail why the holding that there is no probable cause to indict petitioner amounted to grave abuse of discretion on the part of the DOJ. Resort by respondent to the extraordinary writ of *certiorari* and the grant thereof by the Court of Appeals is correct.

WHEREFORE, premises considered, the instant Petition is **DENIED** for lack of merit. The 30 June 2008 Decision and the 18 September 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 100091, are hereby **AFFIRMED.**

SO ORDERED.

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

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[23] *Rollo,* pp. 29-30.

SECOND DIVISION

[G.R. No. 187214. August 14, 2013]

SANOH FULTON PHILS., INC. and MR. EDDIE JOSE, *petitioners, vs.* **EMMANUEL BERNARDO and SAMUEL TAGHOY,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETRENCHMENT DISTINGUISHED FROM CLOSURE.— Retrenchment to prevent losses and closure not due to serious business losses are two separate authorized causes for terminating the services of an employee. In *J.A.T. General Services v. NLRC*, the Court took the occasion to draw the distinction between retrenchment and closure, to wit: Closure of business, on one hand, is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business as an authorized cause for termination of employment aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. On the other hand, retrenchment is reduction of personnel usually due to poor financial returns so as to cut down on costs of operations in terms of salaries and wages to prevent bankruptcy of the company. It is sometimes also referred to as down-sizing. Retrenchment is an authorized cause for termination of employment which the law accords an employer who is not making good in its operations in order to cut back on expenses for salaries and wages by laying off some employees. The purpose of retrenchment is to save a financially ailing business establishment from eventually collapsing. The respective requirements to sustain their validity are likewise different. For retrenchment, the three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month

pay, or at least one-half (½) month pay for every year of service, whichever is higher. In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus: (1) the losses incurred are substantial and not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence. Upon the other hand, in termination, the law authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not. However, to put a stamp to its validity, the closure/cessation of business must be *bona fide*, *i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement.

2. **ID.; ID.; ID.; ID.; VALID CAUSE MUST BE ESTABLISHED BY EMPLOYER.—** In termination cases either by retrenchment or closure, the burden of proving that the termination of services is for a valid or authorized cause rests upon the employer. Not every loss incurred or expected to be incurred by an employer can justify retrenchment. The employer must prove, among others, that the losses are substantial and that the retrenchment is reasonably necessary to avert such losses. And, in closures, the *bona fides* of the employer must be proven.

3. **ID.; ID.; ID.; ID.; ID.; LULL CAUSED BY LACK OF ORDERS OR SHORTAGE OF MATERIALS MUST BE OF SUCH NATURE AS WOULD SEVERELY AFFECT THE CONTINUED BUSINESS OPERATIONS OF THE EMPLOYER TO THE DETRIMENT OF ALL AND SUNDRY IF NOT PROPERLY ADDRESSED.—** We are mindful of the principle that losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business may justify an employer to reduce the work force. But a lull caused by lack of orders or shortage of materials must be of such nature as would severely affect the continued business operations of the employer to the detriment of all and sundry if not properly addressed. x x x We held in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, that the

losses must be supported by sufficient and convincing evidence and the normal method of discharging this is by the submission of financial statements duly audited by independent external auditors.

4. ID.; ID.; ILLEGAL DISMISSAL; PROPER REMUNERATION.— [T]he dismissal of respondents was unlawful. Resultingly, respondents are entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, computed from the time the compensation was withheld up to the time of actual reinstatement. Present law says that if reinstatement is not feasible, the payment of full backwages shall be made from the date of dismissal until finality of judgment. Verily, in this case, reinstatement is no longer practical in view of the length of time that had elapsed from the time of respondents' dismissal. As held in *EDI Staff Builders International Inc. v. Magsino*, apart from backwages, respondents should be awarded separation pay.

CARPIO, *J., separate concurring opinion*:

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETRENCHMENT TO PREVENT LOSSES; REQUISITES.— Retrenchment to prevent losses is one of the authorized causes for dismissal of employees. x x x There are three requisites for a valid retrenchment. In *Genuino Ice Company, Inc. v. Lava*, the Court held that: x x x [T]here are three (3) basic requisites for a valid retrenchment, namely: (a) proof that the retrenchment is necessary to prevent **losses or impending losses**; (b) service of written notices to the employees and to the [Department of Labor and Employment] at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (½) month pay for every year of service, whichever is higher.

2. ID.; ID.; ID.; ID.; THAT RETRENCHMENT IS NECESSARY TO PREVENT LOSSES OR IMPENDING LOSSES; ELUCIDATED.— Under the first requisite, there are two kinds of losses which can justify retrenchment, namely, incurred losses and impending losses. Incurred losses refer to losses that have already occurred. Since they have already occurred, they should be reflected in the financial statements. On the

other hand, impending losses refer to losses that have not yet occurred. They are also termed as future or expected losses. Since they have not yet occurred, they are not reflected in the financial statements. Thus, in *Waterfront Cebu City Hotel v. Jimenez*, the Court held that retrenchment must be "reasonably necessary and likely to prevent business losses which, *if already incurred*, are not merely de minimis, but substantial, serious, actual and real, *or if only expected*, are reasonably imminent as perceived objectively and in good faith by the employer." The Court recognizes two kinds of losses which can justify retrenchment — incurred losses which are substantial, serious, actual and real, and expected losses which are reasonably imminent.

3. ID.; ID.; ID.; MUST BE SUFFICIENTLY EVINCED.— Whether the losses are incurred or impending, employers always bear the burden of proving that retrenchment is necessary to abate such losses. In *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, the Court held that, "The burden clearly falls upon the employer to prove economic or business losses with sufficient supporting evidence. Its failure to prove these reverses or losses necessarily means that the employee's dismissal was not justified." In the case of incurred losses, financial statements duly audited by independent external auditors are the best proof. In *Anabe v. Asian Construction (ASIAKONSTRUKT)*, the Court held that, "The losses must be supported by sufficient and convincing evidence, the normal method of discharging [this] is the submission of financial statements duly audited by independent external auditors." In the case of impending losses, financial statements duly audited by independent external auditors are not necessarily the best proof. Obviously, impending, expected or future losses which employers seek to prevent through retrenchment could not yet be reflected in the financial statements. In fact, if the retrenchment adequately serves its purpose, then the impending losses would never be reflected in the financial statements.

APPEARANCES OF COUNSEL

Antonio A. Geronimo for petitioners.
Patricio L. Boncayao, Jr. for respondents.

D E C I S I O N

PEREZ, *J.*:

This petition for review seeks to annul the 23 January 2008 Decision[1] and 13 March 2009 Resolution[2] of the Court of Appeals which declared that petitioner Sanoh Fulton Phils., Inc. (Sanoh) illegally dismissed respondent employees.

Sanoh is a domestic corporation engaged in the manufacture of automotive parts and wire condensers for home appliances. Its Wire Condenser Department employed 61 employees. Respondents belonged to this department.

In view of job order cancellations relating to the manufacture of wire condensers by Matsushita, Sanyo and National Panasonic, Sanoh decided to phase out the Wire Condenser Department. On 22 December 2003, the Human Resources Manager of Sanoh informed the 17 employees, 16 of whom belonged to the Wire Condenser Department, of retrenchment effective 22 January 2004. All 17 employees are union members.

A grievance conference was held where the affected employees were informed of the following grounds for retrenchment:

1) Lack of local market.
2) Competition from imported products.
3) Phasing out of Wire Condenser Department.[3]

Two succeeding conciliation conferences were likewise held but the parties failed to reach an amicable settlement. Thus, two (2) separate complaints for illegal dismissal, docketed as NLRC Case No. RAB-IV-1-18788-04-C and NLRC Case No. RAB-IV-02-18844-04-C, were filed by the following complainants:

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[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Mario L. Guariña III and Japar B. Dimaampao, concurring. *Rollo*, pp. 40-53.

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

[3] Records, Vol. I, p. 112.

1. Rene Dasco
2. Reynaldo Chavez
3. Joey MaQuillao
4. Jerson Mendoza
5. David Almeron
6. Nicanor Malubay
7. Alejandro Hontanosas
8. Reynaldo Abayon
9. Gerome Glor
10. Edralin Descalzota
11. Isagani Reginaldo
12. Ruelito Magtibay
13. Adonis Noo
14. Armando Nobleza
15. Emmanuel Bernardo
16. Samuel Taghoy
17. Manny Santos[4]

Sanoh on its part, filed a petition for declaration of the partial closure of its Wire Condenser Department and valid retrenchment of the 17 employees, docketed as NLRC Case No. RAB-IV-01-18762-04-C.

During the course of the proceedings before the Labor Arbiter, 14 of the 17 employees executed individual quitclaims. Hence, their interest in the cases was dismissed with prejudice. Only 3 employees, respondents Emmanuel Bernardo and Samuel Taghoy, and Manny Santos persisted.

The complainants alleged that there was no valid cause for retrenchment and in effecting retrenchment, there was a violation of the "first in-last out" and "last in-first out" (LIFO) policy embodied in the Collective Bargaining Agreement.

Sanoh, on the other hand, asserted that retrenchment was a valid exercise of management prerogative. Sanoh averred that some employees who were hired much later were either assigned to other departments or were bound by the terms of their job training agreement to stay with the company for 3 years.

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[4] *Rollo,* pp. 68-69.

On 18 July 2005, the Labor Arbiter rendered a Decision[5] dismissing the complaint for illegal dismissal. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint of RENE DASCO, ADONIS NOO, ARMANDO NOBLEZA, ISAGANI REGINALDO, JOEY MAQUILLAO, NICANOR MALUBAY, JEROME GLOR, REYNALDO ABAYON, DAVID ALMERON, RUELITO MAGTIBAY, EDRALIN DESCALZOTA, ALEJANDRO HONTANOSAS, REYNALDO CHAVES and JERSON MENDOZA. Respondent company however is ordered to pay the separation pay of the following:
>
> | | |
> |---|---|
> | EMMANUEL BERNARDO - | ₱53,339.52 |
> | SAMUEL TAGHOY - | 58,968.00 |
> | MANNY SANTOS - | 69,120.68 |
> | GRAND TOTAL | ₱181,428.20[6] |

On appeal, the National Labor Relations Commission (NLRC) affirmed *in toto* the decision of the Labor Arbiter in its Resolution[7] dated 23 May 2006. The NLRC held that "the retrenchment x x x was a valid exercise of management prerogative, more so, since the said decision was premised on the 'permanent lack of orders from major clients.'"[8] The NLRC found no violation of the company's LIFO policy because the employees involved were bound under a training agreement to render three (3) years of continuous service. The NLRC also sustained the award of separation pay to the three (3) employees.

Respondents filed a motion for reconsideration but the NLRC denied said motion in its 16 August 2006 Resolution.[9] Respondents filed a petition for *certiorari* before the Court of Appeals.

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[5] Penned by Labor Arbiter Renell Joseph R. Dela Cruz. *Id.* at 67-74.

[6] *Id.* at 74.

[7] Penned by Presiding Commissioner Raul T. Aquino with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring. *Id.* at 76-84.

[8] *Id.* at 82.

[9] *Id.* at 86-88.

The appellate court summed up respondents' arguments in this wise:

(a) Their dismissal was without just cause and retrenchment was unjustified;
(b) There was no justifiable ground to retrench the employees because the retrenchment was intended to prevent losses and the company was not losing;
(c) After the retrenchment, the Wire Condenser Department was not phased out and there was no need to reduce or retrench the personnel;
(d) There has been no closure of the Wire Condenser Department and no redundancy of work.[10]

On 23 January 2008, the Court of Appeals overturned the findings of the Labor Arbiter and the NLRC, and ruled that Sanoh failed to prove the existence of substantial losses that would justify a valid retrenchment. The Court of Appeals also upheld the quitclaim executed by complainant Manny Santos, thus he was deemed to have released Sanoh from his monetary claims. The appellate court disposed as follows:

WHEREFORE, the Petition insofar as petitioner Manny Santos is dismissed. As regards petitioners Emmanuel B. Bernardo and Samuel Taghoy, respondent company is found guilty of illegal dismissal and is ordered to reinstate petitioners Emmanuel B. Bernardo and Samuel Taghoy with full backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent company is ordered to pay backwages plus, in lieu of reinstatement, separation pay for every year of service, whichever is higher.[11]

Sanoh now questions the reversal by the Court of Appeals of the decisions of the Labor Arbiter and the NLRC. The position of the parties is unchanged.

Sanoh insists that it is the prerogative of management to effect retrenchment as long as it is done in good faith. Sanoh relies

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[10] *Id.* at 46.

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

on letters from its customers showing cancellation of job orders to prove that it is suffering from serious losses. In addition, Sanoh claims that it had, in fact, closed down the Wire Condenser Department in view of serious business losses.

On the other hand, respondents argue that the Wire Condenser Department was not phased out and there was no need to retrench the personnel. Respondents point out that Sanoh even made the retained employees render substantial overtime work. Respondents refute the allegation of serious business losses by producing documentary evidence to the contrary.

The Labor Arbiter and the NLRC were one in upholding the retrenchment as a valid exercise of Sanoh's management prerogative. The NLRC further observed that the decision to retrench was premised on the permanent lack of orders from major clients.[12]

After scouring the records, we are in full accord with the decision of the Court of Appeals.

To justify retrenchment, Sanoh invokes as grounds serious business losses resulting in the closure of the Wire Condenser Department, to which respondents belonged. In the same breadth, Sanoh also contends that its decision to close the Wire Condenser Department is within its right even in the absence of business losses as long as it is done in good faith.

Sanoh's two-tiered argument rests on the application of Article 283 of the Labor Code, which provides:

> ART. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices

[12] *Id.* at 82.

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 to at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Retrenchment to prevent losses and closure not due to serious business losses are two separate authorized causes for terminating the services of an employee. In *J.A.T. General Services v. NLRC*,[13] the Court took the occasion to draw the distinction between retrenchment and closure, to wit:

> Closure of business, on one hand, is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business as an authorized cause for termination of employment aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. On the other hand, retrenchment is reduction of personnel usually due to poor financial returns so as to cut down on costs of operations in terms of salaries and wages to prevent bankruptcy of the company. It is sometimes also referred to as down-sizing. Retrenchment is an authorized cause for termination of employment which the law accords an employer who is not making good in its operations in order to cut back on expenses for salaries and wages by laying off some employees. The purpose of retrenchment is to save a financially ailing business establishment from eventually collapsing.

The respective requirements to sustain their validity are likewise different.

For retrenchment, the three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month

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[13] 465 Phil. 785, 794 (2004).

prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (½) month pay for every year of service, whichever is higher.[14] In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus:

> (1) the losses incurred are substantial and not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.[15]

Upon the other hand, in termination, the law authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not. However, to put a stamp to its validity, the closure/cessation of business must be *bona fide*, *i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement.[16]

In termination cases either by retrenchment or closure, the burden of proving that the termination of services is for a valid or authorized cause rests upon the employer.[17] Not every loss incurred or expected to be incurred by an employer can justify retrenchment. The employer must prove, among others, that

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[14] *Genuino Ice Company, Inc. v. Lava*, G.R. No. 190001, 23 March 2011, 646 SCRA 385, 389; *Manatad v. Philippine Telegraph and Telephone Corporation*, G.R. No. 172363, 7 March 2008, 548 SCRA 64, 80-81.

[15] *Shimizu Phils. Contractors Inc. v. Callanta*, G.R. No. 165923, 29 September 2010, 631 SCRA 529, 540; *Alabang Country Club Inc. v. NLRC*, 503 Phil. 937, 949 (2005).

[16] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor Union-Super*, G.R. No. 166760, 22 August 2008, 563 SCRA 93, 106.

[17] *Aliviado v. Procter and Gamble Phils., Inc.*, G.R. No. 160506, 9 March 2010, 614 SCRA 563, 587; *Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, 23 February 2011, 644 SCRA 76, 86-88.

the losses are substantial and that the retrenchment is reasonably necessary to avert such losses.[18] And to repeat, in closures, the *bona fides* of the employer must be proven.

In this case, there was no valid retrenchment. Nor was there a closure of business.

We are mindful of the principle that losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business may justify an employer to reduce the work force. But a lull caused by lack of orders or shortage of materials must be of such nature as would severely affect the continued business operations of the employer to the detriment of all and sundry if not properly addressed.[19]

Sanoh asserts that cancelled orders of wire condensers led to the phasing out of the Wire Condenser Department which triggered retrenchment. Sanoh presented the letters of cancellation given by Matsushita and Sanyo as evidence of cancelled orders. The evidence presented by Sanoh barely established the connection between the cancelled orders and the projected business losses that may be incurred by Sanoh. Sanoh failed to prove that these cancelled orders would severely impact on their production of wire condensers.

We held in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*,[20] that the losses must be supported by sufficient and convincing evidence and the normal method of discharging this is by the submission of financial statements duly audited by independent external auditors.[21] It was aptly observed by the appellate court that no financial statements or documents were presented to substantiate Sanoh's claim of loss of ₱7 million per month. And a business lull caused by lack of orders which

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[18] *Legend Hotel (Manila) v. Realuyo,* G.R. No. 153511, 18 July 2012, 677 SCRA 10, 26.

[19] *Edge Apparel, Inc. v. NLRC, Fourth Division,* G.R. No. 121314, 12 February 1998, 286 SCRA 302, 311-312.

[20] G.R. No. 170464, 12 July 2010, 624 SCRA 705.

[21] *Id.* at 716.

could have justified retrenchment was not shown by petitioner. As observed once more by the Court of Appeals, petitioner failed to present proof of the extent of the reduced order and its contribution to the sustainability of its business.

On the other hand, respondents' refutations of the employer's reason for retrenchment were supported by documentary evidence. Respondents explained that Matsushita had four (4) outstanding orders of condensers of refrigerators: Model 17-20, Model 1404, Model 802 and Model 602. It was only in March 2004 that Model 17-20 and Model 1404 were phased out and only in July 2004 that Model 802 was phased out. However, Model 602 remained and the order of Matsushita had been increased from 500 to 1600 units monthly from July 2004.[22]

With respect to the Sanyo account, respondent assert that Sanyo had sufficient stocks for three (3) months which explained why it did not order from Sanyo. However, beginning February 2004, Sanyo resumed making orders.[23]

Respondents added that despite the cancellation of some orders by Matsushita and Sanyo, the additional orders made by Concepcion Industries and Uni-Magma more than compensated the losses incurred on the cancelled orders.[24]

Verily, Sanoh failed to discharge its burden of submitting competent proof to show the substantial business losses it suffered warranting retrenchment. Contrarily, respondents amply proved that the cancelled orders did not seriously create a dent on Sanoh's financial standing. Respondents further presented the production target and actual production of the Wire Condenser Department for the year 2005, to prove that the department had realized income for that year.

Sanoh would then argue that it did not even have to prove business losses when it decided to close down the Wire Condenser

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[22] Records, Vol. II, p. 147.

[23] *Id.* at 148.

[24] *Id.* at 149.

Department because the law recognizes the right of management to cease business operations. As already stated, the burden of proving that the closure was *bona fide,* rests upon the employer. Sanoh made a categorical statement that the Wire Condenser Department was totally closed. The documentary evidence presented by respondents, however, negate Sanoh's statement. In other words, Sanoh lacked *bona fides* even in its assertion that Wire Condenser Department had closed down. Respondents disclose that this department had gone full blast in its operations, even with substantial overtime operations immediately after their dismissal was effected. Moreover, respondents assert that Sanoh still hired employees after the so-called retrenchment.

Respondents submitted the time sheets of the Wire Condenser Department for the months of January up to July 2004[25] which showed that some of the employees had been rendering overtime work after retrenchment was effected presumably to compensate the lack of manpower in that department.

As the Wire Condenser Department is still in operation and no business losses were proven by Sanoh, the dismissal of respondents was unlawful. Resultingly, respondents are entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, computed from the time the compensation was withheld up to the time of actual reinstatement. Present law says that if reinstatement is not feasible, the payment of full backwages shall be made from the date of dismissal until finality of judgment.

Verily, in this case, reinstatement is no longer practical in view of the length of time that had elapsed from the time of respondents' dismissal.[26] As held in *EDI Staff Builders International Inc. v. Magsino,* apart from backwages, respondents should be awarded separation pay.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated 23 January 2008 and its Resolution

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[25] Records, Vol. 1, pp. 126-138 and 165-173.

[26] 411 Phil. 730, 739-740 (2001) citing *Bustamante v. NLRC,* G.R. No. 111651, 28 November 1996, 265 SCRA 61, 69-70.

dated 13 March 2009 are hereby **AFFIRMED WITH MODIFICATION** that respondents shall be awarded backwages from the time of dismissal up to finality of this judgment, with interest at the rate of six percent (6%) *per annum* which shall be increased to twelve percent (12%) after the finality of this judgment and separation pay equivalent to one-half (½) month pay for every year of service.

SO ORDERED.

Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J. (Chairperson), see separate concurring opinion.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

I concur with the Court's denial of the petition. Indeed, Sanoh Fulton Phils., Inc. (Sanoh) is liable for illegal dismissal because it failed to prove that the impending losses it expected to incur were imminent and, consequently, that the retrenchment it conducted was necessary to prevent such alleged impending losses. However, I file this separate opinion to differentiate the two kinds of losses which can justify retrenchment and the corresponding proof required for each kind.

Retrenchment to prevent losses is one of the authorized causes for dismissal of employees. Article 283 of the Labor Code states:

> Art. 283. Closure of establishment and reduction of personnel. — **The employer may also terminate the employment of any employee due to** the installation of labor-saving devices, redundancy, **retrenchment to prevent losses** or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher.

In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied)

There are three requisites for a valid retrenchment. In *Genuino Ice Company, Inc. v. Lava*,[1] the Court held that:

x x x [T]here are three (3) basic requisites for a valid retrenchment, namely: (a) proof that the retrenchment is necessary to prevent **losses or impending losses**; (b) service of written notices to the employees and to the [Department of Labor and Employment] at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (½) month pay for every year of service, whichever is higher.[2] (Emphasis supplied)

Under the first requisite, there are two kinds of losses which can justify retrenchment, namely, incurred losses and impending losses. Incurred losses refer to losses that have already occurred. Since they have already occurred, they should be reflected in the financial statements. On the other hand, impending losses refer to losses that have not yet occurred. They are also termed as future or expected losses. Since they have not yet occurred, they are not reflected in the financial statements. Thus, in *Waterfront Cebu City Hotel v. Jimenez*,[3] the Court held that retrenchment must be "reasonably necessary and likely to prevent business losses which, *if already incurred*, are not merely de minimis, but substantial, serious, actual and real, *or if only expected*, are reasonably imminent as perceived objectively and in good faith by the employer."[4] The Court recognizes two kinds

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[1] G.R. No. 190001, 23 March 2011, 646 SCRA 385.

[2] *Id*. at 389.

[3] G.R. No. 174214, 13 June 2012, 672 SCRA 185.

[4] *Id*. at 197 citing *Shimizu Phils. Contractors, Inc. v. Callanta*, G.R. No. 165923, 29 September 2010, 631 SCRA 529; *Lambert Pawnbrokers*

of losses which can justify retrenchment — incurred losses which are substantial, serious, actual and real, and expected losses which are reasonably imminent.

Whether the losses are incurred or impending, employers always bear the burden of proving that retrenchment is necessary to abate such losses. In *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*,[5] the Court held that, "The burden clearly falls upon the employer to prove economic or business losses with sufficient supporting evidence. Its failure to prove these reverses or losses necessarily means that the employee's dismissal was not justified."[6]

In the case of incurred losses, financial statements duly audited by independent external auditors are the best proof. In *Anabe v. Asian Construction (ASIAKONSTRUKT)*,[7] the Court held that, "The losses must be supported by sufficient and convincing evidence, the normal method of discharging [this] is the submission of financial statements duly audited by independent external auditors."[8] In the case of impending losses, financial statements duly audited by independent external auditors are not necessarily the best proof. Obviously, impending, expected or future losses which employers seek to prevent through retrenchment could not yet be reflected in the financial statements. In fact, if the retrenchment adequately serves its purpose, then the impending losses would never be reflected in the financial statements.

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and Jewelry Corporation v. Binamira, G.R. No. 170464, 12 July 2010, 624 SCRA 705; *Bio Quest Marketing, Inc. v. Rey*, G.R. No. 181503, 18 September 2009, 600 SCRA 721; *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, 581 Phil. 228 (2008); *Casimiro v. Stern Real Estate Inc. Rembrandt Hotel and/or Meehan*, 519 Phil. 438 (2006); *Philippine Carpet Employees Association v. Sto. Tomas*, 518 Phil. 299 (2006); *Ariola v. Philex Mining Corp.*, 503 Phil. 765 (2005); *Asian Alcohol Corporation v. National Labor Relations Commission*, 364 Phil. 912 (1999).

[5] G.R. No. 178083, 22 July 2008, 559 SCRA 252.

[6] *Id*. at 273.

[7] G.R. No. 183233, 23 December 2009, 609 SCRA 213.

[8] *Id*. at 219.

In the present case, Sanoh conducted a retrenchment mainly to prevent impending losses, not to abate losses already being incurred. In his *ponencia*, Justice Jose P. Perez (Justice Perez) stated:

> In view of job order cancellations relating to the manufacture of wire condensers by Matsushita, Sanyo and National Panasonic, Sanoh decided to phase out the Wire Condenser Department. On 22 December 2003, the Human Resources Manager of Sanoh informed the 17 employees, 16 of whom belonged to the Wire Condenser Department, of retrenchment effective 22 January 2004. All 17 employees are union members.
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> x x x x x x x x x
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> Sanoh insists that it is the prerogative of management to effect retrenchment as long as it is done in good faith. Sanoh relies on letters from its customers showing cancellation of job orders to prove that it is suffering from serious losses. In addition, Sanoh claims that it had, in fact, closed down the Wire Condenser Department in view of serious business losses.
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> x x x x x x x x x
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> Sanoh asserts that cancelled orders of wire condensers led to the phasing out of the Wire Condenser Department which triggered retrenchment. Sanoh presented the letters of cancellation given by Matsushita and Sanyo as evidence of cancelled orders.

Justice Perez then stated that, even if the retrenchment was conducted for the purpose of preventing *impending* losses, the retrenchment conducted by Sanoh was invalid because it failed to present financial statements. Justice Perez stated that:

> We held in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, that the losses must be supported by sufficient and convincing evidence and the normal method of discharging this is by the submission of financial statements duly audited by independent external auditors. It was aptly observed by the appellate court that no financial statements x x x were presented to substantiate Sanoh's claim of loss of ₱7 million per month.

I disagree. Again, impending, expected or future losses which employers seek to prevent through retrenchment could not yet

be reflected in the financial statements because they have not yet occurred. In fact, if the retrenchment does indeed prevent the impending losses as it is supposed to do, then such losses would never be reflected in the financial statements. It would be unreasonable and unfair to require employers conducting retrenchment to prevent impending, expected or future losses to submit as proof of such losses financial statements.

The surrounding facts in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*[9] are not on all fours with the present case. In *Lambert*, the employer alleged as justification for retrenchment *incurred* losses, not impending losses. In that case, the Court held that:

> In their Position Paper, petitioners asserted that they had no choice but to retrench respondent due to economic reverses. The corporation suffered a marked decline in profits as well as substantial and persistent increase in losses. In its Statement of Income and Expenses, its gross income for 1998 dropped ₱1 million to ₱665,000.00.
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> x x x x x x x x x
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> The losses must be supported by sufficient and convincing evidence. The normal method of discharging this is by the submission of financial statements duly audited by independent external auditors. In this case, however, the Statement of Income and Expenses for the year 1997-1998 submitted by the petitioners was prepared only on January 12, 1999. Thus, it is highly improbable that the management already knew on September 14, 1998, the date of Helen's retrenchment, that they would be incurring substantial losses.[10]

Sanoh is liable for illegal dismissal not because it failed to present its financial statements but because the surrounding circumstances show that there were no impending losses which were "reasonably imminent as perceived objectively and in good faith by the employer." Sanoh failed to discharge its burden to prove with substantial and convincing evidence that the impending losses it expected to incur were imminent and that the retrenchment it conducted was necessary to prevent such losses.

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[9] G.R. No. 170464, 12 July 2010, 624 SCRA 705.

[10] *Id.* at 709-716.

Justice Perez correctly found that (1) Matsushita had four outstanding orders of refrigerator condensers; (2) Matsushita's Model 602 orders were increased from 500 to 1,600 units; (3) Sanyo had sufficient stocks for three months so it temporarily stopped ordering, then it resumed ordering in February 2004; (4) the additional orders from Concepcion Industries and Uni-Magma more than compensated for the cancelled orders; (5) the Sanoh's Wire Condenser Department was profitable in 2005; (6) Sanoh's Wire Condenser Department was never shut down; and (7) employees in the Wire Condenser Department rendered overtime work.

Accordingly, I vote to **DENY** the petition.

FIRST DIVISION

[G.R. No. 187340. August 14, 2013]

ANTONIO B. SANCHEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE SANDIGANBAYAN, RESPECTED; EXCEPTIONS.— The factual findings of the Sandiganbayan are conclusive upon this Court, except under any of the following circumstances: (1) The conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) The inference made is manifestly an error or founded on a mistake; (3) There is grave abuse of discretion; (4) The judgment is based on misapprehension of facts; and (5) The findings of fact are premised on want of evidence and are contradicted by evidence on record.

2. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019) CAUSING UNDUE INJURY OR GIVING

UNWARRANTED ADVANTAGE IN THE DISCHARGE OF OFFICIAL FUNCTIONS THROUGH MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE; ELUCIDATED.— Section 3(e) of R.A. 3019 provides: 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 (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. x x x. The elements of this crime are as follows: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith **or gross inexcusable negligence**; and 3. 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. *Uriarte v. People* further elaborates thus: Section 3(e) of R.A. 3019 may be committed **either** by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.**

APPEARANCES OF COUNSEL

Tanco & Partners Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a *certiorari* Petition[1] filed by City Engineer Antonio B. Sanchez assailing the Sandiganbayan Decision[2] dated 24 September 2008 and Resolution[3] dated 06 March 2009 in Crim. Case No. 25971. The Sandiganbayan found Sanchez guilty of violating Section 3 (e) of the Graft and Corrupt Practices Act.[4]

Eugenio F. Gabuya Jr. (Gabuya), the *Barangay* Captain of Cogon, Pardo, Cebu City, filed a request with the Office of the City Engineer for the improvement of an existing canal traversing Tagunol and Tabukanal in Cogon. The Maintenance and Drainage Section of the Office of the City Engineer surveyed the existing canal, found it dirty and clogged, and recommended its improvement. Engineering Assistant Thessani C. Rubi prepared a "Program of Work" and an "Estimate of Construction, Plans and Specifications," which were then checked by Engineer Gerardo C. del Rosario (Del Rosario).[5]

Petitioner approved and submitted these documents to the Cebu City Council. In the course of their preparation, however, *he never ordered Rubi, Del Rosario, or any of his subordinates to verify the ownership of the land through which the canal would pass because, according to him, it appeared to be public land.*[6] The Council passed Resolution No. 1053 authorizing City Mayor Alvin B. Garcia (Garcia) to enter into a contract for

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[1] *Rollo,* pp. 3-19.

[2] *Id.* at 22-32, penned by Associate Justice Norberto Y. Geraldez and concurred by Associate Justices Francisco H. Villaruz, Jr. and Efren N. dela Cruz.

[3] *Id.* at 57-59.

[4] Republic Act No. (R.A.) 3019.

[5] Sandiganbayan, Records, Vol. II, pp. 29-38.

[6] *Rollo,* p. 25.

and on behalf of the city for the construction of a "CHB-lined" canal and the installation of a box culvert at Highway Tagunol in *Barangay* Cogon. Pursuant to Resolution No. 3550, ₱496,054 was appropriated for the project.[7] Garcia then entered into a contract with Alvarez Construction for the building of the canal. The Construction Division of the Office of the City Engineer, together with Alvarez Construction, implemented the project and completed it on 9 May 1998.[8]

Sometime in January 1998, Lucia Nadela (private complainant) discovered that a canal was being constructed on her property without her consent and approval.[9] She also found that the *nipa* trees on her land, from which she had been harvesting and selling *nipa* leaves, had been cut. Despite the assurances of Gabuya that the canal would be removed in due time, the Office of the City Engineer never initiated efforts to do so. Nadela filed a Complaint before the Office of the Ombudsman for violation of Republic Act 3019 against Gabuya, Garcia and herein petitioner.

The Office of the Ombudsman (OMB) found probable cause against petitioner Sanchez only. It relieved Gabuya of responsibility, supposedly because the construction of the canal was entirely the undertaking of the City Government of Cebu.[10] As for Garcia, he purportedly relied on the representations of petitioner, who had the duty of verifying the status of the land.[11] The OMB thus filed an Information[12] against petitioner with the Sandiganbayan, *viz*.:

That on or about the month of January 1998, and/or sometime subsequent thereto, at Cebu City, Philippines, and within the

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[7] *Id.*

[8] *Id.*

[9] Sandiganbayan, Records, Vol. I, p. 60.

[10] *Id.* at 9.

[11] *Id.* at 7.

[12] *Rollo*, pp. 20-21.

jurisdiction of this Honorable Court, above-named accused, ANTONIO B. SANCHEZ, a public officer, being the Head, City Engineering Office of Cebu City, in the performance of his official functions, with deliberate intent and manifest partiality, evident bad faith and gross inexcusable negligence, did then and there willfuly, unlawfully, and criminally cause the construction of a dike/canal which traversed the lot owned by Lucia Nadela situated at Cogon, Pardo, Cebu City and covered with TCT No. 53444, without the consent of the owner thereof, thereby taking the said property of Lucia Nadela without due process, depriving Lucia Nadela of the use of her property, thereby giving unwarranted benefits to the City of Cebu, to the undue damage, injury and prejudice of Lucia Nadela.

CONTRARY TO LAW.[13]

The Sandiganbayan held that petitioner, being a public officer by virtue of his position as the City Engineer of Cebu, acted with gross inexcusable negligence in approving the construction of the canal without first ascertaining the ownership of the property where the canal would be constructed or verifying whether the property had been expropriated.[14] This alleged negligence supposedly deprived private complainant of the control and use of the middle portion of her land, resulting in a loss of ₱20,000 every four or five months, which represents income from harvesting and selling *nipa* leaves. Private complainant also claimed that she suffered injury, because informal land settlers used the canal as their toilet, thereby dirtying and damaging the land.[15] The Sandiganbayan found petitioner guilty of violating Section 3(e) of R.A. 3019, and sentenced him to imprisonment for 6 years and 1 month minimum, to 8 years as maximum, with perpetual disqualification from public office.[16]

Petitioner comes before this Court assailing the Sandiganbayan's factual finding of gross inexcusable negligence on his part and undue injury to private complainant. He avers that it was the

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[13] *Id.* at 20.

[14] *Id.* at 26-28.

[15] *Id.* at 30.

[16] *Id.* at 31.

duty of the Maintenance and Drainage Section of the Inspection Office, not his, to determine whether or not the land was privately owned. Also, he purportedly had no hand in the approval of plans for the land or in the implementation or execution of the project.[17] Petitioner also cites *Arias v. Sandiganbayan*[18] in arguing that he cannot be held liable for the negligent acts of his subordinates, unless there is a finding of conspiracy between them. Lastly, he argues that there existed a prejudicial question before the Regional Trial Court (RTC) in Civil Case No. CEB-21748, which delved into the validity of the acquisition of Nadela's lot. According to petitioner, the instant case was filed on the premise that the construction of the canal was unlawful, while the identical question in Civil Case No. CEB-21748 was whether or not the City legally acquired the property of private complainant when it constructed a canal thereon.[19]

In a Resolution[20] dated 8 June 2009, this Court required respondent to comment.

In its Comment,[21] respondent avers that one of the functions and duties of petitioner is to coordinate the construction of engineering and public works projects of the local government unit. Before implementing the project, however, he did not verify with the Register of Deeds whether the lot on which the canal would be built already had a title.[22] Respondent also emphasizes the undisputed facts: *first*, private complainant was the registered owner of Lot. 3520 covered by Transfer Certificate of Title No. 53444; and *second*, the canal ate up 145 square meters of the middle portion of the lot. Because of the presence of the canal, informal settlers established their residence near it and used it as their waste disposal site, resulting in the lot's

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[17] *Id.* at 8-10.

[18] 259 Phil. 794 (1989).

[19] *Rollo*, pp. 13-14.

[20] *Id.* at 65.

[21] *Id.* at 72-95.

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

depreciation. To make matters worse, private complainant was never compensated for the taking of her property in order to give way to the construction of the canal.[23] As to the argument of petitioner that there existed a prejudicial question in Civil Case No. CEB-21748, this issue was already decided by the RTC in a Resolution dated 26 September 2007, which he did not question through a motion for reconsideration and a subsequent Rule 65 petition. Hence, he cannot now come before this Court asking it to rule on an issue that has already been settled.[24]

The sole issue before us is whether petitioner is guilty beyond reasonable doubt of violating Section 3 (e) of R.A. 3019.

We have carefully reviewed the records of this case and found nothing therein to warrant a reversal of the assailed Decision of the Sandiganbayan. We deny the Petition and affirm petitioner's conviction.

The factual findings of the Sandiganbayan are conclusive upon this Court, except under any of the following circumstances:

(1) The conclusion is a finding grounded entirely on speculation, surmise and conjectures;

(2) The inference made is manifestly an error or founded on a mistake;

(3) There is grave abuse of discretion;

(4) The judgment is based on misapprehension of facts; and

(5) The findings of fact are premised on want of evidence and are contradicted by evidence on record.[25]

None of the foregoing circumstances is present. The findings of fact and conclusion of the Sandiganbayan that petitioner is

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[23] *Id.* at 87-92.

[24] *Id.* at 92.

[25] *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 719-720 (2005).

guilty of violating Section 3(e), R.A. 3019 are sufficiently supported by the records.

Section 3(e) of R.A. 3019 provides:

> 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:
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> 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. x x x.

The elements of this crime are as follows:

> 1. The accused must be a public officer discharging administrative, judicial or official functions;
>
> 2. He must have acted with manifest partiality, evident bad faith **or gross inexcusable negligence**; and
>
> 3. 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.[26] (Emphasis supplied)

Uriarte v. People[27] further elaborates thus:

> Section 3(e) of R.A. 3019 may be committed **either** by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively

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[26] *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 289-290.

[27] 540 Phil. 477, 494-495 (2006).

operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.** (Emphasis supplied)

The Sandiganbayan correctly found the concurrence of the three elements.

First, petitioner, being the city engineer of Cebu, is undisputedly a public officer.

Second, the failure of petitioner to validate the ownership of the land on which the canal was to be built because of his unfounded belief that it was public land constitutes gross inexcusable negligence.

In his own testimony, petitioner impliedly admitted that it fell squarely under his duties to check the ownership of the land with the Register of Deeds. Yet he concluded that it was public land based solely on his evaluation of *its appearance*, *i.e.* that it looked swampy:

Q: x x x Do you recall your statement that the basis in saying that the property of the private complainant was a public domain was because it appears swampy and a catch basin (sic), am I correct?
A: Yes, sir.

Q: So on the basis of the appearance of the lot of the complainant, you presumed that the lot is a public domain, am I correct?

x x x x x x x x x

A: Yes, sir.

Q: So that is why you did not know that the lot was owned by the private complainant in this case?
A: Yes, sir.

Q: Because you did not make a verification from the Register of Deeds.

A: Yes, sir.

x x x x x x x x x

Q: x x x, [Y]ou did not order your survey team to verify from the Regional Trial Court if the City Government of Cebu filed an expropriation proceeding against this lot of the private complainant?

A: No, because the lot was planted with nipa and pasture land. Because of the appearance that it is a public domain and the lot was planted with nipa palm. It was a mangrove area.

Q: So you based your presumption on the appearance of the lot, is that what you mean?

x x x x x x x x x

A: x x x Yes, sir. (Emphasis supplied.)[28]

Petitioner's functions and duties as City Engineer, are stated in Section 477(b) of R.A. 7160, to wit:

The engineer shall **take charge of the engineering office** and shall:

x x x x x x x x x

(2) **Advise** the governor or mayor, as the case may be on infrastructure, public works, and other engineering matters;

(3) **Administer, coordinate, supervise, and control** the **construction**, maintenance, improvement, and repair of roads, bridges, and other engineering and public works projects of the local government unit concerned;

(4) **Provide** engineering services to the local government unit concerned, including **investigation and survey**, engineering designs, feasibility studies, and project management; (Emphases supplied)

Petitioner cannot hide behind the *Arias* doctrine, because it is not on all fours with his case. In *Arias*, six people comprising heads of offices and their subordinates were charged with violation of Section 3 (e) of R.A. 3019. The accused therein allegedly

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[28] *Rollo,* p. 29, as cited in the Sandiganbayan Decision, p. 8.

conspired with one another in causing, allowing, and/or approving the illegal and irregular disbursement and expenditure of public funds. In acquitting the two heads of offices, the Court ruled that they could not be held liable for the acts of their dishonest or negligent subordinates because they failed to personally examine each detail of a transaction before affixing their signatures in good faith.

In the present case, petitioner is solely charged with violating Section 3(e) of R.A. 3019. He is being held liable for gross and inexcusable negligence in performing the **duties primarily vested in him by law**, resulting in undue injury to private complainant. The good faith of heads of offices in signing a document will only be appreciated if they, with trust and confidence, have relied on their subordinates in whom the duty is primarily lodged.[29]

Moreover, the undue injury to private complainant was established. The cutting down of her palm trees and the construction of the canal were all done without her approval and consent. As a result, she lost income from the sale of the palm leaves. She also lost control and use of a part of her land. The damage to private complainant did not end with the canal's construction. Informal settlers dirtied her private property by using the canal constructed thereon as their lavatory, washroom, and waste disposal site.

Lastly, petitioner cannot raise the issue of the existence of a prejudicial question because, as correctly argued by respondent, the RTC in Civil Case No. CEB-21748 has already ruled that there is none. Petitioner failed to avail himself of the remedies available to him by law in order to question this RTC ruling. As a result, the Resolution, insofar as he is concerned, is already final and binding on him. Nevertheless, the question of valid expropriation is irrelevant to this case, in which petitioner is being held liable for gross and inexcusable negligence in complying with his duties as City Engineer, to the detriment of private complainant.

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[29] *Sistoza v. Desierto*, 437 Phil. 117, 121-122 (2002).

WHEREFORE, in view of the foregoing, the Petition is **DENIED.** The Sandiganbayan Decision dated 24 September 2008 and Resolution dated 06 March 2009 in Case No. 25971 are hereby **AFFIRMED.**

SO ORDERED.

Brion,[*] *Bersamin, Villarama, Jr.*, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 193661. August 14, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RYAN BLANCO *Y* SANGKULA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DRUGS; ELEMENTS. — For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti.*

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES. — Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, its veracity or the weight of their testimonies.

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[*] Designated acting member of the First Division in lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 1497 dated 31 July 2013.

3. ID.; ID.; NON-PRESENTATION OF CONFIDENTIAL INFORMANT IN DRUG CASE, NOT FATAL TO THE PROSECUTION. — The non-presentation of the confidential informant is not fatal to the prosecution. lnformants are usually not presented in court because of the need to hide their identity and maintain their valuable service to the police.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

This is an appeal from the Decision of the Court of Appeals[1] in CA-G.R CR-HC No. 03624, which affirmed the Joint Decision[2] dated September 16, 2008 of the Regional Trial Court, Branch 267, Pasig City, finding accused-appellant Ryan Blanco *y* Sangkula guilty of the illegal sale and possession of *shabu* or *methylamphetamine hydrochloride*, a dangerous drug, in violation of Section 5, 1st paragraph and Section 11, 3rd paragraph of Article II of Republic Act No. 9165, otherwise known as *The Comprehensive Dangerous Drugs Act of 2002*.

On March 26, 2007, two (2) Informations were filed against accused-appellant Blanco: Criminal Case No. 15537-D-TG for the crime of Sale of Dangerous Drugs in violation of Section 5, 1st paragraph, Article II, and Criminal Case No. 15538-D-TG for Possession of Dangerous Drugs in violation of Section II, 2nd paragraph, Number 3, Article II, of Republic Act No. 9165.

The Information for illegal sale reads:

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[1] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario, concurring. *Rollo,* pp. 123-132.

[2] Penned by Acting Presiding Judge Raul Bautista Villanueva (now Deputy Court Administrator of the Supreme Court). *Rollo,* pp. 53-63.

Criminal Case No. 15537-D-TG

"That, on or about the 23rd day of March 2007, in the City of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there[,] willfully and knowingly sell, dispense, deliver and cause to pass upon and/or give PO2 Renato Ibanez, who acted as poseur buyer one (1) heat-sealed transparent plastic sachet containing, zero point zero one (0.01) gram of white crystalline substance, which substance was found positive to the test for *methylamphetamine hydrochloride*, commonly known as "*shabu*"[,] a dangerous drug and in consideration of the amount of One Hundred (Php100.00) pesos, in violation of the above-cited law."

The Information for illegal possession of dangerous drugs reads:

Criminal Case No.15538-D-TG

"That, on or about the 23rd day of March 2007, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully and knowingly have in his possession, custody and control a total of zero point zero six (0.06) gram of white crystalline substance, broken down into zero point zero one (0.01) gram, then separately contained in six (6) heat-sealed transparent plastic sachets, which were found positive to the test for *methylamphetamine hydrochloride*, commonly known as "s*habu*"[,] a dangerous drug and in consideration of the amount of One Hundred (Php100.00) pesos, in violation of the above-cited law."

The Regional Trial Court, Branch 267, Pasig City, conducted a joint trial after accused-appellant pleaded "not guilty" of the crimes charged.

On September 16, 2008, the trial court rendered a Joint Decision finding that the prosecution established the essential requisites of the crimes charged and accused-appellant is guilty beyond reasonable doubt of illegal sale and possession of *shabu*. Thus, it sentenced him as follows:

"WHEREFORE, and the foregoing considered, the court finds that:

i. Accused Ryan Blanco is GUILTY beyond reasonable doubt of selling 0.01 gram of *shabu*, or *methylamphetamine hydrochloride*, a dangerous drug, without authority[,] in violation of Section 5, 1st paragraph, Article II of RA No. 9165, as alleged in the Information in Criminal Case No. 15537-D-TG and he is hereby sentenced to suffer the penalty of life imprisonment, to pay a fine of [Php]500,000.00 and to suffer the accessory penalties provided for by law; and

ii. Accused Blanco is GUILTY beyond reasonable doubt as well of possessing a total of 0.06 gram of *shabu*, or methylamphetamine hydrochloride, a dangerous drug, contained in 6 plastic sachets, without authority[,] in violation of Section 11, 3rd paragraph, Article II of RA No. 9165 as alleged in the Information in Criminal Case No. 15538-D-TG and he is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY of *reclusion temporal*, as minimum, up to TWENTY (20) YEARS of *reclusion temporal*, as maximum, to pay a fine of [Php] 300,000.00 and to suffer the accessory penalties provided for by law.

With costs *de oficio*."[3]

The Court of Appeals, in a decision promulgated on May 24, 2010 affirmed the Joint Decision, with the modification that the penalty to be imposed on accused-appellant in Criminal Case No. 15538-D-TG for illegal possession of 0.06 grams of "*shabu*" "shall be (12) years and one (1) day as minimum up to twenty (20) years as maximum, to pay a fine of ₱300,000.00, and to suffer the accessory penalties provided in RA No. 9165."

Hence, the present appeal.

Appellant was charged with and convicted of illegal sale and possession of dangerous drug. He, however, merely raises on appeal his conviction insofar as the charge for illegal sale of dangerous drug is concerned.

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[3] *Rollo*, pp. 25-26.

We dismiss the appeal for lack of merit.

Appellant contends that the trial court, in convicting him of the crime of illegal sale of *shabu*, erred in giving full weight and credence to the prosecution's testimony notwithstanding its material and glaring inconsistencies. He particularly claims that the conduct of a surveillance and test-buy operation by the buy-bust team is crucial to his conviction. He further asserts the alleged variations as to how the actual transaction of sale took place as narrated in the joint affidavits of arrest and as testified to in open court by PO2 Renato Ibañez (PO2 Ibañez). Thus, appellant insists that the presentation of the confidential informant is necessary in this case. Appellant also questions the propriety of conducting a buy-bust operation by the apprehending police officers against him.

We find appellant's contentions not sustainable and are indeed utterly untenable.

The prosecution presented as witnesses PO2 Ibañez and PO3 Atanacio Allauigan (PO3 Allauigan) of the District Anti-Illegal Drugs-Special Operations Task Force (DAID-SOTF), Fort Bonifacio, Taguig City.

PO2 Ibañez declared that on March 23, 2007, a confidential informant arrived at the Southern Police District Office in Fort Bonifacio, Taguig City. The informant told him of the drug pushing activities of one Ryan Blanco *y* Sangkula, accused-appellant at Sitio Uno, Western Bicutan, Taguig City. PO2 Ibañez immediately informed their Team Leader, Senior Inspector Edward Quijano. Immediately, a buy-bust operation was planned. After coordinating with the Philippine Drug Enforcement Agency (PDEA), the team prepared a plan whereby PO2 Ibañez was to act as poseur-buyer. He was given a Php100.00 bill as marked money. At 5:10 p.m. of that day, the buy-bust team arrived at the target area and saw accused-appellant by the railroad tracks. He and the informant approached and asked the accused-appellant if they could buy "*shabu*" worth "*isang piso lang*", meaning Php100.00. As he handed the marked money, accused-appellant took out his purse and got one (1) plastic sachet, which he handed to the police poseur-buyer. At that juncture, PO2 Ibañez took

the construction helmet off his head as the pre-arranged signal to his teammates that the transaction was completed. PO3 Allauigan was first to approach and assisted him in arresting and handcuffing accused-appellant. Aside from the sachet subject of the buy-bust, he also confiscated the purse in the possession of accused-appellant and recovered six (6) more sachets of "*shabu*", and the Php100.00 buy-bust money.

All the seized items were promptly marked with the initials of the accused-appellant who was then brought to the police station for booking, and where the request for laboratory examination and the affidavits of arrest were prepared. With their request, they then turned over the items to the crime laboratory, which later confirmed that the substances in the sachets turned positive for *methylamphetamine hydrochloride*, otherwise known as *shabu*.

PO3 Allauigan, in his testimony, disclosed that on March 23, 2007 they were tasked to conduct an anti-illegal drug operation on accused- appellant Blanco at Railroad Gate 3, Sitio Malangaw, Western Bicutan, Taguig City. He was designated as the immediate back-up of poseur-buyer PO2 Ibañez. In preparation for their operation, he, PO2 Ibañez and the confidential informant conducted a surveillance or casing of the target area. At around 5:10 in the afternoon, they arrived at the target area. They parked their vehicle and walked towards the railroad tracks. The team strategically positioned themselves with him being more or less 20 to 30 meters away from PO2 Ibañez and accused-appellant Blanco. He then saw the two talk for about 10 to 15 minutes after which he saw PO2 Ibañez give something to accused-appellant Blanco and the latter thereafter gave a plastic sachet to the said officer. When the pre-arranged signal was given by PO2 Ibañez, he immediately rushed to the scene and saw PO2 Ibañez confiscate the marked bill. He handcuffed accused-appellant Blanco and he brought the latter to their office. He confirmed that accused-appellant Blanco was the person they arrested in a buy-bust operation. He also identified the affidavit of arrest he executed in connection therewith. Upon being cross-examined, he admitted that from his position during the transaction between PO2 Ibañez and accused-appellant Blanco, he could

not clearly see what was handed over by the said officer. He also claimed that he merely saw a plastic sachet being given by accused-appellant to PO2 Ibañez.

Accused-appellant Blanco denied the charges against him. According to him, at around 11:00 in the evening of March 23, 2007, he and his wife were segregating cartons, newspapers and bottles at the railroad tracks near his house when suddenly two (2) persons, a female and a male, ran in front of them. After several minutes, five (5) armed men came with their guns pointed at him and his wife. He was asked not to move and to point to the person who was selling *shabu* in their area. In reply thereto, he told the armed men that he does not know any such person as he is merely a junk trader. The armed men then handcuffed him and brought him and his wife to a vehicle. He then saw inside the vehicle two (2) men and a woman also in handcuffs. They were then brought to the Southern Police District Police Station at Fort Bonifacio where a police officer with the name Sanchez in his name plate told him that to be set free he must name somebody in their place who was selling *shabu*. When he informed the said officer that he does not know anyone involved in illegal drugs in their area, he was asked who between him and his wife will be detained. As his wife was then 2 months pregnant, he offered himself to be detained instead. He testified further that he was never shown any illegal drugs that the arresting officers claimed he allegedly sold. He admitted that he did not ask why he had to be detained and that he does not personally know the persons who arrested him prior to the incident.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.[4]

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[4] *People v. Lorui Catalan,* G.R. No. 189330, November 28, 2012; *People v. Mantaleba,* G.R. No. 186227, July 20, 2011, 654 SCRA 188; *People v. Cruz,* G.R. No. 187047, June 15, 2011, 652 SCRA 286; *People v. De la Cruz,*

The prosecution duly established the identity of accused-appellant as a drug seller or pusher, through the testimonies of PO2 Ibañez, the poseur-buyer, and PO3 Allauigan, as back-up officer. PO2 Ibañez testified that it was to accused-appellant that he handed the marked Php100.00 bill for the *shabu* that he bought on March 23, 2007; and that accused-appellant was the one who took out of his coin purse a plastic sachet containing *shabu*. Both PO2 Ibañez and PO3 Allauigan identified accused-appellant as the one they arrested during the buy-bust operation.

Indeed in the instant case, all the elements constituting the illegal sale of dangerous drug are present. The sale of *shabu* was consummated. The alleged inconsistencies in the testimonies of the prosecution witnesses are mere minor matters, which do not detract from the fact that a buy-bust operation was conducted.

Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, its veracity or the weight of their testimonies.[5]

The non-presentation of the confidential informant is not fatal to the prosecution. Informants are usually not presented in court because of the need to hide their identity and maintain their valuable service to the police.[6]

WHEREFORE, the appeal is **DISMISSED** and the Decision of the Court of Appeals dated May 24, 2010 in CA-G.R. CR No. 03624 is **AFFIRMED.**

SO ORDERED.

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

G.R. No. 177324, March 30, 2011, 646 SCRA 707; *People v. Presas,* G.R. No. 182525, March 2, 2011, 644 SCRA 443; *People v. Agulay,* G.R, No. 181747, September 26, 2008, 566 SCRA 571.

[5] *People v. Cruz*, G.R. No. 185381, December 16, 2009, 608 SCRA 350, 364.

[6] *People v. Doria,* 361 Phil. 601, 622 (1999).

THIRD DIVISION

[G.R. No. 195117. August 14, 2013]

HUR TIN YANG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; THE DECISIVE FACTOR IN EVALUATING THE AGREEMENT BETWEEN THE CONTRACTING PARTIES IS THE INTENTION OF THE PARTIES, AS SHOWN NOT NECESSARILY BY THE TERMINOLOGY USED IN THE CONTRACT BUT BY THEIR CONDUCT, WORDS, ACTIONS AND DEEDS PRIOR TO, DURING AND IMMEDIATELY AFTER EXECUTING THE AGREEMENT; CASE AT BAR. — In determining the nature of a contract, courts are not bound by the title or name given by the parties. The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. As such, therefore, documentary and parol evidence may be submitted and admitted to prove such intention. In the instant case, the factual findings of the trial and appellate courts reveal that the dealing between petitioner and Metrobank was **not a trust receipt transaction but one of simple loan**. Petitioner's admission—–that he signed the trust receipts on behalf of Supermax, which failed to pay the loan or turn over the proceeds of the sale or the goods to Metrobank upon demand—–does not conclusively prove that the transaction was, indeed, a trust receipts transaction. In contrast to the nomenclature of the transaction, the parties really intended a contract of loan. This Court—–in *Ng v. People* and *Land Bank of the Philippines v. Perez*, cases which are in all four corners the same as the instant case—–ruled that the fact that the entruster bank knew even before the execution of the trust receipt agreements that the construction materials covered were never intended by the entrustee for resale or for the manufacture of items to be sold is sufficient to prove that

the transaction was a simple loan and not a trust receipts transaction.

2. COMMERCIAL LAW; TRUST RECEIPTS LAW (PD 115); TRUST RECEIPT TRANSACTION IS ONE WHERE THE ENTRUSTEE HAS THE OBLIGATION TO DELIVER TO THE ENTRUSTER THE PRICE OF THE SALE, OR IF THE MERCHANDISE IS NOT SOLD, TO RETURN THE MERCHANDISE TO THE ENTRUSTER; VIOLATION THEREOF CONSTITUTES THE CRIME OF ESTAFA.— The petitioner was charged with *Estafa* committed in what is called, under PD 115, a "trust receipt transaction," x x x. [A] trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner. A violation of any of these undertakings constitutes *Estafa* defined under Art. 315, par. 1(b) of the RPC, as provided in Sec. 13 of PD 115.

3. ID.; ID.; WHEN BOTH PARTIES ENTER INTO AN AGREEMENT KNOWING FULLY WELL THAT THE RETURN OF THE GOODS SUBJECT OF THE TRUST RECEIPTS IS NOT POSSIBLE EVEN WITHOUT ANY FAULT ON THE PART OF THE TRUSTEE, THE TRANSACTION IS A MERE CONTRACT OF SIMPLE LOAN, NOT TRUST RECEIPT TRANSACTIONS PENALIZED UNDER SECTION 13 OF PD 115 IN RELATION TO ARTICLE 315 PARAGRAPH 1(B) OF THE REVISED PENAL CODE, AS THE ONLY OBLIGATION ACTUALLY AGREED UPON BY THE PARTIES WOULD BE THE RETURN OF THE PROCEEDS OF THE SALE TRANSACTION. — [W]hen both parties enter into an agreement knowing fully well that the return of the goods subject of the trust receipt is **not possible** even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Sec. 13 of PD 115 in relation to Art. 315, par. 1(b) of the RPC, as the only obligation actually agreed upon by the parties would be the return of the proceeds of the

sale transaction. **This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods**. In *Ng v. People*, x x x [t]his Court acquitted Anthony Ng and ruled that the *Trust Receipts Law* was created "**to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased**." Since Asiatrust knew that Anthony Ng was neither an importer nor retail dealer, it should have known that the said agreement could not possibly apply to petitioner x x x. Since the factual milieu of *Ng* and *Land Bank of the Philippines* are in all four corners similar to the instant case, it behooves this Court, following the principle of *stare decisis*, to rule that the transactions in the instant case are not trust receipts transactions but contracts of simple loan. The fact that the entruster bank, Metrobank in this case, knew even before the execution of the alleged trust receipt agreements that the covered construction materials were never intended by the entrustee (petitioner) for resale or for the manufacture of items to be sold would take the transaction between petitioner and Metrobank outside the ambit of the *Trust Receipts Law*.

4. ID.; ID.; WHERE THE TRANSACTIONS BETWEEN THE PARTIES ARE NOT TRUST RECEIPTS TRANSACTIONS BUT CONTRACTS OF SIMPLE LOAN, THE COMPLAINTS FOR ESTAFA UNDER ARTICLE 315, PARAGRAPH 1 (B) OF THE REVISED PENAL CODE, IN RELATION TO PD 115, HAVE NO LEG TO STAND ON; ACQUITTAL OF THE PETITIONER FOR THE CRIME OF ESTAFA, WARRANTED. — [T]he subject transactions in the instant case are not trust receipts transactions. Thus, the consolidated complaints for *Estafa* in relation to PD 115 have really no leg to stand on. The Court's ruling in *Colinares v. Court of Appeals* is very apt, thus: The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable, if not reprehensible. Such agreements are contracts of adhesion which borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks, and is prone

to misinterpretation x x x. Unfortunately, what happened in *Colinares* is exactly the situation in the instant case. This reprehensible bank practice described in *Colinares* should be stopped and discouraged. For this Court to give life to the constitutional provision of non-imprisonment for nonpayment of debts, it is imperative that petitioner be acquitted of the crime of *Estafa* under Art. 315, par. 1(b) of the RPC, in relation to PD 115.

APPEARANCES OF COUNSEL

Wilfred F. Neis for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

VELASCO, JR., *J.*:

This is a motion for reconsideration of our February 1, 2012 Minute Resolution[1] sustaining the July 28, 2010 Decision[2] and December 20, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 30426, finding petitioner Hur Tin Yang guilty beyond reasonable doubt of the crime of *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code (RPC) in relation to Presidential Decree No. 115 (PD 115) or the *Trust Receipts Law*.

In twenty-four (24) consolidated Informations, all dated March 15, 2002, petitioner Hur Tin Yang was charged at the instance of the same complainant with the crime of *Estafa* under Article 315, par. 1(b) of the RPC,[4] in relation to PD

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[1] *Rollo,* p. 252.

[2] *Id.* at 57-87. Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Stephen C. Cruz and Danton Q. Bueser.

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

[4] Art. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

115,[5] docketed as Criminal Case Nos. 04-223911 to 34 and raffled to the Regional Trial Court of Manila, Branch 20. The 24 Informations—differing only as regards the alleged date of commission of the crime, date of the trust receipts, the number of the letter of credit, the subject goods and the amount—uniformly recite:

That on or about May 28, 1998, in the City of Manila, Philippines, the said accused being then the authorized officer of **SUPERMAX PHILIPPINES, INC.,** with office address at No. 11/F, Global Tower, Gen Mascardo corner M. Reyes St., Bangkal, Makati City, did then and there willfully, unlawfully and feloniously defraud the **METROPOLITAN BANK AND TRUST COMPANY (METROBANK),** a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, represented by its Officer in Charge, **WINNIE M. VILLANUEVA**, in the following manner, to wit: the said accused received in trust from the said Metropolitan Bank and Trust Company reinforcing bars valued at ₱1,062,918.84 specified in the undated Trust Receipt

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1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or another property.

[5] Trust Receipts Law, **Section 13.** *Penalty clause.* The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

Agreement covered by Letter of Credit No. MG-LOC 216/98 for the purpose of holding said merchandise/goods in trust, with obligation on the part of the accused to turn over the proceeds of the sale thereof or if unsold, to return the goods to the said bank within the specified period agreed upon, but herein accused once in possession of the said merchandise/goods, far from complying with his aforesaid obligation, failed and refused and still fails and refuses to do so despite repeated demands made upon him to that effect and with intent to defraud and with grave abuse of confidence and trust, misappropriated, misapplied and converted the said merchandise/goods or the value thereof to his own personal use and benefit, to the damage and prejudice of said **METROPOLITAN BANK AND TRUST COMPANY** in the aforesaid amount of ₱1,062,918.84, Philippine Currency.

Contrary to law.[6]

Upon arraignment, petitioner pleaded "not guilty." Thereafter, trial on the merits then ensued.

The facts of these consolidated cases are undisputed:

Supermax Philippines, Inc. (Supermax) is a domestic corporation engaged in the construction business. On various occasions in the month of April, May, July, August, September, October and November 1998, Metropolitan Bank and Trust Company (Metrobank), Magdalena Branch, Manila, extended several commercial letters of credit (LCs) to Supermax. These commercial LCs were used by Supermax to pay for the delivery of several construction materials which will be used in their construction business. Thereafter, Metrobank required petitioner, as representative and Vice-President for Internal Affairs of Supermax, to sign twenty-four (24) trust receipts as security for the construction materials and to hold those materials or the proceeds of the sales in trust for Metrobank to the extent of the amount stated in the trust receipts.

When the 24 trust receipts fell due and despite the receipt of a demand letter dated August 15, 2000, Supermax failed to pay or deliver the goods or proceeds to Metrobank. Instead,

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[6] *Rollo,* pp. 58-59.

Supermax, through petitioner, requested the restructuring of the loan. When the intended restructuring of the loan did not materialize, Metrobank sent another demand letter dated October 11, 2001. As the demands fell on deaf ears, Metrobank, through its representative, Winnie M. Villanueva, filed the instant criminal complaints against petitioner.

For his defense, while admitting signing the trust receipts, petitioner argued that said trust receipts were demanded by Metrobank as additional security for the loans extended to Supermax for the purchase of construction equipment and materials. In support of this argument, petitioner presented as witness, Priscila Alfonso, who testified that the construction materials covered by the trust receipts were delivered way before petitioner signed the corresponding trust receipts.[7] Further, petitioner argued that Metrobank knew all along that the construction materials subject of the trust receipts were not intended for resale but for personal use of Supermax relating to its construction business.[8]

The trial court *a quo*, by Judgment dated October 6, 2006, found petitioner guilty as charged and sentenced him as follows:

> His guilt having been proven and established beyond reasonable doubt, the Court hereby renders judgment CONVICTING accused HUR TIN YANG of the crime of estafa under Article 315 paragraph 1 (a) of the Revised Penal Code and hereby imposes upon him the indeterminate penalty of 4 years, 2 months and 1 day of *prision correccional* to 20 years of *reclusion temporal* and to pay Metropolitan Bank and Trust Company, Inc. the amount of Php13,156,256.51 as civil liability and to pay cost.
>
> SO ORDERED.[9]

Petitioner appealed to the CA. On July 28, 2010, the appellate court rendered a Decision, upholding the findings of the RTC that the prosecution has satisfactorily established the guilt of

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[7] TSN, April 24, 2006, p. 13.

[8] *Rollo*, p. 40.

[9] *Id.* at 206. Penned by Judge Marivic T. Balisi-Umali.

petitioner beyond reasonable doubt, including the following critical facts, to wit: (1) petitioner signing the trust receipts agreement; (2) Supermax failing to pay the loan; and (3) Supermax failing to turn over the proceeds of the sale or the goods to Metrobank upon demand. Curiously, but significantly, the CA also found that even before the execution of the trust receipts, Metrobank knew or should have known that the subject construction materials were never intended for resale or for the manufacture of items to be sold.[10]

The CA ruled that since the offense punished under PD 115 is in the nature of *malum prohibitum*, a mere failure to deliver the proceeds of the sale or goods, if not sold, is sufficient to justify a conviction under PD 115. The *fallo* of the CA Decision reads:

> **WHEREFORE**, in view of the foregoing premises, the appeal filed in this case is hereby **DENIED** and, consequently, **DISMISSED**. The assailed Decision dated October 6, 2006 of the Rregional Trial Court, Branch 20, in the City of Manila in Criminal Cases Nos. 04223911 to 223934 is hereby **AFFIRMED**.
>
> **SO ORDERED**.

Petitioner filed a Motion for Reconsideration, but it was denied in a Resolution dated December 20, 2010. Not satisfied, petitioner filed a petition for review under Rule 45 of the Rules of Court. The Office of the Solicitor General (OSG) filed its Comment dated November 28, 2011, stressing that the pieces of evidence

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[10] *Id.* at 79-80. The CA Decision dated July 28, 2010 reads, "The evidence for the accused-appellant further tended to show that the transactions between Metrobank and Supermax could not be considered trust receipts transactions within the purview of PD No. 115 but rather loan transactions because the equipment and construction materials, which were the goods subject of the trust receipts, were never intended to be put up for sale or to be manufactured for ultimate sale as they would be utilized by Supermax in the prosecution of its various projects and that Metrobank knew beforehand that the proceeds of the loans would be used to purchase constructions materials because, before the approval of such loans, documents such as articles of incorporation, by-laws and financial reports of Supermax were submitted to said bank."

adduced from the testimony and documents submitted before the trial court are sufficient to establish the guilt of petitioner.[11]

On February 1, 2012, this Court dismissed the Petition via a Minute Resolution on the ground that the CA committed no reversible error in the assailed July 28, 2010 Decision. Hence, petitioner filed the present Motion for Reconsideration contending that the transactions between the parties do not constitute trust receipt agreements but rather of simple loans.

On October 3, 2012, the OSG filed its Comment on the Motion for Reconsideration, praying for the denial of said motion and arguing that petitioner merely reiterated his arguments in the petition and his Motion for Reconsideration is nothing more than a mere rehash of the matters already thoroughly passed upon by the RTC, the CA and this Court.[12]

The sole issue for the consideration of the Court is whether or not petitioner is liable for *Estafa* under Art. 315, par. 1(b) of the RPC in relation to PD 115, even if it was sufficiently proved that the entruster (Metrobank) knew beforehand that the goods (construction materials) subject of the trust receipts were never intended to be sold but only for use in the entrustee's construction business.

The motion for reconsideration has merit.

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[11] *Id.* at 243-244. The OSG Comment reads, "The following pieces of evidence adduced from the testimony and documents submitted before the trial court are sufficient to establish the guilt of petitioner, to wit:

First, the trust receipts bearing the genuine signatures of petitioner; second, the two demand letters of Metrobank addressed to petitioner dated August 15, 2000 and October 11, 20001 (sic); and third, the initial admission by petitioner that he signed as Vice President for Internal Affairs of Supermax.

That petitioner did not sell the goods under trust receipts is of no moment. The offense punished under Presidential Decree No. 115 is in the nature of *malum prohibitum*. A mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest x x x." (Emphasis supplied.)

[12] *Id.* at 278.

In determining the nature of a contract, courts are not bound by the title or name given by the parties. The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. As such, therefore, documentary and parol evidence may be submitted and admitted to prove such intention.[13]

In the instant case, the factual findings of the trial and appellate courts reveal that the dealing between petitioner and Metrobank was **not a trust receipt transaction but one of simple loan**. Petitioner's admission—that he signed the trust receipts on behalf of Supermax, which failed to pay the loan or turn over the proceeds of the sale or the goods to Metrobank upon demand—does not conclusively prove that the transaction was, indeed, a trust receipts transaction. In contrast to the nomenclature of the transaction, the parties really intended a contract of loan. This Court—in *Ng v. People*[14] and *Land Bank of the Philippines v. Perez*,[15] cases which are in all four corners the same as the instant case—ruled that the fact that the entruster bank knew even before the execution of the trust receipt agreements that the construction materials covered were never intended by the entrustee for resale or for the manufacture of items to be sold is sufficient to prove that the transaction was a simple loan and not a trust receipts transaction.

The petitioner was charged with *Estafa* committed in what is called, under PD 115, a "trust receipt transaction," which is defined as:

Section 4. ***What constitutes a trust receipts transaction***.—A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as

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[13] *Aguirre v. Court of Appeals*, G.R. No. 131520, January 28, 2000, 323 SCRA 771, 774.

[14] G.R. No. 173905, April 23, 2010, 619 SCRA 291.

[15] G.R. No. 166884, June 13, 2012, 672 SCRA 117.

the entruster, and another person referred to in this Decree as entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents: (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: *Provided*, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied full with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments: (a) to sell or procure their sale or exchange; or (b) to deliver them to a principal; or (c) to effect the consummation of some transactions involving delivery to a depository or register; or (d) to effect their presentation, collection or renewal.

Simply stated, a trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner.[16] A violation of any of these

[16] *Ng v. People*, *supra* note 14, at 304.

undertakings constitutes *Estafa* defined under Art. 315, par. 1(b) of the RPC, as provided in Sec. 13 of PD 115, *viz*:

> Section 13. ***Penalty Clause***.—The failure of an entrustee to **turn over the proceeds of the sale of the goods**, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of **in accordance with the terms of the trust receipt** shall constitute the crime of estafa, punishable under the provisions of Article Three hundred fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. x x x (Emphasis supplied.)

Nonetheless, when both parties enter into an agreement knowing fully well that the return of the goods subject of the trust receipt is **not possible** even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Sec. 13 of PD 115 in relation to Art. 315, par. 1(b) of the RPC, as the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. **This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods**.[17]

In *Ng v. People*, Anthony Ng, then engaged in the business of building and fabricating telecommunication towers, applied for a credit line of PhP 3,000,000 with Asiatrust Development Bank, Inc. Prior to the approval of the loan, Anthony Ng informed Asiatrust that the proceeds would be used for purchasing construction materials necessary for the completion of several steel towers he was commissioned to build by several telecommunication companies. Asiatrust approved the loan but required Anthony Ng to sign a trust receipt agreement. When Anthony Ng failed to pay the loan, Asiatrust filed a criminal case for *Estafa* in relation to PD 115 or the *Trust Receipts Law*. This Court acquitted Anthony Ng and ruled that the *Trust Receipts Law* was created "**to aid in financing importers and retail dealers who do not have sufficient funds or resources**

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[17] *Land Bank of the Philippines v. Perez*, *supra* note 15, at 126-127.

to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased." Since Asiatrust knew that Anthony Ng was neither an importer nor retail dealer, it should have known that the said agreement could not possibly apply to petitioner, *viz*:

> The true nature of a trust receipt transaction can be found in the "whereas" clause of PD 115 which states that a trust receipt is to be utilized "as a convenient business device to assist importers and merchants solve their financing problems." Obviously, the State, in enacting the law, sought to find a way to assist importers and merchants in their financing in order to encourage commerce in the Philippines.
>
> [A] trust receipt is considered a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased. Similarly, American Jurisprudence demonstrates that trust receipt transactions always refer to a method of "financing importations or financing sales." The principle is of course not limited in its application to financing importations, since the principle is equally applicable to domestic transactions. Regardless of whether the transaction is foreign or domestic, it is important to note that the transactions discussed in relation to trust receipts mainly involved sales.
>
> Following the precept of the law, such transactions affect situations wherein the entruster, who owns or holds absolute title or security interests over specified goods, documents or instruments, releases the subject goods to the possession of the entrustee. The release of such goods to the entrustee is conditioned upon his execution and delivery to the entruster of a trust receipt wherein the former binds himself to hold the specific goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds to the extent of the amount owing to the entruster or the goods, documents or instruments themselves if they are unsold. x x x [T]he entruster is entitled "only to the proceeds derived from the sale of goods released under a trust receipt to the entrustee."

Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction.

x x x x x x x x x

To emphasize, the Trust Receipts Law was created to "to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased." Since Asiatrust knew that petitioner was neither an importer nor retail dealer, it should have known that the said agreement could not possibly apply to petitioner.[18]

Further, in *Land Bank of the Philippines v. Perez*, the respondents were officers of Asian Construction and Development Corporation (ACDC), a corporation engaged in the construction business. On several occasions, respondents executed in favor of Land Bank of the Philippines (LBP) trust receipts to secure the purchase of construction materials that they will need in their construction projects. When the trust receipts matured, ACDC failed to return to LBP the proceeds of the construction projects or the construction materials subject of the trust receipts. After several demands went unheeded, LBP filed a complaint for *Estafa* or violation of Art. 315, par. 1(b) of the RPC, in relation to PD 115, against the respondent officers of ACDC. This Court, like in *Ng*, acquitted all the respondents on the postulate that the parties really intended a simple contract of loan and not a trust receipts transaction, *viz*:

When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods.

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[18] *Supra* note 14, at 305-307.

x x x x x x x x x

Thus, **in concluding that the transaction was a loan and not a trust receipt, we noted in *Colinares* that the industry or line of work that the borrowers were engaged in was construction. We pointed out that the borrowers were not importers acquiring goods for resale**. Indeed, goods sold in retail are often within the custody or control of the trustee until they are purchased. In the case of materials used in the manufacture of finished products, these finished products – if not the raw materials or their components – similarly remain in the possession of the trustee until they are sold. But the goods and the materials that are used for a construction project are often placed under the control and custody of the clients employing the contractor, who can only be compelled to return the materials if they fail to pay the contractor and often only after the requisite legal proceedings. **The contractor's difficulty and uncertainty in claiming these materials (or the buildings and structures which they become part of), as soon as the bank demands them, disqualify them from being covered by trust receipt agreements**.[19]

Since the factual milieu of *Ng* and *Land Bank of the Philippines* are in all four corners similar to the instant case, it behooves this Court, following the principle of *stare decisis*,[20] to rule that the transactions in the instant case are not trust receipts transactions but contracts of simple loan. The fact that the entruster bank, Metrobank in this case, knew even before the execution of the alleged trust receipt agreements that the covered construction materials were never intended by the entrustee (petitioner) for resale or for the manufacture of items to be sold would take the transaction between petitioner and Metrobank outside the ambit of the *Trust Receipts Law*.

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[19] *Supra* note 15, at 126-127, 129.

[20] The doctrine "*stare decisis et non quieta movere*" (Stand by the decisions and disturb not what is settled) is firmly entrenched in our jurisprudence. Once this Court has laid down a principle of law as applicable to a certain state of facts, it would adhere to that principle and apply it to all future cases in which the facts are substantially the same as in the earlier controversy. *Agra v. Commission on Audit*, G.R. No. 167807, December 6, 2011, 661 SCRA 563, 585.

For reasons discussed above, the subject transactions in the instant case are not trust receipts transactions. Thus, the consolidated complaints for *Estafa* in relation to PD 115 have really no leg to stand on.

The Court's ruling in *Colinares v. Court of Appeals*[21] is very apt, thus:

> The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable, if not reprehensible. Such agreements are contracts of adhesion which borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks, and is prone to misinterpretation x x x.

Unfortunately, what happened in *Colinares* is exactly the situation in the instant case. This reprehensible bank practice described in *Colinares* should be stopped and discouraged. For this Court to give life to the constitutional provision of non-imprisonment for nonpayment of debts,[22] it is imperative that petitioner be acquitted of the crime of *Estafa* under Art. 315, par. 1(b) of the RPC, in relation to PD 115.

WHEREFORE, the Resolution dated February 1, 2012, upholding the CA's Decision dated July 28, 2010 and Resolution dated December 20, 2010 in CA-G.R. CR No. 30426, is hereby **RECONSIDERED**. Petitioner Hur Tin Yang is **ACQUITTED** of the charge of violating Art. 315, par. 1(b) of the RPC, in relation to the pertinent provision of PD 115 in Criminal Case Nos. 04-223911 to 34.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.*, concur.

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[21] G.R. No. 90828, September 5, 2000, 339 SCRA 609, 623-624.

[22] CONSTITUTION, Art. III, Sec. 20 provides, "No person shall be imprisoned for debt or non-payment of poll tax."

EN BANC

[G.R. No. 186613. August 27, 2013]

ROSENDO R. CORALES, in his official capacity as Municipal Mayor of Nagcarlan, Laguna, and DR. RODOLFO R. ANGELES, in his official capacity as Municipal Administrator of Nagcarlan, Laguna, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the COMMISSION ON AUDIT, as represented by Provincial State Auditor of Laguna MAXIMO L. ANDAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; TO EXERCISE THE POWER OF JUDICIAL REVIEW, THERE MUST BE AN ACTUAL CASE CALLING FOR THE EXERCISE OF JUDICIAL POWER, THE QUESTION MUST BE RIPE FOR ADJUDICATION, AND THE PERSON CHALLENGING MUST HAVE THE STANDING; EXPOUNDED.— [T]his Court can hardly see any actual case or controversy to warrant the exercise of its power of judicial review. Settled is the rule that for the courts to exercise the power of judicial review, the following must be extant: (1) there must be an actual case calling for the exercise of judicial power; (2) the question must be ripe for adjudication; and (3) the person challenging must have the "standing." An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a mere hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Closely related thereto is that **the question must be ripe for adjudication**. **A question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it**. The third requisite is legal standing or *locus standi*, which has been defined as a personal or substantial interest in the case such that the party has sustained or will sustain direct injury

as a result of the governmental act that is being challenged, alleging more than a generalized grievance. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing.

2. ID.; ID.; ID.; ID.; ID.; REQUISITES OF ACTUAL CASE AND RIPENESS, NOT PRESENT; NO ACTUAL OR IMMINENT INJURY BY REASON OF THE ISSUANCE OF THE AUDIT OBSERVATION MEMORANDUM (AOM) NO. 2006-007-100, THUS, THE ACTION TO ASSAIL THE SAME IS PREMATURE, AND BASED ENTIRELY ON SURMISES, CONJECTURES AND SPECULATIONS.— The requisites of actual case and ripeness are absent in the present case. To repeat, the AOM issued by Andal merely requested petitioner Corales to comment/reply thereto. Truly, the AOM already contained a recommendation to issue a Notice of Disallowance; however, no Notice of Disallowance was yet issued. More so, there was no evidence to show that Andal had already enforced against petitioner Corales the contents of the AOM. Similarly, there was no clear showing that petitioners, particularly petitioner Corales, would sustain actual or imminent injury by reason of the issuance of the AOM. The action taken by the petitioners to assail the AOM was, indeed, premature and based entirely on surmises, conjectures and speculations that petitioner Corales would eventually be compelled to reimburse petitioner Dr. Angeles' salaries, should the audit investigation confirm the irregularity of such disbursements. Further, as correctly pointed out by respondent Republic in its Memorandum, what petitioners actually assail is Andal's authority to request them to file the desired comment/reply to the AOM, which is beyond the scope of the action for prohibition, as such request is neither an actionable wrong nor constitutive of an act perceived to be illegal. Andal, being the Provincial State Auditor, is clothed with the authority to audit petitioners' disbursements, conduct an investigation thereon and render a final finding and recommendation thereafter. Hence, it is beyond question that in relation to his audit investigation function, Andal can validly and legally

require petitioners to submit comment/reply to the AOM, which the latter cannot pre-empt by prematurely seeking judicial intervention, like filing an action for prohibition.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; AVAILABLE TO PARTIES AGGRIEVED BY THE DECISION OF THE AUDITOR ONLY WHEN THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF THE LAW; ACTION FOR PROHIBITION CONSIDERED PREMATURE IN CASE AT BAR.— [P]rohibition, being a preventive remedy to seek a judgment ordering the defendant to desist from continuing with the commission of an act perceived to be illegal, may only be resorted to when there is "**no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law**." x x x. [P]etitioners' action for prohibition was premature. The audit investigative process was still in its initial phase. There was yet no Notice of Disallowance issued. And, even granting that the AOM issued to petitioner Corales is already equivalent to an order, decision or resolution of the Auditor or that such AOM is already tantamount to a directive for petitioner Corales to reimburse the salaries paid to petitioner Dr. Angeles, still, the action for prohibition is premature since there are still many administrative remedies available to petitioners to contest the said AOM. Section 1, Rule V of the 1997 Revised Rules of Procedure of the COA, provides: "[a]n aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, notice of disallowances and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit." From the final order or decision of the Director, an aggrieved party may appeal to the Commission proper. It is the decision or resolution of the Commission proper which can be appealed to this Court.

4. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; BEFORE A PARTY MAY SEEK THE INTERVENTION OF THE COURT, HE SHOULD FIRST AVAIL HIMSELF OF ALL THE MEANS AFFORDED HIM BY ADMINISTRATIVE PROCESSES; THE PREMATURE INVOCATION OF THE INTERVENTION OF THE COURT IS FATAL TO ONE'S CAUSE OF ACTION.—

> [P]etitioners have all the remedies available to them at the administrative level but they failed to exhaust the same and instead, immediately sought judicial intervention. Otherwise stated, the auditing process has just begun but the petitioners already thwarted the same by immediately filing a Petition for Prohibition. In *Fua, Jr. v. COA,* citing *Sison v. Tablang,* this Court declared that the general rule is that before a party may seek the intervention of the court, **he should first avail himself of all the means afforded him by administrative processes**. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation. Also, in *The Special Audit Team, Commission on Audit v. Court of Appeals and Government Service Insurance System*, this Court has extensively pronounced that: If resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. **The premature invocation of the intervention of the court is fatal to one's cause of action**. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, **the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case**. x x x. Moreover, **courts have accorded respect for the specialized ability of other agencies of government to deal with the issues within their respective specializations prior to any court intervention**.

5. REMEDIAL LAW; MOTIONS; MOTION TO DISMISS; THE DENIAL OF THE MOTION TO DISMISS IS NOT APPEALABLE. THE ONLY REMEDY OF THE PARTY IS A SPECIAL CIVIL ACTION FOR *CERTIORARI* SHOWING THAT SUCH DENIAL WAS MADE WITH GRAVE ABUSE OF DISCRETION; PRONOUNCEMENT IN CHINA ROAD CASE (401 PHIL. 590 (2000),

INAPPLICABLE TO CASE AT BAR.— *China Road Case* is not at all applicable in the case at bench. Therein, the Motion to Dismiss the Complaint was granted. As the order granting the *motion to dismiss* was a final, as distinguished from an interlocutory order, the proper remedy was an appeal in due course. x x x. In the case at bench, however, the Motion to Dismiss was denied. It is well-entrenched that an order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Therefore, contrary to the claim of petitioners, the denial of a Motion to Dismiss is not appealable, not even *via* Rule 45 of the Rules of Court. The only remedy for the denial of the Motion to Dismiss is a special civil action for *certiorari* showing that such denial was made with grave abuse of discretion. Taking into consideration all the foregoing, this Court finds no reversible error on the part of the Court of Appeals in reversing the Orders of the court *a quo* and consequently dismissing petitioners' Petition for Prohibition filed thereat.

APPEARANCES OF COUNSEL

Noe Cangco Zarate for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to nullify the Decision[1] and Resolution[2] dated 15 September 2008 and 20 February 2009, respectively, of the Court of Appeals in CA-G.R. SP No. 101296 and, in effect, to reinstate the Petition for Prohibition and *Mandamus*[3]

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[1] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring. *Rollo*, pp. 42-53.

[2] *Id.* at 55.

[3] *Id.* at 61-79.

filed by herein petitioners Rosendo R. Corales (Corales) and Dr. Rodolfo R. Angeles (Dr. Angeles) with the Regional Trial Court (RTC) of San Pablo City, Laguna. The assailed Decision annulled and set aside the Order[4] dated 17 May 2007 of Branch 32, and the Order[5] dated 5 September 2007 of Branch 29, both of the RTC of San Pablo City, Laguna in Civil Case No. SP-6370 (07), which respectively denied herein respondent Republic of the Philippines' (Republic) Motion to Dismiss petitioners' Petition for Prohibition and the subsequent Motion for Reconsideration thereof. The Court of Appeals thereby ordered the dismissal of petitioners' Petition for Prohibition with the court *a quo*. The questioned Resolution, on the other hand, denied for lack of merit petitioners' Motion for Reconsideration of the assailed Decision.

The antecedents, as culled from the records, are as follows:

Petitioner Corales was the duly elected Municipal Mayor of Nagcarlan, Laguna for three (3) consecutive terms, *i.e.*, the 1998, 2001 and 2004 elections. In his first term as local chief executive, petitioner Corales appointed petitioner Dr. Angeles to the position of Municipal Administrator, whose appointment was unanimously approved by the *Sangguniang Bayan* of Nagcarlan, Laguna (*Sangguniang Bayan*) per Resolution No. 98-64[6] dated 22 July 1998. During his second and third terms as municipal mayor, petitioner Corales renewed the appointment of petitioner Dr. Angeles. But, on these times, the *Sangguniang Bayan* per Resolution No. 2001-078[7] dated 12 July 2001 and 26 subsequent Resolutions, disapproved petitioner Dr. Angeles' appointment on the ground of nepotism, as well as the latter's purported unfitness and unsatisfactory performance. Even so, petitioner Dr. Angeles continued to discharge the functions and

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[4] Penned by Acting Presiding Judge Romulo SG. Villanueva. CA *rollo*, pp. 21-22.

[5] Penned by Judge Honorio E. Guanlao, Jr. *Id.* at 23.

[6] *Rollo*, pp. 80-81.

[7] *Id.* at 82-84.

duties of a Municipal Administrator for which he received an annual salary of ₱210,012.00.[8]

Following an audit on various local disbursements, Maximo Andal (Andal), the Provincial State Auditor of Laguna, issued an Audit Observation Memorandum (AOM) No. 2006-007-100[9] dated 6 October 2006 addressed to petitioner Corales who was asked to comment/reply. The aforesaid AOM, in sum, states that: 1) petitioner Dr. Angeles' appointment as Municipal Administrator (during the second and third terms of petitioner Corales) was without legal basis for having been repeatedly denied confirmation by the *Sangguniang Bayan*; 2) petitioner Dr. Angeles can be considered, however, as a *de facto* officer entitled to the emoluments of the office for the actual services rendered; 3) nonetheless, it is not the Municipality of Nagcarlan that should be made liable to pay for petitioner Dr. Angeles' salary; instead, it is petitioner Corales, being the appointing authority, as explicitly provided for in Article 169(I) of the Rules and Regulations Implementing the Local Government Code of 1991,[10] as well as Section 5, Rule IV of the Omnibus Rules of Appointments and Other Personnel Actions;[11] 4) a post audit of payrolls pertaining to the payment of salaries, allowances

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[8] CA Decision dated 15 September 2008. *Id.* at 43-44; Petition for Review on *Certiorari* dated 17 April 2009. *Id.* at 19-21.

[9] *Id.* at 56-59.

[10] Upon checking, however, of the Rules and Regulations Implementing the Local Government Code of 1991, Article 169 thereof speaks of "Promotion" and it has no subparagraph I. It is Article 168, Rule XXII of the aforesaid rules which speaks of "Appointments," and subparagraph (i) thereof specifically provides, thus: "The appointing authority shall be liable for the payment of the salary of the appointee for actual services rendered if the appointment is disapproved because the appointing authority issued it in willful violation of applicable laws, rules and regulations thereby making the appointment unlawful."

[11] Sec 5. The services rendered by any person who was required to assume the duties and responsibilities of the position without an appointment having been issued by the appointing authority shall not be credited nor recognized by the Commission and shall be the personal accountability of the person who made him assume office.

and other incentives of petitioner Dr. Angeles from 15 July 2001 up to 31 May 2006[12] partially amounted to ₱1,282,829.99; and 5) in view thereof, it is recommended that an appropriate Notice of Disallowance be issued for the payment of salary expenses incurred without legal basis by the Municipality of Nagcarlan in the aforestated amount.[13]

Instead of submitting his comment/reply thereon, petitioner Corales, together with petitioner Dr. Angeles, opted to file a Petition for Prohibition and *Mandamus* against Andal and the then members of the *Sangguniang Bayan* before the RTC of San Pablo City, Laguna, docketed as Civil Case No. SP-6370 (07) and originally raffled to Branch 32. Petitioners sought, by way of prohibition, to require the Office of the Provincial Auditor, through Andal, to recall its AOM and to eventually desist from collecting reimbursement from petitioner Corales for the salaries paid to and received by petitioner Dr. Angeles for the latter's services as Municipal Administrator. Petitioners similarly sought, by way of *mandamus*, to compel the then members of the *Sangguniang Bayan*, as a collegial body, to recall its Resolutions denying confirmation to petitioner Dr. Angeles' appointment as Municipal Administrator and in their stead to confirm the validity and legitimacy of such appointment.[14]

In its turn, the Office of the Solicitor General (OSG), on Andal's behalf, who was impleaded in his official capacity, filed a Motion to Dismiss petitioners' Petition for Prohibition and *Mandamus* grounded on lack of cause of action, prematurity and non-exhaustion of administrative remedies. It was specifically contended therein that: (1) the issuance of the AOM was merely an initiatory step in the administrative investigation of the Commission on Audit (COA) to allow petitioner Corales to controvert the findings and conclusions of the *Sangguniang Bayan*

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[12] Excluding the period from 1 November 2001 to 31 December 2001; 16 March 2002 to 15 May 2002; 1-31 August 2002; 16-30 June 2003; 1-31 December 2003; 1-31 September 2004; and 1 June 2006 to 30 September 2006.

[13] *Rollo,* pp. 56-59.

[14] Petition for Prohibition and *Mandamus* dated 31 December 2006. *Id.* at 61-79; CA Decision dated 15 September 2008. *Id.* at 46-47.

in its Resolution No. 2001-078, as well as those of then Secretary Jose D. Lina, Jr. in Department of Interior and Local Government (DILG) Opinion No. 124 s. 2002; (2) it was only after the completion of the said investigation that a resolution will be issued as regards the propriety of the disbursements made by the Municipality of Nagcarlan in the form of salaries paid to petitioner Dr. Angeles during his tenure as Municipal Administrator; and (3) instead of resorting to judicial action, petitioner Corales should have first responded to the AOM and, in the event of an adverse decision against him, elevate the matter for review to a higher authorities in the COA.[15] With these, petitioners' petition should be dismissed, as petitioner Corales has no cause of action against Andal – his resort to judicial intervention is premature and he even failed to avail himself of, much less exhaust, the administrative remedies available to him.[16]

In its Order dated 17 May 2007, the trial court denied the said Motion to Dismiss on the ground that Andal was merely a nominal party.[17] The subsequent motion for its reconsideration was also denied in another Order dated 5 September 2007.[18]

Respondent Republic, as represented by COA, as represented by Andal, consequently filed a Petition for *Certiorari* with the Court of Appeals ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in rendering the Orders dated 17 May 2007 and 5 September 2007, as it unjustly denied respondent's right to actively prosecute the case through a mere declaration that it was a nominal party despite a clear showing that the Petition for Prohibition referred to the respondent as a real party in interest.[19]

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[15] Motion to Dismiss dated 28 March 2007 filed before the RTC of San Pablo City, Laguna. CA *rollo*, pp. 74-80; CA Decision dated 15 September 2008. *Id.* at 47-48.

[16] *Id.* at 79; *id.* at 48.

[17] *Rollo,* pp. 21-22.

[18] *Id.* at 22.

[19] Petition for *Certiorari* dated 8 November 2007 filed before the Court of Appeals. CA *rollo*, p. 8.

On 15 September 2008, the Court of Appeals rendered its now assailed Decision granting respondent's Petition for *Certiorari*, thereby annulling and setting aside the RTC Orders dated 17 May 2007 and 5 September 2007 and, accordingly, dismissing petitioners' Petition for Prohibition with the court *a quo*.[20] The Court of Appeals justified its decision in the following manner:

> x x x We agree with the OSG's contention that **the [herein respondent Republic]**, herein represented by the COA and specifically by Andal in the latter's capacity as Provincial State Auditor of Laguna, is **not merely a nominal party to the petition for prohibition**. x x x. **That the [respondent] naturally has an interest in the disposition/disbursement of said public funds as well as in the recovery thereof should the ongoing investigative audit confirm the illegality thereof cannot be gainsaid. Rather than a mere nominal party, therefore, the [respondent] is an indispensable party to the petition for prohibition and may thus seek its dismissal**, **given that under the attendant facts there is a yet no actual case or controversy calling for [therein] respondent court's exercise of its judicial power**.
>
> **Judicial review cannot be exercised in *vacuo***. **Thus, as a condition precedent for the exercise of judicial inquiry, there must be an actual case or controversy**, which exists when there is a conflict of legal rights or an assertion of opposite legal claims, which can be resolved on the basis of existing law and jurisprudence. x x x. An actual case or controversy thus means an existing case or controversy that is appropriate or ripe for judicial determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.
>
> **[Herein petitioners]** x x x **have failed to show the existence of an actual case or controversy** that would necessitate judicial inquiry through a petition for prohibition. As the OSG aptly observed, the **issuance of the AOM is just an initiatory step in the investigative audit** being then conducted by Andal[,] as Provincial State Auditor of Laguna **to determine the propriety of the disbursements made by the Municipal Government of Nagcarlan**. **While Andal may have stated an opinion in the AOM that [herein petitioner] Corales**

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[20] CA Decision dated 15 September 2008. *Rollo*, p. 49.

should reimburse the government treasury for the salaries paid to [herein petitioner Dr. Angeles] in light of the repeated disapproval and/or rejection of the latter's appointment by the *Sangguniang [Bayan]* of Nagcarlan, there is no showing whatsoever of any affirmative action taken by Andal to enforce such audit observation. What Andal did, as the AOM unmistakably shows, was to merely request [petitioner] Corales to submit a reply/ comment to the audit observation and in the process afford the latter an opportunity to controvert not only Andal's opinion on salary reimbursement but the other statements therein expressed by the other members of the audit team.

In the absence moreover of a showing that [petitioners], particularly [petitioner] Corales, sustained actual or imminent injury by reason of the issuance of the AOM, there is no reason to allow the continuance of the petition for prohibition which was, after all, manifestly conjectural or anticipatory, filed for a speculative purpose and upon the hypothetical assumption that [petitioner] Corales would be eventually compelled to reimburse the amounts paid as [petitioner Dr. Angeles'] salaries should the audit investigation confirm the irregularity of such disbursements. This Court will not engage in such speculative guesswork and neither should respondent court x x x.[21] (Emphasis and italics supplied)

Disgruntled, petitioners moved for its reconsideration but it was denied for lack of merit in a Resolution dated 20 February 2009.

Hence, this petition.

In their Memorandum, petitioners raise the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A PALPABLY ERRONEOUS RESOLUTION OF A SUBSTANTIAL QUESTION OF LAW WHEN IT ORDERED THE DISMISSAL OF PETITIONERS' SUIT FOR PROHIBITION.

II.

WHETHER OR NOT THE COURT OF APPEALS ACTED UNJUSTLY AND INJUDICIOUSLY WHEN IT HELD THAT

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[21] *Id.* at 50-52.

THE FACTS AND CIRCUMSTANCES SURROUNDING THE SUIT FOR PROHIBITION IS NOT YET RIPE FOR JUDICIAL DETERMINATION.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN THE INTERPRETATION AND RESOLUTION OF A PIVOTAL LEGAL ISSUE WHEN IT CONCLUDED THAT THERE IS NO ACTUAL DISPUTE OR CONCRETE CONTROVERSY WHICH MAY BE THE PROPER SUBJECT MATTER OF A SUIT FOR PROHIBITION.

IV.

WHETHER OR NOT THE COURT OF APPEALS UNJUSTIFIABLY TRANSGRESSED AND TRAMPLED UPON A CATEGORICAL JURISPRUDENTIAL DOCTRINE WHEN IT TOOK COGNIZANCE OF AND FAVORABLY RESOLVED THE [HEREIN RESPONDENT'S] PETITION FOR *CERTIORARI,* IN BLATANT VIOLATION OF THE RULE LAID DOWN IN THE *APROPOS* CASE OF *CHINA ROAD AND BRIDGE CORPORATION [V.] COURT OF APPEALS* (348 SCRA 401).

V.

WHETHER OR NOT THE COURT OF APPEALS OVERSTEPPED AND WENT BEYOND THE BOUNDARIES OF ITS LEGITIMATE DISCRETION WHEN IT DEVIATED AND VEERED AWAY FROM THE PRINCIPAL ISSUES OF THE CASE, INSTEAD OF PRONOUNCING THAT PETITIONERS HAVE A VALID, PERFECT AND LEGITIMATE CAUSE OF ACTION FOR PROHIBITION.[22] (Italics supplied)

The Petition is bereft of merit.

The issues will be discussed *in seriatim*.

The first three issues concern the ripeness or prematurity of the Petition for Prohibition assailing the AOM issued by Andal

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[22] Petitioners' Memorandum dated 31 August 2010. Temporary *rollo*, pp. 14-16.

to petitioner Corales. Petitioners argue that from the tenor of the AOM it is clear that petitioner Corales is being adjudged liable and personally accountable to pay or to reimburse, in his private capacity, the salaries paid to and received by petitioner Dr. Angeles for the latter's services as Municipal Administrator, as his appointment thereto was considered invalid for lack of necessary confirmation from the *Sangguniang Bayan*. It is further argued that contrary to the claim of respondent Republic that such AOM is a mere initiatory step in the course of an investigative auditing process, the wordings thereof unmistakably reveal that the same is a categorical disposition and enforcement measure requiring petitioner Corales to reimburse the money disbursed by the Municipality of Nagcarlan to pay petitioner Dr. Angeles' salaries as Municipal Administrator. Such AOM is a firm, clear and affirmative official action on the part of the Provincial State Auditor to hold petitioner Corales liable for reimbursement; thus, to require the latter to still comment or controvert the findings thereon is a mere frivolous and useless formality. Since the requirement for petitioner Corales to pay and reimburse the salaries of petitioner Dr. Angeles is actual, direct and forthcoming, the same may be the proper subject of an action for prohibition. Otherwise stated, such imposition of liability for reimbursement against petitioner Corales presents a concrete justiciable controversy and an actual dispute of legal rights.

Petitioners' contention is unavailing.

To begin with, this Court deems it proper to quote the significant portions of the questioned AOM, to wit:

FOR: **Hon. ROSENDO R. CORALES**
Municipal Mayor
Nagcarlan, Laguna

FROM: **Mr. MAXIMO L. ANDAL**
State Auditor IV
Audit Team Leader

May we have your comment/reply on the following audit observation. Please return the duplicate within fifteen (15) days upon receipt by filling up the space provided for with your comments.

AUDIT OBSERVATION	MANAGEMENT COMMENT
The appointment of [herein petitioner Dr. Angeles] as Municipal Administrator was repeatedly denied not confirmed/ concurred by Sangguniang Bayan hence, the validity of the appointment as per opinion/rulings by the then Secretary Jose D. Lina, Jr. of the DILG in opinion No. 124 s.2002 was without legal basis. DILG Opinion No. 124 s[.]2002 states that the continued discharge of powers by [petitioner Dr. Angeles] as Municipal Administrator appears to have no legal basis. A person may assume public office once his appointment is already effective. The Supreme Court in one case (*Atty. David B. Corpuz [v.] Court of Appeals, et al[.]*, G.R. No. 123989, 26 January 1998) held that where the assent or confirmation of some other office or body is required, the appointment may be complete only when such assent or confirmation is obtained. Until the process is completed, the appointee can claim no vested right in the office nor invoke security of tenure. Since the appointment of a Municipal Administrator requires *sanggunian* concurrence (Section 443 (d), RA 7160) and considering that the appointment never became effective. As such, his assumption and continued holding of the office of the Municipal Administrator find no legal basis.	

However, [petitioner Dr. Angeles] may claim salary for the services he has actually rendered. As held in one case (*Civil Liberties Union [v.] Executive Secretary*, 194 SCRA 317), a *de facto* officer is entitled to emoluments of the office for the actual services rendered. Here, [petitioner Dr. Angeles] can be considered as a *de facto* officer. x x x, as held in the *Corpuz* case cited above, the Supreme Court ruled that a public official who assumed office under an incomplete appointment is merely a *de facto* officer for the duration of his occupancy of the office for the reason that he assumed office under color of a known appointment which is void by a reason of some defect or irregularity in its exercise.

It is worthy to emphasize along that line that while [petitioner Dr. Angeles] may be entitled to the salary as a *de facto* officer, the municipality cannot be made liable to pay his salaries. Instructive on this point is Article 169 (I) of the Rules and Regulations Implementing the Local Government Code of 1991 which explicitly provides, thus:

> **"The appointing authority shall be liable for the payment of salary of the appointee for actual services rendered if the appointment is disapproved because the appointing authority issued it in willful violation of applicable laws, rules and**

regulations thereby making the appointment unlawful."

Corollary, Section 5 of Rule IV of the Omnibus Rules of Appointments and Other Personnel Actions provides, thus:

> **"The services rendered by any person who was required to assume the duties and responsibilities of any position without appointment having been issued by the appointing authority shall not be credited nor recognized by the Commission and shall be the personal accountability of the person who made him assume office."**

"Hence, [herein petitioner Corales] shall pay the salaries of [petitioner Dr. Angeles] for the services the latter has actually rendered.

x x x x x x x x x

Clearly, the appointment of [petitioner Dr. Angeles] **per se was bereft of legal basis** in view of the absence of the concurrence of the legislative body thus payment of his salaries from the funds of the Municipality for actual services rendered remained unlawful.

Further, in paragraph 4 of the letter of Mr. Allan Poe M. Carmona, Director II of the CSC dated [1 December 2004] to Mr. Ruben C. Pagaspas, OIC, Regional Cluster

Director, COA, Cluster III, Sub-Cluster VI stated that [petitioner Dr. Angeles] cannot be appointed to Municipal Administrator without the concurrence of the *Sangguniang Bayan* as provided under RA 7160. Post audit of payrolls pertaining to the payment of salaries, allowances and other incentives of [petitioner Dr. Angeles] as Municipal Administrator for the period from [15 July 2001] up to [31 May 2006] excluding the period from [1 November 2001] to [31 December 2001], [16 March 2002] to [15 May 2002], [1-31 August 2002], [16-30 June 2003], [1-31 December 2003], [1-31 September 2004] and [1 June 2006] to [30 September 2006] were partially amounted to ₱1,282,829.99. x x x. Issuance of Notice of Disallowance was suggested by Atty. Eden T. Rafanan, Regional Cluster Director for [L]egal and Adjudication Office in her 2nd Indorsement dated [3 July 2006]. In view hereof, **it is recommended that appropriate Notice of Disallowance be issued** for the payment of the salary expenses incurred without legal basis by the municipality in the amount mentioned in the above paragraph.[23] (Emphasis, italics and underscoring supplied).	

[23] *Rollo,* pp. 56-59.

As can be gleaned therefrom, petitioner Corales was simply required **to submit his comment/reply on the observations** stated in the AOM. As so keenly observed by the Court of Appeals, any mention in the AOM that petitioner Corales shall reimburse the salaries paid to petitioner Dr. Angeles in light of the repeated disapproval or rejection by the *Sangguniang Bayan* of his appointment as Municipal Administrator was merely an initial opinion, not conclusive, as there was no showing that Andal had taken any affirmative action thereafter to compel petitioner Corales to make the necessary reimbursement. Otherwise stated, it has not been shown that Andal carried out or enforced what was stated in the AOM. On the contrary, petitioner Corales was given an opportunity to refute the findings and observations in the AOM by requesting him to comment/reply thereto, but he never did. More so, even though the AOM already contained a recommendation for the issuance of a Notice of Disallowance of the payment of salary expenses, the records are bereft of any evidence to show that a Notice of Disallowance has, in fact, been issued. Concomitantly, the AOM did not contain any recommendation to the effect that petitioner Corales would be held personally liable for the amount that would be disallowed. It is, therefore, incongruous to conclude that the said AOM is tantamount to a directive requiring petitioner Corales to reimburse the salaries paid to and received by petitioner Dr. Angeles during the latter's stint as Municipal Administrator after his appointment thereto was held invalid for want of conformity from the *Sangguniang Bayan*.

In relation thereto, as aptly observed by the OSG, to which the Court of Appeals conformed, the **issuance of the AOM is just an initiatory step in the investigative audit** being conducted by Andal as Provincial State Auditor to determine the propriety of the disbursements made by the Municipal Government of Laguna. That the issuance of an AOM can be regarded as just an initiatory step in the investigative audit is evident from COA Memorandum No. 2002-053 dated 26 August 2002.[24] A perusal

[24] This and COA Resolution No. 2006-001 dated 31 January 2006, which restored to the audit sectors the responsibility for the issuance of notices

of COA Memorandum No. 2002-053, particularly Roman Numeral III, Letter A, paragraphs 1 to 5 and 9, reveals that any finding or observation by the Auditor stated in the AOM is not yet conclusive, as the comment/justification[25] of the head of office or his duly authorized representative is still necessary before the Auditor can make any conclusion. The Auditor may give due course or find the comment/justification to be without merit but in either case, the Auditor shall clearly state the reason for the conclusion reached and recommendation made. Subsequent thereto, the Auditor shall transmit the AOM, together with the comment or justification of the Auditee and the former's recommendation to the Director, Legal and Adjudication Office (DLAO), for the sector concerned in Metro Manila and/or the Regional Legal and Adjudication Cluster Director (RLACD) in the case of regions. The transmittal shall be coursed through the Cluster Director concerned and the Regional Cluster Director, as the case may be, for their own comment and recommendation. The DLAO for the sector concerned in the Central Office and the RLACD shall make the necessary evaluation of the records transmitted with the AOM. When, on the basis thereof, he finds that the transaction should be suspended or disallowed, he will then issue the corresponding Notice of Suspension (NS), Notice of Disallowance (ND) or Notice of Charge (NC), as the case may be, furnishing a copy thereof to the Cluster Director. Otherwise, the Director may dispatch a team to conduct further investigation work to justify the contemplated action. If after in-depth investigation, the DLAO for each sector in Metro Manila and the RLACD for the regions find that the issuance of the NS, ND, and NC is warranted, he shall issue the same and transmit such NS, ND or NC, as the case may be, to the agency head and other persons found liable therefor.

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of suspension, disallowance or charge arising in the course of the settlement of accounts and their review of transactions covered by their audit programs; the Offices under the Legal and Adjudication Sector shall be responsible for the issuance of such notices in case of audits conducted by its teams, were later superseded by COA Circular No. 2009-006 dated 15 September 2009.

[25] To be submitted 15 days from receipt of the AOM.

From the foregoing, it is beyond doubt that the issuance of an AOM is, indeed, an initial step in the conduct of an investigative audit considering that after its issuance there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the Auditee. There is, therefore, no basis for petitioner Corales' claim that his comment thereon would be a mere formality. Further, even though the AOM issued to petitioner Corales already contained a recommendation for the issuance of a Notice of Disallowance, still, it cannot be argued that his comment/reply to the AOM would be a futile act since no Notice of Disallowance was yet issued. Again, the records are bereft of any evidence showing that Andal has already taken any affirmative action against petitioner Corales after the issuance of the AOM.

Viewed in this light, this Court can hardly see any actual case or controversy to warrant the exercise of its power of judicial review. Settled is the rule that for the courts to exercise the power of judicial review, the following must be extant: (1) there must be an actual case calling for the exercise of judicial power; (2) the question must be ripe for adjudication; and (3) the person challenging must have the "standing." An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a mere hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Closely related thereto is that **the question must be ripe for adjudication**. **A question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it**. The third requisite is legal standing or *locus standi*, which has been defined as a personal or substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends

for illumination of difficult constitutional questions." Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing.[26]

The requisites of actual case and ripeness are absent in the present case. To repeat, the AOM issued by Andal merely requested petitioner Corales to comment/reply thereto. Truly, the AOM already contained a recommendation to issue a Notice of Disallowance; however, no Notice of Disallowance was yet issued. More so, there was no evidence to show that Andal had already enforced against petitioner Corales the contents of the AOM. Similarly, there was no clear showing that petitioners, particularly petitioner Corales, would sustain actual or imminent injury by reason of the issuance of the AOM. The action taken by the petitioners to assail the AOM was, indeed, premature and based entirely on surmises, conjectures and speculations that petitioner Corales would eventually be compelled to reimburse petitioner Dr. Angeles' salaries, should the audit investigation confirm the irregularity of such disbursements. Further, as correctly pointed out by respondent Republic in its Memorandum, what petitioners actually assail is Andal's authority to request them to file the desired comment/reply to the AOM, which is beyond the scope of the action for prohibition, as such request is neither an actionable wrong nor constitutive of an act perceived to be illegal. Andal, being the Provincial State Auditor, is clothed with the authority to audit petitioners' disbursements, conduct an investigation thereon and render a final finding and recommendation thereafter. Hence, it is beyond question that in relation to his audit investigation function, Andal can validly and legally require petitioners to submit comment/reply to the AOM, which the latter cannot pre-empt by prematurely seeking judicial intervention, like filing an action for prohibition.

Moreover, prohibition, being a preventive remedy to seek a judgment ordering the defendant to desist from continuing with the commission of an act perceived to be illegal, may only be

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[26] *Didipio Earth-Savers' Multi-Purpose Association, Inc., (DESAMA) v. Gozun,* 520 Phil. 457, 471-472 (2006).

resorted to when there is "**no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law**."[27]

In this case, petitioners insist that it is no longer necessary to exhaust administrative remedies considering that there is no appeal or any other plain, speedy and appropriate remedial measure to assail the imposition under the AOM aside from an action for prohibition.

This Court finds the said contention plain self-deception.

As previously stated, petitioners' action for prohibition was premature. The audit investigative process was still in its initial phase. There was yet no Notice of Disallowance issued. And, even granting that the AOM issued to petitioner Corales is already equivalent to an order, decision or resolution of the Auditor or that such AOM is already tantamount to a directive for petitioner Corales to reimburse the salaries paid to petitioner Dr. Angeles, still, the action for prohibition is premature since there are still many administrative remedies available to petitioners to contest the said AOM. Section 1, Rule V of the 1997 Revised Rules of Procedure of the COA, provides: "[a]n aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, notice of disallowances and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit." From the final order or decision of the Director, an aggrieved party may appeal to the Commission proper.[28] It is the decision or resolution of the Commission proper which can be appealed to this Court.[29]

Clearly, petitioners have all the remedies available to them at the administrative level but they failed to exhaust the same and instead, immediately sought judicial intervention. Otherwise stated, the auditing process has just begun but the petitioners

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[27] *Guerrero v. Domingo*, G.R. No. 156142, 23 March 2011, 646 SCRA 175, 182; 1997 Revised Rules of Civil Procedure, Rule 65, Sec. 2.

[28] 1997 Revised Rules of Procedure of the COA, Rule VI, Sec. 1.

[29] Revised Rules of Procedure of the COA, Rule XI, Sec. 1.

already thwarted the same by immediately filing a Petition for Prohibition. In *Fua, Jr. v. COA*,[30] citing *Sison v. Tablang*,[31] this Court declared that the general rule is that before a party may seek the intervention of the court, **he should first avail himself of all the means afforded him by administrative processes**. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation. Also, in *The Special Audit Team, Commission on Audit v. Court of Appeals and Government Service Insurance System*,[32] this Court has extensively pronounced that:

> If resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. **The premature invocation of the intervention of the court is fatal to one's cause of action**. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, **the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case**. x x x.

Moreover, **courts have accorded respect for the specialized ability of other agencies of government to deal with the issues within their respective specializations prior to any court intervention**. The Court has reasoned thus:

> We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their

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[30] G.R. No. 175803, 4 December 2009, 607 SCRA 347, 352.

[31] G.R. No. 177011, 5 June 2009, 588 SCRA 727, 731.

[32] G.R. No. 174788, 11 April 2013.

> responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

The 1987 Constitution created the constitutional commissions as independent constitutional bodies, tasked with specific roles in the system of governance that require expertise in certain fields. For COA, this role involves:

> The power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, instrumentalities, including government-owned and controlled corporations with original charter. x x x.

As one of the three (3) independent constitutional commissions, **COA has been empowered to define the scope of its audit and examination and to establish the techniques and methods required therefor; and to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties**.

Thus, in the light of this constitutionally delegated task, the courts must exercise caution when intervening with disputes involving these independent bodies, for the **general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes**. **The issues which administrative agencies are authorized to decide should not be summarily taken from them** and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.[33] (Emphasis supplied)

In their futile attempt to convince this Court to rule in their favor, petitioners aver that by filing a Motion to Dismiss on the ground of lack of cause of action, respondent Republic, in essence, admitted all the material averments and narration of

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[33] *Id.*

facts stated in the Petition for Prohibition and *Mandamus*. As such, there is no longer any question of fact to speak of and what remains is a pure question of law. The judgment, therefore, of the trial court denying the Motion to Dismiss is no longer subject to any appeal or review by the Court of Appeals. Instead, it is already appealable and reviewable by this Court under Rule 45 of the Rules of Court, where only pure questions of law may be raised and dealt with. This is in line with the pronouncement in *China Road and Bridge Corporation v. Court of Appeals*[34] (*China Road Case*). The Court of Appeals should have dismissed respondent Republic's Petition for *Certiorari* under Rule 65 of the Rules of Court for being an improper and inappropriate mode of review.

Petitioners' above argument is misplaced.

China Road Case is not at all applicable in the case at bench. Therein, the Motion to Dismiss the Complaint was granted. As the order granting the *motion to dismiss* was a final, as distinguished from an interlocutory order, the proper remedy was an appeal in due course.[35] Thus, this Court in *China Road Case* held that:

> x x x Applying the test to the instant case, it is clear that private respondent raises pure questions of law which are not proper in an ordinary appeal under Rule 41, but should be raised by way of a petition for review on *certiorari* under Rule 45.
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> We agree with private respondent that in a motion to dismiss due to failure to state a cause of action, the trial court can consider all the pleadings filed, including annexes, motions and the evidence on record. However in so doing, the trial court does not rule on the truth or falsity of such documents. It merely includes such documents in the hypothetical admission. Any review of a finding of lack of cause of action based on these documents would not involve a calibration of the probative value of such pieces of evidence but

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[34] 401 Phil. 590 (2000).

[35] *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, 17 August 2011, 655 SCRA 580, 592.

would only limit itself to the inquiry of whether the law was properly applied given the facts and these supporting documents. **Therefore, what would inevitably arise from such a review are pure questions of law, and not questions of fact**.[36] (Emphasis supplied)

In the case at bench, however, the Motion to Dismiss was denied. It is well-entrenched that an order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits.[37] Therefore, contrary to the claim of petitioners, the denial of a Motion to Dismiss is not appealable, not even *via* Rule 45 of the Rules of Court. The only remedy for the denial of the Motion to Dismiss is a special civil action for *certiorari* showing that such denial was made with grave abuse of discretion.[38]

Taking into consideration all the foregoing, this Court finds no reversible error on the part of the Court of Appeals in reversing the Orders of the court *a quo* and consequently dismissing petitioners' Petition for Prohibition filed thereat.

WHEREFORE, premises considered, the Decision and Resolution dated 15 September 2008 and 20 February 2009, respectively, of the Court of Appeals in CA-G.R. SP No. 101296 are hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

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

Brion and *Villarama, Jr., JJ.,* on official leave.

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[36] *China Road and Bridge Corporation v. Court of Appeals, supra* note 34 at 602.

[37] *Global Business Holdings, Inc. v. Surecomp Software, B.V.*, G.R. No. 173463, 13 October 2010, 633 SCRA 94, 101.

[38] *Id.* at 102.

EN BANC

[G.R. No. 199199. August 27, 2013]

MARICRIS D. DOLOT, Chairman of the BAGONG ALYANSANG MAKABAYAN-SORSOGON, *petitioner, vs.* **HON. RAMON PAJE, in his capacity as the Secretary of the Department of Environment and Natural Resources, REYNULFO A. JUAN, Regional Director, Mines and Geosciences Bureau, DENR, HON. RAUL R. LEE, Governor, Province of Sorsogon, ANTONIO C. OCAMPO, JR., VICTORIA A. AJERO, ALFREDO M. AGUILAR, and JUAN M. AGUILAR, ANTONES ENTERPRISES, GLOBAL SUMMIT MINES DEV'T. CORP., and TR ORE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JURISDICTION AND VENUE, DISTINGUISHED; SUPREME COURT ADMINISTRATIVE ORDER NO.7 AND ADMINISTRATIVE CIRCULAR NO. 23-2008 ISSUED BY THE COURT MERELY PROVIDE FOR THE VENUE WHERE AN ACTION MAY BE FILED, FOR THE COURT DOES NOT HAVE POWER TO CONFER JURISDICTION ON ANY COURT AS THE ALLOCATION OF JURISDICTION IS LODGED SOLELY IN CONGRESS; NEITHER CAN JURISDICTION BE DELEGATED TO ANOTHER OFFICE OR AGENCY OF THE GOVERNMENT.— The RTC cannot solely rely on SC A.O. No. 7 and Admin. Circular No. 23-2008 and confine itself within its four corners in determining whether it had jurisdiction over the action filed by the petitioners. None is more well-settled than the rule that jurisdiction, which is the power and authority of the court to hear, try and decide a case, is conferred by law. It may either be over the nature of the action, over the subject matter, over the person of the defendants or over the issues framed in the pleadings. By virtue of Batas Pambansa (B.P.) Blg. 129 or the Judiciary Reorganization Act of 1980, jurisdiction over special civil actions for *certiorari*, prohibition and *mandamus* is vested in the RTC. Particularly, Section 21(1) thereof provides that the RTCs shall exercise

original jurisdiction – in the issuance of writs of *certiorari*, prohibition, ***mandamus***, *quo warranto*, *habeas corpus* and injunction **which may be enforced in any part of their respective regions**. A.O. No. 7 and Admin. Circular No. 23-2008 was issued pursuant to Section 18 of B.P. Blg. 129, which gave the Court authority to define the territory over which a branch of the RTC shall exercise its authority. These administrative orders and circulars issued by the Court merely provide for the venue where an action may be filed. The Court does not have the power to confer jurisdiction on any court or tribunal as the allocation of jurisdiction is lodged solely in Congress. It also cannot be delegated to another office or agency of the Government. Section 18 of B.P. Blg. 129, in fact, explicitly states that the territory thus defined shall be deemed to be the territorial area of the branch concerned **for purposes of determining the venue of all suits, proceedings or actions**.

2. ID.; ID.; VENUE; VENUE RELATES ONLY TO THE PLACE OF TRIAL OR THE GEOGRAPHICAL LOCATION IN WHICH AN ACTION OR PROCEEDING SHOULD BE BROUGHT AND DOES NOT EQUATE TO THE JURISDICTION OF THE COURT; IMPROPER VENUE DOES NOT WARRANT THE OUTRIGHT DISMISSAL OF THE PETITION AS VENUE MAY BE WAIVED.— x x x Venue relates only to the place of trial or the geographical location in which an action or proceeding should be brought and **does not equate to the jurisdiction of the court**. It is intended to accord convenience to the parties, as it relates to the place of trial, and does not restrict their access to the courts. Consequently, the RTC's *motu proprio* dismissal of Civil Case No. 2011-8338 on the ground of lack of jurisdiction is patently incorrect. At most, the error committed by the petitioners in filing the case with the RTC of Sorsogon was that of improper venue. A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases (Rules) specifically states that a special civil action for continuing *mandamus* shall be filed with the "[RTC] exercising jurisdiction **over the territory where the actionable neglect or omission occurred** x x x." In this case, it appears that the alleged actionable neglect or omission occurred in the Municipality of Matnog and as such, the petition should have been filed in the RTC of Irosin. But even then, it does not warrant the outright dismissal of the petition by the RTC as

venue may be waived. Moreover, the action filed by the petitioners is not criminal in nature where venue is an essential element of jurisdiction. In *Gomez-Castillo v. Commission on Elections*, the Court even expressed that what the RTC should have done under the circumstances was to transfer the case (an election protest) to the proper branch. Similarly, it would serve the higher interest of justice if the Court orders the transfer of Civil Case No. 2011 8338 to the RTC of Irosin for proper and speedy resolution, with the RTC applying the Rules in its disposition of the case. At this juncture, the Court affirms the continuing applicability of Admin. Circular No. 23-2008 constituting the different "green courts" in the country and setting the administrative guidelines in the raffle and disposition of environmental cases. While the designation and guidelines were made in 2008, the same should operate in conjunction with the Rules.

3. ID.; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (A.M. NO. 09-6-8-SC); WRIT OF CONTINUING *MANDAMUS*; THE PETITION FILED SHOULD BE SUFFICIENT IN FORM AND SUBSTANCE BEFORE A COURT MAY TAKE FURTHER ACTION; OTHERWISE, THE COURT MAY DISMISS THE PETITION OUTRIGHT; SUFFICIENCY OF FORM AND SUBSTANCE, EXPLAINED.— The concept of continuing *mandamus* was first introduced in *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*. Now cast in stone under Rule 8 of the Rules, the writ of continuing *mandamus* enjoys a distinct procedure than that of ordinary civil actions for the enforcement/violation of environmental laws, which are covered by Part II (Civil Procedure). Similar to the procedure under Rule 65 of the Rules of Court for special civil actions for *certiorari*, prohibition and *mandamus*, Section 4, Rule 8 of the Rules requires that the petition filed should be sufficient in form and substance before a court may take further action; otherwise, the court may dismiss the petition outright. Courts must be cautioned, however, that the determination to give due course to the petition or dismiss it outright is an exercise of discretion that must be applied in a reasonable manner in consonance with the spirit of the law and always with the view in mind of seeing to it that justice is served. Sufficiency in form and substance refers to the contents of the petition filed under Rule 8, Section 1

x x x. On matters of form, the petition must be verified and must contain supporting evidence as well as a sworn certification of non-forum shopping. It is also necessary that the petitioner must be one who is aggrieved by an act or omission of the government agency, instrumentality or its officer concerned. Sufficiency of substance, on the other hand, necessitates that the petition must contain substantive allegations specifically constituting an actionable neglect or omission and must establish, at the very least, a *prima facie* basis for the issuance of the writ, *viz*: (1) an agency or instrumentality of government or its officer unlawfully neglects the performance of an act or unlawfully excludes another from the use or enjoyment of a right; (2) the act to be performed by the government agency, instrumentality or its officer is specifically enjoined by law as a duty; (3) such duty results from an office, trust or station in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein; and (4) there is no other plain, speedy and adequate remedy in the course of law.

4. ID.; ID.; ID.; THE PETITION SHOULD MAINLY INVOLVE AN ENVIRONMENTAL AND OTHER RELATED LAW, RULE OR REGULATION OR A RIGHT THEREIN; A WRIT OF CONTINUING *MANDAMUS* IS A COMMAND OF CONTINUING COMPLIANCE WITH A FINAL JUDGMENT AS IT PERMITS THE COURT TO RETAIN JURISDICTION AFTER JUDGMENT IN ORDER TO ENSURE THE SUCCESSFUL IMPLEMENTATION OF THE RELIEFS MANDATED UNDER THE COURT'S DECISION.— The writ of continuing *mandamus* is a special civil action that may be availed of "to compel the performance of an act specifically enjoined by law." **The petition should mainly involve an environmental and other related law, rule or regulation or a right therein.** The RTC's mistaken notion on the need for a final judgment, decree or order is apparently based on the definition of the writ of continuing *mandamus* under Section 4, Rule 1 of the Rules, to wit: (c) Continuing *mandamus* is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts **decreed by final judgment** which shall remain effective until judgment is fully satisfied. The final court decree, order or decision erroneously alluded to by the RTC actually pertains

to the judgment or decree that a court would eventually render in an environmental case for continuing *mandamus* and which judgment or decree shall subsequently become final. Under the Rules, after the court has rendered a judgment in conformity with Rule 8, Section 7 and such judgment has become final, the issuing court still retains jurisdiction over the case to ensure that the government agency concerned is performing its tasks as mandated by law and to monitor the effective performance of said tasks. It is only upon full satisfaction of the final judgment, order or decision that a final return of the writ shall be made to the court and if the court finds that the judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket. A writ of continuing *mandamus* is, in essence, a command of continuing compliance with a final judgment as it "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision."

5. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE MINING ACT (R.A. NO. 7942); ARBITRATION PROCEEDINGS; ARBITRATION BEFORE THE PANEL OF ARBITRATORS IS PROPER ONLY WHEN THERE IS A DISAGREEMENT BETWEEN THE PARTIES AS TO SOME PROVISIONS OF THE CONTRACT BETWEEN THEM WHICH NEEDS THE INTERPRETATION AND THE APPLICATION OF THAT PARTICULAR KNOWLEDGE AND EXPERTISE POSSESSED BY MEMBERS OF THAT PANEL, BUT NOT WHEN ONE OF THE PARTIES REPUDIATES THE EXISTENCE OF SUCH CONTRACT ON THE GROUND OF FRAUD OR OPPRESSION, FOR THE VALIDITY OF THE CONTRACT CANNOT BE SUBJECT OF ARBITRATION PROCEEDINGS.— The Court, likewise, cannot sustain the argument that the petitioners should have first filed a case with the Panel of Arbitrators (Panel), which has jurisdiction over mining disputes under R.A. No. 7942. Indeed, as pointed out by the respondents, the Panel has jurisdiction over mining disputes. But the petition filed below does not involve a mining dispute. What was being protested are the alleged negative environmental impact of the small-scale mining operation being conducted by Antones Enterprises, Global Summit Mines Development Corporation and TR Ore in the Municipality of Matnog; the authority of the Governor of Sorsogon to issue

mining permits in favor of these entities; and the perceived indifference of the DENR and local government officials over the issue. Resolution of these matters does not entail the technical knowledge and expertise of the members of the Panel but requires an exercise of judicial function. Thus, in *Olympic Mines and Development Corp. v. Platinum Group Metals Corporation*, the Court stated – **Arbitration before the Panel of Arbitrators is proper only when there is a disagreement between the parties as to some provisions of the contract between them, which needs the interpretation and the application of that particular knowledge and expertise possessed by members of that Panel**. It is not proper when one of the parties repudiates the existence or validity of such contract or agreement on the ground of fraud or oppression as in this case. The validity of the contract cannot be subject of arbitration proceedings. Allegations of fraud and duress in the execution of a contract are matters within the jurisdiction of the ordinary courts of law. **These questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function**. Consequently, resort to the Panel would be completely useless and unnecessary.

6. ID.; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (A.M. NO. 09-6-8-SC); WRIT OF CONTINUING *MANDAMUS*; INCLUSION OF JUDICIAL AFFIDAVITS NOT MANDATORY FOR IT IS ONLY IF THE PETITIONER'S EVIDENCE CONSISTS OF TESTIMONY OF WITNESSES THAT JUDICIAL AFFIDAVITS MUST BE ATTACHED TO THE PETITION.— The Court also finds that the RTC erred in ruling that the petition is infirm for failure to attach judicial affidavits. As previously stated, Rule 8 requires that the petition should be verified, contain supporting evidence and must be accompanied by a sworn certification of non-forum shopping. There is nothing in Rule 8 that compels the inclusion of judicial affidavits, albeit not prohibited. It is only if the evidence of the petitioner would consist of testimony of witnesses that it would be the time that judicial affidavits (affidavits of witnesses in the question and answer form) must be attached to the petition/complaint.

7. ID.; ID.; ID.; FAILURE TO FURNISH THE RESPONDENTS A COPY OF THE PETITION IS NOT A FATAL DEFECT WHICH WOULD WARRANT THE DISMISSAL OF THE CASE.— [F]ailure to furnish a copy of the petition to the respondents is not a fatal defect such that the case should be dismissed. The RTC could have just required the petitioners to furnish a copy of the petition to the respondents. It should be remembered that "courts are not enslaved by technicalities, and they have the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to an opportunity to be heard."

APPEARANCES OF COUNSEL

NUPL and *Joven G. Laura* for petitioner.

The Solicitor General for public respondent.

Gabriel & Mendoza Law Office for Global Summit Mines Dev't. Corp.

Del Rosario Law Office for Antonio C. Ocampo, Jr.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Order[2] dated September 16, 2011 and Resolution[3] dated October 18, 2011 issued by the Regional Trial Court (RTC) of Sorsogon, Branch 53. The assailed issuances dismissed Civil Case No. 2011-8338 for Continuing *Mandamus,* Damages and Attorney's Fees with Prayer for the Issuance of a Temporary Environment Protection Order.

Antecedent Facts

On September 15, 2011, petitioner Maricris D. Dolot (Dolot), together with the parish priest of the Holy Infant Jesus Parish

[1] *Rollo,* pp. 4-17.

[2] Penned by Presiding Judge Rofebar F. Gerona; *id.* at 34-35.

[3] Penned by Executive Judge Victor C. Gella; *id.* at 43-45.

and the officers of Alyansa Laban sa Mina sa Matnog (petitioners), filed a petition for continuing *mandamus*, damages and attorney's fees with the RTC of Sorsogon, docketed as Civil Case No. 2011-8338.[4] The petition contained the following pertinent allegations: (1) sometime in 2009, they protested the iron ore mining operations being conducted by Antones Enterprises, Global Summit Mines Development Corporation and TR Ore in *Barangays* Balocawe and Bon-ot Daco, located in the Municipality of Matnog, to no avail; (2) Matnog is located in the southern tip of Luzon and there is a need to protect, preserve and maintain the geological foundation of the municipality; (3) Matnog is susceptible to flooding and landslides, and confronted with the environmental dangers of flood hazard, liquefaction, ground settlement, ground subsidence and landslide hazard; (4) after investigation, they learned that the mining operators did not have the required permit to operate; (5) Sorsogon Governor Raul Lee and his predecessor Sally Lee issued to the operators a small-scale mining permit, which they did not have authority to issue; (6) the representatives of the Presidential Management Staff and the Department of Environment and Natural Resources (DENR), despite knowledge, did not do anything to protect the interest of the people of Matnog;[5] and (7) the respondents violated Republic Act (R.A.) No. 7076 or the People's Small-Scale Mining Act of 1991, R.A. No. 7942 or the Philippine Mining Act of 1995, and the Local Government Code.[6] Thus, they prayed for the following reliefs: (1) the issuance of a writ commanding the respondents to immediately stop the mining operations in the Municipality of Matnog; (2) the issuance of a temporary environment protection order or TEPO; (3) the creation of an inter-agency group to undertake the rehabilitation of the mining site; (4) award of damages; and (5) return of the iron ore, among others.[7]

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[4] *Id*. at 21-33.

[5] *Id*. at 22-25.

[6] *Id*. at 25-29.

[7] *Id*. at 29-32.

The case was referred by the Executive Judge to the RTC of Sorsogon, Branch 53 being the designated environmental court.[8] In the Order[9] dated September 16, 2011, the case was summarily dismissed for lack of jurisdiction.

The petitioners filed a motion for reconsideration but it was denied in the Resolution[10] dated October 18, 2011. Aside from sustaining the dismissal of the case for lack of jurisdiction, the RTC[11] further ruled that: (1) there was no final court decree, order or decision yet that the public officials allegedly failed to act on, which is a condition for the issuance of the writ of continuing *mandamus*; (2) the case was prematurely filed as the petitioners therein failed to exhaust their administrative remedies; and (3) they also failed to attach judicial affidavits and furnish a copy of the complaint to the government or appropriate agency, as required by the rules.[12]

Petitioner Dolot went straight to this Court on pure questions of law.

Issues

The main issue in this case is whether the RTC-Branch 53 has jurisdiction to resolve Civil Case No. 2011-8338. The other issue is whether the petition is dismissible on the grounds that: (1) there is no final court decree, order or decision that the public officials allegedly failed to act on; (2) the case was prematurely filed for failure to exhaust administrative remedies; and (3) the petitioners failed to attach judicial affidavits and furnish a copy of the complaint to the government or appropriate agency.

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[8] *Id.* at 34.

[9] *Id.* at 34-35.

[10] *Id.* at 43-45.

[11] The motion for reconsideration was resolved by the Pairing Judge of Branch 53 since the Presiding Judge recused himself from the case.

[12] *Rollo*, pp. 43-44.

Ruling of the Court

Jurisdiction and Venue

In dismissing the petition for lack of jurisdiction, the RTC, in its Order dated September 16, 2011, apparently relied on SC Administrative Order (A.O.) No. 7 defining the territorial areas of the Regional Trial Courts in Regions 1 to 12, and Administrative Circular (Admin. Circular) No. 23-2008,[13] designating the environmental courts "to try and decide violations of environmental laws x x x **committed within their respective territorial jurisdictions**."[14] Thus, it ruled that its territorial jurisdiction was limited within the boundaries of Sorsogon City and the neighboring municipalities of Donsol, Pilar, Castilla, Casiguran and Juban and that it was "bereft of jurisdiction to entertain, hear and decide [the] case, as such authority rests before another co-equal court."[15]

Such reasoning is plainly erroneous. The RTC cannot solely rely on SC A.O. No. 7 and Admin. Circular No. 23-2008 and confine itself within its four corners in determining whether it had jurisdiction over the action filed by the petitioners.

None is more well-settled than the rule that jurisdiction, which is the power and authority of the court to hear, try and decide a case, is conferred by law.[16] It may either be over the nature of the action, over the subject matter, over the person of the defendants or over the issues framed in the pleadings.[17] By

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[13] Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases. Issued by the Court on January 28, 2008. Branch 53 of Sorsogon is one of the special courts designated in the Fifth Judicial Region. The other courts are Branch 1 (Legaspi City), Branch 13 (Ligao City), Branch 15 (Tabaco City), Branch 25 (Naga City), Branch 32 (Pili), Branch 35 (Iriga City), Branch 38 (Daet) and Branch 47 (Masbate City).

[14] *Rollo*, p. 34.

[15] *Id.*

[16] *Landbank of the Philippines v. Villegas*, G.R. No. 180384, March 26, 2010, 616 SCRA 626, 630.

[17] *Platinum Tours & Travel, Inc. v. Panlilio*, 457 Phil. 961, 967 (2003).

virtue of Batas Pambansa (B.P.) Blg. 129 or the Judiciary Reorganization Act of 1980, jurisdiction over special civil actions for *certiorari*, prohibition and *mandamus* is vested in the RTC. Particularly, Section 21(1) thereof provides that the RTCs shall exercise original jurisdiction –

> in the issuance of writs of *certiorari*, prohibition, ***mandamus***, *quo warranto*, *habeas corpus* and injunction **which may be enforced in any part of their respective regions**. (Emphasis ours)

A.O. No. 7 and Admin. Circular No. 23-2008 was issued pursuant to Section 18 of B.P. Blg. 129, which gave the Court authority to define the territory over which a branch of the RTC shall exercise its authority. These administrative orders and circulars issued by the Court merely provide for the venue where an action may be filed. The Court does not have the power to confer jurisdiction on any court or tribunal as the allocation of jurisdiction is lodged solely in Congress.[18] It also cannot be delegated to another office or agency of the Government.[19] Section 18 of B.P. Blg. 129, in fact, explicitly states that the territory thus defined shall be deemed to be the territorial area of the branch concerned **for purposes of determining the venue of all suits, proceedings or actions**. It was also clarified in *Office of the Court Administrator v. Judge Matas*[20] that –

> Administrative Order No. 3 [defining the territorial jurisdiction of the Regional Trial Courts in the National Capital Judicial Region] and, in like manner, Circular Nos. 13 and 19, did not *per se* confer jurisdiction on the covered regional trial courts or its branches, such that non-observance thereof would nullify their judicial acts. The administrative order merely defines the limits of the administrative area within which a branch of the court may exercise its authority pursuant to the jurisdiction conferred by Batas Pambansa Blg. 129.[21]

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[18] *Gomez-Castillo v. Commission on Elections*, G.R. No. 187231, June 22, 2010, 621 SCRA 499, 507.

[19] *Id.*

[20] 317 Phil. 9 (1995).

[21] *Id.* at 22, citing *Malaloan v. Court of Appeals*, G.R. No. 104879, May 6, 1994, 232 SCRA 249, 261.

The RTC need not be reminded that venue relates only to the place of trial or the geographical location in which an action or proceeding should be brought and **does not equate to the jurisdiction of the court**. It is intended to accord convenience to the parties, as it relates to the place of trial, and does not restrict their access to the courts.[22] Consequently, the RTC's *motu proprio* dismissal of Civil Case No. 2011-8338 on the ground of lack of jurisdiction is patently incorrect.

At most, the error committed by the petitioners in filing the case with the RTC of Sorsogon was that of improper venue. A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases (Rules) specifically states that a special civil action for continuing *mandamus* shall be filed with the "[RTC] exercising jurisdiction **over the territory where the actionable neglect or omission occurred** x x x."[23] In this case, it appears that the alleged actionable neglect or omission occurred in the Municipality of Matnog and as such, the petition should have been filed in the RTC of Irosin.[24] But even then, it does not warrant the outright dismissal of the petition by the RTC as venue may be waived.[25] Moreover, the action filed by the petitioners is not criminal in nature where venue is an essential element of jurisdiction.[26] In

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[22] *Mendiola v. Court of Appeals*, G.R. No. 159746, July 18, 2012, 677 SCRA 27, 50.

[23] Rules of Procedure for Environmental Cases, Rule 8, Section 2.

Rule 1, Section 1, meanwhile, states that the rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations.

[24] Under A.O. No. 7, Series of 1983 (as amended, 2009), RTC-Irosin, Branch 55, covers the municipalities of Irosin, Matnog and Santa Magdalena. Branches 51 to 53 of RTC-Sorsogon, on the other hand, cover the city of Sorsogon and the municipalities of Casiguran, Castilla, Donsol, Juban and Pilar.

[25] *Rudolf Lietz Holdings, Inc. v. Registry of Deeds of Parañaque*, 398 Phil. 626, 632 (2000).

[26] *Union Bank of the Philippines v. People*, G.R. No. 192565, February 28, 2012, 667 SCRA 113, 122.

Gomez-Castillo v. Commission on Elections,[27] the Court even expressed that what the RTC should have done under the circumstances was to transfer the case (an election protest) to the proper branch. Similarly, it would serve the higher interest of justice[28] if the Court orders the transfer of Civil Case No. 2011 8338 to the RTC of Irosin for proper and speedy resolution, with the RTC applying the Rules in its disposition of the case.

At this juncture, the Court affirms the continuing applicability of Admin. Circular No. 23-2008 constituting the different "green courts" in the country and setting the administrative guidelines in the raffle and disposition of environmental cases. While the designation and guidelines were made in 2008, the same should operate in conjunction with the Rules.

A.M. No. 09-6-8-SC: Rules of Procedure for Environmental Cases

In its Resolution dated October 18, 2011, which resolved the petitioners' motion for reconsideration of the order of dismissal, the RTC further ruled that the petition was dismissible on the following grounds: (1) there is no final court decree, order or decision yet that the public officials allegedly failed to act on; (2) the case was prematurely filed for failure to exhaust administrative remedies; and (3) there was failure to attach judicial affidavits and furnish a copy of the complaint to the government or appropriate agency.[29] The respondents, and even the Office of the Solicitor General, in behalf of the public respondents, all concur with the view of the RTC.

The concept of continuing *mandamus* was first introduced in *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*.[30] Now cast in stone under Rule 8 of

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[27] G.R. No. 187231, June 22, 2010, 621 SCRA 499.

[28] 1987 CONSTITUTION, Article IV, Section 5; Internal Rules of the Supreme Court, as amended, Rule 4, Section 3; A.M. No. 10-4-20-SC (Revised), March 12, 2013.

[29] *Rollo*, pp. 43-44.

[30] G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661.

the Rules, the writ of continuing *mandamus* enjoys a distinct procedure than that of ordinary civil actions for the enforcement/violation of environmental laws, which are covered by Part II (Civil Procedure). Similar to the procedure under Rule 65 of the Rules of Court for special civil actions for *certiorari*, prohibition and *mandamus*, Section 4, Rule 8 of the Rules requires that the petition filed should be sufficient in form and substance before a court may take further action; otherwise, the court may dismiss the petition outright. Courts must be cautioned, however, that the determination to give due course to the petition or dismiss it outright is an exercise of discretion that must be applied in a reasonable manner in consonance with the spirit of the law and always with the view in mind of seeing to it that justice is served.[31]

Sufficiency in form and substance refers to the contents of the petition filed under Rule 8, Section 1:

> When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

On matters of form, the petition must be verified and must contain supporting evidence as well as a sworn certification of

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[31] *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, 567 Phil. 255, 281-282 (2008).

non-forum shopping. It is also necessary that the petitioner must be one who is aggrieved by an act or omission of the government agency, instrumentality or its officer concerned. Sufficiency of substance, on the other hand, necessitates that the petition must contain substantive allegations specifically constituting an actionable neglect or omission and must establish, at the very least, a *prima facie* basis for the issuance of the writ, *viz*: (1) an agency or instrumentality of government or its officer unlawfully neglects the performance of an act or unlawfully excludes another from the use or enjoyment of a right; (2) the act to be performed by the government agency, instrumentality or its officer is specifically enjoined by law as a duty; (3) such duty results from an office, trust or station in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein; and (4) there is no other plain, speedy and adequate remedy in the course of law.[32]

The writ of continuing *mandamus* is a special civil action that may be availed of "to compel the performance of an act specifically enjoined by law."[33] **The petition should mainly involve an environmental and other related law, rule or regulation or a right therein.** The RTC's mistaken notion on the need for a final judgment, decree or order is apparently based on the definition of the writ of continuing *mandamus* under Section 4, Rule 1 of the Rules, to wit:

> (c) Continuing *mandamus* is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts **decreed by final judgment** which shall remain effective until judgment is fully satisfied. (Emphasis ours)

The final court decree, order or decision erroneously alluded to by the RTC actually pertains to the judgment or decree that

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[32] The petition must also specify that it concerns an environmental law, rule or regulation and must pray that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied.

[33] *Boracay Foundation, Inc. v. Province of Aklan*, G.R. No. 196870, June 26, 2012, 674 SCRA 555, 606.

a court would eventually render in an environmental case for continuing *mandamus* and which judgment or decree shall subsequently become final.

Under the Rules, after the court has rendered a judgment in conformity with Rule 8, Section 7 and such judgment has become final, the issuing court still retains jurisdiction over the case to ensure that the government agency concerned is performing its tasks as mandated by law and to monitor the effective performance of said tasks. It is only upon full satisfaction of the final judgment, order or decision that a final return of the writ shall be made to the court and if the court finds that the judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket.[34] A writ of continuing *mandamus* is, in essence, a command of continuing compliance with a final judgment as it "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision."[35]

The Court, likewise, cannot sustain the argument that the petitioners should have first filed a case with the Panel of Arbitrators (Panel), which has jurisdiction over mining disputes under R.A. No. 7942.

Indeed, as pointed out by the respondents, the Panel has jurisdiction over mining disputes.[36] But the petition filed below does not involve a mining dispute. What was being protested are the alleged negative environmental impact of the small-scale mining operation being conducted by Antones Enterprises, Global Summit Mines Development Corporation and TR Ore in the Municipality of Matnog; the authority of the Governor of

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[34] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 8, Section 8.

[35] *Supra* note 33. (Underscoring ours)

[36] Section 77 of R.A. No. 7942 (Philippine Mining Act) provides that the Panel of Arbitrators shall have exclusive and original jurisdiction to hear and decide (a) disputes involving rights to mining areas; (b) disputes involving mineral agreements or permits; (c) disputes involving surface owners, occupants and claimholders/concessionaires; and (d) disputes pending before the Bureau and the Department at the date of the effectivity of R.A. No. 7942.

Sorsogon to issue mining permits in favor of these entities; and the perceived indifference of the DENR and local government officials over the issue. Resolution of these matters does not entail the technical knowledge and expertise of the members of the Panel but requires an exercise of judicial function. Thus, in *Olympic Mines and Development Corp. v. Platinum Group Metals Corporation*,[37] the Court stated –

> **Arbitration before the Panel of Arbitrators is proper only when there is a disagreement between the parties as to some provisions of the contract between them, which needs the interpretation and the application of that particular knowledge and expertise possessed by members of that Panel**. It is not proper when one of the parties repudiates the existence or validity of such contract or agreement on the ground of fraud or oppression as in this case. The validity of the contract cannot be subject of arbitration proceedings. Allegations of fraud and duress in the execution of a contract are matters within the jurisdiction of the ordinary courts of law. **These questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function**.[38] (Emphasis supplied in the former and ours in the latter)

Consequently, resort to the Panel would be completely useless and unnecessary.

The Court also finds that the RTC erred in ruling that the petition is infirm for failure to attach judicial affidavits. As previously stated, Rule 8 requires that the petition should be verified, contain supporting evidence and must be accompanied by a sworn certification of non-forum shopping. There is nothing in Rule 8 that compels the inclusion of judicial affidavits, albeit not prohibited. It is only if the evidence of the petitioner would consist of testimony of witnesses that it would be the time that judicial affidavits (affidavits of witnesses in the question and answer form) must be attached to the petition/complaint.[39]

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[37] G.R. No. 178188, August 14, 2009, 596 SCRA 314.

[38] *Id.* at 331-332, citing *Gonzales v. Climax Mining Ltd.*, 492 Phil. 682, 696-697 (2005).

[39] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Section 3.

Finally, failure to furnish a copy of the petition to the respondents is not a fatal defect such that the case should be dismissed. The RTC could have just required the petitioners to furnish a copy of the petition to the respondents. It should be remembered that "courts are not enslaved by technicalities, and they have the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to an opportunity to be heard."[40]

WHEREFORE, the petition is **GRANTED.** The Order dated September 16, 2011 and Resolution dated October 18, 2011 issued by the Regional Trial Court of Sorsogon, Branch 53, dismissing Civil Case No. 2011-8338 are **NULLIFIED AND SET ASIDE.** The Executive Judge of the Regional Trial Court of Sorsogon is **DIRECTED** to transfer the case to the Regional Trial Court of Irosin, Branch 55, for further proceedings with dispatch. Petitioner Maricris D. Dolot is also **ORDERED** to furnish the respondents with a copy of the petition and its annexes within ten (10) days from receipt of this Decision and to submit its Compliance with the RTC of Irosin.

SO ORDERED.

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

Brion, J., on leave.

Villarama, Jr., J., on official leave.

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[40] *Tomas v. Santos*, G.R. No. 190448, July 26, 2010, 625 SCRA 645, 650-651.

THIRD DIVISION

[A.M. No. P-09-2726. August 28, 2013]
(Formerly OCA IPI No. 08-2923-P)
[A.M. No. P-10-2884. August 28, 2013]
(Formerly OCA IPI No. 08-2750-P)

JUDGE ROBERTO P. BUENAVENTURA, Metropolitan Trial Court, Branch 63, Makati City, *complainant, vs.* **FE A. MABALOT, Clerk of Court III, Metropolitan Trial Court, Branch 63, Makati City,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED BRIBERY; TO BE LIABLE THEREFOR, THE OFFENDER MUST BE A PUBLIC OFFICER ENTRUSTED WITH LAW ENFORCEMENT WHO REFRAINS FROM ARRESTING OR PROSECUTING AN OFFENDER IN CONSIDERATION OF ANY PROMISE, GIFT OR PRESENT; THE COMPLAINANT MUST PRESENT A PANOPLY OF EVIDENCE TO SUPPORT AN ACCUSATION FOR BRIBERY FOR BARE ALLEGATION IS NOT SUFFICIENT TO HOLD A PERSON LIABLE THEREFOR. — As correctly opined by the Investigating Judge, Mabalot cannot be criminally liable for either direct or indirect bribery penalized under the RPC, there being no evidence that she did in fact accept or receive anything from Atty. Gaviola in connection with the election protest of his wife pending in their branch. As can be gleaned from the subject text message, the "something" offered by Atty. Gaviola was intended not for her, but for De Sesto. She cannot be liable for qualified bribery either as this crime requires that the offender be a public officer entrusted with law enforcement who refrains from arresting or prosecuting an offender in consideration of any promise, gift or present. As settled, an accusation of bribery is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation. Bare allegation would not suffice to hold Mabalot liable. Here, no direct and convincing evidence, other than the text message, was presented which

can prove her alleged bribery. Hence, she cannot be held guilty of said charge.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; BRANCH CLERK OF COURT; SERVES AS A SENTINEL OF JUSTICE AND ANY ACT OF IMPROPRIETY ON HER PART IMMEASURABLY AFFECTS THE HONOR AND DIGNITY OF THE JUDICIARY AND THE PEOPLE'S CONFIDENCE IN IT.— This does not mean, however, that Mabalot is relieved of any liability. Her defense that her text message was only a query as to De Sesto's receipt of whatever Atty. Gaviola intended to give him cannot exonerate her from administrative liability. The Court agrees with the view of the Investigating Judge that she committed misconduct. A perusal of the said text message reveals that Mabalot acted contrary to the norms of conduct required of her position. As Branch CoC, she serves as a sentinel of justice and any act of impropriety on her part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. As the highest ranked court personnel next to the presiding judge, she should have prevented or deterred Atty. Gaviola from giving something to De Sesto. She knew very well that such offer was improper for, otherwise, she would not have added the following phrase in her text message, "*don't worry d worry di malalaman ni Judge…*"

3. ID.; ID.; ID.; ID.; A PUBLIC SERVANT MUST EXHIBIT THE HIGHEST SENSE OF HONESTY AND INTEGRITY FOR NO LESS THAN THE CONSTITUTION MANDATES THAT A PUBLIC OFFICE IS A PUBLIC TRUST AND PUBLIC OFFICERS AND EMPLOYEES MUST AT ALL TIMES BE ACCOUNTABLE TO THE PEOPLE, SERVE THEM WITH UTMOST RESPONSIBILITY, INTEGRITY, LOYALTY AND EFFICIENCY, ACT WITH PATRIOTISM AND JUSTICE, AND LEAD MODEST LIVES.— Mabalot should be reminded that a public servant must exhibit the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic

sentiments. They should be taken as working standards by all in the public service.

4. ID.; ID.; ID.; ID; CHARGE OF MISCONDUCT; MISCONDUCT, EXPOUNDED; FAILURE TO PREVENT AN ILLICIT OFFER OR A CORRUPT ACT IS VIOLATIVE OF THE NORM OF DECENCY AND DIMINISHES THE PEOPLE'S RESPECT FOR THOSE IN THE GOVERNMENT SERVICE, WHICH CONSTITUTES MISCONDUCT; IN THE ABSENCE OF THE ELEMENT OF CORRUPTION OR WRONGFUL MOTIVE, THE RESPONDENT-EMPLOYEE CAN BE HELD GUILTY ONLY OF SIMPLE MISCONDUCT.— Mabalot's failure to prevent the illicit offer or corrupt act of Atty. Gaviola undoubtedly violates the norm of decency and diminishes or tends to diminish the people's respect for those in the government service. Indeed, such act constitutes misconduct. To constitute misconduct, the act or acts must have a direct relation to, and be connected with, the performance of her official duties. Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x. The Court further defines 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 gross if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be proven by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. 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. In the present case, there was no evidence to show that Mabalot unlawfully or wrongfully used her official function as Branch CoC for her own benefit or personal gain. Her text message to De Sesto reads in part "x x x *pinabibigay sa akin pero pinadidiretso ko sa yo*." It is clear from the said message that the "something" offered by Atty. Gaviola, in connection with the pending election protest, was not intended for her but for De Sesto. No corrupt or wrongful motive can be attributed on her part because she did not receive or accept that "something." As the qualifying element of corruption was not established, the Investigating Judge was correct in giving her the benefit of the doubt and finding her guilty of simple misconduct only.

5. ID.; ID.; ID.; ID.; ID.; CATEGORICAL ADMISSION OF UTTERING THREATENING WORDS AGAINST A SUPERIOR PREVAILS OVER DEFENSE OF DENIAL; THREATENING THE LIFE OF A SUPERIOR DEMONSTRATES LACK OF RESPECT.— With respect to the utterance of a grave threat, in her Judicial Memorandum, Mabalot admitted that she talked to Soller on May 6, 2008 and told her about the case involving their 56-hectare family property; the stress she experienced in seeing her family members fighting in court, and the extreme stress brought about by this case, which caused her three blocked arteries requiring an open heart surgery. She denied having made any threatening remarks against the life of Judge Buenaventura as narrated in the affidavit, to wit, "*If our lot will be foreclosed, I will commit suicide but before I kill myself I will kill Buenaventura.*" During the pre-hearing conference between the parties on March 7, 2011, however, Mabalot admitted that she uttered those words out of depression but without intention to make good such threat. The Court believes that such categorical admission prevails over her negative allegation that she did not utter threatening words against Judge Buenaventura. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value. As correctly concluded by the Investigating Judge, Mabalot's earlier denial crumbles in the light of her own admission that she indeed uttered threats to kill Judge

Buenaventura. Her act of threatening the life of her superior certainly demonstrated lack of respect.

6. ID.; ID.; ID.; ID.; ID.; THE ACT OF THREATENING THE LIFE OF A SUPERIOR CANNOT BE CONSIDERED AS MISCONDUCT, NOT BEING RELATED TO THE DISCHARGE OF THE EMPLOYEE'S OFFICIAL FUNCTIONS.— The Court, however, agrees with the Investigating Judge that the act committed by Mabalot cannot be considered as "misconduct," not being related to the discharge of her official functions. There is no proof that her act of threatening Judge Buenaventura through words and text messages were related to, or performed by taking advantage of, her position as Branch CoC. In administrative proceedings, the burden of proving the acts complained of, particularly the relation to the official functions of the public officer, rests on the complainant. In this regard, Judge Buenaventura failed to prove such relation. The Investigating Judge was, therefore, correct in concluding that Mabalot acted in her private capacity. Thus, she cannot be held liable for misconduct, much less for gross misconduct.

7. ID.; ID.; ID.; ID.; CHARGE OF GROSS INSUBORDINATION; INSUBORDINATION IS A WILLFUL OR INTENTIONAL DISREGARD OF THE LAWFUL AND REASONABLE INSTRUCTIONS OF THE EMPLOYER; NOT APPLICABLE. — The Investigating Judge likewise was correct when he recommended that Mabalot be absolved from the charge of gross insubordination. Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. In this case, there was no order or directive issued by Judge Buenaventura that was willfully or intentionally disregarded or not complied with by Mabalot so as to constitute gross insubordination.

8. ID.; ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; REFERS TO ACTS OR OMISSIONS THAT VIOLATE THE NORM OF PUBLIC ACCOUNTABILITY AND DIMINISH – OR TEND TO DIMINISH – THE PEOPLE'S FAITH IN THE JUDICIARY, AND THE SAME NEED NOT BE RELATED OR CONNECTED TO A PUBLIC OFFICER'S OFFICIAL

FUNCTIONS; UTTERANCES AND TEXT MESSAGES OF THREATS TO GET EVEN DEMONSTRATED CONDUCT UNBECOMING OF A COURT PERSONNEL.— [T]he complained act constituted conduct prejudicial to the best interest of the service which, as held in *Largo v. Court of Appeals*, need not be related or connected to a public officer's official functions. The rules do not enumerate the acts constituting conduct prejudicial to the best interest of the service. In *Ito v. De Vera*, the Court wrote that it referred to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary. x x x. In the case at bench, Mabalot's utterances and text messages of threats to get even indeed demonstrated conduct unbecoming of a court personnel. Doubtless, such acts tarnished not only the image and integrity of her public office but also the public perception of the very image of the Judiciary of which she was a part. The Investigating Judge, thus, correctly adjudged her guilty of conduct prejudicial to the best interest of the service.

9. ID.; ID.; ID.; ID.; ID.; THE IMAGE OF A COURT OF JUSTICE IS MIRRORED BY THE CONDUCT, OFFICIAL OR OTHERWISE, OF ITS PERSONNEL – FROM THE JUDGE TO THE LOWEST OF ITS RANK AND FILE – WHO ARE ALL BOUND TO ADHERE TO THE EXACTING STANDARD OF MORALITY AND DECENCY IN BOTH THEIR PROFESSIONAL AND PRIVATE ACTIONS.— Time and again, this Court has declared that the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel — from the judge to the lowest of its rank and file — who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions. In the case of *Consolacion v. Gambito*, quoting the pronouncement in *Hernando v. Bengson*, the Court stressed that: The conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the Judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the Judiciary for the very image of the latter is

necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.

10. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PROPER PENALTY.— As regards the imposition of the proper penalty, the Civil Service Rules classifies conduct prejudicial to the best interest of the service as a grave offense. Under Section 52(A)(20), Rule IV of the said Civil Service Rules, it is punishable by suspension for six (6) months and one (1) day to one year, for the first offense, and by dismissal for the second offense. On the other hand, Section 52(B)(2), Rule IV of the same Rules classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense, and by dismissal for the second offense. In this case, Mabalot was found guilty of two civil service offenses, simple misconduct and conduct prejudicial to the best interest of the service. Section 55, Rule IV of the Civil Service Rules provides that in cases where the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge, with the rest considered as aggravating circumstances. Thus, Mabalot's conviction for the two (2) offenses merits the imposition of the penalty of suspension of six (6) months and one (1) day to one year without pay, which is the penalty for the more serious charge of conduct prejudicial to the best interest of the service with simple misconduct as aggravating circumstance. The rules allow the consideration of mitigating and aggravating circumstances and provide for the manner of imposition of the proper penalty. x x x In the case under consideration, Mabalot's health condition, with her having undergone bypass operation and her long years in government service are appreciated as mitigating factors in her favor. Taking into consideration these mitigating circumstances and the aggravating circumstance of simple misconduct, paragraph (d) of Section 54 applies. Accordingly, the minimum penalty of suspension for six (6) months is the appropriate penalty for

her administrative transgression. Considering Mabalot's compulsory retirement on October 6, 2012, however, the penalty of suspension is no longer feasible. Thus, in lieu of suspension, the penalty of fine in the amount of Forty Thousand Pesos (₱40,000.00) would be appropriate under the circumstances.

11. ID.; ID.; ID.; WHEN AN OFFICER OR EMPLOYEE IS DISCIPLINED, THE OBJECT IS THE IMPROVEMENT OF THE PUBLIC SERVICE AND THE PRESERVATION OF THE PUBLIC'S FAITH AND CONFIDENCE IN THE GOVERNMENT.— [T]his Court cannot tolerate Mabalot's actuations which indubitably fell short of the standard of conduct required of her as a civil servant in the court of justice. Her retirement notwithstanding, she should and must be held accountable. When an officer or employee is disciplined, the object is the improvement of the public service and the preservation of the public's faith and confidence in the government.

D E C I S I O N

MENDOZA, *J.*:

This pertains to the Integrated Report and Recommendation,[1] dated June 15, 2012, of Executive Judge Benjamin T. Pozon *(Judge Pozon)*, Regional Trial Court, Makati City, in the above entitled administrative matters, submitted through the Office of the Court Administrator *(OCA)*, finding that respondent Fe A. Mabalot *(Mabalot)* had committed simple misconduct and conduct prejudicial to the best interest of the service.

The Facts

OCA I.P.I. No. 08-2750-P (Now A.M. No. P-10-2884)

In a letter,[2] dated December 12, 2007, Judge Roberto P. Buenaventura *(Judge Buenaventura)*, Presiding Judge, Metropolitan Trial Court, Branch 63, Makati City *(MeTC)*, requested the transfer of Mabalot, Clerk of Court *(CoC)* III of

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[1] *Rollo* (A.M. No. P-09-2726), pp. 178-192.

[2] *Rollo* (A.M. No. P-10-2884), p. 9.

the same branch, for Conduct Prejudicial to the Best Interest of the Service and Act Violative of Section 3(a) of Republic Act *(R.A.)* No. 3019 or the Anti-Graft and Corrupt Practices Act.

Judge Buenaventura learned about a text message sent by Mabalot to Felipe De Sesto, Jr. *(De Sesto),* one of his staff assigned as Chairman of the Committee on Revision, in an election case, "*Gaviola v. Torres,*" pending in his sala. The text message intimated that she personally knew Atty. Gaviola, the husband of the protestant in the said case. It concerned the delivery of something to De Sesto from Gaviola's husband, who was the former boss of Mabalot. Its tenor suggested a bribery which Mabalot was trying to mediate relative to the case. The text message reads:

Manong Jun nabigay ba sa yo yong pinabibigay ni Atty. Gaviola dating boss ko sa Landbank asawa ng protestant ni Torres dagdagan daw sa pasko don't worry dworry di malalaman ni Judge pinabibigay sa akin pero pinadidiretso ko sa yoo sa yo.[3]

Judge Buenaventura averred that the said matter caused grave concern on his part considering that the credibility of the whole process of the election protest pending in his sala was at stake. For said reason, he stated that he had lost his trust and confidence in Mabalot. There was, therefore, a need for her immediate transfer to protect the integrity of his office.

On December 13, 2007, the said letter-request was endorsed as a complaint by MeTC Executive Judge Henry Laron *(Judge Laron)* to the OCA, for appropriate action and disposition, with a manifestation that Mabalot had already been detailed to the Office of the Clerk of Court, MeTC, Makati City, per Memorandum, dated December 13, 2007.[4] The said administrative complaint was docketed as OCA IPI No. 08-2750-P.

In her Comment,[5] dated February 1, 2008, Mabalot denied the allegation that she was involved in a bribery or corrupt act

[3] *Id.* at 10.

[4] *Id.* at 8.

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

alluded to in the said text message. She argued that had it been true that she intended to favor the protestant, she could have simply taken the keys to the padlocks of the ballot boxes which were left by Grace Beltran in the chambers during the recount of votes. Analyzing the text message, she pointed out that the message sender "had not a hand in the bribery" as the text message was only a query if De Sesto had received whatever Atty. Gaviola gave and it was not even clear from the message what he would give. She categorically denied that she was the author of the text message which could be the doing of some individuals who took the opportunity of using her cellular phone when she left the said phone on her table.

She further claimed, among others, that in her long years of government service, she had performed her duties with utmost responsibility and efficiency, guided by the principle that "public office is a public trust;" that in her entire service, it was the first time that she was charged with an administrative offense which was obviously motivated by personal ire; and that as she was nearing her mandatory retirement age, she would not risk her long years of government service by peddling a bribe from a party in a case. Confirming the manifestation of Judge Laron, she added that inasmuch as she could no longer work effectively with Judge Buenaventura, considering the strained relations, she requested to be detailed to another position where she could serve her salary's worth.[6]

Pursuant to the recommendation of the OCA, the Court in a Resolution,[7] dated March 4, 2009, referred the matter to then Executive Judge Maria Cristina J. Cornejo of RTC, Makati City, for investigation, report and recommendation within sixty (60) days from notice. The latter, however, recused herself and the case was referred to then Vice Executive Judge Pozon, Presiding Judge, RTC, Makati.

On October 9, 2009, the pre-hearing conference was held and the parties agreed to dispense with a formal hearing and

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[6] *Id.* at 4.

[7] *Id.* at 16.

presentation of witnesses or other evidence, and considered the matter closed and submitted for resolution.

As agreed upon, the only issue was whether or not Mabalot had some participation in the suspected bribery.

On October 12, 2009, Judge Buenaventura furnished the Investigating Judge with a copy of his Reply to Mabalot's Comment, which he had filed with the OCA on October 17, 2008, but was not included in the records endorsed by the Court.

Thereafter, Judge Pozon submitted his Report and Recommendation,[8] dated November 13, 2009. In the said Report, it was established that the subject text message was sent from a cellular phone with number 0928-7787724 belonging to Mabalot. Nonetheless, the facts showed that Mabalot did not accept any offer or promise or receive a gift or present. Thus, some elements of the crime of direct bribery under Article 210 of the Revised Penal Code (RPC) were lacking.

The report concluded that Mabalot could not be criminally liable for direct bribery. Neither could she be liable for indirect bribery, as defined and penalized under the RPC, as what was offered by Atty. Gaviola was not intended for her but for De Sesto. Judge Pozon, however, found Mabalot liable for violation of the Code of Conduct for Court Personnel. "[I]nstead of suggesting to Atty. Gaviola to directly give that 'something' to Felipe De Sesto as [she] should have discouraged, if not totally reject or decline the said offer intended for De Sesto. Being the Branch CoC, she should be the first among the court employees to zealously guard the public trust character of her office."[9] Mabalot's acts, according to Judge Pozon, constituted misconduct.

OCA IPI No. 08-2923-P (Now A. M. No. P-09-2726)

In his letter-complaint,[10] dated May 19, 2008, Judge Buenaventura reported to Judge Laron the disturbing actuations

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[8] *Id.* at 26-32.

[9] *Id.* at 31.

[10] *Rollo* (A.M. No. P-09-2726), p. 6.

of Mabalot. In his Affidavit,[11] dated May 22, 2008, Judge Buenaventura claimed, among others, that on May 6, 2008, Mabalot went to his chamber, rudely accused him of being the cause of all her miseries and threatened to harm or kill him; and that, in the presence of other staff members of Branch 63, she hurled insulting words at him, mocking even his religious practice of praying regularly; that sensing that she was not in her right frame of mind, he avoided any discussion with her and just let what she wanted to say until she left his chambers; that after she left his office, she made a threat, in the presence of other court personnel, that she was going to kill him; that this threat was confirmed by Rowena Soller *(Soller)*, Branch COC, MeTC, Branch 65, who reported that she (Mabalot) stated in her presence that she was going to kill Judge Buenaventura and then kill herself afterwards; and that a series of text messages to him then followed, threatening that she would get even with him by destroying him and his family.

Judge Buenaventura averred that Mabalot's actuations in making threats against his life and her attempts to "blackmail" him were not only acts unbecoming of a court personnel but should be given serious attention in the light of judicial-related killings where a number of judges had already been killed.

Judge Buenaventura observed that Mabalot appeared to be very mentally disturbed and suggested that an evaluation of her mental capacity or fitness to carry out court duties and responsibilities be conducted.

In her Affidavit and Counter-Affidavit,[12] dated June 2, 2008, Mabalot alleged, among others, that on May 6, 2008, she went to MeTC, Branch 63, to get her own personal law books and to talk to Judge Buenaventura to tell him that her illegal detail was about to expire as well as her intention to report her situation to the Chief Justice as advised by some judges who were her friends; that she was also to tell Judge Buenaventura to stop Liza Pamittan from spreading the rumor that she was being

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

[12] *Id.* at 24-29.

dismissed from the service; that she was, however, unprofessionally driven away by Judge Buenaventura as he was busy with the election cases; that in tears, she asked Judge Buenaventura if he felt fulfillment, having ruined her career, dignity and life.

Mabalot also claimed that on the same day, she went to Soller for the approval and signature of the MeTC Executive Judge on her leave application; that she was so desperate and hopeless because her salary had been withheld since March 2008 and she was surviving with only ₱500.00 allowance a week from her sister; that in addition, she was being required to refund the excess of the Sheriff's Trust Fund in the amount of ₱59,000.00; that she was heavily indebted due to her sister's operation and incurred relocation expenses when she transferred to Quezon City; and that with all these problems, she thought of dying and eliminating the source of all her miseries which, according to her, was just a normal human reaction, but remote to happen as she had always been a practicing Catholic.

Mabalot also admitted that she texted Judge Buenaventura as he arrogantly refused to talk to her.

On July 16, 2008,[13] Judge Laron referred to the OCA the Resolution,[14] dated July 8, 2008, of the Employee Grievance Committee, MeTC, Makati City, finding that the said complaint was not an appropriate subject of the grievance body and that the case should be resolved in accordance with the Revised Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules) as the actuations described by Judge Buenaventura amounted to grave misconduct, gross insubordination and conduct prejudicial to the best interest of the service.

Mabalot, in her Comment,[15] dated September 19, 2008, insisted that the Employee Grievance Committee was the proper body to handle the complaint as the issue pertained to matters about

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[13] *Id.* at 1.

[14] *Id.* at 2-5.

[15] *Id.* at 47-48.

employee dissatisfaction and discontentment. She denied and refuted the accusations and charges against her.

In his Reply to Comment,[16] Judge Buenaventura insisted that Mabalot's disclosure of her intention to kill and exact revenge against him was not merely an employee dissatisfaction which should be taken lightly. He asserted that Mabalot's actuations were directly related to his previous complaint against her involving a bribery charge which was the subject of a pending administrative case, OCA IPI No. 08-2750-P.

Considering that the issues in the two cases were intertwined, and that Mabalot had adopted the pleadings she filed in that case as her comment in this case, the OCA, in its Report,[17] dated October 26, 2009, recommended the consolidation of the two cases.

On December 7, 2009, the Court re-docketed this administrative complaint as a regular administrative matter, A.M. No. P-09-2726 and consolidated it with OCA IPI No. 08-2750-P, which had not been re-docketed yet as an administrative matter.[18]

According to the OCA, prior to the issuance of the resolution ordering the consolidation of the two cases, the Investigating Judge had concluded the investigation and had submitted his Report and Recommendation in OCA IPI No. 08-2750-P on November 20, 2009. Notwithstanding the termination of the investigation and the submission of the report and recommendation, the OCA, however, reiterated its view that the issues therein were intertwined with those of A.M. No. P-09-2726, inasmuch as Mabalot adopted the pleadings she had filed in the earlier case as her comment in the latter case.

On December 15, 2010, the Court resolved to re-docket A.M. OCA IPI No. 08-2750-P, as a regular administrative matter, (now A.M. No. P-10-2884) and to forward the records of both

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[16] *Id.* at 71.

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

[18] *Id.* at 83-84.

cases to Judge Pozon for the investigation of the issues raised in A.M. No. P-09-2726 and the submission of an integrated report and recommendation on the two (2) consolidated cases within sixty (60) days from receipt of the records.

On March 7, 2011, the pre-hearing conference was held and attended by Judge Buenaventura and Mabalot without the assistance of counsel. Both parties agreed not to present any testimonial evidence and adopted all the relevant pleadings filed in connection with A.M. No. P-10-2884. Thus, Judge Pozon dispensed with the formal hearing and presentation of witnesses, and considered the matter closed and submitted for resolution. He limited the issue on whether Mabalot was guilty of gross misconduct, gross insubordination, and conduct prejudicial to the best interest of the service.

On March 25, 2011, Mabalot filed her Judicial Memorandum.[19] Judge Buenaventura then submitted his Position Paper on March 31, 2011. Mabalot's Comment to Judge Buenaventura's position paper was thereafter filed on April 19, 2011.

In its Memorandum,[20] dated June 26, 2012, the OCA submitted for the Court's consideration the Integrated Report and Recommendation of Judge Pozon, dated June 15, 2012.

Judge Pozon, in the said report, adopted the statement of proceedings, findings of fact and conclusions of law of the Report and Recommendation he submitted in A.M. No. P-10-2884.

As regards A.M. No. P-09-2726, Judge Pozon found that Mabalot indeed made threats to kill Judge Buenaventura, but opined that the said act did not constitute "misconduct" as it was not directly related to, or connected with, the performance of her official duties as Branch CoC, citing *Manuel v. Calimag, Jr.*[21] It was, thus, concluded that Mabalot, having acted in her private capacity, could not be liable for misconduct. Neither could she be held liable for gross insubordination as there was

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[19] *Id.* at 144-149.

[20] *Id.* at 175.

[21] 367 Phil. 162 (1999).

no order issued by Judge Buenaventura which she willfully or intentionally disregarded or disobeyed. Judge Pozon, however, found that the acts complained of constituted conduct prejudicial to the best interest of the service. He cited, as basis for her liability, the Code of Conduct and Ethical Standards for Public Officials and Employees, which enunciates, *inter alia*, the State policy of promoting high standard of ethics and utmost responsibility in the public service. He quoted Section 4(c) of the Code which commands, that "[public officials and employees] shall at all times respect the rights of others and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." By uttering threatening remarks towards Judge Buenaventura, Mabalot failed to live up to such standard.

Based on these findings, Judge Pozon came up with the following recommendation. Thus:

> In view of the foregoing findings in both administrative cases, the undersigned is of the opinion that respondent Clerk of Court Fe Mabalot has committed simple misconduct in A.M. No. P-10-2884 and conduct prejudicial to the best interest of the service in A.M. No. P-09-2726, and hereby recommends that Fe A. Mabalot, who is now 64 yrs. old and is about to retire in less than 1 year, be suspended from office.
>
> Considering her health condition, that she has undergone bypass operation and her thirty two (32) years (now 34 years) of service in the government, the undersigned hereby considers the same in recommending the proper penalty to be imposed upon the respondent. Likewise, pursuant to Section 55 of Rule IV of the Civil Service Commission Memorandum Circular No. 19, series of 1999, which provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances, the undersigned hereby recommends the **suspension of six (6) months and 1 day to one (1) year without pay** pursuant to Section 52 of the said Rule, the penalty for the more serious charge of conduct prejudicial to the best interest of the service.[22]

[22] *Rollo* (A.M. No. P-09-2726), pp. 191-192.

The Court's Ruling

The Court adopts the findings of the Investigating Judge as contained in his Integrated Report and Recommendation.

As can be inferred from the tenor of Judge Buenaventura's letter-complaint and as agreed upon by the parties during the preliminary conference, Judge Buenaventura charged Mabalot with possible bribery on the basis of a text message sent by her to De Sesto.

As correctly opined by the Investigating Judge, Mabalot cannot be criminally liable for either direct or indirect bribery penalized under the RPC, there being no evidence that she did in fact accept or receive anything from Atty. Gaviola in connection with the election protest of his wife pending in their branch. As can be gleaned from the subject text message, the "something" offered by Atty. Gaviola was intended not for her, but for De Sesto. She cannot be liable for qualified bribery either as this crime requires that the offender be a public officer entrusted with law enforcement who refrains from arresting or prosecuting an offender in consideration of any promise, gift or present.

As settled, an accusation of bribery is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation.[23] Bare allegation would not suffice to hold Mabalot liable. Here, no direct and convincing evidence, other than the text message, was presented which can prove her alleged bribery. Hence, she cannot be held guilty of said charge.

This does not mean, however, that Mabalot is relieved of any liability. Her defense that her text message was only a query as to De Sesto's receipt of whatever Atty. Gaviola intended to give him cannot exonerate her from administrative liability. The Court agrees with the view of the Investigating Judge that she committed misconduct. A perusal of the said text message reveals that Mabalot acted contrary to the norms of conduct required of her position. As Branch CoC, she serves as a sentinel of justice

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[23] *Atty. Valdez, Jr. v. Judge Gabales*, 507 Phil. 227, 235 (2005).

and any act of impropriety on her part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it.[24] As the highest ranked court personnel next to the presiding judge, she should have prevented or deterred Atty. Gaviola from giving something to De Sesto. She knew very well that such offer was improper for, otherwise, she would not have added the following phrase in her text message, "*don't worry d worry di malalaman ni Judge…*"

Mabalot should be reminded that a public servant must exhibit the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.[25] Mabalot's failure to prevent the illicit offer or corrupt act of Atty. Gaviola undoubtedly violates the norm of decency and diminishes or tends to diminish the people's respect for those in the government service.[26] Indeed, such act constitutes misconduct. To constitute misconduct, the act or acts must have a direct relation to, and be connected with, the performance of her official duties.

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x It is settled that misconduct, misfeasance, or

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[24] Fourth Whereas clause, Code of Conduct for Court Personnel, A.M. No. 03-06-13-SC, April 23, 2004.

[25] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 607.

[26] *Santos v. Rasalan*, 544 Phil. 35, 44 (2007).

malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x.[27]

The Court further defines misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[28] The misconduct is gross if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be proven by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. 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.[29]

In the present case, there was no evidence to show that Mabalot unlawfully or wrongfully used her official function as Branch CoC for her own benefit or personal gain. Her text message to De Sesto reads in part "x x x *pinabibigay sa akin pero pinadidiretso ko sa yo*." It is clear from the said message that the "something" offered by Atty. Gaviola, in connection with the pending election protest, was not intended for her but for De Sesto. No corrupt or wrongful motive can be attributed on her part because she did not receive or accept that "something." As the qualifying element of corruption was not established, the Investigating Judge was correct in giving her the benefit of the doubt and finding her guilty of simple misconduct only.

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[27] *Largo v. Court of Appeals*, 563 Phil. 293 (2007), citing *Manuel v. Judge Calimag, Jr.*, 367 Phil. 162, 166 (1999).

[28] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633, 638, citing *Arcenio v. Pagorogon*, A.M. Nos. MTJ-89-270 and MTJ-92-637, 5 July 1993, 224 SCRA 246, 254.

[29] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633.

With respect to the utterance of a grave threat, in her Judicial Memorandum, Mabalot admitted that she talked to Soller on May 6, 2008 and told her about the case involving their 56-hectare family property; the stress she experienced in seeing her family members fighting in court, and the extreme stress brought about by this case, which caused her three blocked arteries requiring an open heart surgery. She denied having made any threatening remarks against the life of Judge Buenaventura as narrated in the affidavit,[30] to wit, "*If our lot will be foreclosed, I will commit suicide but before I kill myself I will kill Buenaventura*."

During the pre-hearing conference between the parties on March 7, 2011, however, Mabalot admitted that she uttered those words out of depression but without intention to make good such threat. The Court believes that such categorical admission prevails over her negative allegation that she did not utter threatening words against Judge Buenaventura. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value.[31] As correctly concluded by the Investigating Judge, Mabalot's earlier denial crumbles in the light of her own admission that she indeed uttered threats to kill Judge Buenaventura. Her act of threatening the life of her superior certainly demonstrated lack of respect.

The Court, however, agrees with the Investigating Judge that the act committed by Mabalot cannot be considered as "misconduct," not being related to the discharge of her official functions. There is no proof that her act of threatening Judge Buenaventura through words and text messages were related to, or performed by taking advantage of, her position as Branch CoC. In administrative proceedings, the burden of proving the acts complained of, particularly the relation to the official functions of the public officer, rests on the complainant.[32] In

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[30] Exhibit "D", *rollo* (A.M. No. P-09-2726), p. 9.

[31] *Largo v. Court of Appeals*, *supra* note 27, at 302, citing *Judge Salvador v. Serrano*, A.M. No. P-06-2104, 516 Phil. 412, 426 (2006).

[32] *Id.* at 304.

this regard, Judge Buenaventura failed to prove such relation. The Investigating Judge was, therefore, correct in concluding that Mabalot acted in her private capacity. Thus, she cannot be held liable for misconduct, much less for gross misconduct.

The Investigating Judge likewise was correct when he recommended that Mabalot be absolved from the charge of gross insubordination. Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.[33] In this case, there was no order or directive issued by Judge Buenaventura that was willfully or intentionally disregarded or not complied with by Mabalot so as to constitute gross insubordination.

Nevertheless, the complained act constituted conduct prejudicial to the best interest of the service which, as held in *Largo v. Court of Appeals*,[34] need not be related or connected to a public officer's official functions.

The rules do not enumerate the acts constituting conduct prejudicial to the best interest of the service. In *Ito v. De Vera*,[35] the Court wrote that it referred to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary.[36]

Time and again, this Court has declared that the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel — from the judge to the lowest of its rank and file — who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions.[37]

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[33] *Dalmacio-Joaquin v. Dela Cruz*, A.M. No. P-07-2321, April 24, 2009, 586 SCRA 344, 349.

[34] *Supra* note 27.

[35] 540 Phil. 23, 33 (2006).

[36] *Consolacion v. Gambito*, A.M. Nos. P-06-2186/P-12-3026, July 3, 2012, 675 SCRA 452, 463, citing *Toledo v. Perez*, A.M. Nos. P-03-1677 and P-07-2317, July 15, 2009, 593 SCRA 5, 11-12.

[37] *Re: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division,*

In the case of *Consolacion v. Gambito*,[38] quoting the pronouncement in *Hernando v. Bengson*,[39] the Court stressed that:

> The conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the Judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the Judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.

In the case at bench, Mabalot's utterances and text messages of threats to get even indeed demonstrated conduct unbecoming of a court personnel. Doubtless, such acts tarnished not only the image and integrity of her public office but also the public perception of the very image of the Judiciary of which she was a part. The Investigating Judge, thus, correctly adjudged her guilty of conduct prejudicial to the best interest of the service.

As regards the imposition of the proper penalty, the Civil Service Rules classifies conduct prejudicial to the best interest of the service as a grave offense. Under Section 52(A)(20), Rule IV of the said Civil Service Rules, it is punishable by suspension for six (6) months and one (1) day to one year, for the first offense, and by dismissal for the second offense. On the other hand, Section 52(B)(2), Rule IV of the same Rules classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense, and by dismissal for the second offense.

FMO-OCA, A.M. No. 2011-05-SC, September 6, 2011, 656 SCRA 731, 738, citing *Floria v. Sunga*, 420 Phil. 637, 650 (2001).

[38] *Supra* note 36, at 465.

[39] A.M. No. P-09-2686, March 28, 2011, 646 SCRA 439.

In this case, Mabalot was found guilty of two civil service offenses, simple misconduct and conduct prejudicial to the best interest of the service. Section 55, Rule IV of the Civil Service Rules provides that in cases where the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge, with the rest considered as aggravating circumstances. Thus, Mabalot's conviction for the two (2) offenses merits the imposition of the penalty of suspension of six (6) months and one (1) day to one year without pay, which is the penalty for the more serious charge of conduct prejudicial to the best interest of the service with simple misconduct as aggravating circumstance.

The rules allow the consideration of mitigating and aggravating circumstances and provide for the manner of imposition of the proper penalty. Section 54 of the Civil Service Rules provides:

Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances.[40] (Underscoring supplied)

In the case under consideration, Mabalot's health condition, with her having undergone bypass operation and her long years in government service are appreciated as mitigating factors in

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[40] *Civil Service Commission v. Cortez*, *supra* note 25, at 602-603.

her favor. Taking into consideration these mitigating circumstances and the aggravating circumstance of simple misconduct, paragraph (d) of Section 54 applies. Accordingly, the minimum penalty of suspension for six (6) months is the appropriate penalty for her administrative transgression.

Considering Mabalot's compulsory retirement on October 6, 2012, however, the penalty of suspension is no longer feasible. Thus, in lieu of suspension, the penalty of fine in the amount of Forty Thousand Pesos (₱40,000.00)[41] would be appropriate under the circumstances.

On a final note, this Court cannot tolerate Mabalot's actuations which indubitably fell short of the standard of conduct required of her as a civil servant in the court of justice. Her retirement notwithstanding, she should and must be held accountable. When an officer or employee is disciplined, the object is the improvement of the public service and the preservation of the public's faith and confidence in the government.[42]

WHEREFORE, Fe A. Mabalot, formerly Clerk of Court III, MeTC, Branch 63, Makati City, is hereby declared **GUILTY** of simple misconduct and conduct prejudicial to the best interest of the service and is hereby ordered to pay a **FINE** of ₱40,000.00, to be deducted from her retirement benefits.

SO ORDERED.

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

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[41] See *Toledo v. Perez,* A.M. Nos. P-03-1677 and P-07-2317, July 15, 2009, 593 SCRA 5.

[42] *Santos v. Rasalan*, 544 Phil. 35, 44 (2007), citing *Civil Service Commission v. Cortez,* G.R. No. 155732, June 3, 2004, 430 SCRA 593, citing *Bautista v. Negado,* 108 Phil. 283, 289 (1960).

FIRST DIVISION

[G.R. No. 155306. August 28, 2013]

MALAYANG MANGGAGAWA NG STAYFAST PHILS., INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, STAYFAST PHILIPPINES, INC./ MARIA ALMEIDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PROPER REMEDY TO OBTAIN A REVERSAL OF JUDGMENT ON THE MERITS, FINAL ORDER OR RESOLUTION, 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.— 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 petitioner's claim in the Jurisdictional Facts portion of its petition that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law other than this petition for *certiorari*, 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. For purposes of appeal, the Decision dated July 1, 2002 of the Court of Appeals was a final judgment as it denied due course to, and dismissed, the petition. Thus, the Decision disposed of the petition of petitioner in a manner that left nothing more to be done by the Court of Appeals in respect to the said case. Thus, petitioner 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. Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of. 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 that there should be no appeal.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHERE AN APPEAL IS AVAILABLE, *CERTIORARI* CANNOT BE AVAILED OF BY THE MERE EXPEDIENT OF CONJURING GRAVE ABUSE OF DISCRETION; *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.— Petitioner cannot mask its failure to file an appeal by petition for review under Rule 45 of the Rules of Court by the mere expedient of conjuring grave abuse of discretion to avail of a petition for *certiorari* under Rule 65. The error of petitioner becomes more manifest in light of the following pronouncement in *Balayan v. Acorda*: 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. Moreover, *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 received the Decision dated July 1, 2002 on August 2, 2002 and, under the rules, had until August 19, 2002 to file an appeal by way of a petition for review in this Court. Petitioner let this period lapse without filing an appeal and, instead, filed this petition for *certiorari* on October 1, 2002.

3. ID.; ID.; ID.; A MOTION FOR RECONSIDERATION IS A PREREQUISITE FOR THE AVAILMENT OF A PETITION

FOR *CERTIORARI*; RATIONALE; EXCEPTIONS NOT PRESENT.— [E]ven assuming that a petition for *certiorari* is the correct remedy in this case, petitioner failed to comply with the requirement of a prior motion for reconsideration. As a general rule, a motion for reconsideration is a prerequisite for the availment of a petition for *certiorari* under Rule 65. The filing of a motion for reconsideration before resort to *certiorari* will lie is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case. While there are well recognized exceptions to this rule, this petition is not covered by any of those exceptions. The Court of Appeals was not given any opportunity either to rectify whatever error it may have made or to address the ascription and aspersion of grave abuse of discretion thrown at it by petitioner. Nor did petitioner offer any compelling reason to warrant a deviation from the rule. The instant petition for *certiorari* is therefore fatally defective.

4. ID.; ID.; ID.; TO JUSTIFY THE PROPER AVAILMENT OF A PETITION FOR *CERTIORARI*, THE PETITIONER SHOULD DEMONSTRATE WITH DEFINITENESS THE GRAVE ABUSE OF DISCRETION, THAT IS, 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; TERM "GRAVE ABUSE OF DISCRETION," EXPOUNDED.— [P]etitioner was not able to establish its allegation of grave abuse of discretion on the part of the Court of Appeals. 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. In this connection, *Yu v. Judge Reyes-Carpio* 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. In this case, nowhere in the petition did petitioner show that the issuance of the Decision dated July 1, 2002 of the Court of Appeals was patent and gross that would warrant striking it down through a petition for *certiorari*. Aside from a general statement in the Jurisdictional Facts portion of the petition and the sweeping allegation of grave abuse of discretion in the general enumeration of the grounds of the petition, petitioner failed to substantiate its imputation of grave abuse of discretion on the part of the Court of Appeals. No argument was advanced to show that the Court of Appeals exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Petitioner did not even discuss how or why the conclusions of the Court of Appeals were made with grave abuse of discretion. Instead, petitioner limited its discussion on its version of the case, which had been already rejected both by the Labor Arbiter and the NLRC. Thus, petitioner failed in its 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.

5. ID.; ID.; ID.; QUESTIONS OF FACT CANNOT BE RAISED IN AN ORIGINAL ACTION FOR *CERTIORARI* FOR ONLY ESTABLISHED OR ADMITTED FACTS CAN BE CONSIDERED; RATIONALE.— [P]etitioner essentially questioned the factual findings of the Labor Arbiter and the NLRC. Petitioner cannot properly do that in a petition for *certiorari*. x x x. For petitioner to question the identical findings of the Labor Arbiter and the NLRC is to raise a question of fact. However, it is settled that questions of fact cannot be raised in an original action for *certiorari*. Only established or

admitted facts can be considered. *Romy's Freight Service v. Castro* explains the rationale of this rule: 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 of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion. The sole object of the writ is to correct errors of jurisdiction or grave abuse of discretion. The phrase 'grave abuse of discretion' has a precise meaning in law, denoting abuse of discretion "too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility." It does not encompass an error of law. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.

6. ID.; APPEALS; FINDINGS OF FACT MADE BY LABOR ARBITERS AND AFFIRMED BY THE NLRC ARE NOT ONLY ENTITLED TO GREAT RESPECT, BUT EVEN FINALITY, AND ARE CONSIDERED BINDING IF THE SAME ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. — [C]onsidering that petitioner basically presented an issue of fact, its petition for *certiorari* crumbles in view of the identical findings of the Labor Arbiter and the NLRC which were further upheld by the Court of Appeals. The Court of Appeals correctly ruled that findings of fact made by Labor Arbiters and affirmed by the NLRC are not only entitled to great respect, but even finality, and are considered binding if the same are supported by substantial evidence. That ruling is based on established case law. Furthermore, in arriving at the said ruling, the Court of Appeals even reviewed the rationale of the Labor Arbiter's decision and was convinced that there was justifiable reason for the NLRC to uphold the same. This Court finds no compelling reason to rule otherwise.

APPEARANCES OF COUNSEL

Axel V. Gonzalez for petitioner.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This petition for *Certiorari* under Rule 65 of the Rules of Court seeks a review and reversal of the Decision[1] dated July 1, 2002 of the Court of Appeals in CA-G.R. SP No. 59465, which dismissed the petition for *certiorari* of petitioner Malayang Manggagawa ng Stayfast Phils., Inc.

The Labor Arbiter and the National Labor Relations Commission (NLRC) made similar findings of fact. Petitioner and Nagkakaisang Lakas ng Manggagawa sa Stayfast (NLMS-Olalia) sought to be the exclusive bargaining agent of the employees of respondent company, Stayfast Philippines, Inc. A certification election was conducted on December 29, 1995.[2] Out of the 223 valid votes cast, petitioner garnered 109 votes while NLMS-Olalia received 112 votes and 2 votes were for "No Union."[3] Thus, the Med-Arbiter who supervised the certification election issued an Order dated January 9, 1996 certifying NLMS-Olalia as the sole and exclusive bargaining agent of all rank and file employees of respondent company.[4]

Petitioner appealed the Order of the Med-Arbiter to the Secretary of Labor and Employment. The Secretary of Labor and Employment initially set aside the Order of the Med-Arbiter and called for run-off election between petitioner and NLMS-Olalia. On motion of NLMS-Olalia, however, the Secretary of Labor and Employment reconsidered his earlier decision and

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[1] *Rollo*, pp. 114-122; penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Romeo A. Brawner and Mario L. Guariña III, concurring.

[2] *Id.* at 115.

[3] Resolution dated January 14, 1998 in G.R. No. 125957 (*Malayang Manggagawa ng Stayfast Phils., Inc. v. Hon. Secretary of Labor and Employment, Nagkakaisang Lakas ng Manggagawa sa Stayfast [NLMS-Olalia] and Stayfast Philippines, Inc.*).

[4] *Rollo*, p. 115.

restored the Med-Arbiter's Order dated January 9, 1996. Petitioner elevated the matter via petition for *certiorari* to this Court.[5] The petition, docketed as G.R. No. 125957, was dismissed in a Resolution dated January 14, 1998.[6]

Meanwhile, NLMS-Olalia demanded to collectively bargain with respondent company. The latter rejected petitioner's demand, insisting that it would negotiate a collective bargaining agreement only with whichever union is finally certified as the sole and exclusive bargaining agent of the workers. Nevertheless, NLMS-Olalia went on strike on April 1, 1997 until it was temporarily restrained eight days later.[7]

Subsequently, on June 5, 1997, petitioner filed its own notice of strike in the National Conciliation and Mediation Board (NCMB). Respondent company opposed petitioner's move and filed a motion to dismiss on the ground that petitioner was not the certified bargaining agent and therefore lacked personality to file a notice of strike.[8] Thereafter, the parties were able to make concessions during the conciliation-mediation stage in the NCMB which led petitioner to withdraw its notice of strike.[9] In this connection, the NCMB issued a Certification dated July 31, 1997 which reads:

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that it appears from the "Minutes/Agreement" of conciliation conference dated July 15, 1997, which was further confirmed by Conciliator/Mediator Gil Caragayan[,] the Notice of Strike filed by MMSP-Independent on June [5], 1997, against Stayfast Philippines, Inc. is considered dropped/withdrawn from the business calendar of this office.

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[5] *Id.*

[6] Upon finality of the Resolution, entry of judgment was made on May 22, 1998.

[7] *Rollo*, pp. 115-116.

[8] *Id.* at 116.

[9] *Id.* at 87-99, 95; NLRC Resolution dated January 31, 2000.

It is further certified that there is no new Notice of Strike filed by the same union.

This certification is being issued upon the written request of Atty. Edgardo R. Abaya.

July 31, 1997.

(Sgd.) LEOPOLDO B. DE JESUS
Director II[10]

On July 21, 1997, however, petitioner's members staged a "sit-down strike" to dramatize their demand for a fair and equal treatment as respondent company allegedly continued to discriminate against them. Respondent company issued a memorandum requiring the alleged participants in the "sit-down strike" to explain within 24 hours why they should not be terminated or suspended from work for infraction of company rules and regulations pertaining to unauthorized work stoppage, acts inimical to company interest, and disregard of instruction of immediate supervisor to perform assigned task. As no one complied with the memorandum within the 24-hour deadline, respondent company promptly terminated the service of the participants in the "sit-down strike" on July 22, 1997. Consequently, on July 23, 1997, petitioner staged a strike and filed a complaint for unfair labor practice, union busting and illegal lockout against respondent company and its General Manager, Maria Almeida, in the NLRC.[11]

In support of its complaint, petitioner alleged that respondents had repeatedly committed acts of discrimination, such as the denial of the use of the company canteen for purposes of conducting a strike vote, the constant denial of applications of petitioner's members for leave to attend hearings in relation to certain labor cases while similar applications of members of the other union were approved, and the suspension of petitioner's president for being absent due to attendance in hearings of labor cases involving petitioner's members. Petitioner further claimed

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[10] CA *rollo*, p. 63.

[11] *Id.* at 68-69; Labor Arbiter's Decision dated April 27, 1999.

that the termination of about 127 of its officers and members constituted union busting and unlawful lockout.[12]

For its part, respondent company claimed that petitioner lacked legal authority to go on strike since it is a minority union. As petitioner withdrew its notice of strike during the proceedings in the NCMB, the strike conducted by petitioner was illegal as it constituted a wildcat strike and later became a full-blown strike on July 23, 1997. Petitioner committed illegal acts during the strike and obstructed the free ingress and egress from respondent company's premises.[13]

On April 27, 1999, the Labor Arbiter rendered a Decision which ruled that, while petitioner may file a notice of strike on behalf of its members, petitioner failed to cite any instance of discrimination or harassment when it filed its notice of strike on June 5, 1997 and the incidents mentioned as discriminatory occurred after the filing of the said notice. Moreover, assuming the strike was legal at the beginning, it became illegal when petitioner committed acts prohibited under Article 264(e) of the Labor Code, such as acts of violence, coercion and intimidation and obstruction of the free ingress to and egress from respondent company's premises. Also, petitioner was supposed to have made a self-imposed prohibition to stage a strike when it submitted its labor dispute with respondent company for compulsory arbitration in the afternoon of July 23, 1997. Yet, petitioner continued with its strike. For these reasons, the Labor Arbiter dismissed the petition.[14] The dispositive portion of the Labor Arbiter's Decision dated April 27, 1999 reads:

PREMISES CONSIDERED, the complaint is hereby dismissed for lack of merit.[15]

Petitioner appealed but, in a Resolution dated January 31, 2000, the NLRC upheld the Labor Arbiter's Decision. According

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

[13] *Id.* at 99.

[14] *Id.* at 71-78.

[15] *Id.* at 78.

to the NLRC, the actuations of petitioner were patently illegal because the sit-down strike staged on July 21, 1997 was made barely a week after petitioner withdrew its notice of strike, with prejudice, on account of the concessions agreed upon by the parties. Petitioner filed no new notice of strike that could have supported its charges of discriminatory acts and unfair labor practice. Moreover, no evidence was presented to establish such charges. Also, petitioner's members were given the opportunity to explain their violation of respondent company's rules on unauthorized work stoppage, acts inimical to company interest and disregard of instruction of immediate supervisor to perform assigned task. Thus, the NLRC dismissed petitioner's appeal.[16] The dispositive portion of the NLRC's Resolution dated January 31, 2000 reads:

> WHEREFORE, premises considered, the decision under review is AFFIRMED, and complainants' appeal, DISMISSED, for lack of merit.[17]

Petitioner filed a motion for reconsideration but the NLRC denied it in a Resolution dated April 10, 2000.[18]

Petitioner filed a petition for *certiorari* in the Court of Appeals, docketed as CA-G.R. SP No. 59465, on the following grounds:

(A) RESPONDENT NLRC COMMITTED GROSS AND GRAVE ABUSE OF DISCRETION WHEN IT UPHELD THE LABOR ARBITER'S DECISION.

(B) COMPLAINANTS/APPELLANTS WHOSE TERMINATION RESULTED FROM THE UNFAIR LABOR PRACTICE[,] UNION-BUSTING AND UNLAWFUL LOCKOUT OF HEREIN RESPONDENT ARE ENTITLED TO REINSTATEMENT WITH FULL BACKWAGES.

(C) COMPLAINANTS, BY REASON OF THE ARBITRARY ACTION IN WANTON DISREGARD OF THE LEGAL RIGHTS

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[16] *Id.* at 95-107.

[17] *Id.* at 106.

[18] *Id.* at 111.

OF HEREIN [COMPLAINANTS,] ARE ENTITLED TO DAMAGES AND ATTORNEY'S FEES.[19]

In a Decision dated July 1, 2002, the Court of Appeals found that petitioner was seeking a review of the findings of fact and conclusion of the Labor Arbiter which was sustained by the NLRC. The Court of Appeals found no cogent reason to indulge petitioner. It applied the rule that findings of fact made by the Labor Arbiter and affirmed by the NLRC are considered by the appellate court as binding if supported by substantial evidence. The Court of Appeals ruled that the NLRC Resolution dated January 31, 2000 was supported by justifiable reason and cannot be faulted with grave abuse of discretion. Petitioner failed to establish that the NLRC committed grave abuse of discretion. Moreover, a petition for *certiorari* is not used to correct a lower tribunal's appreciation of evidence and findings of fact. Thus, the Court of Appeals dismissed the petition. The dispositive portion of the Court of Appeals' Decision dated July 1, 2002 reads:

WHEREFORE, foregoing premises considered, the Petition, having no merit, in fact and in law, is hereby DENIED DUE COURSE and ORDERED DISMISSED. Resultantly, the assailed Resolution[s] are AFFIRMED, with costs to Petitioner.[20]

Hence, this petition for *certiorari*[21] under Rule 65 of the Rules of Court.

According to petitioner, it "interposes appeal on the judgment of the Honorable Justices of the Court of Appeals" on the following grounds:

(1) The Honorable Justices of the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when they upheld the rulings of the NLRC and disregarded the constitutional protection of labor as well as Article 248 (e) and Article 263 of the Labor Code.

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

[20] *Rollo*, p. 121.

[21] *Id.* at 3-18.

(2) The Honorable Justices of the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when they upheld the decision of the NLRC that the termination of complainants/appellants were valid and corollary thereto no reinstatement[,] backwages, damages and attorney's fees were awarded.[22]

In discussing the above grounds, petitioner claims that the discriminatory acts of respondent company and its General Manager against petitioner's members constituted unfair labor practice under Article 248(e) of the Labor Code, as amended. The termination of employment of petitioner's 127 officers and members constituted union-busting and unlawful lockout. As the said officers and members were unlawfully dismissed from employment, they are entitled to reinstatement with full backwages. The arbitrary action of respondent company and its General Manager wantonly disregarded the legal rights of petitioner's officers and members thereby entitling said officers and members to damages and attorney's fees.[23]

Respondent company and its General Manager, for their part, question the timeliness of the petition which was filed 52 days after petitioner's receipt of the Decision of the Court of Appeals. They point out that petitioner should have filed a petition for review under Rule 45 of the Rules of Court within 15 days from receipt of a copy of the Court of Appeals Decision. Respondent company and its General Manager also argue that the sit-down strike which subsequently became a full blown strike conducted by petitioner was illegal as it had previously withdrawn its notice of strike. The illegality of the strike was compounded by the commission of prohibited acts like the blocking of the entry and exit points of respondent company's premises. Also, petitioner's officers and employees were afforded due process before they were dismissed as they were issued a memorandum requiring them to explain their participation in the illegal sit-down strike but they simply ignored the said memorandum.[24]

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[22] *Id.* at 8.

[23] *Id.* at 9-15.

[24] *Id.* at 133-140; Comment.

The petition fails for many reasons.

First, this petition for *certiorari* 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.[25] Contrary to petitioner's claim in the Jurisdictional Facts portion of its petition that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law other than this petition for *certiorari*, 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 of which provides:

> 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.

For purposes of appeal, the Decision dated July 1, 2002 of the Court of Appeals was a final judgment as it denied due course to, and dismissed, the petition. Thus, the Decision disposed of the petition of petitioner in a manner that left nothing more to be done by the Court of Appeals in respect to the said case. Thus, petitioner 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. Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of.

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even

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[25] Rules of Court, Rule 65, Section 1.

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 that there should be no appeal.[26]

Petitioner cannot mask its failure to file an appeal by petition for review under Rule 45 of the Rules of Court by the mere expedient of conjuring grave abuse of discretion to avail of a petition for *certiorari* under Rule 65. The error of petitioner becomes more manifest in light of the following pronouncement in *Balayan v. Acorda*[27]:

> 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.)

Moreover, *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.[28] In this case, petitioner received the Decision dated July 1, 2002 on August 2, 2002 and, under the rules,[29] had until August 19, 2002 to file an appeal by way

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[26] *Bugarin v. Palisoc*, 513 Phil. 59, 66 (2005).

[27] 523 Phil. 305, 309 (2006).

[28] *Bugarin v. Palisoc*, *supra* note 26 at 66-67.

[29] Section 2, Rule 45 of the Rules of Court 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

of a petition for review in this Court. Petitioner let this period lapse without filing an appeal and, instead, filed this petition for *certiorari* on October 1, 2002.

Second, even assuming that a petition for *certiorari* is the correct remedy in this case, petitioner failed to comply with the requirement of a prior motion for reconsideration.

As a general rule, a motion for reconsideration is a prerequisite for the availment of a petition for *certiorari* under Rule 65.[30] The filing of a motion for reconsideration before resort to *certiorari* will lie is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.[31] While there are well recognized exceptions to this rule,[32] this petition is not covered by any of those exceptions.

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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 July 1, 2002 was August 17, 2002, 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 August 19, 2002, a Monday, to file the petition for review in this Court.

[30] *Romy's Freight Service v. Castro*, 523 Phil. 540, 545 (2006).

[31] *Villena v. Rupisan*, 549 Phil. 146, 158 (2007).

[32] These exceptions are:

(a) Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) Where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d) Where, under the circumstances, a motion for reconsideration would be useless;

The Court of Appeals was not given any opportunity either to rectify whatever error it may have made or to address the ascription and aspersion of grave abuse of discretion thrown at it by petitioner. Nor did petitioner offer any compelling reason to warrant a deviation from the rule. The instant petition for *certiorari* is therefore fatally defective.

Third, petitioner was not able to establish its allegation of grave abuse of discretion on the part of the Court of Appeals.

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.[33] 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*[34] 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

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(e) Where petitioner was deprived of due process and there is extreme urgency for relief;

(f) Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) Where the proceedings in the lower court are a nullity for lack of due process;

(h) Where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and

(i) Where the issue raised is one purely of law or where public interest is involved. (*Romy's Freight Service v. Castro*, *supra* note 30.)

[33] *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007).

[34] G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

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 show that the issuance of the Decision dated July 1, 2002 of the Court of Appeals was patent and gross that would warrant striking it down through a petition for *certiorari*. Aside from a general statement in the Jurisdictional Facts portion of the petition and the sweeping allegation of grave abuse of discretion in the general enumeration of the grounds of the petition,[35] petitioner failed to substantiate its imputation of grave abuse of discretion on the part of the Court of Appeals. No argument was advanced to show that the Court of Appeals exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Petitioner did not even discuss how or why the conclusions of the Court of Appeals were made with grave abuse of discretion. Instead, petitioner limited its discussion on its version of the case, which had been already rejected both by the Labor Arbiter and the NLRC. Thus, petitioner failed in its 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.

Fourth, petitioner essentially questioned the factual findings of the Labor Arbiter and the NLRC. Petitioner cannot properly do that in a petition for *certiorari*.

Petitioner used the Discussion/Arguments portion of its petition to refute the findings of fact of the Labor Arbiter which was upheld by the NLRC. In particular, petitioner reiterated its position that respondent company and its General Manager committed discriminatory acts against petitioner's members which constituted

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[35] *Rollo*, pp. 5 and 8.

unfair labor practice; that the termination of employment of petitioner's officers and members was a case of union-busting and unlawful lockout; and, that the said officers and members were unlawfully dismissed from employment and are therefore entitled to reinstatement with full backwages, plus damages and attorney's fees.[36] For petitioner to question the identical findings of the Labor Arbiter and the NLRC is to raise a question of fact. However, it is settled that questions of fact cannot be raised in an original action for *certiorari*.[37] Only established or admitted facts can be considered.[38] *Romy's Freight Service v. Castro*[39] explains the rationale of this rule:

> 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 of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion. The sole object of the writ is to correct errors of jurisdiction or grave abuse of discretion. The phrase 'grave abuse of discretion' has a precise meaning in law, denoting abuse of discretion "too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility." It does not encompass an error of law. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight. (Citations omitted.)

Fifth, considering that petitioner basically presented an issue of fact, its petition for *certiorari* crumbles in view of the identical findings of the Labor Arbiter and the NLRC which were further upheld by the Court of Appeals.

The Court of Appeals correctly ruled that findings of fact made by Labor Arbiters and affirmed by the NLRC are not only entitled to great respect, but even finality, and are considered

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[36] *Id.* at 9-15.

[37] *Korea Technologies Co., Ltd. v. Lerma*, 566 Phil. 1, 35 (2008).

[38] *Ramcar, Inc. v. Hi-Power Marketing*, 527 Phil. 699, 708 (2006).

[39] *Supra* note 30 at 546.

binding if the same are supported by substantial evidence.[40] That ruling is based on established case law.[41] Furthermore, in arriving at the said ruling, the Court of Appeals even reviewed the rationale of the Labor Arbiter's decision and was convinced that there was justifiable reason for the NLRC to uphold the same.[42] This Court finds no compelling reason to rule otherwise.

Sixth, even on the merits, the case of petitioner has no leg to stand on.

Petitioner's case rests on the alleged discriminatory acts of respondent company against petitioner's officers and members. However, both the Labor Arbiter and the NLRC held that there was no sufficient proof of respondent company's alleged discriminatory acts.[43] Thus, petitioner's unfair labor practice, union-busting and unlawful lockout claims do not hold water. Moreover, the established facts as found by the NLRC are as follows: the "sit-down strike" made by petitioner's officers and members on July 21, 1997 was in violation of respondent company's rules, and petitioner's officers and members ignored the opportunity given by respondent company for them to explain their misconduct, which resulted in the termination of their employment.[44] The Court of Appeals ruled that the said findings were supported by substantial evidence.[45] This Court finds that such ruling of the appellate court is not grave abuse of discretion, nor could it be considered wrong.

In sum, there is an abundance of reasons, both procedural and substantive, which are all fatal to petitioner's cause. In contrast,

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[40] *Spouses Santos v. National Labor Relations Commission*, 354 Phil. 918, 931 (1998).

[41] For example, the doctrine is reiterated in *Metro Transit Organization, Inc. v. National Labor Relations Commission*, 367 Phil. 259, 263 (1999).

[42] *Rollo*, p. 121.

[43] Labor Arbiter's Decision dated April 27, 1999, pp. 6-7 and NLRC Resolution dated January 31, 2000, pp. 9-11, *rollo*, pp. 71-72 and 95-97, respectively.

[44] *Id.* at 97.

[45] *Id.* at 121.

the instant petition for *certiorari* suffers from an acute scarcity of legal and factual support.

WHEREFORE, the petition is hereby **DISMISSED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Mendoza,[*] and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 155943. August 28, 2013]

PILAR DEVELOPMENT CORPORATION, *petitioner, vs.* **THE HON. COURT OF APPEALS, SPOUSES PEPITO L. NG and VIOLETA N. NG, and SPOUSES ANTONIO V. MARTEL, JR. and JULIANA TICSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; WHEN A RIGHT OR A FACT HAS BEEN JUDICIALLY TRIED AND DETERMINED BY A COURT OF COMPETENT JURISDICTION, OR AN OPPORTUNITY FOR SUCH TRIAL HAS BEEN GIVEN, THE JUDGMENT OF THE COURT – SO LONG AS IT REMAINS UNREVERSED – SHOULD BE CONCLUSIVE UPON THE PARTIES AND THOSE IN PRIVITY WITH THEM IN LAW OR ESTATE; DOCTRINE APPLIED TO CASE AT BAR.— The facts of this case clearly show that petitioner's cause of action is already barred by the prior judgments of the RTC in its Decision dated 8 December 1994 in Case 1 and of this Court in Case 2. If an action has been dismissed and the

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[*] Per Special Order No. 1502 dated August 8, 2013.

order of dismissal has become final, a prior judgment bars the institution of another action involving the same parties, subject matter, and cause of action as in the earlier case. The fundamental principle behind the doctrine of *res judicata* is that parties ought not to be permitted to litigate the same issue more than once. That is, when a right or a fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court—so long as it remains unreversed—should be conclusive upon the parties and those in privity with them in law or estate.

2. ID.; ID.; ID.; REQUISITES; PRESENT.— Petitioner insists that the CA erred in blindly applying the rule of *res judicata* to the present case. This Court finds, however, that all the requisites for the application of that rule are present in this case. In order that there may be *res judicata,* it is requisite (a) that the former judgment is final; (b) that it has been rendered by a court of competent jurisdiction; (c) that it is a judgment on the merits; and (d) that, between the first and the second actions, there is identity of parties, subject-matter, and cause of action. The Decisions of the RTC in Case 1 and of this Court in Case 2 — both of which ruled that respondents are the rightful owners of the property in question — have all become final and unappealable. In Case 2, this Court had jurisdiction over the subject matter and over the parties; the judgments were issued on the merits; and there was a similarity of parties, subject matter, and cause of action. The question of who has a better right to the property was already resolved by the RTC when it granted respondents' Petition to set aside the CFI's Decision granting the Factors' Application for Registration and Confirmation of Title. Since neither of the parties appealed from this RTC Decision, it became final and unappealable. Hence, this Court ruled in Case 2 that the CA correctly affirmed the trial court's Decision to grant respondents' Motion to Dismiss. The cause of action of the Factors in their Complaint for Annulment of Title was, even then, already barred by the prior judgment in Case 1. Concomitantly, the issue of whether or not TCT Nos. 61176 and 61177 are valid titles has already been resolved in Case 1 and subsequently in Case 2. Both cases already involved the Factors and the predecessors-in-interest of herein petitioner and respondents. The subject matter in the foregoing cases is the same property that is the subject of the instant Petition. Lastly, the prayers in both cases

are the same. It must be kept in mind that the principle of *res judicata* does not require absolute but only substantial identity of parties, subject matter, and issues.

3. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION DOES NOT MEAN ABSOLUTE IDENTITY, OTHERWISE, A PARTY COULD EASILY ESCAPE THE OPERATION OF *RES JUDICATA* BY CHANGING THE FORM OF THE ACTION OR THE RELIEF SOUGHT; TEST OF IDENTITY OF CAUSES OF ACTION.— We rule that there is identity of causes of action, the test for which is to look into the facts or evidence necessary to maintain the two actions, to wit: Hornbook is the rule that identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.

4. ID.; ID.; ID.; ID.; ID.; THE EVIDENCE OR SET OF FACTS USED IN A COMPLAINT FOR QUIETING OF TITLE IS THE SAME AS THAT WHICH IS NECESSARY IN A CASE FOR ANNULMENT OF TITLE; THE DIFFERENCE IN FORM AND NATURE OF THE TWO ACTIONS IS IMMATERIAL AND IS NOT THE REASON TO EXEMPT THE PARTY FROM THE EFFECTS OF *RES JUDICATA*; COMPLAINT FOR QUIETING OF TITLE IS ALREADY BARRED BY THE COURT'S PRIOR JUDGMENT DECLARING THE VALIDITY OF THE TITLES ISSUED IN RESPONDENTS' NAMES.— We have already ruled in *Stilianopulos v. The City of Legaspi* that the evidence or set of facts used in a complaint for quieting of title is the same as that which is necessary in a case for annulment of title, *viz*: The underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title. Thus, it becomes readily apparent that the same evidence or set of facts as those considered in the quieting-of-title case would also be

used in this Petition. The difference in form and nature of the two actions is immaterial and is not a reason to exempt petitioner from the effects of *res judicata.* The philosophy behind this rule prohibits the parties from litigating the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Verily, there should be an end to litigation by the same parties and their privies over a subject, once it is fully and fairly adjudicated. This Court has already denied with finality the Factors' Complaint praying for the annulment of the titles issued in respondents' names. In Case 2, it has determined that respondents have a better right to the property than the Factors. Since it is to the Factors that petitioner traces its title to the property, then the declaration made by this Court on who has the better right thereto is binding on petitioner. Thus, the CA did not err in affirming the RTC's Decision to grant respondents' Motion to Dismiss. The cause of action in petitioner's Complaint for Quieting of Title is already barred by this Court's prior judgment declaring the validity of the titles issued in respondents' names.

5. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ISSUE ON THE APPLICABILITY OF THE PRINCIPLE OF LACHES MUST BE RAISED AT THE EARLIEST OPPORTUNITY POSSIBLE.— Petitioner further argues that the CA erred when it overlooked or disregarded the rule that even registered landowners may lose their right to recover possession of their registered property by reason of *laches*. Suffice it to say that this issue should have been raised at the earliest opportunity possible. Rule 39, Section 47(b) of the Rules on Civil Procedure provides that with respect to any matter that could have been raised in relation to the matter directly adjudged, the judgment or final order on the latter is considered "conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." Thus, for their failure to assert this argument in either LRC No. N-9049 or G.R. No. 132334 or for the denial of the argument after it has been raised, the aforementioned cases are considered conclusive between the parties. This Court may no longer rule on this

matter, as any pronouncement thereon would result in *res judicata*.

6. ID.; ACTIONS; FORUM SHOPPING; THE ACT OF FILING MULTIPLE SUITS INVOLVING THE SAME PARTIES AND THE SAME CAUSE OF ACTION FOR THE PURPOSE OF OBTAINING A FAVORABLE JUDGMENT AMOUNTS TO FORUM-SHOPPING.— [I]t must be stressed that petitioner's act of filing multiple suits involving the same parties and the same cause of action for the purpose of obtaining a favorable judgment amounts to forum-shopping, which by itself is already a valid ground to deny the instant Petition.

APPEARANCES OF COUNSEL

Angeles & Associates for petitioner.
Manuel S. Fonacier, Jr. for private respondents.

D E C I S I O N

SERENO, *C.J.*:

This case involves a 6.7905-hectare property located in Sitio Caballero, Almanza, Las Piñas City. The ownership of the property and the validity of the titles covering it have already been questioned and resolved in numerous cases filed before several regional trial courts (RTCs), the Court of Appeals (CA), and the Supreme Court. The present petition stems from one of those cases.

Pilar Development Corporation (petitioner), through the instant Petition for Review,[1] is before this Court praying for the reversal of the CA Decision[2] dated 12 July 2002 and Resolution[3] dated 14 November 2002. The CA affirmed the Order of the RTC of

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[1] *Rollo* (G.R. No. 155943), pp. 9-30.

[2] *Id.* at 34-43; CA-G.R. CV No. 60437, penned by Associate Justice Marina L. Buzon and concurred in by acting Presiding Justice Cancio C. Garcia and Associate Justice Eliezer R. delos Santos.

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

Las Piñas City dated 9 February 1998 granting the Motion to Dismiss filed by respondent spouses Pepito L. Ng and Violeta N. Ng (Sps. Ng) and spouses Antonio V. Martel, Jr. and Juliana Ticson (Sps. Martel) against petitioner's Complaint for Quieting of Title.

FACTUAL BACKGROUND:

G.R. No. 91413: Lilia Mayuga-Fusilero v. The Honorable Court of Appeals, Benito J. Lopez, and Pepito Ng

Spouses Benito and Corazon Lopez (Sps. Lopez) and Sps. Ng acquired a 185,317 sq.m. property located in Almanza, Las Piñas City, from a certain Philip Dumbrique (Dumbrique) on 7 February 1977. Thereafter, the latter's Transfer Certificate of Title (TCT) No. S-50432 was cancelled. On 6 January 1978, TCT No. 61176 was issued in the name of Sps. Lopez, and TCT No. 61177 in the name of Sps. Ng.

In May 1978—after the property had been transferred to and registered in the names of Sps. Ng and Sps. Lopez—a claim adverse to theirs and Dumbrique's cropped up. Lilia Mayuga-Fusilero (Fusilero) filed a Complaint against them with the Court of First Instance (CFI), where the case was docketed as Civil Case No. Pq-6381-P (Fusilero case).

The CFI ruled in favor of the Lopezes and the Ngs. Fusilero appealed the case to the CA, which in CA-G.R. CV No. 14618 affirmed the CFI's Decision. She appealed to this Court, but her appeal was also denied through a 2 July 1990 Resolution in G.R. No. 91413. We ruled that the CA did not err in affirming the CFI's Decision.

Eventually, Sps. Lopez sold their property to respondent Sps. Martel, resulting in the cancellation of the former's title and the issuance of TCT No. T-57471 in the latter's names.

LRC No. N-9049

While the Fusilero case was pending, Enrique, Narciso, Reuben, Mario, Teodorica, Beatriz, Ricardo, and Rolando—

all surnamed Factor—executed a Deed of Sale of Unregistered Lands dated 21 January 1975 in favor of petitioner. [4]

After the purchase of the property, petitioner enclosed it with a fence made of cement hollow blocks.[5] It subdivided and developed the property into what is now known as "Pilar Village."

On 9 December 1975, the Factors filed an Application for Registration and Confirmation of Title to Parcels of Land with the Court of First Instance (CFI) of Rizal, where the case was docketed as LRC No. N-9049 (Case 1).[6]

The Factors claimed that they were the owners of the land subject of the present cases; and that they had inherited it from their parents, Constantino Factor and Maura Mayuga. They also claimed to have been in actual possession of the property for more than 30 years prior to the filing of their application for registration.

As previously mentioned, pending the resolution of Case 1 by the CFI, specifically on 6 January 1978, TCT Nos. 61176 and 61177 were issued in the names of respondent Sps. Lopez and Sps. Ng, respectively. These titles covered a big parcel of land, which included the 6.7905 hectares sold by the Factors to petitioner.[7]

On 31 January 1976, the CFI in Case 1 rendered its Decision declaring the Factors as the rightful owners of the subject property. Consequently, it ordered the issuance of the decrees of registration and the corresponding certificates of title. In compliance with the Order, TCTs in the names of the Factors were issued on 13 December 1994.

After the issuance of their TCTs, respondents filed a Petition to Reopen, Review, and Set Aside the Decision of the CFI in

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[4] *Id.* at pp. 14-15 & 34.

[5] *Id.* at 15.

[6] *Rollo* (G.R. No. 132334), pp. 26-27.

[7] *Rollo* (G.R. No. 155943), p. 35.

Case 1. Soon thereafter, the Factors informed petitioner of respondents' claim over the property.

According to petitioner, since it took possession of the property in 1975 up until 19 years thereafter, or on 30 May 1995—which was also the day when the Factors informed it of respondents' Petition to Reopen—it had no knowledge of any third party having any claim on the property.[8]

On 8 December 1994, the RTC issued its Decision granting respondents' Petition to Reopen. It set aside its earlier Decision awarding the property to the Factors and ordered the issuance of the decree of registration and the corresponding certificates of title in respondents' favor.[9]

Neither of the parties appealed the RTC Decision.

G.R. No. 132334: De Leon v. Imperio*; *G.R. Nos.* 133956-58: *Factor v. Court of Appeals*; *and the present Petition.

Instead of appealing the 8 December 1994 Decision of the RTC, the Factors filed anew a Complaint for Annulment of Title. Alleging that TCT Nos. 61176 and 61177 were spurious and could not be used as basis for any claim of title, they prayed that the RTC order the Registrar of Deeds to cancel these titles. The case was docketed as Civil Case No. 94-3158 (Case 2).[10]

On 15 May 1995, Sps. Lopez and Sps. Ng filed a Motion to Dismiss Case 2, alleging that the cause of action of the Factors was barred by prior judgment and *res judicata*.

The Lopezes and the Ngs narrated that they had purchased the property from Dumbrique in 1977. Supposedly, they were only made aware of the controversy surrounding it when, on 17 November 1987, the Heirs of Irene Garcia filed with the RTC a Complaint for annulment and/or cancellation of title and

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[8] *Id.* at 15.

[9] *Rollo* (G.R. No. 132334), p. 27.

[10] *Id.* at 28.

reconveyance with preliminary injunction against Philip Dumbrique, Sps. Lopez, and respondent Sps. Ng in Civil Case No. 18349. This case eventually reached the present Court. In a Resolution dated 15 January 1997,[11] this Court ruled that the CA committed no error in affirming the RTC's dismissal of the Complaint, since Sps. Lopez and Sps. Ng were innocent buyers in good faith and for value. The Court likewise affirmed the CA's pronouncement that the Complaint should be dismissed, as the issue had already been settled by this Court's Decision in the Fusilero case.

On 8 September 1995, the RTC in Case 2 issued an Order granting the Motion to Dismiss. The Factors filed a Motion for Reconsideration, but it was denied through an Order dated 23 November 1995. They then appealed to the CA, but the latter, in CA-G.R. CV No. 52037, ruled that the dismissal of their Application for Registration of Confirmation of Title in Case 1 had made their Complaint for the annulment of TCT Nos. 61176 and 61177 moot and academic.[12] Thus, the CA affirmed the RTC Decision and dismissed the appeal of the Factors. The latter filed a Motion for Reconsideration, but it was likewise denied by the CA on 23 November 1995.

The Factors then filed a Petition for Review with this Court, where the case was docketed as G.R. No. 132334. At the same time, petitioner filed with the RTC of Las Piñas City, on 15 July 1997, a Complaint for Quieting of Title and Declaration of Nullity of respondents' title (Case 3).[13] The present Petition stems from that Complaint.

Respondents filed a Motion to Dismiss the Complaint for Quieting of Title dated 8 September 1997. They argued that petitioner had no cause of action against them, and that whatever cause of action it may claim to have was already barred by prior judgment and the statute of limitations.

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[11] *Rollo* (G.R. No. 123751), pp. 388-390.

[12] *Rollo* (G.R. No. 132334), p. 50.

[13] *Rollo* (G.R. No. 155943), p. 11.

In its Opposition to the Motion to Dismiss, petitioner pointed out that it had acquired ownership of the property in 1975, ahead of respondents' predecessor-in-interest, Dumbrique, who acquired it only in 1977. It also accused respondents of being guilty of *laches* for their failure to assert their proprietary rights for an unreasonable length of time in spite of their knowledge of its actual, open, continuous, and adverse possession of the subject property.

In an Order dated 9 February 1998, the RTC granted respondents' Motion to Dismiss.

As to the Petition for Review filed by the Factors in Case 2, it was denied through this Court's Resolution dated 22 February 1999. They filed a Motion for Reconsideration, but the Court, through its 21 April 1999 Resolution,[14] denied the motion with finality.

With respect to the RTC's dismissal of the Complaint for Quieting of Title in Case 3, petitioner appealed this Order to the CA, but the latter affirmed the RTC Order. Petitioner filed a Motion for Reconsideration, which was likewise denied by the appellate court.

Petitioner now comes before this Court through a Petition for Review on *Certiorari*, alleging that the CA, in Case 3, erred in holding that the equitable principle of *laches* cannot be applied against respondents, who are holders of a Certificate of Title.[15] Petitioner further avers that the CA erroneously applied the principle of *stare decisis* and the rule on *res judicata*.[16]

In Case 3 the CA ruled that the validity of TCT Nos. 61176 and 61177 had already been questioned before and affirmed by this Court several times.[17]

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[14] *Id.* at 342.

[15] *Rollo* (G.R. No. 155943), p. 16.

[16] *Id.* at 17.

[17] *Id.* at 39.

The CA held then that petitioner was bound by the ruling of this Court in the latter's 22 February 1999 Resolution in Case 2. That Resolution affirmed the Decision in CA-G.R. CV No. 52037 denying the Factors' Petition for the annulment of titles issued in favor of respondents.

In affirming the RTC Decision granting respondent's Motion to Dismiss petitioner's Complaint for Quieting of Title, the CA ruled that the validity of TCT Nos. 61176 and 61177 had already been upheld by this Court in Case 2.

We agree with the CA.

The facts of this case clearly show that petitioner's cause of action is already barred by the prior judgments of the RTC in its Decision dated 8 December 1994 in Case 1 and of this Court in Case 2.

If an action has been dismissed and the order of dismissal has become final, a prior judgment bars the institution of another action involving the same parties, subject matter, and cause of action as in the earlier case.[18]

The fundamental principle behind the doctrine of *res judicata* is that parties ought not to be permitted to litigate the same issue more than once. That is, when a right or a fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court—so long as it remains unreversed—should be conclusive upon the parties and those in privity with them in law or estate.[19]

Petitioner insists that the CA erred in blindly applying the rule of *res judicata* to the present case.[20] This Court finds, however, that all the requisites for the application of that rule are present in this case.

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[18] *Cayco v. Cruz,* 106 Phil. 65 (1959).

[19] *Lizares v. Tengco,* G.R. Nos. L-45425 & L-45965, 27 March 1992, 207 SCRA 600, 613, citing *Philippine National Bank v. Barretto,* 52 Phil. 818 (1929).

[20] *Rollo* (G.R. No. 155943), p. 27.

In order that there may be *res judicata,* it is requisite (a) that the former judgment is final; (b) that it has been rendered by a court of competent jurisdiction; (c) that it is a judgment on the merits; and (d) that, between the first and the second actions, there is identity of parties, subject-matter, and cause of action.[21]

The Decisions of the RTC in Case 1 and of this Court in Case 2—both of which ruled that respondents are the rightful owners of the property in question—have all become final and unappealable. In Case 2, this Court had jurisdiction over the subject matter and over the parties; the judgments were issued on the merits; and there was a similarity of parties, subject matter, and cause of action.

The question of who has a better right to the property was already resolved by the RTC when it granted respondents' Petition to set aside the CFI's Decision granting the Factors' Application for Registration and Confirmation of Title. Since neither of the parties appealed from this RTC Decision, it became final and unappealable. Hence, this Court ruled in Case 2 that the CA correctly affirmed the trial court's Decision to grant respondents' Motion to Dismiss. The cause of action of the Factors in their Complaint for Annulment of Title was, even then, already barred by the prior judgment in Case 1.

Concomitantly, the issue of whether or not TCT Nos. 61176 and 61177 are valid titles has already been resolved in Case 1 and subsequently in Case 2. Both cases already involved the Factors and the predecessors-in-interest of herein petitioner and respondents. The subject matter in the foregoing cases is the same property that is the subject of the instant Petition. Lastly, the prayers in both cases are the same. It must be kept in mind that the principle of *res judicata* does not require absolute but only substantial identity of parties, subject matter, and issues.[22]

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[21] *San Diego v. Cardona,* 70 Phil. 281, 283 (1940).

[22] *Suarez v. Municipality of Naujan, Oriental Mindoro*, 124 Phil. 1298 (1966).

We rule that there is identity of causes of action, the test for which is to look into the facts or evidence necessary to maintain the two actions, to wit:

> Hornbook is the rule that identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.[23]

We have already ruled in *Stilianopulos v. The City of Legaspi*[24] that the evidence or set of facts used in a complaint for quieting of title is the same as that which is necessary in a case for annulment of title, *viz*:

> The underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title. Thus, it becomes readily apparent that the same evidence or set of facts as those considered in the quieting-of-title case would also be used in this Petition.
>
> The difference in form and nature of the two actions is immaterial and is not a reason to exempt petitioner from the effects of *res judicata*. The philosophy behind this rule prohibits the parties from litigating the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Verily, there should be an end to litigation by the same parties and their privies over a subject, once it is fully and fairly adjudicated.

This Court has already denied with finality the Factors' Complaint praying for the annulment of the titles issued in

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[23] *Cruz v. CA*, 517 Phil. 572, 585 (2006), citing *Luzon Development Bank v. Conquilla*, 507 Phil. 209 (2005).

[24] 374 Phil. 879, 897 (1999).

respondents' names. In Case 2, it has determined that respondents have a better right to the property than the Factors. Since it is to the Factors that petitioner traces its title to the property, then the declaration made by this Court on who has the better right thereto is binding on petitioner.

Thus, the CA did not err in affirming the RTC's Decision to grant respondents' Motion to Dismiss. The cause of action in petitioner's Complaint for Quieting of Title is already barred by this Court's prior judgment declaring the validity of the titles issued in respondents' names.

Petitioner further argues that the CA erred when it overlooked or disregarded the rule that even registered landowners may lose their right to recover possession of their registered property by reason of *laches*.[25] Suffice it to say that this issue should have been raised at the earliest opportunity possible. Rule 39, Section 47(b) of the Rules on Civil Procedure provides that with respect to any matter that could have been raised in relation to the matter directly adjudged, the judgment or final order on the latter is considered "conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." Thus, for their failure to assert this argument in either LRC No. N-9049 or G.R. No. 132334 or for the denial of the argument after it has been raised, the aforementioned cases are considered conclusive between the parties. This Court may no longer rule on this matter, as any pronouncement thereon would result in *res judicata*.

Lastly, it must be stressed that petitioner's act of filing multiple suits involving the same parties and the same cause of action for the purpose of obtaining a favorable judgment amounts to forum-shopping, which by itself is already a valid ground to deny the instant Petition.

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court Appeals dated 12 July 2002 and its subsequent

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[25] *Rollo* (G.R. No. 155943), p. 19.

Resolution in CA-G.R. CV No. 60437 dated 14 November 2002 are **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Mendoza,[*] and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 163431. August 28, 2013]

NATHANIEL N. DONGON, *petitioner, vs.* **RAPID MOVERS AND FORWARDERS CO., INC. and/or NICANOR E. JAO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; INSTANCES WHEN THE COURT TREATED A PETITION FOR REVIEW ON *CERTIORARI* AS A SPECIAL CIVIL ACTION FOR *CERTIORARI*, ENUMERATED; APPLICATION IN CASE AT BAR.— Ordinarily, an original action for *certiorari* will not prosper if the remedy of appeal is available, for an appeal by petition for review on *certiorari* under Rule 45 of the *Rules of Court* and an original action for *certiorari* under Rule 65 of the *Rules of Court* are mutually exclusive, not alternative nor successive, remedies. On several occasions, however, the Court has treated a petition for *certiorari* as a petition for review on *certiorari* when: (*a*) the petition has been filed within the 15-day reglementary period; (*b*) public welfare and the advancement of public policy dictate such

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[*] Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per Special Order No. 1502.

treatment; (*c*) the broader interests of justice require such treatment; (*d*) the writs issued were null and void; or (*e*) the questioned decision or order amounts to an oppressive exercise of judicial authority. The Court deems it proper to allow due course to the petition as one for *certiorari* under Rule 65 in the broader interest of substantial justice, particularly because the NLRC's appellate adjudication was set aside by the CA, and in order to put at rest the doubt that the CA, in so doing, exercised its judicial authority oppressively.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; WILLFUL DISOBEDIENCE TO THE LAWFUL ORDERS OF AN EMPLOYER, AS A GROUND; REQUIREMENTS; NOT PRESENT IN CASE AT BAR.— Willful disobedience to the lawful orders of an employer is one of the valid grounds to terminate an employee under Article 296 (formerly Article 282) of the *Labor Code.* For willful disobedience to be a ground, it is required that: (*a*) the conduct of the employee must be willful or intentional; and (*b*) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge. Willfulness must be attended by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. In any case, the conduct of the employee that is a valid ground for dismissal under the *Labor Code* constitutes harmful behavior against the business interest or person of his employer. It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer. Under the foregoing standards, the disobedience attributed to petitioner could not be justly characterized as willful within the contemplation of Article 296 of the *Labor Code*. He neither benefitted from it, nor thereby prejudiced the business interest of Rapid Movers. His explanation that his deed had been intended to benefit Rapid Movers was credible. There could be no wrong or perversity on his part that warranted the termination of his employment based on willful disobedience.

3. ID.; ID.; ID.; MANAGEMENT PREROGATIVE WILL BE UPHELD SO LONG AS IT IS NOT WIELDED AS AN IMPLEMENT TO CIRCUMVENT THE LAWS AND OPPRESS LABOR; EXPLAINED.— It is true that an

> employer is given a wide latitude of discretion in managing its own affairs. The broad discretion includes the implementation of company rules and regulations and the imposition of disciplinary measures on its employees. But the exercise of a management prerogative like this is not limitless, but hemmed in by good faith and a due consideration of the rights of the worker. In this light, the management prerogative will be upheld for as long as it is not wielded as an implement to circumvent the laws and oppress labor. To us, dismissal should only be a last resort, a penalty to be meted only after all the relevant circumstances have been appreciated and evaluated with the goal of ensuring that the ground for dismissal was not only serious but true. The cause of termination, to be lawful, must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This requirement is in keeping with the spirit of our Constitution and laws to lean over backwards in favor of the working class, and with the mandate that every doubt must be resolved in their favor. Although we recognize the inherent right of the employer to discipline its employees, we should still ensure that the employer exercises the prerogative to discipline humanely and considerately, and that the sanction imposed is commensurate to the offense involved and to the degree of the infraction. The discipline exacted by the employer should further consider the employee's length of service and the number of infractions during his employment. The employer should never forget that always at stake in disciplining its employee are not only his position but also his livelihood, and that he may also have a family entirely dependent on his earnings.

APPEARANCES OF COUNSEL

Ariel R. Subia for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The prerogative of the employer to dismiss an employee on the ground of willful disobedience to company policies must be exercised in good faith and with due regard to the rights of labor.

The Case

By petition for review on *certiorari*, petitioner appeals the adverse decision promulgated on October 24, 2003,[1] whereby the Court of Appeals (CA) set aside the decision dated June 17, 2002 of the National Labor Relations Commission (NLRC) in his favor.[2] The NLRC had thereby reversed the ruling dated September 10, 2001 of the Labor Arbiter dismissing his complaint for illegal dismissal.[3]

Antecedents

The following background facts of this case are stated in the CA's assailed decision, *viz*:

> From the records, it appears that petitioner Rapid is engaged in the hauling and trucking business while private respondent Nathaniel T. Dongon is a former truck helper leadman.
>
> Private respondent's area of assignment is the Tanduay Otis Warehouse where he has a job of facilitating the loading and unloading [of the] petitioner's trucks. On 23 April 2001, private respondent and his driver, Vicente Villaruz, were in the vicinity of Tanduay as they tried to get some goods to be distributed to their clients.
>
> Tanduay's security guard called the attention of private respondent as to the fact that Mr. Villaruz'[s] was not wearing an Identification Card (I.D. Card). Private respondent, then, assured the guard that he will secure a special permission from the management to warrant the orderly release of goods.
>
> Instead of complying with his compromise, private respondent lent his I.D. Card to Villaruz; and by reason of such misrepresentation, private respondent and Mr. Villaruz got a clearance from Tanduay

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[1] *Rollo*, at 21-30; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice), and concurred in by Associate Justice Buenaventura J. Guerrero (retired/deceased) and Associate Justice Regalado E. Maambong (retired/deceased).

[2] *Id.* at 46-55; penned by Commissioner Victoriano R. Calaycay, and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan (now a Member of the Court of Appeals).

[3] *Id.* at 62-70.

for the release of the goods. However, the security guard, who saw the misrepresentation committed by private respondent and Mr. Villaruz, accosted them and reported the matter to the management of Tanduay.

On 23 May 2001, after conducting an administrative investigation, private respondent was dismissed from the petitioning Company.

On 01 June 2001, private respondent filed a Complaint for Illegal Dismissal. x x x[4]

In his decision, the Labor Arbiter dismissed the complaint, and ruled that respondent Rapid Movers and Forwarders Co., Inc. (Rapid Movers) rightly exercised its prerogative to dismiss petitioner, considering that: (1) he had admitted lending his company ID to driver Vicente Villaruz; (2) his act had constituted mental dishonesty and deceit amounting to breach of trust; (3) Rapid Movers' relationship with Tanduay had been jeopardized by his act; and (4) he had been banned from all the warehouses of Tanduay as a result, leaving Rapid Movers with no available job for him.[5]

On appeal, however, the NLRC reversed the Labor Arbiter, and held that Rapid Movers had not discharged its burden to prove the validity of petitioner's dismissal from his employment. It opined that Rapid Movers did not suffer any pecuniary damage from his act; and that his dismissal was a penalty disproportionate to the act of petitioner complained of. It awarded him backwages and separation pay in lieu of reinstatement, to wit:

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE and a new one ENTERED ordering the payment of his backwages from April 25, 2001 up to the finality of this decision and in lieu of reinstatement, he should be paid his separation pay from date of hire on May 2, 1994 up to the finality hereof.

SO ORDERED.[6]

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[4] *Id.* at 22-23.

[5] *Id.* at 62-70.

[6] *Id.* at 54.

Rapid Movers brought a petition for *certiorari* in the CA, averring grave abuse of discretion on the part of the NLRC, to wit:

I.

x x x IN STRIKING DOWN THE DISMISSAL OF THE PRIVATE RESPONDENT [AS] ILLEGAL ALLEGEDLY FOR BEING GROSSLY DISPROPORTIONATE TO THE OFFENSE COMMITTED IN THAT NEITHER THE PETITIONERS NOR ITS CLIENT TANDUAY SUFFERED ANY PECUNIARY DAMAGE THEREFROM THEREBY IMPLYING THAT FOR A DISHONEST ACT/MISCONDUCT TO BE A GROUND FOR DISMISSAL OF AN EMPLOYEE, THE SAME MUST AT LEAST HAVE RESULTED IN PECUNIARY DAMAGE TO THE EMPLOYER;

II.

x x x IN EXPRESSING RESERVATION ON THE GUILT OF THE PRIVATE RESPONDENT IN THE LIGHT OF ITS PERCEIVED CONFLICTING DATES OF THE LETTER OF TANDUAY TO RAPID MOVERS (JANUARY 25, 2001) AND THE OCCURRENCE OF THE INCIDENT ON APRIL 25, 2001 WHEN SAID CONFLICT OF DATES CONSIDERING THE EVIDENCE ON RECORD, WAS MORE APPARENT THAN REAL.[7]

Ruling of the CA

On October 24, 2003, the CA promulgated its assailed decision reinstating the decision of the Labor Arbiter, and upholding the right of Rapid Movers to discipline its workers, holding thusly:

> There is no dispute that the private respondent lent his I.D. Card to another employee who used the same in entering the compound of the petitioner customer, Tanduay. Considering that this amounts to dishonesty and is provided for in the petitioning Company's *Manual of Discipline*, its imposition is but proper and appropriate.
>
> It is basic in any enterprise that an employee has the obligation of following the rules and regulations of its employer. More basic further is the elementary obligation of an employee to be honest and truthful in his work. It should be noted that honesty is one of the foremost criteria of an employer when hiring a prospective

[7] *Id.* at 39-40.

employee. Thus, we see employers requiring an NBI clearance or police clearance before formally accepting an applicant as their employee. Such rules and regulations are necessary for the efficient operation of the business.

Employees who violate such rules and regulations are liable for the penalties and sanctions so provided, *e.g*., the Company's Manual of Discipline (as in this case) and the Labor Code.

The argument of the respondent commission that no pecuniary damage was sustained is off-tangent with the facts of the case. The act of lending an ID is an act of dishonesty to which no pecuniary estimate can be ascribed for the simple reason that no monetary equation is involved. What is involved is plain and simple adherence to truth and violation of the rules. The act of uttering or the making of a falsehood does not need any pecuniary estimate for the act to gestate to one punishable under the labor laws. In this case, the illegal use of the I.D. Card while it may appear to be initially trivial is of crucial relevance to the petitioner's customer, Tanduay, which deals with drivers and leadmen withdrawing goods and merchandise from its warehouse. For those with criminal intentions can use another's ID to asport goods and merchandise.

Hence, while it can be conceded that there is no pecuniary damage involved, the fact remains that the offense does not only constitute dishonesty but also willful disobedience to the lawful order of the Company, *e.g*., to observe at all time the terms and conditions of the Manual of Discipline. Article 282 of the Labor Code provides:

> "Termination by Employer – An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> x x x." (Emphasis, supplied)

The constitutional protection afforded to labor does not condone wrongdoings by the employee; and an employer's power to discipline its workers is inherent to it. As honesty is always the best policy, the Court is convinced that the ruling of the Labor Arbiter is more in accord with the spirit of the Labor Code. "The Constitutional policy of providing full protection to labor is not intended to oppress or destroy management (***Capili vs. NLRC, 270 SCRA 488[1997])****."*

Also, in *Atlas Fertilizer Corporation vs. NLRC*, 273 SCRA 549 [1997], the Highest Magistrate declared that "The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer."

WHEREFORE, premises considered, the *Petition* is **GRANTED**. The assailed 17 June 2002 *Decision* of respondent Commission in NLRC CA-029937-01 is hereby **SET ASIDE** and the 10 September 2001 *Decision* of Labor Arbiter Vicente R. Layawen is ordered **REINSTATED**. No costs.

SO ORDERED.[8]

Petitioner moved for a reconsideration, but the CA denied his motion on March 22, 2004.[9]

Undaunted, the petitioner is now on appeal.

Issue

Petitioner still asserts the illegality of his dismissal, and denies being guilty of willful disobedience. He contends that:

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN SUSTAINING THE DECISION DATED 10 SEPTEMBER 2001 OF LABOR ARBITER VICENTE R. LAYAWEN WHERE THE LATTER RULED THAT BY LENDING HIS ID TO VILLARUZ, PETITIONER (COMPLAINANT) COMMITTED MISREPRESENTATION AND DECEIT CONSTITUTING MENTAL DISHONESTY WHICH CANNOT BE DISCARDED AS INSIGNIFICANT OR TRIVIAL.[10]

Petitioner argues that his dismissal was discriminatory because Villaruz was retained in his employment as driver; and that the CA gravely abused its discretion in disregarding his showing that he did not violate Rapid Movers' rules and regulations but simply performed his work in line with the duties entrusted to him, and in not appreciating his good faith and lack of any intention to willfully disobey the company's rules.

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[8] *Id.* at 27-30.

[9] *Id.* at 31.

[10] *Id.* at 9.

In its comment,[11] Rapid Movers prays that the petition for *certiorari* be dismissed for being an improper remedy and apparently resorted to as a substitute for a lost appeal; and insists that the CA did not commit grave abuse of discretion.

In his reply,[12] petitioner submits that his dismissal was a penalty too harsh and disproportionate to his supposed violation; and that his dismissal was inappropriate due to the violation being his first infraction that was even committed in good faith and without malice.

Based on the parties' foregoing submissions, the issues to be resolved are, *firstly*: Was the petition improper and dismissible?; and, *secondly*: If the petition could prosper, was the dismissal of petitioner on the ground of willful disobedience to the company regulation lawful?

Ruling

The petition has merit.

1.

Petition should not be dismissed

In *St. Martin Funeral Home v. National Labor Relations Commission*,[13] the Court has clarified that parties seeking the review of decisions of the NLRC should file a petition for *certiorari* in the CA on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. Thereafter, the remedy of the aggrieved party from the CA decision is an appeal via petition for review on *certiorari*.[14]

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[11] *Id.* at 145-150.

[12] *Id.* at 152-158.

[13] G.R. No. 130866, September 16, 1998, 295 SCRA 494, 503-504.

[14] See *Talidano v. Falcon Maritime & Allied Services, Inc.*, G.R. No. 172031, July 14, 2008, 558 SCRA 279, 291; *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, G.R. No. 170244, November 28, 2007, 539 SCRA 178, 187-188; *Hanjin Engineering and Construction Co., Ltd., v. Court of Appeals*, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 96.

The petition filed here is self-styled as a petition for review on *certiorari*, but Rapid Movers points out that the petition was really one for *certiorari* under Rule 65 of the *Rules of Court* due to its basis being the commission by the CA of a grave abuse of its discretion and because the petition was filed beyond the reglementary period of appeal under Rule 45. Hence, Rapid Movers insists that the Court should dismiss the petition because *certiorari* under Rule 65 could not be a substitute of a lost appeal under Rule 45.

Ordinarily, an original action for *certiorari* will not prosper if the remedy of appeal is available, for an appeal by petition for review on *certiorari* under Rule 45 of the *Rules of Court* and an original action for *certiorari* under Rule 65 of the *Rules of Court* are mutually exclusive, not alternative nor successive, remedies.[15] On several occasions, however, the Court has treated a petition for *certiorari* as a petition for review on *certiorari* when: (*a*) the petition has been filed within the 15-day reglementary period;[16] (*b*) public welfare and the advancement of public policy dictate such treatment; (*c*) the broader interests of justice require such treatment; (*d*) the writs issued were null and void; or (*e*) the questioned decision or order amounts to an oppressive exercise of judicial authority.[17]

The Court deems it proper to allow due course to the petition as one for *certiorari* under Rule 65 in the broader interest of substantial justice, particularly because the NLRC's appellate adjudication was set aside by the CA, and in order to put at rest the doubt that the CA, in so doing, exercised its judicial authority oppressively. Whether the petition was proper or not

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[15] *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 575; *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 136.

[16] *Nuñez v. GSIS Family Bank*, G.R. No. 163988, November 17, 2005, 475 SCRA 305, 316; *Tichangco v. Enriquez*, G.R. No. 150629, June 30, 2004, 433 SCRA 324, 333.

[17] *Leyte IV Electric Cooperative, Inc. v. Leyeco IV Employees Union-ALU*, G.R. No. 157775, October 19, 2007, 537 SCRA 154, 166.

should be of less importance than whether the CA gravely erred in undoing and setting aside the determination of the NLRC as a reviewing forum *vis-à-vis* the Labor Arbiter. We note in this regard that the NLRC had declared the dismissal of petitioner to be harsh and not commensurate to the infraction committed. Given the spirit and intention underlying our labor laws of resolving a doubtful situation in favor of the working man, we will have to review the judgment of the CA to ascertain whether the NLRC had really committed grave abuse of its discretion. This will settle the doubts on the propriety of terminating petitioner, and at the same time ensure that justice is served to the parties.[18]

2.

Petitioner was not guilty of willful disobedience; hence, his dismissal was illegal

Petitioner maintains that willful disobedience could not be a ground for his dismissal because he had acted in good faith and with the sole intention of facilitating deliveries for Rapid Movers when he allowed Villaruz to use his company ID.

Willful disobedience to the lawful orders of an employer is one of the valid grounds to terminate an employee under Article 296 (formerly Article 282) of the *Labor Code*.[19] For willful disobedience to be a ground, it is required that: (*a*) the conduct of the employee must be willful or intentional; and (*b*) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge.[20] Willfulness must be attended

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[18] *Dalton-Reyes v. Court of Appeals*, G.R. No. 149580, March 16, 2005, 453 SCRA 498, 509-510.

[19] Renumbered pursuant to Republic Act No. 10151 (*An Act Allowing The Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, As Amended, Otherwise Known As The Labor Code of the Philippines*).

[20] *Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW,* G.R. No. 148205, February 28, 2005, 452 SCRA 480, 497; *Dimabayao v. National Labor Relations Commission*,

by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.[21] In any case, the conduct of the employee that is a valid ground for dismissal under the *Labor Code* constitutes harmful behavior against the business interest or person of his employer.[22] It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer.

Under the foregoing standards, the disobedience attributed to petitioner could not be justly characterized as willful within the contemplation of Article 296 of the *Labor Code*. He neither benefitted from it, nor thereby prejudiced the business interest of Rapid Movers. His explanation that his deed had been intended to benefit Rapid Movers was credible. There could be no wrong or perversity on his part that warranted the termination of his employment based on willful disobedience.

Rapid Movers argues, however, that the strict implementation of company rules and regulations should be accorded respect as a valid exercise of its management prerogative. It posits that it had the prerogative to terminate petitioner for violating its following company rules and regulations, to wit:

(a) "*Pagpayag sa paggamit ng iba o paggamit ng maling rekord ng kumpanya kaugnay sa operations, maintenance or materyales o trabaho*" (Additional Rules and Regulations No. 2); and

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G.R. No. 122178, February 25, 1999, 303 SCRA 655, 659; *Carlos A. Gothong Lines, Inc. v. NLRC*, G.R. No. 96685, February 15, 1999, 303 SCRA 164, 170; *Lagatic v. National Labor Relations Commission*, G.R. No. 121004, January 28, 1998, 285 SCRA 251, 257.

[21] *Lakpue Drug, Inc. v. Belga*, G.R. No. 166379, October 20, 2005, 473 SCRA 617, 624; *St. Michael's Institute v. Santos*, G.R. No. 145280, December 4, 2001, 371 SCRA 383, 393; *Escobin v. National Labor Relations Commission*, G.R. No. 118159, April 15, 1998, 289 SCRA 48, 67.

[22] Separate Opinion of *J*. Tinga in *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 693.

(b) "*Pagkutsaba sa pagplano o pagpulong sa ibang tao upang labagin ang anumang alituntunin ng kumpanya*" (Article 5.28).[23]

We cannot sustain the argument of Rapid Movers.

It is true that an employer is given a wide latitude of discretion in managing its own affairs. The broad discretion includes the implementation of company rules and regulations and the imposition of disciplinary measures on its employees. But the exercise of a management prerogative like this is not limitless, but hemmed in by good faith and a due consideration of the rights of the worker.[24] In this light, the management prerogative will be upheld for as long as it is not wielded as an implement to circumvent the laws and oppress labor.[25]

To us, dismissal should only be a last resort, a penalty to be meted only after all the relevant circumstances have been appreciated and evaluated with the goal of ensuring that the ground for dismissal was not only serious but true. The cause of termination, to be lawful, must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This requirement is in keeping with the spirit of our Constitution and laws to lean over backwards in favor of the working class, and with the mandate that every doubt must be resolved in their favor.[26]

Although we recognize the inherent right of the employer to discipline its employees, we should still ensure that the employer exercises the prerogative to discipline humanely and considerately, and that the sanction imposed is commensurate to the offense

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[23] *Rollo*, p. 78.

[24] *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 115.

[25] *Mendiola v. Court of Appeals*, G.R. No. 159333, July 31, 2006, 497 SCRA 346, 360; *Unicorn Safety Glass, Inc. v. Basarte*, G.R. No. 154689, November 25, 2004, 444 SCRA 287, 297.

[26] *Hongkong and Shanghai Banking Corp. v. National Labor Relations Commission*, G.R. No. 116542, July 30, 1996, 260 SCRA 49, 56.

involved and to the degree of the infraction. The discipline exacted by the employer should further consider the employee's length of service and the number of infractions during his employment.[27] The employer should never forget that always at stake in disciplining its employee are not only his position but also his livelihood,[28] and that he may also have a family entirely dependent on his earnings.[29]

Considering that petitioner's motive in lending his company ID to Villaruz was to benefit Rapid Movers as their employer by facilitating the loading of goods at the Tanduay Otis Warehouse for distribution to Rapid Movers' clients, and considering also that petitioner had rendered seven long unblemished years of service to Rapid Movers, his dismissal was plainly unwarranted. The NLRC's reversal of the decision of the Labor Arbiter by holding that penalty too harsh and disproportionate to the wrong attributed to him was legally and factually justified, not arbitrary or whimsical. Consequently, for the CA to pronounce that the NLRC had thereby gravely abused its discretion was not only erroneous but was itself a grave abuse of discretion amounting to lack of jurisdiction for not being in conformity with the pertinent laws and jurisprudence. We have held that a conclusion or finding derived from erroneous considerations is not a mere error of judgment but one tainted with grave abuse of discretion.[30]

WHEREFORE, the Court **GRANTS** the petition; **REVERSES** and **SETS ASIDE** the decision promulgated by the Court of Appeals on October 24, 2003; **REINSTATES** the decision of the National Labor Relations Commission rendered on June 17, 2002; and **ORDERS** respondents to pay the costs of suit.

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[27] *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 509-510.

[28] *Pioneer Texturizing Corp. v. National Labor Relations Commission*, G.R. No. 118651, October 16, 1997, 280 SCRA 806, 816.

[29] *Almira v. B.F. Goodrich Philippines, Inc.*, No. L-34974, July 25, 1974, 58 SCRA 120, 131.

[30] *Varias v. Commission on Elections*, G.R. No. 189078, March 30, 2010, 617 SCRA 214, 229.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Mendoza,[*] and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 170942. August 28, 2013]

COMSAVINGS BANK (now GSIS FAMILY BANK), *petitioner, vs.* **SPOUSES DANILO and ESTRELLA CAPISTRANO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; NATURE AND EFFECT; LIABILITY OF A BANKING INSTITUTION RESULTING FROM ITS GROSS NEGLIGENCE; SUSTAINED IN CASE AT BAR.— The liability of Comsavings Bank towards respondents was based on Article 20 and Article 1170 of the *Civil* Code. x x x Based on the provisions, a banking institution like Comsavings Bank is obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions because its business is imbued with public interest. As aptly declared in *Philippine National Bank v. Pike*: "The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks." Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences

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[*] Vice Associate Justice Martin S. Villarama, Jr., who is on leave, per Special Order No. 1502 dated August 8, 2013.

insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. There is no question that Comsavings Bank was grossly negligent in its dealings with respondents because it did not comply with its legal obligation to exercise the required diligence and integrity.

2. ID.; DAMAGES; MORAL DAMAGES; AWARD, WHEN PROPER.— Under Article 2219 of the *Civil Code*, moral damages may be recovered for the acts or actions referred to in Article 20 of the *Civil Code*. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. In their amended complaint, respondents claimed that the acts of GCB Builders and Comsavings Bank had caused them to suffer sleepless nights, worries and anxieties. The claim was well founded. x x x The award of moral damages of ₱100,000.00 awarded by the CA as exemplary damages is proper.

3. ID.; ID.; EXEMPLARY DAMAGES; THE LAW ALLOWS THE GRANT OF EXEMPLARY DAMAGES TO SET AN EXAMPLE FOR THE PUBLIC GOOD.— With respect to exemplary damages, the amount of ₱50,000.00 awarded by the CA as exemplary damages is sustained. Relevantly, we have held that: The law allows the grant of exemplary damages to set an example for the public good. The business of a bank is affected with public interest; thus, it makes a sworn profession of diligence and meticulousness in giving irreproachable service. For this reason, the bank should guard against injury attributable to negligence or bad faith on its part. The banking sector must at all times maintain a high level of meticulousness. The grant of exemplary damages is justified by the initial carelessness of petitioner, aggravated by its lack of promptness in repairing its error.

4. ID.; ID.; ACTUAL DAMAGES; TO JUSTIFY AN AWARD FOR ACTUAL DAMAGES, THERE MUST BE COMPETENT PROOF OF THE ACTUAL AMOUNT OF LOSS; NOT PRESENT IN CASE AT BAR.— The award of actual damages amounting to ₱25,000.00 is not warranted. To justify an award for actual damages, there must be competent proof of the actual amount of loss. Credence can be given only

to claims duly supported by receipts. Respondents did not submit any documentary proof, like receipts, to support their claim for actual damages.

5. ID.; ID.; TEMPERATE DAMAGES; RECOVERY OF TEMPERATE DAMAGES IS ALLOWED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS WAS SUFFERED BUT ITS AMOUNT CANNOT BE PROVED WITH CERTAINTY; CASE AT BAR.— It cannot be denied that they had suffered substantial losses. Article 2224 of the *Civil Code* allows the recovery of temperate damages when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty. In lieu of actual damages, therefore, temperate damages of ₱25,000.00 are awarded. Such amount, in our view, is reasonable under the circumstances.

6. ID.; ID.; ATTORNEY'S FEES; WHEN EXEMPLARY DAMAGES ARE AWARDED OR WHERE THE PLAINTIFF HAS INCURRED EXPENSES TO PROTECT HIS INTEREST BY REASON OF DEFENDANT'S ACT OR OMISSION, RECOVERY OF ATTORNEY'S FEES IS ALLOWED.— Article 2208 of the *Civil Code* allows recovery of attorney's fees when exemplary damages are awarded or where the plaintiff has incurred expenses to protect his interest by reason of defendant's act or omission. Considering that exemplary damages were properly awarded here, and that respondents hired a private lawyer to litigate its cause, we agree with the RTC and CA that the ₱30,000.00 allowed as attorney's fees were appropriate and reasonable.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Mila Raquid-Arroyo for respondents.

D E C I S I O N

BERSAMIN, *J.*:

A banking institution serving as an originating bank for the Unified Home Lending Program (UHLP) of the Government

owes a duty to observe the highest degree of diligence and a high standard of integrity and performance in all its transactions with its clients because its business is imbued with public interest.

The Case

Comsavings Bank (now GSIS Family Bank) seeks the review and reversal of the decision promulgated on November 30, 2005,[1] whereby the Court of Appeals (CA) affirmed with modifications the decision rendered on April 25, 2003 by the Regional Trial Court (RTC), Branch 135, in Makati City finding it liable for damages to respondents.[2]

Antecedents

Respondents were the owners of a residential lot with an area of 200 square meters known as Lot 8 of Block 4 of the Infant Jesus Subdivision situated in Bacoor, Cavite, and covered by Transfer Certificate of Title (TCT) No. 316885 of the Register of Deeds of Cavite. Desirous of building their own house on the lot, they availed themselves of the UHLP implemented by the National Home Mortgage Finance Corporation (NHMFC). On May 28, 1992, they executed a construction contract with Carmencita Cruz-Bay, the proprietor of GCB Builders, for the total contract price of ₱265,000.00 with the latter undertaking to complete the construction within 75 days. To finance the construction, GCB Builders facilitated their loan application with Comsavings Bank, an NHMFC-accredited originator. As proof of their qualifications to avail themselves of a loan under the UHLP and to comply with the conditions prescribed for the approval of their application, they submitted their record of employment, the amount of their income, and a clearance from the Social Security System (SSS) to the effect that they had no existing loans, among others. On May 28, 1992, they executed in favor of GCB Builders a deed of assignment of the amount of the ₱300,000.00 proceeds of the loan from Comsavings Bank.

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[1] *Rollo*, pp. 30-48; penned by Associate Justice Portia Aliño-Hormachuelos (retired), with Associate Justice Mariano C. Del Castillo (now a Member of this Court) and Associate Justice Magdangal M. De Leon concurring.

[2] *Id*. at 72-82.

On July 2, 1992, Comsavings Bank informed respondent Estrella Capistrano that she would have to sign various documents as part of the requirements for the release of the loan. Among the documents was a *certificate of house completion and acceptance*. On the same date, Comsavings Bank handed Estrella a letter addressed to GCB Builders informing the latter that respondents had complied with the preliminary requirements of the UHLP, and were qualified to avail themselves of the loan amounting to ₱303,450.00 payable within 25 years at 16% *per annum*, subject to the following terms and conditions, namely: the signing of mortgage documents, 100% completion of the construction of the housing unit, original certificate of occupancy permit and certification of completion, and submission of house pictures signed by the borrower at the back.

On August 10, 1992, Comsavings Bank informed respondents of the approval of an interim financing loan of ₱260,000.00 payable within 180 days, which amount was to be paid out of the proceeds of the loan from NHMFC. By October 9, 1992, GCB Builders received from Comsavings Bank the total sum of ₱265,000.00 as construction cost in four releases, to wit:

August 7, 1992	-	₱ 39,210.00
August 19, 1992	-	₱112,181.00
September 3, 1992	-	₱ 53,565.00
October 9, 1992	-	₱ 24,779.25[3]

In late September 1992, after Comsavings Bank had released the total of ₱265,000.00 to GCB Builders as construction cost, respondents inquired from GCB Builder when their house would be completed considering that their contract stipulated a completion period of 75 days. Cruz-Bay gave various excuses for the delay, such as the rainy season, but promised to finish the construction as soon as possible. The year 1992 ended with the construction of the house unfinished.[4]

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

[4] *Id.* at 33.

In February 1993, respondents demanded the completion of the house. In reply, Cruz-Bay told them to give the further amount of ₱25,000.00 to finish the construction. They requested a breakdown of the amounts already spent in the construction considering that the ₱303,450.00 that Comsavings Bank had been paid by NHMFC on their loan had been more than the contract price of the contract. Instead of furnishing them the requested breakdown, GCB Builders' counsel sent a demand letter for an additional construction cost of ₱52,511.59.

On May 30, 1993, respondents received a letter from NHMFC advising that they should already start paying their monthly amortizations of ₱4,278.00 because their loan had been released on April 20, 1993 directly to Comsavings Bank. On June 1, 1993, Estrella Capistrano went to the construction site and found to her dismay that the house was still unfinished. She noted that there were no doorknobs; that the toilet bath floor was not even constructed yet because the portion of the house was still soil; that there were no toilet and bathroom fixtures; that the toilet and bath wall tiles had no end-capping; that there were cracks on the wall plastering; that the kitchen sink had no plumbing fixtures; and that the main door installed was a flush-type instead of the sliding door specified in the approved plans.

On July 5, 1993, respondents wrote to NHMFC protesting the demand for amortization payments considering that they had not signed any *certification of completion and acceptance*, and that even if there was such a *certification of completion and acceptance*, it would have been forged.

On July 14, 1993, respondents again wrote to NHMFC requesting an ocular inspection of the construction site.

On November 11, 1993, Atty. Ruben C. Corona, the Manager of the Collateral Verification & External Examination Department of NHMFC, informed the counsel of respondents that the inspection of the construction site conducted on August 4, 1993 showed the following:

1) That the subject unit is being occupied by tenant, a certain Mr. Mark Inanil;

2) That the toilet/bath and kitchen counter are not installed with Plumbing fixtures;

3) That there are no door knobs on bedroom and no handles on Kitchen cabinet;

4) That the toilet bath has no concrete flooring and the tiles has no end/corner cappings; and

5) That there are hairline cracks on flooring.[5]

On July 12, 1993, respondents sued GCB Builders and Comsavings Bank for breach of contract and damages,[6] praying that defendants be ordered jointly and severally liable: (1) to finish the construction of the house according to the plans and specifications agreed upon at the price stipulated in the construction contract; and (2) to pay them ₱38,450.00 as the equivalent of the mortgage value in excess of the contract price; ₱25,000.00 as actual damages for the expenses incurred by reason of the breach of contract; ₱200,000.00 as moral damages; ₱30,000.00 as attorney's fees; and ₱50,000.00 as exemplary damages.

Respondents amended their complaint to implead NHMFC as an additional defendant. Aside from adopting the reliefs under the original complaint, they prayed that NHMFC be directed to hold in abeyance its demand for amortization payment until the case had been finally adjudged; that NHMFC, GCB Builders and Comsavings Bank be ordered to pay moral and exemplary damages, and attorney's fees; and that GCB Builders and Comsavings be directed to pay ₱4,500.00 as monthly rental from the filing of the complaint until the house was turned-over and accepted by them.[7]

In their respective answers,[8] GCB Builders, Comsavings Bank and NHMFC asserted that the complaint as amended stated no

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[5] *Id.* at 31-35.

[6] *Id.* at 49-53.

[7] *Id.* at 54-60.

[8] Records, pp. 22-26, 119-120, 123-126, and 186-189.

cause of action against them. On its part, GCB Builders claimed that the construction of the house had been completed a long time ago; that respondent had failed, despite demand, to occupy the house and to pay a balance of ₱46,849.94 as of August 23, 1993; and that it had received only ₱239,355.30 out of the ₱303,000.00 loan, inasmuch as the balance went to interim interest, originator fee, service charge and other bank charges. Comsavings Bank averred that respondents were estopped from assailing their signing of the *certificate of house acceptance/ completion* on July 2, 1992 considering that they had the option not to pre-sign the certificate; and that it did not make any representation as to the conditions and facilitation of the loan with NHMFC when it submitted the *certificate of house acceptance/completion* to NHMFC after the completion of the house on April 20, 1993 because such representations were normal and regular requirements in loan processing of the conduit banks of NHMFC. Lastly, NHMFC alleged that it administered the UHLP of the Government by granting financing to qualified home borrowers through loan originators, like Comsavings Bank in this case; and that respondents had applied and had been granted a housing loan, and, as security, they had executed a loan and mortgage agreement and promissory note for ₱303,450.00 dated July 2, 1992.

Decision of the RTC

On April 25, 2003, after trial, the RTC rendered a decision in favor of respondents.[9] Specifically, it found that although the proceeds of the loan had been completely released, the construction of the house of respondents remained not completed; that the house had remained in the possession of GCB Builders, which had meanwhile leased it to another person; that GCB Builders did not comply with the terms and conditions of the construction contract; and that NHMFC approved the loan in the gross amount of ₱303,450.00, and released ₱289,000.00 of that amount to Comsavings Bank on April 20, 1993. It concluded that respondents were entitled to recover from all

[9] *Supra* note 2.

defendants actual damages of ₱25,000.00; moral damages for their mental anguish and sleepless night in the amount of ₱200,000.00; exemplary damages of ₱100,000.00; and ₱30,000.00 as attorney's fees. It ruled, however, that only GCB Builders was liable for the monthly rental of ₱4,500.00 because GCB Builders was alone in renting out the house; and that NHMFC was equally liable with the other defendants by reason of its having released the loan proceeds to Comsavings Bank without verifying whether the construction had already been completed, thereby indicating that NHMFC had connived and confederated with its co-defendants in the irregular release of the loan proceeds to Comsavings Bank.

The RTC disposed thusly:

> WHEREFORE, judgment is hereby rendered ordering:
>
> 1. Defendants GCB Builder, COMSAVINGS BANK, and NATIONAL HOUSING FINANCE MORTGAGE CORPORATION (sic) jointly and severally:
>
> 1.1 To complete the construction of the house of plaintiff Spouses DANILO and ESTRELLA CAPISTRANO within thirty [30] days;
>
> 1.2 To pay said plaintiffs:
>
> 1.2.1 ₱25,000.00 in actual damages;
> 1.2.2 ₱200,000.00 in moral damages;
> 1.2.3 ₱100,000.00 in exemplary damages;
> 1.2.4 ₱30,000.00 as attorney's fees.
>
> 2. Defendant GCB Builder to pay the plaintiffs the amount of ₱4,500.00, as rentals from the date of the filing of the Complaint until the construction of the house is completed, turned over to and accepted by the plaintiffs;
>
> 3. Defendants NHMFC to hold in abeyance the collection of the amortizations until 30 days from the completion and acceptance by the plaintiffs of the house in question.
>
> SO ORDERED.[10]

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[10] *Id.* at 80-82.

GCB Builders, Comsavings Bank and NHMFC appealed to the CA.

Decision of the CA

GCB Builders assigned the following errors to the RTC, namely:

1. IN FINDING THAT THE HOUSE IN QUESTION WAS NOT COMPLETED.
2. IN FINDING THAT GCB BUILDERS DID NOT COMPLY WITH THE TERM AND CONDITIONS OF THE CONSTRUCTION.
3. IN NOT FINDING THAT THE PLAINTIFFS ARE LIABLE TO PAY DEFENDANT GCB THE AMOUNT OF ₱45,000.00.
4. IN RENDERING WITHOUT LEGAL AND FACTUAL BASIS THE DECISION, THE DISPOSTIVE PORTION OF WHICH READS, AS FOLLOWS:

x x x x x x x x x

5. IN NOT GRANTING THE RELIEFS PRAYED FOR IN THE COUNTERCLAIM;
6. IN NOT DISMISSING THE COMPLAINT.[11]

Comsavings Bank phrased its assignment of error thuswise:

I

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT COMSAVINGS BANK IS JOINTLY AND SEVERALLY LIABLE WITH THE OTHER DEFENDANTS-APPELLANTS GCB BUILDERS AND NATIONAL HOME MORTGAGE FINANCE CORPORATION TO PAY PLAINTIFFS-APPELLEES ACTUAL, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.[12]

NHMFC ascribes to the RTC the following errors, to wit:

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[11] CA *rollo*, pp. 138-139.

[12] *Id.* at 46.

I

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT NATIONAL HOME MORTGAGE FINANCE CORPORATION IS JOINTLY AND SEVERALLY LIABLE WITH THE OTHER DEFENDANT-APPELLANTS GCB BUILDERS AND COMSAVINGS BANK TO PAY PLAINTIFFS-APPELLEES ACTUAL, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.

II

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT NATIONAL HOME MORTGAGE FINANCE CORPORATION SHOULD HOLD IN ABEYANCE THE COLLECTION OF AMORTIZATION UNTIL 30 DAYS FROM THE COMPLETION AND ACCEPTANCE BY THE PLAINTIFFS OF THE HOUSE IN QUESTION.[13]

On November 30, 2005, the CA promulgated the appealed decision,[14] affirming the RTC subject to the modification that NHMFC was absolved of liability, and that the moral and exemplary damages were reduced, *viz*:

x x x x x x x x x

The Court *a quo* held appellant Comsavings Bank jointly and severally liable with appellant GCB Builders since it likewise committed misrepresentations in obtaining the mortgage loan from the NHMFC in the name of the appellees. We concur. The records show that it was appellant Comsavings Bank which called up the appellee Estrella Capistrano and had her sign various documents as part of the documentary requirements for the release of the construction loan. One of these documents, was the Certificate of House Completion and Acceptance, which, upon appellant Bank's representation was signed by the appellees even if the construction of the house had not yet started. On July 2, 1992, Comsavings Bank informed appellant GCB Builders that appellees had provisionally complied with the preliminary requirements under the Unified Home Lending Program of appellant NHMFC and qualified for a loan in

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

[14] *Supra* note 1.

the amount of ₱303,450.00 payable in twenty-five (25) years at an interest of 16% per annum. One condition for the approval of the loan was "100% completion of the construction of the housing unit located on the property described plus: Original Certificate of Occupancy Permit and Certification of Completion and Submission of House pictures signed at the back by the borrower. However, the loan documents which appellant Bank submitted to appellant NHMFC were false. Appellant Comsavings Bank in order to show that the construction of the subject house had been completed, submitted a photograph of a toilet/bath with plumbing and fixtures installed when in the truth, as admitted by appellant GCB Builders, the plumbing fixtures had not (been) installed as the appellees were still indebted to GCB. Comsavings Bank also submitted photographs of wall tiles of the toilet/bath showing them to be brown or mustard, but the color of the wall tiles actually installed was white per testimony of appellee Estrella Capistrano and corroborated by appellant GCB Builders' witness Leopoldo Arnaiz. The appellees complained to appellant NHMFC that the house which they bought was unfinished on the basis of which NHMFC conducted an inspection of the housing unit and found the complaint to be true.

By submitting false or forged documents to the NHMFC, appellant Comsavings Bank violated the warranties contained in the purchase of the loan agreement with appellant NHMFC. On the strength of such warranties, NHMFC issued Check No. 425824 in the amount of ₱1,382,806.63 that include the mortgage loan of the appellees. It must be recalled that the agreement provided among others that "the housing loan extended to the appellees would be released to and received by Comsavings Bank, and the latter warrants the genuineness of all loan documents it submitted to NHMFC. Incidentally, Carmencita B. Cruz, owner and proprietor of appellant GCB Builders admitted that she is even not an accredited builder of housing units under the Unified Home Lending Program (UHLP) of the NHMFC in the area. Appellant Comsavings Bank in allowing appellant GCB Builders to participate in the UHLP program undermined and defeated its real purpose, to help low income families build their own homes, to the damage and prejudice of the appellees.[15]

x x x x x x x x x

[15] *Id.* at 45-48.

WHEREFORE, in view of all the foregoing, the decision appealed from is AFFIRMED with MODIFICATIONS. The dispositive portion finding the NHMFC jointly and severally liable with the other appellants for the payment of actual, moral and exemplary damages, is hereby deleted; the awards of moral and exemplary damages are reduced to ₱100,000.00 and ₱50,000.00, respectively, and the amount of rentals to be paid by GCB Builders is to be reckoned from August 4, 1993.

SO ORDERED.[16]

Hence, this further appeal by Comsavings Bank.

Issue

Comsavings Bank submits the lone issue of:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING PETITIONER BANK JOINTLY AND SEVERALLY LIABLE WITH GCB BUILDERS TO PAY RESPONDENT ACTUAL, MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES.[17]

Comsavings Bank insists on its non-liability, contending that it committed no misrepresentation when it made respondents sign the *certificate of house acceptance/completion* notwithstanding that the construction of the house had not yet started; that they agreed to pre-sign the certificate, although they had the option not to; that it made them sign the certificate to enable them to avoid the inconvenience of returning back and forth just to sign the certificate; that it made clear to them during the pre-signing that the certificate would be submitted to NHMFC only after the completion of the house; that it submitted the certificate to NHMFC after the completion of the construction of the house on April 23, 2003; that they had thus been informed beforehand of the conditions in pre-signing the certificate; that choosing to pre-sign the certificate estopped them from questioning the procedural aspect of the documentation;

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[16] *Id.*

[17] *Id.* at 17.

and that the practice of pre-signing documents was not expressly prohibited considering that they were not induced to pre-sign the certificate.[18]

Ruling

The appeal has no merit.

1.

Comsaving Bank's liability was not based on its *purchase of loan agreement* with NHMFC but on Article 20 and Article 1170 of the *Civil Code*

The CA rightfully declared Comsavings Bank solidarily liable with GCB Builders for the damages sustained by respondents. However, we point out that such liability did not arise from Comsavings Bank's breach of warranties under its *purchase of loan agreement* with NHMFC. Under the *purchase of loan agreement*, it undertook, for value received, to sell, transfer and deliver to NHMFC the loan agreements, promissory notes and other supporting documents that it had entered into and executed with respondents, and warranted the genuineness of the loan documents and the "construction of the residential units."[19] Having made the warranties in favor of NHMFC, it would be liable in case of breach of the warranties to NHMFC, not respondents, eliminating breach of such warranties as a source of its liability towards respondents.

Instead, the liability of Comsavings Bank towards respondents was based on Article 20 and Article 1170 of the *Civil* Code, *viz*:

> Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

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[18] *Id.* at 20-22.

[19] Records, p. 880.

Based on the provisions, a banking institution like Comsavings Bank is obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions because its business is imbued with public interest.[20] As aptly declared in *Philippine National Bank v. Pike*:[21] "The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks."

Gross negligence connotes want of care in the performance of one's duties;[22] it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[23] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[24]

There is no question that Comsavings Bank was grossly negligent in its dealings with respondents because it did not comply with its legal obligation to exercise the required diligence and integrity. As a banking institution serving as an originator under the UHLP and being the maker of the *certificate of acceptance/completion*,[25] it was fully aware that the purpose of the signed certificate was to affirm that the house had been *completely* constructed according to the approved plans and

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[20] *Philippine National Bank v. Chea Chee Chong*, G.R. Nos. 170865 and 170892, April 25, 2012, 671 SCRA 49, 62-63; *Solidbank Corporation v. Arrieta*, G.R. No. 152720, February 17, 2005, 451 SCRA 711, 720; and *Philippine Commercial International Bank v. Court of Appeals*, G.R. Nos. 121413, 121479 and 128604, January 29, 2001, 350 SCRA 446, 472.

[21] G.R. No. 157845, September 20, 2005, 470 SCRA 328, 347.

[22] *Premiere Development Bank v. Mantal*, G.R. No. 167716, March 23, 2006, 485 SCRA 234, 239.

[23] *Macalinao v. Ong*, G.R. No. 146635, December 14, 2005, 477 SCRA 740, 760.

[24] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 696.

[25] Records, p. 812.

specifications, and that respondents had thereby accepted the delivery of the *complete* house. Given the purpose of the certificate, it should have desisted from presenting the certificate to respondents for their signature without such conditions having been fulfilled. Yet, it made respondents sign the certificate (through Estrella Capistrano, both in her personal capacity and as the attorney-in-fact of her husband Danilo Capistrano) despite the construction of the house not yet even starting. Its act was irregular *per se* because it contravened the purpose of the certificate. Worse, the pre-signing of the certificate was fraudulent because it was thereby enabled to gain in the process the amount of ₱17,306.83 in the form of several deductions from the proceeds of the loan on top of other benefits as an originator bank.[26] On the other hand, respondents were prejudiced, considering that the construction of the house was then still incomplete and was ultimately defective. Compounding their plight was that NHMFC demanded payment of their monthly amortizations despite the non-completion of the house. Had Comsavings Bank been fair towards them as its clients, it should not have made them pre-sign the certificate until it had confirmed that the construction of the house had been completed.

Comsavings Bank asserts that it submitted the certificate to NHMFC after the construction of the house had been completed on April 23, 2003. The assertion could not be true, however, because Atty. Corona of NHMFC testified that he had inspected the house on August 4, 1993 and had found the construction to be incomplete and defective.[27]

Contrary to the claim of Comsavings Bank, the records contain no showing that respondents had been given the option not to pre-sign the *certificate of acceptance/completion*; that Comsavings Bank had made respondents sign the certificate so that they would not be inconvenienced in going back and forth just to sign the certificate; and that it made clear to them during the pre-signing that the certificate would be submitted to NHMFC

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[26] Records, p. 11.

[27] TSN, October 19, 1998, pp. 2-9; records, p. 110.

only after the completion of the house. Felicisima M. Miranda, the loan officer of Comsavings Bank and its sole witness during trial, did not attest to such option not to pre-sign. Also, Estrella Capistrano (Estrella) mentioned nothing about it during the trial, testifying only that after signing several documents, including the certificate, she was told by Comsavings Bank's personnel that the documents would be needed for the processing of the loan.[28] Clearly, the supposed option was Comsavings Bank's lame justification for the pre-signing of the certificate.

The submission of pictures of the fully-constructed house bearing the signatures of respondents on the dorsal sides was a requirement for the release of the loan by Comsavings Bank to GCB Builders, and for the Comsavings Bank's reimbursement of the loan from NHMFC.[29] The signatures were ostensibly for authentication of the pictures. In its compliance, GCB Builders submitted pictures of a different house sans the signatures of respondents on the dorsal sides.[30] Ignoring the glaring irregularity, Comsavings Bank accepted the unsigned (hence, unauthenticated) pictures, released the loan to GCB Builders, and turned over the pictures to NHMFC for the reimbursement of the loan. Had Comsavings Bank complied with its duty of observing the highest degree of diligence, it would have checked first whether the pictures carried the signatures of respondents on their dorsal sides, and whether the house depicted on the pictures was really the house of respondents, before releasing the proceeds of the loan to GCB Builders and before submitting the pictures to NHMFC for the reimbursement. Again, this is an indication of Comsavings Bank's gross negligence.

2.

Comsavings Bank is liable for damages

As to the damages that should be awarded to respondents, moral and exemplary damages were warranted.

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[28] TSN, September 14, 1995, pp. 4 and 7.

[29] Records, pp. 11 and 880.

[30] *Id.* at 726.

Under Article 2219 of the *Civil Code*, moral damages may be recovered for the acts or actions referred to in Article 20 of the *Civil Code*. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.[31]

In their amended complaint, respondents claimed that the acts of GCB Builders and Comsavings Bank had caused them to suffer sleepless nights, worries and anxieties. The claim was well founded. Danilo worked in Saudi Arabia in order to pay the loan used for the construction of their family home. His anxiety and anguish over the incomplete and defective construction of their house, as well as the inconvenience he and his wife experienced because of this suit were not easily probable. On her part, Estrella was a mere housewife, but was the attorney-in-fact of Danilo in matters concerning the loan transaction. With Danilo working abroad, she was alone in overseeing the house construction and the progress of the present case. Given her situation, she definitely experienced worries and sleepless nights. The award of moral damages of ₱100,000.00 awarded by the CA as exemplary damages is proper.

With respect to exemplary damages, the amount of ₱50,000.00 awarded by the CA as exemplary damages is sustained. Relevantly, we have held that:

> The law allows the grant of exemplary damages to set an example for the public good. The business of a bank is affected with public interest; thus, it makes a sworn profession of diligence and meticulousness in giving irreproachable service. For this reason, the bank should guard against injury attributable to negligence or bad faith on its part. The banking sector must at all times maintain a high level of meticulousness. The grant of exemplary damages is justified by the initial carelessness of petitioner, aggravated by its lack of promptness in repairing its error.[32]

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[31] See also *Cagungun v. Planters Development Bank*, G.R. No. 158674, October 17, 2005, 473 SCRA 259, 271.

[32] *Solidbank Corporation v. Arrieta*, G.R. No. 152720, February 17, 2005, 451 SCRA 711, 722.

However, the award of actual damages amounting to ₱25,000.00 is not warranted. To justify an award for actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims duly supported by receipts.[33] Respondents did not submit any documentary proof, like receipts, to support their claim for actual damages.

Nonetheless, it cannot be denied that they had suffered substantial losses. Article 2224 of the *Civil Code* allows the recovery of temperate damages when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty. In lieu of actual damages, therefore, temperate damages of ₱25,000.00 are awarded. Such amount, in our view, is reasonable under the circumstances.

Article 2208 of the *Civil Code* allows recovery of attorney's fees when exemplary damages are awarded or where the plaintiff has incurred expenses to protect his interest by reason of defendant's act or omission. Considering that exemplary damages were properly awarded here, and that respondents hired a private lawyer to litigate its cause, we agree with the RTC and CA that the ₱30,000.00 allowed as attorney's fees were appropriate and reasonable.

A defendant who did not appeal may be benefitted by the judgment in favor of the other defendant who appealed.[34] Thus, the foregoing modifications as to the nature and amount of damages inures to the benefit of GCB Builders although it did not appeal the ruling of the CA.

WHEREFORE, we **AFFIRM** the decision promulgated by the Court of Appeals on November 30, 2005, subject to the **MODIFICATIONS** that Comsavings Bank and GCB Builders are further ordered to pay, jointly and severally, to the Spouses Danilo and Estrella Capistrano the following amounts: (1) ₱25,000.00

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[33] *Gamboa, Rodriguez, Rivera & Co., Inc. v. Court of Appeals*, G.R. No. 117456, May 6, 2005, 458 SCRA 68, 74.

[34] *Petilla v. Court of Appeals*, No. L-38188, June 18, 1987, 151 SCRA 1, 12.

as temperate damages; (2) ₱30,000.00 as attorney's fees; (3) interest of 6% *per annum* on all the amounts of damages reckoned from the finality of this decision; and (4) the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Mendoza,[*] and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171307. August 28, 2013]

J.R.A. PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE ADDED TAX (VAT); INPUT TAXES; COMPLIANCE WITH THE VAT INVOICING REQUIREMENTS IS NECESSARY TO BE ABLE TO FILE CLAIM FOR INPUT TAXES ATTRIBUTABLE TO ZERO RATED SALES; NOT ESTABLISHED IN CASE AT BAR.— Case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor. Section 110(A)(1) of the NIRC provides that creditable input taxes must be evidenced by a VAT invoice or official receipt, which must, in turn, comply with Section 237 and 238 of the same law, as well as Section 4.108.1 of RR 7-95. The foregoing provisions require, *inter alia,* that an invoice must reflect, as

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[*] Vice Associate Justice Martin S. Villarama, Jr., who is on leave, per Special Order No. 1502 dated August 8, 2013.

required by law: (*a*) the BIR Permit to Print; (*b*) the TIN-V of the purchaser; and (*c*) the word "zero-rated" imprinted thereon. In this relation, failure to comply with the said invoicing requirements provides sufficient ground to deny a claim for tax refund or tax credit. In this case, records show that all of the export sales invoices presented by petitioner not only lack the word "zero-rated" but also failed to reflect its BIR Permit to Print as well as its TIN-V. Thus, it cannot be gainsaid that it failed to comply with the above-stated invoicing requirements, thereby rendering improper its claim for tax refund. Clearly, compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.

APPEARANCES OF COUNSEL

Salvador Guevarra & Associates for petitioner.
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*[1] are the Decision[2] dated September 20, 2005 and Resolution[3] dated January 27, 2006 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E. B. No. 35 which denied petitioner J.R.A. Philippines, Inc.'s (petitioner) claim for refund of its unutilized input value-added tax (VAT) for the calendar year 1999 in the amount of ₱7,786,614.04.

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[1] *Rollo*, pp. 11-51.

[2] *Id.* at 54-65. Penned by Associate Justice Caesar A. Casanova, with Associate Justices Lovell R. Bautista, Olga Palanca-Enriquez, concurring; Associate Justice Juanito C. Castañeda, Jr., separate concurring; and Presiding Justice Ernesto D. Acosta, concurring and dissenting.

[3] *Id.* at 88-93. Issued by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta, dissenting.

The Facts

Petitioner is a VAT and Philippine Economic Zone Authority (PEZA) registered corporation engaged in the manufacture and export of ready-to-wear items.[4] It claimed to have paid the aggregate sum of ₱7,786,614.04 as excess input VAT for the calendar year 1999, which amount it purportedly used to purchase domestic goods and services directly attributable to its zero-rated export sales.[5] Alleging that its input VAT remained unutilized as it has not engaged in any business activity or transaction for which it may be liable for output VAT, petitioner filed four separate applications for tax refund with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance.[6] When the same was not acted upon by respondent Commissioner of Internal Revenue (CIR) — and in order to toll the two-year prescriptive period under Section 229[7] of Republic Act No. (RA) 8424,[8] as amended, otherwise known as the National Internal Revenue Code (NIRC) — petitioner filed a petition for review[9] before the CTA, docketed as CTA Case No. 6249.

In its Answer,[10] the CIR contended that since petitioner is registered with the PEZA, its business was not subject to VAT

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[4] *Id.* at 55.

[5] *Id.* at 56.

[6] *Id.*

[7] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* –

x x x x x x x x x

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[8] "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES," otherwise known as "Tax Reform Act of 1997."

[9] *Rollo*, pp. 101-105.

[10] *Id.* at 122-124.

as provided under Section 24[11] of RA 7916,[12] otherwise known as "The Special Economic Zone Act of 1995," in relation to Section 109(q)[13] of the NIRC. Hence, it is not entitled to credit its input VAT under Section 4.103-1 of Revenue Regulations No. (RR) 7-95.[14] Besides, petitioner's alleged unutilized input VAT for 1999 was not properly documented.[15]

The Proceedings Before the CTA

On March 16, 2004, the CTA Division[16] rendered a Decision[17] denying petitioner's claim for input VAT refund on the ground that all of its export sales invoices: (*a*) have no Bureau of Internal Revenue (BIR) Permit to Print; (*b*) did not contain its Taxpayer's Identification Number-VAT (TIN-V); and (*c*) the word "zero-rated" was not imprinted thereon in violation of

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[11] SEC. 24. *Exemption from Taxes under the* ***National Internal*** *Revenue Code*. – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x. (See also *id.* at 166.)

[12] "AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES."

[13] SEC. 109. *Exempt Transactions*. – The following shall be exempt from the value-added tax:

x x x x x x x x x

(q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590;

x x x x x x x x x

[14] *Rollo,* p. 123.

[15] *Id.*

[16] The specific division is not indicated in the records.

[17] *Rollo*, pp. 163-175. Penned by Associate Judge Juanito C. Castañeda, Jr., with Associate Judge Lovell R. Bautista, concurring.

Section 113(A)[18] in relation to Section 238 of the NIRC and Section 4.108-1 of RR 7-95.[19] Having thus failed to comply with the invoicing requirements, petitioner's evidence was deemed insufficient to establish its zero-rated export sales for input VAT refund purposes.[20]

Dissatisfied, petitioner filed a motion for reconsideration[21] which was, however, denied in a Resolution[22] dated September 20, 2004.

Unperturbed, petitioner elevated the matter before the CTA *En Banc*, arguing that the export sales invoices are not the sole basis to prove export sales.[23] In this accord, it posited that its export sales should be deemed properly documented and substantiated by the bills of lading, airway bills, and export documents[24] as these documents are the best evidence to prove the actual exportation of the goods.[25]

On September 20, 2005, the CTA *En Banc* issued the assailed Decision,[26] denying petitioner's claim for input VAT refund. It

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[18] SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons*. –

(A) *Invoicing Requirements*. – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

x x x x x x x x x

[19] *Rollo*, p. 172.

[20] *Id.* at 173-174.

[21] *Id.* at 176-181. Dated April 5, 2004.

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

[23] *Id.* at 205.

[24] *Id.* at 204.

[25] *Id.* at 206.

[26] *Id.* at 54-65.

ruled that petitioner failed to establish the fact that its 1999 export sales were "zero-rated" for VAT purposes as it failed to comply with the substantiation requirements under Section 113(A) in relation to Section 238 of the NIRC, as well as Section 4.108-1 of RR 7-95.[27] Further, it affirmed the earlier finding that petitioner's export sales invoices had no BIR Permit to Print and did not contain its TIN-V and the words "zero-rated." As such, the documents it submitted were insufficient to prove the zero-rated export sales of the goods for input VAT refund purposes.[28]

Petitioner moved for reconsideration which was, similarly, denied in a Resolution dated January 27, 2006.[29] Hence, the instant petition.

The Issue Before the Court

The sole issue in this case is whether or not the CTA erred in denying petitioner's claim for tax refund.

The Court's Ruling

The petition lacks merit.

Case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.[30] Section 110(A)(1)[31] of the NIRC provides that creditable input taxes must be evidenced by a VAT invoice

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[27] *Id.* at 59-60.

[28] *Id.* at 61-62.

[29] *Id.* at 88-93.

[30] *Western Mindanao Power Corporation v. CIR*, G.R. No. 181136, June 13, 2012, 672 SCRA 350, 362.

[31] SEC. 110. *Tax Credits.* –

(A) *Creditable Input Tax.* –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof x x x:

x x x x x x x x x

or official receipt, which must, in turn, comply with Sections 237[32] and 238[33] of the same law, as well as Section 4.108.1[34]

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[32] SEC. 237. *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 Twenty-five pesos (₱25.00) or more, issue duly registered 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, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations 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: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

x x x x x x x x x

[33] SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

x x x x x x x x x

[34] Section 4.108-1 of RR 7-95 provides:

SEC. 4.108-1. *Invoicing Requirements.* – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

of RR 7-95. The foregoing provisions require, *inter alia*, that an invoice must reflect, as required by law: (*a*) the BIR Permit to Print; (*b*) the TIN-V of the purchaser; and (*c*) the word "zero-rated" imprinted thereon. In this relation, failure to comply with the said invoicing requirements provides sufficient ground to deny a claim for tax refund or tax credit.[35]

In this case, records show that all of the export sales invoices presented by petitioner not only lack the word "zero-rated" but also failed to reflect its BIR Permit to Print as well as its TIN-V. Thus, it cannot be gainsaid that it failed to comply with the above-stated invoicing requirements, thereby rendering improper its claim for tax refund. Clearly, compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales. As held in *Microsoft Philippines, Inc. v. CIR*:[36]

> The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. **A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.** A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to Microsoft's claim, RR-7-95 expressly states that "[A]ll purchases covered by invoice other than a VAT invoice shall not give rise to any input tax. Microsoft's invoice, lacking the word "zero-rated," is not a

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> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> x x x x x x x x x
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT-invoice." All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

[35] *Eastern Telecommunications Philippines, Inc. v. CIR*, G.R. No. 168856, August 29, 2012, 679 SCRA 305, 313.

[36] G.R. No. 180173, April 6, 2011, 647 SCRA 398. See also *J.R.A. Philippines, Inc. v. CIR*, October 11, 2010, 632 SCRA 517, 525-527.

"VAT invoice," and thus cannot give rise to any input tax.[37] (Emphasis supplied)

All told, the CTA committed no reversible error in denying petitioner's refund claim.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated September 20, 2005 and Resolution dated January 27, 2006 of the Court of Tax Appeals *En Banc* in C.T.A. E.B. No. 35 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172293. August 28, 2013]

ARACELI J. CABRERA and ARNEL CABRERA and in behalf of the heirs of SEVERINO CABRERA, *petitioners, vs.* **ANGELA G. FRANCISCO, FELIPE C. GELLA, VICTOR C. GELLA, ELENA LEILANI G. REYES, MA. RIZALINA G. ILIGAN and DIANA ROSE GELLA,** *respondents.*

SYLLABUS

REMEDIAL LAW; BATAS PAMBANSA BLG. 129, AS AMENDED BY REPUBLIC ACT NO. 7691 (THE JUDICIARY REORGANIZATION ACT OF 1980); REGIONAL TRIAL

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[37] *Id.* at 405.

[*] Designated Acting Member per Special Order No. 1525 dated August 22, 2013.

COURTS, INCREASED JURISDICTIONAL AMOUNT; THE CLAIM FOR MORAL DAMAGES CANNOT BE INCLUDED IN DETERMINING THE JURISDICTIONAL AMOUNT; APPLICATION IN CASE AT BAR.— To determine whether the RTC in this case has jurisdiction over petitioners' Complaint, respondents correctly argued that the same be considered *vis-à-vis* Section 19(8) of BP 129. x x x This jurisdictional amount of exceeding ₱100,000.00 for RTC's outside of Metro Manila was adjusted to ₱200,000.00 effective March 20, 1999 in pursuance to Section 5 of RA 7691. x x x Hence, when petitioners filed their Complaint on September 3, 2001, the said increased jurisdictional amount was already effective. The demand in their Complaint must therefore exceed ₱200,000.00 in order for it to fall under the jurisdiction of the RTC. Petitioners prayed that they be paid five percent of the total purchase price of Lot No. 1782-B. However, since the Complaint did not allege that the said property has already been sold, as in fact it has not yet been sold as respondents contend, there is no purchase price which can be used as basis for computing the five percent that petitioners are claiming. Nevertheless and as mentioned, petitioners were able to attach to their Complaint a copy of the tax declaration for Lot No. 1782-B showing a total market value of ₱3,550,072.00. And since "[t]he fair market value is the price at which a property may be sold by a seller, who is not compelled to sell, and bought by a buyer, who is not compelled to buy," the RTC correctly computed the amount of petitioners' claim based on the property's market value. And since five percent of ₱3,550,072.00 is only ₱177,503.60 or below the jurisdictional amount of exceeding ₱200,000.00 set for RTCs outside of Metro Manila, the RTC in this case has no jurisdiction over petitioners' claim. There is no merit to petitioners' averment that their demand for moral damages should be included in the computation of their total claims. Paragraph 8, Section 19 of BP 129 expressly speaks of demand which is exclusive of damages of whatever kind. x x x Here, the moral damages being claimed by petitioners are merely the consequence of respondents' alleged non-payment of commission and compensation the collection of which is petitioners' main cause of action. Thus, the said claim for moral damages cannot be included in determining the jurisdictional amount.

APPEARANCES OF COUNSEL

Mariano R. Pefianco for petitioners.
Balane Tamase Alampay Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the [C]omplaint of the plaintiff[s] x x x. The averments in the [C]omplaint and the character of the relief sought are the ones to be consulted. x x x"[1]

This Petition for Review on *Certiorari*[2] assails the July 6, 2005 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 75126 which dismissed the appeal filed by petitioners Araceli J. Cabrera (Araceli) and Arnel Cabrera (Arnel), in their own behalf and in behalf of the heirs of Severino Cabrera (petitioners), and affirmed the Order[4] dated May 2, 2002 of the Regional Trial Court (RTC), Branch 12, San Jose, Antique in Civil Case No. 2001-9-3267. The said RTC Order granted the Motion to Dismiss[5] of respondents Angela G. Francisco, Felipe C. Gella, Victor C. Gella, Elena Leilani G. Reyes, Ma. Rizalina G. Iligan and Diana Rose Gella (respondents) and dismissed petitioners' Complaint[6] denominated as Collection of Agents' Compensation, Commission and Damages. Likewise assailed is the CA Resolution[7]

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[1] *Padlan v. Dinglasan*, G.R. No. 180321, March 20, 2013.

[2] *Rollo*, pp. 8-20.

[3] CA *rollo*, pp. 102-109; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Sesinando E. Villon and Enrico A. Lanzanas.

[4] Records, pp. 42-47; penned by Judge Rudy P. Castrojas.

[5] *Id.* at 14-21.

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

[7] CA *rollo*, pp. 124-125; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas.

dated April 5, 2006 which denied petitioners' Motion for Reconsideration.[8]

Factual Antecedents

On October 25, 1976, respondents' father, Atty. Lorenzo C. Gella (Atty. Gella), executed a private document confirming that he has appointed Severino Cabrera (Severino), husband of Araceli and father of Arnel as administrator of all his real properties located in San Jose, Antique[9] consisting of about 24 hectares of land described as Lot No. 1782-B and covered by Transfer Certificate of Title No. T-16987.[10]

When Severino died in 1991, Araceli and Arnel, with the consent of respondents, took over the administration of the properties. Respondents likewise instructed them to look for buyers of the properties, allegedly promising them "a commission of five percent of the total purchase price of the said properties as compensation for their long and continued administration"[11] thereof.

Accordingly, petitioners introduced real estate broker and President of ESV Marketing and Development Corporation, Erlinda Veñegas (Erlinda), to the respondents who agreed to have the said properties developed by Erlinda's company. However, a conflict arose when respondents appointed Erlinda as the new administratrix of the properties and terminated Araceli's and Arnel's services.

Petitioners, through counsel, wrote respondents and demanded for their five percent commission and compensation to no avail. Hence, on September 3, 2001, they filed a Complaint for Collection of Agent's Compensation, Commission and Damages[12]

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[8] *Id.* at 112-114.

[9] Records, p. 6.

[10] *Id.* at 7.

[11] *Id.* at 3.

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

against respondents before the RTC. Attached to their Complaint is a copy of the tax declaration for Lot No. 1782-B.[13]

Ruling of the Regional Trial Court

Petitioners prayed that they be paid (1) commission and compensation in the form of real property equivalent to five percent of the 24-hectare Lot No. 1782-B, (2) moral damages of ₱100,000.00, and (3) attorney's fees and litigation expenses of ₱100,000.00.

Respondents filed a Motion to Dismiss[14] based on the following grounds: (1) lack of jurisdiction, (2) failure to state a cause of action, and (3) lack of legal capacity of Araceli and Arnel to sue in behalf of the other heirs of Severino.

Respondents argued that for RTCs outside of Metro Manila to take cognizance of a civil suit, the jurisdictional amount must exceed ₱200,000.00 pursuant to Section 5 of Republic Act (RA) No. 7691 which amended Section 19 of *Batas Pambansa Blg*. (BP) 129. And since the total market value of Lot No. 1782-B is ₱3,550,072,[15] five percent thereof is only ₱177,506.60 or less than the said jurisdictional amount, then the RTC has no jurisdiction over petitioners' Complaint. Respondents also posited that the Complaint states no cause of action since petitioners' supposed right to any commission remained inchoate as Lot No. 1782-B has not yet been sold; in fact, the Complaint merely alleged that petitioners introduced a real estate broker to respondents. Lastly, respondents averred that petitioners have no legal capacity to sue on behalf of Severino's other heirs and that the verification and certification of non-forum shopping attached to the Complaint only mentioned Araceli and Arnel as plaintiffs.

Finding respondents' arguments to be well-taken, the RTC, in an Order[16] dated May 2, 2002 ruled:

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[13] *Id.* at 8.

[14] *Id.* at 14-21.

[15] *Id.* at 5.

[16] *Id.* at 42-47.

WHEREFORE, premises considered, the [respondents'] Motion to Dismiss is granted. Consequently, this case is hereby DISMISSED. Costs against the [petitioners].

SO ORDERED.[17]

Petitioners filed a Notice of Appeal,[18] hence, the elevation of the records of the case to the CA.

Ruling of the Court of Appeals

Petitioners averred that their claim is one which is incapable of pecuniary estimation or one involving interest in real property the assessed value of which exceeds ₱200,000.00. Hence, it falls under the exclusive original jurisdiction of the RTC. Moreover, they asserted that they are not only claiming for commission but also for compensation for the services rendered by Severino as well as by Araceli and Arnel for the administration of respondents' properties. Citing Section 3, Rule 3[19] of the Rules of Court, petitioners justified the inclusion of Severino's other heirs as plaintiffs in the Complaint.

In the Decision[20] dated July 6, 2005, the CA concluded that the Complaint is mainly for collection of sum of money and not one which is incapable of pecuniary estimation since petitioners are claiming five percent of the total purchase price of Lot No. 1782-B. Neither does it involve an interest over a property since petitioners are merely claiming payment for their services. The appellate court also ruled that the Complaint did not state a

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[17] *Id.* at 47.

[18] *Id.* at 48.

[19] SEC. 3. *Representatives as parties.* – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

[20] CA *rollo*, pp. 102-109.

cause of action since it failed to show the existence of petitioners' right that was allegedly violated by respondents. Moreover, it found no evidence of Araceli's and Arnel's authority to file the Complaint for and in behalf of Severino's other heirs. In sum, the CA found no error on the part of the RTC in granting respondents' Motion to Dismiss. Thus:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DISMISSING** the appeal filed in this case and **AFFIRMING** the [Order] rendered by [the] lower court in Civil Case No. 2001-9-3267 with double costs against [petitioners].
>
> SO ORDERED.[21]

Petitioners filed a Motion for Reconsideration[22] questioning solely the CA's affirmance of the RTC's finding on lack of jurisdiction. This was, however, also denied in a Resolution[23] dated April 5, 2006.

Hence, the present Petition for Review on *Certiorari*.

Issues

Whether the CA erred in affirming the RTC's findings that it has no jurisdiction over the subject matter of the case; that the Complaint states no cause of action; and that petitioners Araceli and Arnel have no legal capacity to sue in behalf of the other heirs of Severino.

The Parties' Arguments

At the outset, petitioners claim that the RTC did not make its own independent assessment of the merits of respondents' Motion to Dismiss but only blindly adopted the arguments raised therein. This, to them, violates the Court's pronouncement in *Atty. Osumo v. Judge Serrano*[24] enjoining judges to be faithful to the law and to maintain professional competence.

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[21] *Id.* at 109.

[22] *Id.* at 112-114.

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

[24] 429 Phil. 626, 633 (2002).

As to the substantial issues, petitioners reiterate the arguments they raised before the CA. They insist that their Complaint is one which is incapable of pecuniary estimation or involves interest in real property the assessed value of which exceeds ₱200,000.00 and falls within the RTC's jurisdiction. At any rate, they emphasize that they likewise seek to recover damages, the amount of which should have been considered by the RTC in determining jurisdiction. Moreover, they have a cause of action against the respondents because an agency under the Civil Code is presumed to be for a compensation.[25] And what they are claiming in their Complaint is such compensation for the services rendered not only by Severino but also by Araceli and Arnel as administrators/agents of respondents' properties. Lastly, they allege that pursuant to Section 3, Rule 3 of the Rules of Court, the joining of Severino's other heirs as plaintiffs in the Complaint, is proper.

On the other hand, respondents assert that petitioners' Complaint, as correctly found by the CA, is for a specific sum of money seeking to recover the amount of ₱177,503.60,[26] which is below the jurisdictional amount for RTCs outside of Metro Manila. As to petitioners' claim for damages, the same is only incidental to the principal claim for agent's compensation and therefore should not be included in computing the total amount of the claim for purposes of determining jurisdiction. Respondents likewise point out that the CA's affirmance of the RTC's findings that the Complaint states no cause of action and that Araceli and Arnel have no capacity to sue in behalf of the other heirs can no longer be questioned before this Court as they are already final and executory since petitioners failed to assail them in their Motion for Reconsideration with the CA. Be that as it may, no error can be imputed to the CA for affirming the said findings as they are in accordance with law.

Our Ruling

The Petition lacks merit.

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[25] Article 1875 of the CIVIL CODE provides: "Agency is presumed to be for a compensation, unless there is proof to the contrary."

[26] *Rollo*, p. 62.

Contrary to petitioners' claim, the RTC made an independent assessment of the merits of respondents' Motion to Dismiss.

It cannot be gainsaid that "[i]t is the [C]ourt's bounden duty to assess independently the merits of a motion x x x."[27] In this case, the RTC complied with this duty by making its own independent assessment of the merits of respondents' Motion to Dismiss. A reading of the RTC's Order will show that in resolving said motion, it judiciously examined the Complaint and the documents attached thereto as well as the other pleadings filed in connection with the said motion.[28] Based on these, it made an extensive discussion of its observations and conclusions. This is apparent from the following portions of the said Order, to wit:

> x x x In the instant case, the plaintiffs' complaint does not even mention specifically the amount of their demand outside of their claim for damages and attorney's fees. They are only demanding the payment of their alleged commission/compensation and that of the late Severino Cabrera which they fixed at 5% of Lot No. 1782-B allegedly with an area of 24 hectares. They did not also state the total monetary value of Lot 1782-B neither did they mention the monetary equivalent of 5% of Lot No. 1782-B. In short, the complaint fails to establish that this Court has jurisdiction over the subject matter of the claim.
>
> As the tax declaration covering Lot No. 1782-B has been attached to the complaint as Annex "C" and made an integral part thereof, the court, in its desire to determine whether it has jurisdiction over the subject matter of plaintiff's claim computed the total market value of Lot No. 1782-B, including the value of the trees and the plants standing thereon, as appearing in said Annex "C". The computation shows the amount of ₱3,508,370.00. Five percent thereof

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[27] *Cerezo v. People*, G.R. No. 185230, June 1, 2011, 650 SCRA 222, 229.

[28] Opposition to Motion to Dismiss, records, pp. 23-24; Reply (To Plaintiff's Opposition to Motion to Dismiss dated 02 January 2002), *id.* at 27-29; Rejoinder, *id.* at 32-33; Sur-Rejoinder (Re: Motion to Dismiss dated 11 December 2001), *id.* at 34-36.

is ₱175,418.50. It is way below the jurisdictional amount for the Regional Trial Court outside Metro Manila which is pegged at more than ₱200,000. Clearly, therefore, this [C]ourt has no jurisdiction over the subject matter of the plaintiff's complaint as correctly contended by the defendants.[29]

x x x x x x x x x

A careful scrutiny of the complaint in this case reveals that it is bereft of any allegation that Lot No. 1782-B or any portion thereof has already been sold thru the plaintiffs' efforts prior to the alleged dismissal as agents or brokers of the defendants. As they failed to sell Lot No. 1782-B or any portion thereof, then they are not entitled to any commission, assuming in *gratia argumenti* that they were promised 5% commission by defendants should they be able to sell Lot No. 1782-B or any part or parcel of the said lot.

Besides, the court notices that the appointment of the plaintiffs' father (Annex "A"-Complaint) does not state in any manner that he is entitled to a compensation or commission when it is supposed to be the repository of what had been agreed upon between him and Atty. Lorenzo C. Gella, relative [to] his designation as administrator of Atty. Gella. As such, the plaintiffs cannot claim now that Severino Cabrera is entitled to any compensation or commission as Annex "A" does not so provide.[30]

x x x x x x x x x

An examination of the records of this case reveals that there is nothing in plaintiffs' complaint showing that they were empowered by the other heirs of the late Severino Cabrera to take this action on their behalf. x x x[31]

Clearly, petitioners' claim that the RTC merely adopted the arguments of respondents in their Motion to Dismiss when it resolved the same is belied by the above-quoted disquisition of the RTC on the matter and therefore deserves no credence.

Petitioners' Complaint is neither one which is incapable of pecuniary

[29] *Id.* at 45.

[30] *Id.* at 46.

[31] *Id.*

estimation nor involves interest in a real property.

Section 19(1) and (2) of BP 129[32] as amended by RA 7691[33] read:

SEC. 19. *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

x x x x x x x x x

Insisting that the RTC has jurisdiction over their Complaint, petitioners contend that the same is one which is incapable of pecuniary estimation or involves interest in a real property the assessed value of which exceeds ₱200,000.00.

The Court does not agree. To ascertain the correctness of petitioner's contention, the averments in the Complaint and the character of the relief sought in the said Complaint must be consulted.[34] This is because the jurisdiction of the court is determined by the nature of the action pleaded as appearing from the allegations in the Complaint.[35] Hence, the pertinent portions of petitioners' Complaint are hereunder reproduced:

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[32] OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT of 1980.

[33] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129.

[34] *Padlan v. Dinglasan, supra* note 1.

[35] *Id.*

x x x x x x x x x

2. That on October 25, 1976 the defendants' father the late Atty. Lorenzo Gella, x x x designated x x x Severino Cabrera as agent or [administrator of all his real properties located in San Jose, Antique] x x x.

3. That said Severino Cabrera immediately assumed his duties and responsibilities faithfully as agent or administrator until his death in 1991 of the properties of Lorenzo Gella in San Jose, Antique consisting of about 24 hectares x x x [which later] became Lot No. 1782-B in the name of the defendants, covered by T.C.T. No. T-16987, Register of Deeds of Antique x x x.

4. That after the death of said Severino Cabrera in 1991, with the consent of the defendants, his wife took over his duties and responsibilities as agent or administratrix of the above-named properties of the defendants in San Jose, Antique with the help of her son, Arnel Cabrera as '*encargado*' and the plaintiffs were also instructed by the defendants to look for buyers of their properties and plaintiffs were promised by defendants ***a commission of five percent of the total purchase price of the said properties as compensation for their long and continued administration of all the said properties.***

5. That sometime in 1994 plaintiffs approached the real estate broker Erlinda Veñegas to sell the above-described Lot No. 1782-B and the plaintiffs gave her the addresses of the defendants who at all times live in Metro Manila[. T]hereafter defendants agreed to have the said property developed by ESV Marketing & Development Corporation represented by its President, said Erlinda Veñegas and defendants also designated said Erlinda Veñegas as administratrix of said property and at the same time defendants dismissed plaintiffs as agents or administrators thereof;

6. That on August 1, 2001 plaintiffs, through counsel wrote defendants ***demanding payment*** of their five percent of twenty four hectares properties under their administration for twenty five years in [the] form [of] real estate in [the] subdivision of Lot 1782-B as their compensation or commission, but defendants refused and failed ***to pay plaintiffs in cash or in kind of what is due them***;

7. That in view of the aforesaid failure and refusal of defendants to pay their compensation or commission and instead they were dismissed and replaced by the said Erlinda Veñegas they themselves

recommended to defendants, the plaintiffs have suffered public humiliation, mental anguish, and serious anxiety for which plaintiffs should be adjudged and entitled to moral damages in the sum of not less than Php100,000.00 each.

8. That defendants' ingratitude and unjustified refusal to pay plaintiffs x x x their compensation or commission for twenty five years service as administrators and had successfully found [a] developer of defendants' property but only to be dismissed, plaintiffs were compelled to institute this action and incur expenses as well as attorney's fees in the sum of Php100,000.00.

PRAYER

WHEREFORE, it is respectfully prayed that after due hearing, judgment be rendered against defendants jointly and severally in favor of the plaintiffs, as follows:

a. ***To pay plaintiffs their compensation or commission*** in [the] form of real estate from Lot No. 1782-B subdivision equivalent to five percent of twenty four hectares properties under their administration;

b. To pay plaintiffs moral damages in the amount of not less than Php100,000.00 each;

c. Attorney's fee and litigation expenses in the amount of not less than Php100,000.00 each and pay the costs of suit

x x x x x x x x x[36]

(Italics and Emphases supplied)

The Court in *Ungria v. Court of Appeals*[37] restated the criterion laid down in *Singson v. Isabela Sawmill*[38] to ascertain if an action is capable or not of pecuniary estimation, *viz*:

In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation,

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[36] Records, pp. 2-4.

[37] G.R. No. 165777, July 25, 2011, 654 SCRA 314, 324-325.

[38] 177 Phil. 575, 588-589 (1979).

and whether jurisdiction is in the municipal courts or in the [C]ourts of [F]irst [I]nstance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by [C]ourts of [F]irst [I]nstance (now Regional Trial Courts).

It can be readily seen from the allegations in the Complaint that petitioners' main purpose in filing the same is to collect the commission allegedly promised them by respondents should they be able to sell Lot No. 1782-B, as well as the compensation for the services rendered by Severino, Araceli and Arnel for the administration of respondents' properties. Captioned as a Complaint for Collection of Agent's Compensation, Commission and Damages, it is principally for the collection of a sum of money representing such compensation and commission. Indeed, the payment of such money claim is the principal relief sought and not merely incidental to, or a consequence of another action where the subject of litigation may not be estimated in terms of money. In fact, petitioners in this case estimated their claim to be equivalent to five percent of the purchase price of Lot No. 1782-B. Therefore, the CA did not err when it ruled that petitioners' Complaint is not incapable of pecuniary estimation.

The Court cannot also give credence to petitioners' contention that their action involves interest in a real property. The October 25, 1976 letter[39] of Atty. Gella confirming Severino's appointment as administrator of his properties does not provide that the latter's services would be compensated in the form of real estate or, at the very least, that it was for a compensation. Neither was it alleged in the Complaint that the five percent commission promised to Araceli and Arnel would be equivalent to such portion of Lot No. 1782-B. What is clear from paragraph 4 thereof is that respondents instructed petitioners to look for buyers of their properties and "*were promised by [respondents] a commission of* ***five percent of the total purchase price of the said properties***

[39] Records, p. 6.

as compensation for their long and continued administration of all the said properties." Also, petitioners' allegation in paragraph 6 that respondents failed to pay them "*in cash or in kind"* of what is due them negates any agreement between the parties that they should be paid in the form of real estate. Clearly, the allegations in their Complaint failed to sufficiently show that they have interest of whatever kind over the properties of respondents. Given these, petitioners' claim that their action involves interest over a real property is unavailing. Thus, the Court quotes with approval the CA's ratiocination with respect to the same:

> As to their weak claim of interest over the property, it is apparent that their only interest is to be compensated for their long-term administration of the properties. They do not claim an interest in the properties themselves but merely payment for their services, such payment they compute to be equivalent to five (5%) percent of the value of the properties. Under Section 1, Rule 4 of the Rules of Court, a real action is an action affecting title to or possession of real property, or interest therein. These include partition or condemnation of, or foreclosure of mortgage on, real property. Plaintiffs-appellants' interest is obviously not the one contemplated under the rules on jurisdiction.[40]

Petitioners' demand is below the jurisdictional amount required for RTCs outside of Metro Manila, hence, the RTC concerned in this case has no jurisdiction over petitioners' Complaint.

To determine whether the RTC in this case has jurisdiction over petitioners' Complaint, respondents correctly argued that the same be considered *vis-à-vis* Section 19(8) of BP 129, which provides:

> **SEC. 19.** *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> x x x x x x x x x

[40] CA *rollo,* p. 106.

(8) In all other cases in which the demand, exclusive of interests, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property exceeds One hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Two hundred thousand pesos (₱200,000.00).

This jurisdictional amount of exceeding ₱100,000.00 for RTC's outside of Metro Manila was adjusted to ₱200,000.00 effective March 20, 1999 in pursuance to Section 5 of RA 7691[41] which further provides:

SEC. 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19(3), (4), and (8); and Sec. 33(1) of Batas Pambansa Blg. 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (₱200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (₱300,000.00): *Provided, however*, That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (₱400,000.00).

Hence, when petitioners filed their Complaint on September 3, 2001, the said increased jurisdictional amount was already effective. The demand in their Complaint must therefore exceed ₱200,000.00 in order for it to fall under the jurisdiction of the RTC.

Petitioners prayed that they be paid five percent of the total purchase price of Lot No. 1782-B. However, since the Complaint did not allege that the said property has already been sold, as in fact it has not yet been sold as respondents contend, there is no purchase price which can be used as basis for computing the five percent that petitioners are claiming. Nevertheless and as mentioned, petitioners were able to attach to their Complaint a copy of the tax declaration for Lot No. 1782-B showing a total market value of ₱3,550,072.00.[42] And since "[t]he fair

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[41] See Supreme Court Circular No. 21-99 dated April 15, 1999.

[42] Records, p. 8; not ₱3,508,370.00 as computed by the RTC.

market value is the price at which a property may be sold by a seller, who is not compelled to sell, and bought by a buyer, who is not compelled to buy,"[43] the RTC correctly computed the amount of petitioners' claim based on the property's market value. And since five percent of ₱3,550,072.00 is only ₱177,503.60 or below the jurisdictional amount of exceeding ₱200,000.00 set for RTCs outside of Metro Manila, the RTC in this case has no jurisdiction over petitioners' claim.

There is no merit to petitioners' averment that their demand for moral damages should be included in the computation of their total claims. Paragraph 8, Section 19 of BP 129 expressly speaks of demand which is exclusive of damages of whatever kind. This exclusion was later explained by the Court in Administrative Circular No. 09-94 dated June 14, 1994 as follows:

> 2. The exclusion of the term "damages of whatever kind" in determining the jurisdictional amount under Section 19 (8) and Section 33 (1) of B.P. Blg. 129, as amended by R.A. No. 7691, applies to cases where the damages are merely incidental to or a consequence of the main cause of action. However, in cases where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court.

Here, the moral damages being claimed by petitioners are merely the consequence of respondents' alleged non-payment of commission and compensation the collection of which is petitioners' main cause of action. Thus, the said claim for moral damages cannot be included in determining the jurisdictional amount.

In view of the foregoing, the CA did not err in affirming the RTC's conclusion that it has no jurisdiction over petitioners' claim.

The CA's affirmance of the RTC's findings that the Complaint states no cause of action and that Araceli and

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[43] *Hilario v. Salvador*, 497 Phil. 327, 336 (2005).

Arnel have no authority to sue in behalf of Severino's other heirs cannot be raised in this Petition.

As pointed out by respondents, petitioners failed to question in their Motion for Reconsideration before the CA its affirmance of the RTC's findings that the Complaint states no cause of action and that Araceli and Arnel have no authority to sue in behalf of the other heirs of Severino. Suffice it to say that "[p]rior to raising [these arguments] before this Court, [they] should have raised the matter in [their Motion for Reconsideration] in order to give the appellate court an opportunity to correct its ruling. For [them] to raise [these issues] before [this Court] now would be improper, since [they] failed to do so before the CA."[44]

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** and the assailed Decision dated July 6, 2005 and the Resolution dated April 5, 2006 of the Court of Appeals in CA-G.R. CV No. 75126 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[44] *Philippine Commercial International Bank v. Abad*, 492 Phil. 657, 667-668 (2005).

[*] Per Special Order No. 1525 dated August 22, 2013.

FIRST DIVISION

[G.R. No. 175977. August 28, 2013]

HADJI PANGSAYAN T. ABDULRAHMAN, *petitioner, vs.* **The OFFICE OF THE OMBUDSMAN FOR MINDANAO and GUIAMALUDIN A. SENDAD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT MAY REJECT AND DISMISS A PETITION FOR *CERTIORARI* WHEN THERE IS NO SHOWING OF GRAVE ABUSE OF DISCRETION BY ANY COURT, AGENCY OR BRANCH OF THE GOVERNMENT OR WHEN THERE ARE PROCEDURAL ERRORS, EXCEPT IN CLEARLY MERITORIOUS CASES, WHERE THE HIGHER DEMANDS OF SUBSTANTIAL JUSTICE MUST TRANSCEND RIGID OBSERVANCE OF PROCEDURAL RULES; APPLIED.— The acceptance of a petition for *certiorari*, and necessarily the grant of due course thereto, is addressed to the sound discretion of the court. Thus, the court may reject and dismiss a petition for *certiorari* (1) when there is no showing of grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, such as violations of the Rules of Court or Supreme Court circulars. In this case, the CA dismissed petitioner's special civil action for *certiorari* because of procedural errors x x x. Petitioner argues that the rules of procedure should be liberally construed when substantial issues need to be resolved. Indeed, the rules of procedure need not always be applied in a strict, technical sense, since they were adopted to help secure and not override substantial justice. "In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules." Thus, we have given due course to a petition because it was meritorious, even though we recognized that the CA was correct in dismissing the petition for *certiorari* in the light of the failure of petitioner to submit material documents. We have affirmed the CA when it granted a petition for *certiorari* despite the litigant's failure to file a motion for reconsideration beforehand. We have also had

occasion to excuse the failure to comply with the rule on the statement of material dates in the petition, since the dates were evident from the records.

2. **ID.; ID.; ID.; DISMISSAL OF THE PETITION FOR FAILURE TO IMPLEAD PRIVATE RESPONDENT TO THE PETITION NOT PROPER FOR NEITHER THE MISJOINDER NOR THE NON-JOINDER OF PARTIES IS A GROUND FOR THE DISMISSAL OF AN ACTION.—** In this case, it was an error for the CA to dismiss the petition for failure to comply with Section 5, Rule 65 of the Rules of Court x x x. Section 5. *Respondents and costs in certain cases.* — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, **the person or persons interested in sustaining the proceedings in the court** x x x. Section 11, Rule 3 of the Rules of Court, states that neither the misjoinder nor the non-joinder of parties is a ground for the dismissal of an action. If it was truly necessary to implead Guiamaludin Sendad, what the CA should have done was to order petitioner to add him as private respondent to the case.

3. **ID.; ID.; ID.; A MOTION FOR RECONSIDERATION IS A CONDITION PRECEDENT TO THE FILING OF A PETITION FOR *CERTIORARI*; EXCEPTIONS NOT APPLICABLE WHERE THE QUESTIONS RAISED IN THE *CERTIORARI* PROCEEDING BEFORE THE COURT OF APPEALS WERE DIFFERENT FROM THOSE PASSED UPON BY THE OMBUDSMAN.—** It is clear that upon receipt of a copy of the Order of Implementation dated 31 March 2004, petitioner immediately filed the petition for *certiorari* and prohibition before the CA three days later. The motions for reconsideration that petitioner referred to were filed by him in connection with the Resolution dated 14 March 1995 recommending his dismissal from service. There are well-settled exceptions to the general rule that a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari* under Rule 65 of the Rules of Court. However, none of them finds application in this case, especially since questions raised in the *certiorari* proceeding before the CA were different from those passed upon by the Ombudsman.

The question raised before the CA was the legality of the Order of Implementation. On the other hand, what was passed upon by the Ombudsman was whether petitioner was guilty of grave misconduct.

4. POLITICAL LAW; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; THE POWER OF THE OMBUDSMAN TO IMPOSE ADMINISTRATIVE LIABILITY IS NOT MERELY ADVISORY, BUT ACTUALLY MANDATORY IN NATURE, BUT SAID POWER IS SHARED WITH THE HEAD OF OFFICE OR ANY OTHER OFFICER CONCERNED.— [W]hile we agree that in clearly meritorious cases, the higher demands of substantial justice can transcend the rigid observance of procedural rules, it is not the case here. While petitioner initially questioned the Order of Implementation because it became a direct order to dismiss — allegedly beyond the authority of the Ombudsman, empowered as it is, only to recommend the removal of erring public employees — his main argument was that the Order of Implementation should have been addressed to the Secretary of Environment and Natural Resources as the head of office who had the power to appoint and dismiss him. In *Ledesma v. Court of Appeals* and subsequent cases, this Court has already made the pronouncement that the power of the Ombudsman to impose administrative liability is not merely advisory, but actually mandatory in nature. However, this power is shared with the head of office or any other officer concerned. Thus, when Section 13(3) of Article XI of the Constitution and Section 15(3) of Republic Act No. 6770 (The Ombudsman Act of 1989) uses the word "recommend" in connection with the action to be taken against an erring government employee, the intention is to course the implementation through the proper officer.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION IS MORE THAN MERE IMPUTATION OF CAPRICE, WHIMSICALITY OR ARBITRARINESS AND IT IS NOT PRESENT WHEN THE ACTS ARE FOUND TO BE MERE ERRORS OF JUDGMENT OR SIMPLE ABUSE OF DISCRETION; CASE AT BAR.— Grave abuse of discretion is "the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent

or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law." It is more than mere imputation of caprice, whimsicality or arbitrariness; and it is not present when the acts are found to be mere errors of judgment or simple abuse of discretion. Petitioner himself manifested that at the time that private respondent filed the complaint, the former was employed at DENR XII on a contractual basis. The employment status of petitioner is shown in the Contracts of Technical Services dated 3 July 1988 and 1 January 1989 executed between him and Atty. Dacilo M. Adap (Atty. Adap), Regional Technical Director of DENR XII. Also, attached to the record is a handwritten note dated 8 March 1990 from DENR XII RED Macorro Macumbal instructing Atty. Adap to renew the contractual employment of petitioner. Thus, when the recommendation to dismiss petitioner from service was issued by the Ombudsman through the Resolution dated 14 March 1995, the recommendation was coursed through then DENR XII RED Macorro Macumbal. Later, due to the query of the DENR XII RED officer-in-charge regarding the status of the case of petitioner, the Order of Implementation dated 31 March 2004 was directed to the former to effect petitioner's dismissal. The Ombudsman was never informed of any change in the status of appointment of petitioner. Thus, the Ombudsman had reason to believe that his employment continued to be under a contract of service. Even if this belief was mistaken, we find that it does not amount to grave abuse of discretion.

APPEARANCES OF COUNSEL

Guiani & Associates for petitioner.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Resolutions dated 21 July 2005[1]

[1] *Rollo*, pp. 151-152. The Resolution of the Court of Appeals (CA) Mindanao Station's Twenty-Second Division was penned by Associate Justice

and 14 November 2006[2] of the Court of Appeals Mindanao Station (CA) in CA-G.R. SP No. 85727. The CA Resolutions dismissed the petition for *certiorari* impugning the Order of Implementation[3] issued by the Office of the Ombudsman for Mindanao (Ombudsman), which had directed the Department of Environment and Natural Resources (DENR) Region XII (XII) Regional Executive Director (RED) to dismiss petitioner from service.

Petitioner was a Land Management Inspector of the Community Environment and Natural Resources Office (CENRO) of Kalamansig, Sultan Kudarat.[4] In a letter[5] dated 29 August 1990 addressed to Regional Director Salvador Ranin of the National Bureau of Investigation, Cotabato City, private respondent reported the alleged illegal activities of petitioner and Guialil Sayutin (Sayutin), an employee of CENRO 3-B Maganoy, Maguindanao.[6]

According to private respondent, petitioner solicited from him the total amount of ₱5,450[7] as consideration for the titling in private respondent's name of lands located in South Upi, Maguindanao, and covered by the homestead applications of Unos Pacutin and Ting Midtimbang. On the other hand, Sayutin received documents belonging to private respondent from Ellen Alcoriza (Alcoriza), records officer of CENRO Salimbao, Sultan Kudarat, without authority therefor.[8] Sayutin later lost the aforesaid documents.[9]

Normandie B. Pizarro with Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr. concurring.

[2] *Id.* at 153-158. The Resolution of the CA Mindanao Station's Twenty-First Division was penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez concurring.

[3] *Id.* at 91-93.

[4] *Id.* at 85.

[5] *Id.* at 84.

[6] *Id.* at 85.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 84.

The letter-complaint found its way to the Ombudsman. Instead of submitting a counter-affidavit in compliance with the Ombudsman's Order dated 17 July 1992,[10] petitioner filed a Manifestation[11] dated 11 August 1992. He manifested that private respondent had already executed an Affidavit of Desistance.[12] In that affidavit, private respondent indicated that he had forgiven petitioner after the latter produced the missing documents and returned the money solicited together with incidental expenses. Thus, petitioner prayed that he be dropped as respondent in the complaint.

In a Resolution[13] dated 14 March 1995, the Ombudsman recommended the dismissal of petitioner, Sayutin, and Alcoriza from service. It found Sayutin and Alcoriza guilty of gross neglect of duty and petitioner of grave misconduct. As regards the Manifestation and the attached Affidavit of Desistance filed by petitioner, the Ombudsman ruled that these documents failed to controvert and, in fact, admitted the material allegations of the complaint.[14]

A copy of the Resolution was ordered furnished to the DENR XII RED, who was directed to implement the dismissal of petitioner, Sayutin, and Alcoriza, and to show proof of compliance within 10 days from receipt.[15]

Petitioner filed a motion for reconsideration but it was denied in an Order dated 19 February 1999.[16] He then filed a Motion for New Trial or Second Motion for Reconsideration,[17] attaching thereto the Affidavit[18] of private respondent, as well as the Joint-

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[10] *Id.* at 122.

[11] *Id.* at 122-124.

[12] *Id.* at 112.

[13] *Id.* at 85-88.

[14] *Id.* at 86.

[15] *Id.* at 87.

[16] *Id.* at 89.

[17] *Id.* at 125-140.

[18] *Id.* at 113-114.

Affidavit[19] of Mama Sangeban, Jr. (Sangeban) and Mario Tuhok (Tuhok), both dated 16 August 1999.

In his Affidavit, private respondent stated that the amount of ₱5,450 was actually paid to Sangeban, the driver of a truck, and Tuhok, the owner of two horses. The truck and two horses were used in transporting private respondent, petitioner and Undi Tumindig when they went to South Upi, Maguindanao to conduct an ocular inspection of the lands covered by the homestead applications of Unos Pacutin and Ting Midtimbang. This statement was corroborated by Sangeban and Tuhok in their Joint-Affidavit.

In an Order dated 23 August 1999, the Ombudsman denied the motion for being a second motion for reconsideration.[20] Under the mistaken notion that petitioner's Motion for New Trial or Second Motion for Reconsideration had yet to be resolved by the Ombudsman, the new DENR Region XII RED ordered the retention of petitioner in the latter's position pending the resolution of the second motion for reconsideration.

Petitioner filed a petition for review before the CA docketed as CA-G.R. SP No. 55737[21] assailing the Ombudsman's Resolution recommending his dismissal. In a Decision dated 28 June 2001, the CA dismissed the petition for lack of merit.[22] The Decision attained finality on 4 September 2001.[23]

In a letter[24] dated 15 March 2004, the DENR XII RED officer-in-charge inquired about the status of the case of petitioner as the latter was then still reporting for work and even applying for a promotion.

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[19] *Id.* at 96.

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

[21] *Id.* at 171.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 94-95.

On 31 March 2004, the Ombudsman issued an Order of Implementation[25] directing DENR XII RED officer-in-charge Jim Sampulna to implement the dismissal from service of petitioner and to show proof of compliance within 10 days from receipt.

Petitioner received a copy of the Order of Implementation on 13 August 2004.[26] On 16 August 2004, he filed a Petition for *Certiorari* and Prohibition with Prayer for a Status Quo Order[27] before the CA, alleging that the Ombudsman had issued the Order of Implementation with grave abuse of discretion amounting to lack of jurisdiction. He argued that the Order of Implementation should have been addressed to the Secretary of Environment and Natural Resources as the head of office who had the power to appoint and dismiss him.[28] Petitioner also questioned the Order of Implementation for being a direct order to dismiss. According to him, this was beyond the authority of the Ombudsman, which was only empowered to recommend the removal of erring public employees.[29] Finally, petitioner argued that while the Order of Implementation was in the nature of an execution of judgment, which may not be stayed, the petition presented an exception.[30]

On 21 July 2005, the CA issued the first assailed Resolution dismissing the petition for the following reasons: (1) failure to implead private respondent; and (2) failure to attach copies of the pleadings and documents relevant to the petition.[31] Petitioner filed a Motion for Reconsideration dated 17 August 2005.[32]

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[25] *Id.* at 91-93.

[26] *Id.* at 98.

[27] *Id.* at 97-104.

[28] *Id.* at 99-A.

[29] *Id.* at 100.

[30] *Id.* at 101-102.

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

[32] *Id.* at 159-167.

On 14 November 2006, the CA issued the second assailed Resolution denying the Motion for Reconsideration.[33] It ruled that it could excuse the second infirmity, since it could very well require petitioner to submit additional requirements necessary for the resolution of the petition. To excuse the first infirmity, however, would render the petition non-adversarial.[34]

The CA also found additional grounds to dismiss the appeal. Petitioner did not file a motion for reconsideration of the Order of Implementation. Thus, his petition was rendered dismissible for failure to exhaust administrative remedies.[35]

The CA likewise ruled that there are three essential dates that must be indicated in a petition for *certiorari*: (1) when judgment or final order was received; (2) when the motion for reconsideration was filed; and (3) when notice of denial thereof was received.[36] According to the CA, since petitioner did not file a motion for reconsideration of the Order of Implementation before filing a petition for *certiorari*, he also failed to comply with the requirement of stating the material dates in the petition.[37]

ISSUES

Petitioner now comes before us on a Petition for Review on *Certiorari*[38] raising the following issues:

1. Whether the Rules of Court should be given liberal construction, especially when there are substantial issues to be resolved; and
2. Whether the CA misapprehended facts by concluding that petitioner failed to exhaust administrative remedies.

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[33] *Id.* at 153-158.

[34] *Id* at 154-155.

[35] *Id.* at 156.

[36] *Santos v. CA*, 413 Phil. 41, 53 (2001).

[37] *Rollo*, pp. 156-157.

[38] *Id.* at 7-18.

OUR RULING

The acceptance of a petition for *certiorari*, and necessarily the grant of due course thereto, is addressed to the sound discretion of the court.[39] Thus, the court may reject and dismiss a petition for *certiorari* (1) when there is no showing of grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, such as violations of the Rules of Court or Supreme Court circulars.[40]

In this case, the CA dismissed petitioner's special civil action for *certiorari* because of procedural errors, namely: (1) failure to implead private respondent; (2) failure to attach copies of the pleadings and documents relevant to the petition; (3) failure to file a motion for reconsideration of the Order of Implementation; and, consequently, (4) failure to allege material dates in the petition.

Petitioner argues that the rules of procedure should be liberally construed when substantial issues need to be resolved.

Indeed, the rules of procedure need not always be applied in a strict, technical sense, since they were adopted to help secure and not override substantial justice.[41] "In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules."[42]

Thus, we have given due course to a petition because it was meritorious, even though we recognized that the CA was correct in dismissing the petition for *certiorari* in the light of the failure of petitioner to submit material documents.[43] We have affirmed the CA when it granted a petition for *certiorari* despite the litigant's failure to file a motion for reconsideration beforehand.[44]

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[39] *Serrano v. Galant Maritime Services, Inc.*, 455 Phil. 992, 997 (2003).

[40] *Id.*

[41] *Go, Jr. v. CA*, G.R. No. 172027, 29 July 2010, 626 SCRA 180, 189.

[42] *Id.*

[43] *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458 (2005).

[44] *PLDT v. Imperial*, 524 Phil. 204 (2006).

We have also had occasion to excuse the failure to comply with the rule on the statement of material dates in the petition, since the dates were evident from the records.[45]

Failure to implead private respondent

In this case, it was an error for the CA to dismiss the petition for failure to comply with Section 5, Rule 65 of the Rules of Court, which states:

> Section 5. *Respondents and costs in certain cases.* — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, **the person or persons interested in sustaining the proceedings in the court**; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents. (Emphasis supplied)

Section 11, Rule 3 of the Rules of Court, states that neither the misjoinder nor the non-joinder of parties is a ground for the dismissal of an action.[46] If it was truly necessary to implead Guiamaludin Sendad, what the CA should have done was to order petitioner to add him as private respondent to the case.

Failure to file a motion for reconsideration

The CA stood ready to excuse the failure of petitioner to attach copies of the pleadings and documents relevant to the petition, since his omission could be remedied by requiring him to submit additional requirements necessary for the resolution of the petition. However, the CA could not excuse his failure to move for reconsideration of the issuance of the Order of

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[45] *Great Southern Maritime Services Corporation v. Acuña*, 492 Phil. 518 (2005).

[46] *Cuyo v. People*, G.R. No. 192164, 12 October 2011, 659 SCRA 69, 73.

Implementation prior to the filing of the petition for *certiorari* before it. On the other hand, petitioner insists that he has filed a motion for reconsideration not once, but twice.[47]

The CA is correct on this point. It is clear that upon receipt of a copy of the Order of Implementation dated 31 March 2004, petitioner immediately filed the petition for *certiorari* and prohibition before the CA three days later. The motions for reconsideration that petitioner referred to were filed by him in connection with the Resolution dated 14 March 1995 recommending his dismissal from service.

There are well-settled exceptions[48] to the general rule that a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari* under Rule 65 of the Rules of Court.[49] However, none of them finds application in this case, especially since questions raised in the *certiorari* proceeding before the CA were different from those passed upon by the Ombudsman. The question raised before the CA was the legality of the Order of Implementation. On the other hand, what was passed upon by the Ombudsman was whether petitioner was guilty of grave misconduct.

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[47] *Rollo*, p. 15.

[48] (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or public interest is involved.

[49] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 135703, 15 April 2009, 585 SCRA 18.

The issue of grave abuse of discretion

Nevertheless, while we agree that in clearly meritorious cases, the higher demands of substantial justice can transcend the rigid observance of procedural rules, it is not the case here.

While petitioner initially questioned the Order of Implementation because it became a direct order to dismiss — allegedly beyond the authority of the Ombudsman, empowered as it is, only to recommend the removal of erring public employees — his main argument was that the Order of Implementation should have been addressed to the Secretary of Environment and Natural Resources as the head of office who had the power to appoint and dismiss him.[50]

In *Ledesma v. Court of Appeals*[51] and subsequent cases,[52] this Court has already made the pronouncement that the power of the Ombudsman to impose administrative liability is not merely advisory, but actually mandatory in nature. However, this power is shared with the head of office or any other officer concerned.[53] Thus, when Section 13(3) of Article XI[54] of the Constitution and Section 15(3)[55] of Republic Act No. 6770 (The Ombudsman

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[50] *Rollo*, p. 36.

[51] 503 Phil. 396 (2005).

[52] *Fajardo v. Ombudsman*, G.R. No. 173268, 23 August 2012, 679 SCRA 97; *Ombudsman v. Beltran*, G.R. No. 168039, 5 June 2009, 588 SCRA 574; *Boncalon, v. Ombudsman (Visayas)*, G.R. No. 171812, 24 December 2008, 575 SCRA 449; *Ombudsman v. Court of Appeals*, 554 Phil. 656 (2007); *Ombudsman v. Lucero*, 537 Phil. 917 (2006); *Ombudsman v. Court of Appeals*, 537 Phil. 751 (2006).

[53] *Ledesma v. Court of Appeals*, *supra* note 51.

[54] Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

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(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

[55] Section 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:

Act of 1989) uses the word "recommend" in connection with the action to be taken against an erring government employee, the intention is to course the implementation through the proper officer.[56]

In this case, petitioner claims that the order should have been addressed to the Secretary of Environment and Natural Resources as the head of office. According to petitioner, directing it to the DENR XII RED amounted to grave abuse of discretion on the part of the Ombudsman.

We are not persuaded.

Grave abuse of discretion is "the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law."[57] It is more than mere imputation of caprice, whimsicality or arbitrariness; and it is not present when the acts are found to be mere errors of judgment or simple abuse of discretion.[58]

Petitioner himself manifested that at the time that private respondent filed the complaint, the former was employed at DENR

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x x x x x x x x x.

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

[56] *Ledesma v. Court of Appeals, supra.*

[57] *Republic v. Sandiganbayan (Fourth Division)*, G.R. No. 152375, 13 December 2011, 662 SCRA 152, 186.

[58] *Id.*

XII on a contractual basis.[59] The employment status of petitioner is shown in the Contracts of Technical Services dated 3 July 1988[60] and 1 January 1989[61] executed between him and Atty. Dacilo M. Adap (Atty. Adap), Regional Technical Director of DENR XII. Also, attached to the record is a handwritten note dated 8 March 1990 from DENR XII RED Macorro Macumbal instructing Atty. Adap to renew the contractual employment of petitioner.[62]

Thus, when the recommendation to dismiss petitioner from service was issued by the Ombudsman through the Resolution dated 14 March 1995, the recommendation was coursed through then DENR XII RED Macorro Macumbal. Later, due to the query of the DENR XII RED officer-in-charge regarding the status of the case of petitioner, the Order of Implementation dated 31 March 2004 was directed to the former to effect petitioner's dismissal.

The Ombudsman was never informed of any change in the status of appointment of petitioner. Thus, the Ombudsman had reason to believe that his employment continued to be under a contract of service. Even if this belief was mistaken, we find that it does not amount to grave abuse of discretion.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Mendoza,[*] and *Reyes, JJ.*, concur.

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[59] *Rollo*, p. 61; Records, p. 4.

[60] Records, p. 29.

[61] *Id.* at 73.

[62] *Id.* at 27.

[*] Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per Special Order No. 1502.

SECOND DIVISION

[G.R. No. 178031. August 28, 2013]

VIRGINIA M. VENZON, *petitioner, vs.* **RURAL BANK OF BUENAVISTA (AGUSAN DEL NORTE), INC., represented by LOURDESITA E. PARAJES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ANSWER WITH COUNTERCLAIM; NEGATIVE PREGNANT, EXPLAINED; PRESENT IN CASE AT BAR.— By making such an ambiguous allegation in its Answer with Counterclaims, respondent is deemed to have admitted receiving the amount of ₱6,000.00 from petitioner as evidenced by Official Receipt No. 410848, which amount under the circumstances it had no right to receive. "If an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted." "Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a 'negative pregnant' exists, and only the qualification or modification is denied, while the fact itself is admitted." "A denial in the form of a negative pregnant is an ambiguous pleading, since it cannot be ascertained whether it is the fact or only the qualification that is intended to be denied." "[P]rofession of ignorance about a fact which is patently and necessarily within the pleader's knowledge, or means of knowing as ineffectual, [is] no denial at all." In fine, respondent failed to refute petitioner's claim of having paid the amount of ₱6,000.00.

2. CIVIL LAW; QUASI-CONTRACT; *SOLUTIO INDEBITI,* PRESENT IN CASE AT BAR; GRANT OF 6% INTEREST, SUSTAINED.— Since respondent was not entitled to receive the said amount, as it is deemed fully paid from the foreclosure of petitioner's property since its bid price at the auction sale covered all that petitioner owed it by way of principal, interest, attorney's fees and charges, it must return the same to petitioner. "If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation

to return it arises." Moreover, pursuant to Circular No. 799, series of 2013 of the *Bangko Sentral ng Pilipinas* which took effect July 1, 2013, the amount of ₱6,000.00 shall earn interest at the rate of 6% *per annum* computed from the filing of the Petition in Civil Case No. 5535 up to its full satisfaction.

APPEARANCES OF COUNSEL

Castro Castro and Associates for petitioner.
Libra Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari*[1] questioning the December 14, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 01341-MIN which dismissed the Petition in said case, as well as its May 7, 2007 Resolution[3] denying reconsideration thereof.

Factual Antecedents

On January 28, 2005, petitioner Virginia M. Venzon filed a Petition[4] to nullify foreclosure proceedings and Tax Declaration Nos. 96-GR-06-003-7002-R and 96-GR-06-003-7003-R issued in the name of respondent Rural Bank of Buenavista (Agusan del Norte), Inc. The case[5] was docketed as Civil Case No. 5535 and raffled to Branch 5 of the Regional Trial Court (RTC) of

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[1] *Rollo*, pp. 3-33.

[2] CA *rollo*, pp. 48-51; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

[3] *Id.* at 71-73.

[4] *Id.* at 12-14.

[5] Entitled "Virginia M. Venzon, Petitioner, versus Rural Bank of Buenavista (Agusan del Norte), Inc., represented by Lourdesita Espina-Chan and Casiano A. Angchangco, Jr., Respondent."

Butuan City. Petitioner alleged that in 1983 she and her late spouse, George F. Venzon, Sr., obtained a ₱5,000.00 loan from respondent against a mortgage on their house and lot in Libertad, Butuan City, covered by Tax Declaration Nos. 28289 and 42710 issued in their names, which were later on replaced with Tax Declaration Nos. 96 GR-06-003-2884-R and 96 GR-06-003-2885-R; that she was able to pay ₱2,300.00, thus leaving an outstanding balance of only ₱2,370.00; that sometime in March 1987, she offered to pay the said balance in full, but the latter refused to accept payment, and instead shoved petitioner away from the bank premises; that in March 1987, respondent foreclosed on the mortgage, and the property was sold at auction for ₱6,472.76 to respondent, being the highest bidder; that the foreclosure proceedings are null and void for lack of notice and publication of the sale, lack of sheriff's final deed of sale and notice of redemption period; and that she paid respondent ₱6,000.00 on October 9, 1995, as evidenced by respondent's Official Receipt No. 410848[6] issued on October 9, 1995.

In its Answer with Counterclaims,[7] respondent claimed that petitioner did not make any payment on the loan; that petitioner never went to the bank in March 1987 to settle her obligations in full; that petitioner was not shoved and driven away from its premises; that the foreclosure proceedings were regularly done and all requirements were complied with; that a certificate of sale was issued by the sheriff and duly recorded in the Registry of Deeds; that petitioner's claim that she paid ₱6,000.00 on October 9, 1995 is utterly false; that petitioner's cause of action has long prescribed as the case was filed only in 2005 or 18 years after the foreclosure sale; and that petitioner is guilty of laches. Respondent interposed its counterclaim for damages and attorney's fees as well.

In her Reply,[8] petitioner insisted that the foreclosure proceedings were irregular and that prescription and laches do

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

[7] *Id.* at 20-26.

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

not apply as the foreclosure proceedings are null and void to begin with.

Ruling of the Regional Trial Court

On July 13, 2006, the trial court issued a Resolution[9] dismissing Civil Case No. 5535. It held that —

> The plaintiff, however, may have erroneously relied the [sic] mandatorily [sic] requirement of the aforestated provision of law upon failure to consider that the other party is a Rural Bank. Under the R.A. No. 720 as amended, (Rural Bank Act) property worth exceeding ₱100,000.00 [sic] is exempt from the requirement of publication. This may have been the reason why the foreclosure prosper [sic] without the observance of the required publication. Moreover, neither in the said applicable laws provide [sic] for the impairment of the extrajudicial foreclosure and the subsequent sale to the public. The Court ruled in *Bonnevie, et al. vs. CA, et al.* that Act [N]o. 3135 as amended does not require personal notice to the mortgagor. In the same view, lack of final demand or notice of redemption are [sic] not considered indispensable requirements and failure to observe the same does not render the extrajudicial foreclosure sale a nullity.[10]

In other words, the trial court meant that under the Rural Banks Act, the foreclosure of mortgages covering loans granted by rural banks and executions of judgments thereon involving real properties levied upon by a sheriff shall be exempt from publication where the total amount of the loan, including interests due and unpaid, does not exceed ₱10,000.00.[11] Since petitioner's

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[9] *Id.* at 40-41; penned by Augustus L. Calo.

[10] *Id.* at 41.

[11] Section 5 of Republic Act No. 720 (Rural Banks Act), as amended by Batas Pambansa Blg. 65, provides as follows:

> Section 5. x x x
>
> **The foreclosure of mortgages covering loans granted by Rural Banks and executions of judgments thereon involving real properties levied upon by a sheriff shall be exempt from the publications in newspapers now required by law where the total amount of loan, including interests due and unpaid, does not exceed Ten Thousand Pesos (₱10,000.00) or such amount as the Monetary Board may**

outstanding obligation amounted to just over ₱6,000.00 publication was not necessary.

Petitioner moved for reconsideration,[12] but in the September 6, 2006 Resolution,[13] the trial court denied the same.

Ruling of the Court of Appeals

Petitioner went up to the CA *via* an original Petition for *Certiorari*.[14] On December 14, 2006, the CA issued the first assailed Resolution[15] dismissing the Petition. It held that petitioner's remedy should have been an appeal under Rule 41 of the Rules of Court since the July 13, 2006 Resolution is a final order of dismissal. Petitioner received the Resolution denying her Motion for Reconsideration on September 18, 2006;[16] but she filed the Petition for *Certiorari* on October 25, 2006 when she should have interposed an appeal on or before October 3, 2006. Having done so, her Petition may not even be treated as an appeal for the same was belatedly filed.

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prescribe as may be warranted by prevailing economic conditions. It shall be sufficient publication in such cases if the notices of foreclosure and execution of judgment are posted in the most conspicuous area of the Municipal Building, the Rural Bank and the Barangay Hall where the land mortgaged is situated during the period of sixty days immediately preceding the public auction or execution of judgment. Proof of publications as required herein shall be accomplished by affidavit of the sheriff or officer conducting the foreclosure sale or execution of judgment and shall be attached with the records of the case: Provided, That when a homestead or free patent land is foreclosed, the homesteader or free patent holder, as well as his heirs shall have the right to redeem the same within two years from the date of foreclosure in the case of land not covered by a Torrens title or two years from the date of registration of the foreclosure in the case of land covered by a Torrens title: Provided, finally, That in the case of borrowers who are mere tenants, the produce corresponding to their share may be accepted as security.

[12] CA *rollo*, pp. 43-44.

[13] *Id.* at 46.

[14] *Id.* at 3-9.

[15] *Id.* at 48-51.

[16] *Id.* at 4.

The CA added that the Petition does not provide a sufficient factual background of the case as it merely alleges a chronology of the legal remedies she took before the trial court which does not comply with the requirement under Section 3 of Rule 46.[17]

Petitioner moved for reconsideration[18] by submitting a rewritten Petition. However, in a Resolution dated May 7, 2007, the CA denied the same, hence the present Petition.

Issues

Petitioner submits the following assignment of errors:

I

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS REVERSIBLY ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* THEREBY PREVENTING THE COURT FROM FINDING OUT THAT ACTUALLY NO EXTRAJUDICIAL FORECLOSURE WAS CONDUCTED BY THE OFFICE OF THE PROVINCIAL SHERIFF ON PETITIONER'S PROPERTY AT THE INSTANCE OF THE PRIVATE RESPONDENT.

II

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS REVERSIBLY ERRED IN NOT DISREGARDING TECHNICALITIES IN ORDER TO ADMINISTER SUBSTANTIAL JUSTICE TO THE PETITIONER.[19]

Petitioner's Arguments

Petitioner claims that no extrajudicial foreclosure proceedings ever took place, citing a February 2, 2005 Certification issued

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[17] Sec. 3. Contents and filing of petition; effect of non-compliance with requirements.

The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

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[18] CA *rollo*, pp. 55-61.

[19] *Rollo*, pp. 24, 27.

by the Office of the Clerk of Court of Butuan City stating that the record pertaining to the foreclosure proceedings covering her property "could not be found [in spite] of diligent efforts to find the same."[20] And because no foreclosure proceedings took place, there could not have been notice and publication of the sale, and no sheriff's certificate of sale. For this reason, she claims that the CA erred in dismissing her case.

Petitioner adds that, technicalities aside, a Petition for *Certiorari* is available to her in order to prevent the denial of her substantial rights. She also argues that her payment to respondent of the amount of ₱6,000.00 in 1995 should be considered as a valid redemption of her property.

Respondent's Arguments

For its part, respondent merely validates the pronouncements of the CA by citing and echoing the same, and holding petitioner to a strict observance of the rules for perfecting an appeal within the reglementary period, as it claims they are necessary for the orderly administration of justice,[21] as well as that which requires that only questions of law may be raised in a Petition for Review on *Certiorari*.

Our Ruling

The Court denies the Petition.

The Court finds no error in the CA's treatment of the Petition for *Certiorari*. The trial court's July 13, 2006 Resolution dismissing the case was indeed to be treated as a final order, disposing of the issue of publication and notice of the foreclosure sale — which is the very core of petitioner's cause of action in Civil Case No. 5535 — and declaring the same to be unnecessary pursuant to the Rural Banks Act, as petitioner's outstanding obligation did not exceed ₱10,000.00, and thus leaving petitioner without basis to maintain her case. This constitutes a dismissal with the character of finality. As such, petitioner should have availed of the remedy under Rule 41, and not Rule 65.

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[20] *Id.* at 25.

[21] Citing *Ditching v. Court of Appeals*, 331 Phil. 665, 678 (1996).

The Court is not prepared to be lenient in petitioner's case, either. Civil Case No. 5535 was instituted only in 2005, while the questioned foreclosure proceedings took place way back in 1987. Petitioner's long inaction and commission of a procedural *faux pas* certainly cannot earn the sympathy of the Court.

Nor can the Court grant the Petition on the mere allegation that no foreclosure proceedings ever took place. The February 2, 2005 Certification issued by the Office of the Clerk of Court of Butuan City to the effect that the record of the foreclosure proceedings could not be found is not sufficient ground to invalidate the proceedings taken. Petitioner herself attached the Sheriff's Certificate of Sale[22] as Annex "A" of her Petition in Civil Case No. 5535; this should belie the claim that no record exists covering the foreclosure proceedings. Besides, if petitioner insists that no foreclosure proceedings took place, then she should not have filed an action to annul the same since there was no foreclosure to begin with. She should have filed a different action.

However, petitioner is entitled to a return of the ₱6,000.00 she paid to respondent in 1995. While this may not be validly considered as a redemption of her property as the payment was made long after the redemption period expired, respondent had no right to receive the amount. In its Answer with Counterclaims in Civil Case No. 5535, respondent simply alleged therein that —

10. **Defendant DENIES the allegations under paragraph 10 of the petition for being utterly false, highly self-serving and patently speculative**, the truth being —

- Assumption cannot be had that there was an alleged foreclosure of the then property of the petitioner for the truth of the matter is that a foreclosure proceeding was duly conducted, which fact remains undisputable for so many years now.
- **Without necessarily admitting that payment of ₱6,000.00 was made**, the same however could hardly and could never be considered as redemption price for the following reasons —

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

- The redemption period had long lapsed when the payment of ₱6,000.00 was allegedly made. Thus, there is no point talking about redemption price when the redemption period had long been gone at the time the alleged payment was made.
- Even x x x granting, without conceding, that the amount of ₱6,000.00 was a redemption price, said amount, however, could not constitute as a legal redemption price since the same was not enough to cover the entire redemption price as mandated by the rules and laws.[23] (Emphases supplied)

Interestingly, respondent did not deny being the issuer of Official Receipt No. 410848. Instead, it averred that petitioner's payment to it of ₱6,000.00 was *false and self-serving*, but in the same breath argued that, *without necessarily admitting that payment of ₱6,000.00 was made*, the same cannot be considered as redemption price.

By making such an ambiguous allegation in its Answer with Counterclaims, respondent is deemed to have admitted receiving the amount of ₱6,000.00 from petitioner as evidenced by Official Receipt No. 410848, which amount under the circumstances it had no right to receive. "If an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted."[24] "Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a 'negative pregnant' exists, and only the qualification or modification is denied, while the fact itself is admitted."[25] "A denial in the form of a negative pregnant is an ambiguous pleading, since it cannot be ascertained whether it is the fact or only the qualification that is intended to be denied."[26] "[P]rofession of ignorance about a fact which is patently and necessarily within the pleader's

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[23] *Id.* at 22. Emphases supplied.

[24] *Bañares v. Atty. Barican*, 157 Phil. 134, 138 (1974).

[25] *Galofa v. Nee Bon Sing*, 130 Phil. 51, 54 (1968), citing *Ison v. Ison*, 115 SW 2d. 330, 272 Ky. 836 and 28 Words & Phrases 314.

[26] *Id.*, citing 41 Am. Jur. 429.

knowledge, or means of knowing as ineffectual, [is] no denial at all."[27] In fine, respondent failed to refute petitioner's claim of having paid the amount of ₱6,000.00.

Since respondent was not entitled to receive the said amount, as it is deemed fully paid from the foreclosure of petitioner's property since its bid price at the auction sale covered all that petitioner owed it by way of principal, interest, attorney's fees and charges,[28] it must return the same to petitioner. "If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."[29] Moreover, pursuant to Circular No. 799, series of 2013 of the *Bangko Sentral ng Pilipinas* which took effect July 1, 2013, the amount of ₱6,000.00 shall earn interest at the rate of 6% *per annum* computed from the filing of the Petition in Civil Case No. 5535 up to its full satisfaction.

WHEREFORE, premises considered, the Petition is **DENIED**. The December 14, 2006 and May 7, 2007 Resolutions of the Court of Appeals in CA-G.R. SP No. 01341-MIN are **AFFIRMED**.

However, respondent Rural Bank of Buenavista (Agusan del Norte), Inc. is **ORDERED** to return to petitioner Virginia M. Venzon or her assigns the amount of ₱6,000.00, with interest at the rate of 6% *per annum* computed from the filing of the Petition in Civil Case No. 5535 up to its full satisfaction.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[27] *Vergara, Sr. v. Judge Suelto*, 240 Phil. 719, 730 (1987), citing Moran, *Comments on the Rules*, 1970 ed., Vol. 1, p. 335; *J.P. & Sons, Inc. v. Lianga Industries, Inc.*, 139 Phil. 77, 83 (1969); *Philippine Advertising Counsellors, Inc. v. Hon. Revilla*, 152 Phil. 213, 222 (1973); *Gutierrez v. Court of Appeals*, 165 Phil. 752, 757 (1976).

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

[29] CIVIL CODE, Article 2154.

[*] Per Special Order No. 1525 dated August 22, 2013.

THIRD DIVISION

[G.R. No. 179001. August 28, 2013]

MZR INDUSTRIES, MARILOU R. QUIROZ and LEA TIMBAL, *petitioners, vs.* **MAJEN COLAMBOT,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; BEFORE THE EMPLOYER MUST BEAR THE BURDEN OF PROVING THAT THE DISMISSAL IS LEGAL, THE EMPLOYEE MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF HIS DISMISSAL FROM SERVICE; NOT ESTABLISHED IN CASE AT BAR.— While we recognize the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause, in the present case, however, the facts and the evidence do not establish a *prima facie* case that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof. In the present case, other than Colambot's unsubstantiated allegation of having been verbally terminated from his work, there was no evidence presented to show that he was indeed dismissed from work or was prevented from returning to his work. In the absence of any showing of an overt or positive act proving that petitioners had dismissed respondent, the latter's claim of illegal dismissal cannot be sustained — as the same would be self-serving, conjectural and of no probative value.

2. ID.; ID.; ID.; ID.; ABANDONMENT OF WORK; FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL IS INCONSISTENT WITH ABANDONMENT OF WORK.— It is a settled rule that mere absence or failure to report for work is not enough to amount to abandonment of work. There must be a concurrence of the intention to abandon and some

overt acts from which an employee may be deduced as having no more intention to work. On this point, the CA was correct when it held that: x x x To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment. Suffice it to say that, it is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning. It is therefore incumbent upon petitioners to ascertain the respondents' interest or non-interest in the continuance of their employment. This, petitioners failed to do so.

3. ID.; ID.; ID.; WHERE THE EMPLOYEE'S FAILURE TO WORK WAS OCCASIONED NEITHER BY ABANDONMENT NOR TERMINATION, EACH PARTY MUST BEAR HIS OWN LOSS; APPLICATION IN CASE AT BAR.— These circumstances, taken together, the lack of evidence of dismissal and the lack of intent on the part of the respondent to abandon his work, the remedy is reinstatement but without backwages. However, considering that reinstatement is no longer applicable due to the strained relationship between the parties and that Colambot already found another employment, each party must bear his or her own loss, thus, placing them on equal footing. Verily, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero & Paras Law Office for petitioners.

Public Attorney's Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated May 17, 2007 and Resolution[2] dated July 25, 2007 of the Court of Appeals in CA-G.R. SP No. 98445, reversing the Decision dated October 31, 2006[3] and Resolution[4] dated December 21, 2006 of the National Labor Relations Commission (NLRC) which set aside the Decision[5] dated April 28, 2006 of the Labor Arbiter.

The facts are as follows:

On February 8, 2000, petitioner Marilou Quiroz, Owner and Vice-President for Finance and Marketing of MZR, hired respondent Majen Colambot (Colambot) as messenger. Colambot's duties and responsibilities included field, messengerial and other liaison work.

However, beginning 2002, Colambot's work performance started to deteriorate. Petitioners issued several memoranda to Colambot for habitual tardiness, negligence, and violations of office policies.[6] He was also given written warnings for insubordination committed on August 27, 2003 and September 11-12, 2003;[7] on September 16, 2003 for negligence caused by careless handling of confidential office documents;[8] on September

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[1] *Rollo,* pp. 86-100.

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

[3] *Id.* at 59-71.

[4] CA *rollo,* pp. 118-119.

[5] *Rollo,* pp. 31-36.

[6] CA *rollo,* pp. 54-57.

[7] *Id.* at 58.

[8] *Id.* at 59.

22, 2004 for leaving his post without proper turnover;[9] and, on October 4, 2004 for insubordination.[10]

Petitioners claimed that despite written warnings for repeated tardiness and insubordination, Colambot failed to mend his ways. Hence, in a Memorandum[11] dated October 25, 2004 issued by petitioner Lea Timbal (Timbal), MZR's Administrative Manager, Colambot was given a notice of suspension for insubordination and negligence.

Again, in a Memorandum[12] dated November 25, 2004, Colambot was suspended from November 26, 2004 until December 6, 2004 for insubordination. Allegedly, Colambot disobeyed and left the office despite clear instructions to stay in the office because there was an important meeting in preparation for a very important activity the following day.

Petitioners claimed they waited for Colambot to report back for work on December 7, 2004, but they never heard from him anymore. Later, petitioners were surprised to find out that Colambot had filed a complaint for illegal suspension, underpayment of salaries, overtime pay, holiday pay, rest day, service incentive leave and 13th month pay. On December 16, 2004, the complaint was amended to illegal dismissal, illegal suspension, underpayment of salaries, holiday pay, service incentive pay, 13th month pay and separation pay.[13]

For his part, Colambot narrated that he worked as a messenger for petitioners since February 2000. That on November 2004, he was directed to take care of the processing of a document in Roxas Boulevard, Pasay City. When he arrived at the office around 6 to 7 o'clock in the evening, he looked for petitioner Quiroz to give the documents. The latter told him to wait for

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[9] *Id.* at 60.

[10] *Id.* at 61.

[11] *Rollo*, p. 154.

[12] *Id.* at 155.

[13] CA *rollo*, pp. 26-27.

her for a while. When respondent finally had the chance to talk to Quiroz, she allegedly told him that she is dissatisfied already with his work performance. Afterwards, Colambot claimed that he was made to choose between resigning from the company or the company will be the one to terminate his services. He said he refused to resign. Colambot alleged that Quiroz made him sign a memorandum for his suspension, from November 26 to December 6, 2004. After affixing his signature, Quiroz told him that effective December 7, 2004, he is already deemed terminated. Later, on December 2, 2004, respondent went back to the company to look for Timbal to get his salary. He claimed that Timbal asked him to turn over his company I.D.[14]

Petitioners, however, insisted that while Colambot was suspended due to insubordination and negligence, they maintained that they never terminated Colambot's employment. They added that Colambot's failure to report for work since December 7, 2004 without any approved vacation or sick leave constituted abandonment of his work, but they never terminated his employment. Petitioners further emphasized that even with Colambot's filing of the complaint against them, his employment with MZR has not been terminated.

Colambot, meanwhile, argued that contrary to petitioners' claim that he abandoned his job, he claimed that he did not report back to work after the expiration of his suspension on December 6, 2004, because Quiroz told him that his employment was already terminated effective December 7, 2004.

On April 28, 2006, the Labor Arbiter rendered a Decision,[15] the dispositive portion of which reads:

> WHEREFORE, premises considered, respondents are hereby declared guilty of ILLEGAL DISMISSAL and hereby ORDERED to reinstate complainant to his former position with full backwages from date of dismissal until actual reinstatement and moral and exemplary damages in the sum of ₱100,000.00 and ₱50,000.00, respectively.

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[14] *Id.* at 39-40.

[15] *Rollo*, pp. 31-36.

The computation of the judgment award marked as Annex "A" is part and parcel of this decision.

SO ORDERED.[16]

The Labor Arbiter held that there was no abandonment as there was no deliberate intent on the part of Colambot to sever the employer-employee relationship. The Labor Arbiter likewise noted that Colambot should have been notified to return back to work, which petitioner failed to do.

Aggrieved, petitioners appealed the decision before the NLRC.

On October 31, 2006, the NLRC rendered a Decision,[17] the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the appeal filed by respondents is GRANTED. The judgment of the Labor Arbiter dated April 28, 2006 is hereby SET ASIDE and the Complaint is DISMISSED for lack of merit.

SO ORDERED.[18]

The NLRC pointed out that Colambot's complaint was unsupported by any evidence and was not even made under oath, thus, lacking in credibility and probative value. The NLRC further believed that Colambot abandoned his work due to his refusal to report for work after his suspension. The failure of MZR to notify Colambot to return back to work is not tantamount to actual dismissal.

Colambot filed a motion for reconsideration, but was denied. Thus, *via* a petition for *certiorari* under Rule 65 of the Rules of Court, raising grave abuse of discretion as a ground, Colambot appealed before the Court of Appeals and sought that the Decision dated October 31, 2006 and Resolution dated December 21, 2006 of the NLRC be reversed and set aside.

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[16] *Id.* at 35.

[17] *Id.* at 59-71.

[18] *Id.* at 70.

In the disputed Decision[19] dated May 17, 2007, the Court of Appeals granted the petition and reversed the assailed Decision dated October 31, 2006 and Resolution dated December 21, 2006 of the NLRC. The Decision dated April 28, 2006 of the Labor Arbiter was ordered reinstated with modification that in lieu of reinstatement, petitioners were ordered to pay respondent separation pay equivalent to one (1) month pay for every year of service in addition to full backwages.

The appellate court ruled that Colambot was illegally dismissed based on the grounds that: (1) MZR failed to prove abandonment on the part of Colambot, and (2) MZR failed to serve Colambot with the required written notices of dismissal.

Petitioners appealed, but was denied in a Resolution[20] dated July 25, 2007.

Thus, *via* Rule 45 of the Rules of Court, before this Court, petitioners raised the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT COMPLAINANT WAS ILLEGALLY DISMISSED FROM THE SERVICE.

II

THE HONORABLE COURT SERIOUSLY ERRED IN RULING THAT PETITIONER IS ENTITLED TO SEPARATION PAY AND BACKWAGES.

Petitioners argue that they did not terminate the employer-employee relationship with Colambot. Other than Colambot's self-serving and unverified narration of facts, he failed to present any document showing that he was terminated from work. Petitioners assert that Colambot abandoned his work when he failed to report back to work without an approved vacation or sick leave, thus, he is not entitled to an award of separation pay and backwages.

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[19] *Id.* at 86-100.

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

RULING

While we recognize the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause, in the present case, however, the facts and the evidence do not establish a *prima facie* case that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[21]

In the present case, other than Colambot's unsubstantiated allegation of having been verbally terminated from his work, there was no evidence presented to show that he was indeed dismissed from work or was prevented from returning to his work. In the absence of any showing of an overt or positive act proving that petitioners had dismissed respondent, the latter's claim of illegal dismissal cannot be sustained[22] — as the same would be self-serving, conjectural and of no probative value.

A review of the Notice of Suspension[23] dated November 25, 2004 shows that respondent was merely suspended from work for 6 days, there was, however, no evidence that Colambot was terminated from work. For clarification, we quote:

TO	:	MAJEN COLAMBOT MZR MESSENGER
FROM	:	HUMAN RESOURCE DEPT
DATE	:	NOV. 25, 2004
RE	:	SUSPENSION DUE TO INSUBORDINATION

[21] See *Philippine Rural Reconstruction Movement v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256.

[22] *Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, February 23, 2011, 644 SCRA 76, 88; *Security & Credit Investigation, Inc. v. NLRC*, 403 Phil. 264, 273 (2001).

[23] *Rollo*, p. 155.

x x x x x x x x x

Cases of insubordination and violations have been filed against you many times. We kept on reminding that you should have changed and improved your working attitudes because it greatly affects not only your working performance but the company's productivity as well.

Your attitude only shows HARD HEADEDNESS AND LACK OF RESPECT TO YOUR SUPERIORS which in any company cannot tolerate.

With these, you are suspended for 6 working days effective November 26, 2004, you will only report on December 7, 2004.

THIS IS OUR LAST WARNING FOR YOU TO IMPROVE, FAILURE TO DO SO MAY MEAN TERMINATION OF YOUR EMPLOYMENT CONTRACT.

x x x x x x x x x[24]

While the same appeared to contain a warning of termination should Colambot fail to improve his behavior, it is likewise apparent that there was also a specific instruction for him to report back to work, on December 7, 2004, upon serving his suspension. The subject of the Letter, *i.e.*, "Suspension due to Insubordination," the wordings and content of the letter is a clear-cut notice of suspension, and not a notice of termination. The notice of suspension may have contained warnings of termination, but it must be noted that such was conditioned on the ground that — Colambot would fail to improve his attitude/ behavior. There were no wordings whatsoever implying actual or constructive dismissal. Thus, Colambot's general allegation of having been orally dismissed from the service as against the clear wordings and intent of the notice of suspension which he signed, we are then inclined to believe that there was no dismissal.

In *Machica v. Roosevelt Services Center, Inc.*,[25] this Court sustained the employer's denial as against the employees' categorical assertion of illegal dismissal. In so ruling, this Court held that:

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[24] *Id.* (Emphasis and italics ours.)

[25] 523 Phil. 199 (2006).

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.[26]

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Hence, as between respondents' general allegation of having been orally dismissed from the service *vis-a-vis* those of petitioners which were found to be substantiated by the sworn statement of foreman Wenifredo, we are persuaded by the latter. Absent any showing of an overt or positive act proving that petitioners had dismissed respondents, the latter's claim of illegal dismissal cannot be sustained. Indeed, a cursory examination of the records reveal no illegal dismissal to speak of.[27]

Moreover, in *Abad v. Roselle Cinema*,[28] we ruled that the substantial evidence proffered by the employer that it had not terminated the employee should not be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. We held that such *non sequitur* reasoning cannot take the place of the evidence of both the employer and the employee.

Neither could the petitioners be blamed for failing to order respondent to return back to work. Records show that Colambot immediately filed the complaint for illegal dismissal on December 16, 2004,[29] or just a few days when he was supposed to report back to work on December 7, 2004. For petitioners to order respondent to report back to work, after the latter had already filed a case for illegal dismissal, would be unsound.

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[26] *Id.* at 209-210. (Citations omitted)

[27] *Exodus International Construction Corporation v. Biscocho, supra* note 22, at 88.

[28] 520 Phil. 135, 146 (2006).

[29] *Rollo*, p. 30.

However, while the Court concurs with the conclusion of the NLRC that there was no illegal dismissal, no dismissal having actually taken place, the Court does not agree with its findings that Colambot committed abandonment of work.

In a number of cases,[30] this Court consistently held that to constitute abandonment of work, two elements must be present: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.

In the instant case, other than Colambot's failure to report back to work after suspension, petitioners failed to present any evidence which tend to show his intent to abandon his work. It is a settled rule that mere absence or failure to report for work is not enough to amount to abandonment of work. There must be a concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work.[31] On this point, the CA was correct when it held that:

> Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment. The burden of proof to show that there was unjustified refusal to go back to work rests on the employer. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with

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[30] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003), citing *MSMG-UWP v. Hon. Ramos*, 383 Phil. 329, 371-372 (2000); *Icawat v. NLRC*, 389 Phil. 441, 445 (2000); *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union*-NAFLU-KMU, 418 Phil. 418, 427 (2005); *Seven Star Textile Company v. Dy*, G.R. No. 166846, January 24, 2007, 512 SCRA 486, 499.

[31] *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, September 12, 2006, 501 SCRA 577, 586.

abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. the filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[32]

Suffice it to say that, it is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning. It is therefore incumbent upon petitioners to ascertain the respondents' interest or non-interest in the continuance of their employment. This, petitioners failed to do so.

These circumstances, taken together, the lack of evidence of dismissal and the lack of intent on the part of the respondent to abandon his work, the remedy is reinstatement but without backwages.[33] However, considering that reinstatement is no longer applicable due to the strained relationship between the parties and that Colambot already found another employment, each party must bear his or her own loss, thus, placing them on equal footing.

Verily, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.[34]

WHEREFORE, premises considered and subject to the above disquisitions, the Decision dated May 17, 2007 of the Court of Appeals is hereby **REVERSED and SET ASIDE**. The Resolution dated October 31, 2006 of the National Labor Relations Commission in NLRC NCR CASE No. 00-11-12189-04/CA No. 049533-06 is hereby **REINSTATED.**

SO ORDERED.

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

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[32] *Rollo,* p. 95.

[33] See *Exodus International Construction Corporation v. Biscocho, supra* note 22, at 92.

[34] *Id.* at 93, citing *Leonardo v. NLRC*, 389 Phil. 118, 128 (2000).

FIRST DIVISION

[G.R. No. 180418. August 28, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LUZ REYES-BAKUNAWA, MANUEL BAKUNAWA, JR., MANUEL BAKUNAWA III, FERDINAND E. MARCOS and IMELDA R. MARCOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; DEFINED AND CONSTRUED.— By preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side. Essentially, preponderance of evidence refers to the comparative weight of the evidence presented by the opposing parties. As such, it has been defined as "the weight, credit, and value of the aggregate evidence on either side," and is usually considered to be synonymous with the term *greater weight of the evidence* or *greater weight of the credible evidence*. It is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

2. ID.; ID.; ID.; RULE ON PREPONDERANCE OF EVIDENCE, EXPLAINED.— Under the rule on preponderance of evidence, the court is instructed to find for and to dismiss the case against the defendant should the scales hang in equipoise and there is nothing in the evidence that tilts the scales to one or the other side. The plaintiff who had the burden of proof has failed to establish its case, and the parties are no better off than before they proceeded upon their litigation. In that situation, the court should leave the parties as they are. Moreover, although the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on the plaintiff's side if its evidence alone is insufficient to establish its cause of action. Similarly, when only one side is able to present its evidence, and the other side demurs to the evidence, a preponderance of evidence can result only if the plaintiff's evidence is sufficient to establish the cause of action. For this purpose, the sheer volume of the evidence presented by one

party cannot tip the scales in its favor. Quality, not quantity, is the primordial consideration in evaluating evidence.

3. ID.; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; CLARIFIED.— A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence that his adversary produced, whether true or not, is insufficient in point of law to make out a case or to sustain the issue. The demurring party thereby challenges the sufficiency of the whole evidence to sustain a judgment. The court, in passing upon the sufficiency of the evidence, is required merely to ascertain whether there is competent or sufficient evidence to sustain the indictment or claim, or to support a verdict of guilt or liability.

4. POLITICAL LAW; EXECUTIVE ORDER NO. 1; THE MERE HOLDING OF A POSITION IN THE MARCOS ADMINISTRATION DID NOT NECESSARILY MAKE THE HOLDER A CLOSE ASSOCIATE WITHIN THE CONTEXT OF E.O. NO. 1; SUSTAINED IN CASE AT BAR.— Evidentiary substantiation of the allegations of how the wealth was illegally acquired and by whom was necessary. For that purpose, the mere holding of a position in the Marcos administration did not necessarily make the holder a close associate within the context of E.O. No.1. According to *Republic v. Migriño*, the term *subordinate* as used in E.O. No. 1 and E.O. No. 2 referred to a person who enjoyed a close association with President Marcos and/or his wife similar to that of an immediate family member, relative, and close associate, or to that of a close relative, business associate, dummy, agent, or nominee. Indeed, a *prima facie* showing must be made to show that one unlawfully accumulated wealth by virtue of a close association or relation with President Marcos and/or his wife. It would not suffice, then, that one served during the administration of President Marcos as a government official or employee. x x x We hold that the Sandiganbayan correctly ruled that the evidence of the Republic was able to establish, at best, that Luz Bakunawa had been an employee in Malacañang Palace during the Marcos administration, and did not establish her having a close relationship with the Marcoses, or her having abused her position or employment in order to amass the assets subject of this case. Consequently, Luz Bakunawa could not be considered a close associate or subordinate of the Marcoses within the context of E.O. No. 1 and E.O. No. 2. x x x It is

true that the recovery of ill-gotten wealth should be relentlessly pursued. But the pursuit should not be mindless as to be oppressive towards anyone. Due process requires that there be sufficient competent evidence of the asset being ill-gotten wealth, and of the person or persons charged with the illegal acquisition of ill-gotten wealth being a close associate or subordinate of the Marcoses who took advantage of such ties with the Marcoses to enrich themselves. In that effort, the Republic carries the heavy burden of proof, and must discharge such burden fully; otherwise, the effort would fail and fall.

5. REMEDIAL LAW; EVIDENCE; FORMAL OFFER OF EVIDENCE IS DESIGNED TO MEET THE DEMAND OF DUE PROCESS.— It was basic enough that the Sandiganbayan could not consider any evidence that was not formally offered; and could consider evidence only for the purposes it was specifically offered. Section 34, Rule 132 of the *Rules of Court* explicitly states: x x x The need to formally offer evidence by specifying the purpose of the offer cannot be overemphasized. This need is designed to meet the demand for due process by apprising the adverse party as well as the trial court on what evidence the court would soon be called upon to decide the litigation. The offer and purpose will also put the trial court in the position to determine which rules of evidence it shall apply in admitting or denying admission to the evidence being offered.

6. POLITICAL LAW; ADMINISTRATIVE LAW; NEGOTIATED CONTRACT, EXPLAINED; WHEN VALIDITY THEREOF IS UPHELD.— The Court must point out that negotiated contracts are not *per se* illegal. A negotiated contract is one that is awarded on the basis of a direct agreement between the Government and the contractor, without going through the normal procurement process, like obtaining the prior approval from another authority, or a competitive bidding process. It is generally resorted to for convenience, or "when time is of the essence, or where there is a lack of qualified bidders or contractors, or where there is conclusive evidence that *greater economy* and *efficiency* would be achieved." The Court has upheld the validity of a negotiated contract made pursuant to law, like a negotiated contract entered into by a City Mayor pursuant to the then existing Local Government Code, or a negotiated contract that eventually redounded to the benefit

of the general public, even if there was no specific covering appropriation pursuant to COA rules, or a negotiated contract that was made due to an emergency in the health sector, or a negotiated contract for long overdue repair and renovation needed to provide better health services. Absent evidence proving that the negotiated construction contracts had been irregularly entered into by the Bakunawas, or that the public had been thereby prejudiced, it is pointless for the Court to declare their invalidity. On the contrary, the Sandiganbayan correctly observed that the presumption of the validity of the contracts prevailed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Robert A.C. Sison for Imelda R. Marcos.
Balgos & Perez for Bakunawas.

D E C I S I O N

BERSAMIN, *J.*:

Assets or properties, to be considered as ill-gotten wealth, must be shown to have originated from the Government itself, and should have been taken by former President Marcos, the members of his immediate family, relatives, close subordinates and close associates by illegal means. That one served as a government official or employee during the Marcos administration did not immediately make her a close subordinate or close associate of former President Marcos.[1]

The Case

The Republic appeals the adverse decision rendered on April 10, 2002,[2] and the resolution issued on November 8,

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[1] *Republic v. Sandiganbayan (First Division)*, G.R. No. 166859, G.R. No. 169203, and G.R. No. 180702, April 12, 2011, 648 SCRA 47, 132-133.

[2] *Rollo*, pp. 35-68; penned by Presiding Justice Francis E. Garchitorena (deceased), with Associate Justice Catalino Castañeda, Jr. (retired) and Associate Justice Gregory Ong concurring.

2007,[3] whereby the Sandiganbayan respectively dismissed the complaint for reconveyance, reversion, accounting, restitution and damages filed against respondents in Civil Case No. 0023, and denied the Republic's motion for reconsideration.

Antecedents

Civil Case No. 0023 is an action for reconveyance, reversion, accounting, restitution and damages brought by the Republic against respondents Luz Reyes-Bakunawa, Manuel Bakunawa, Jr., Manuel Bakunawa III, President Marcos and First Lady Imelda R. Marcos for having allegedly acquired and accumulated ill-gotten wealth consisting of funds and other property "in unlawful concert with one another" and "in flagrant breach of trust and of their fiduciary obligations as public officers, with grave abuse of right and power and in brazen violation of the Constitution and laws of the Republic of the Philippines, thus resulting in their unjust enrichment."[4]

The complaint alleged that respondent Luz Reyes-Bakunawa (Luz Bakunawa) had served as Imelda Marcos' Social Secretary during the Marcos administration; that it was during that period of her incumbency in that position that Luz Bakunawa and her husband Manuel Bakunawa had acquired assets, funds and other property grossly and manifestly disproportionate to her salaries and their other lawful income;[5] and that Luz Bakunawa, "by herself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of her position, influence and connection with the latter Defendant spouses, for their benefit and unjust enrichment and in order to prevent disclosure and recovery of assets illegally obtained, engaged in devices, schemes and stratagems,"[6] particularly:

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[3] *Id.* at 69-81; penned by Associate Justice Diosdado M. Peralta (later Presiding Justice, and presently a Member of the Court), with Justices Teresita J. Leonardo De Castro (later Presiding Justice, and presently a Member of the Court) and Associate Justice Efren N. Dela Cruz concurring.

[4] *Id.* at 83-105.

[5] *Id.* at 95-96.

[6] *Id.* at 93.

1) acted as dummies, nominees, and/or agents of the Marcos spouses and, with the active collaboration, knowledge and willing participation of the other defendants, established several corporations engaged in a wide range of economic activities, such as construction and cattle ranching;

2) secured favorable contracts with the Department of Public Works and Communications for the construction of government projects through grossly undercapitalized corporations and without complying with such usual requirements as public bidding, notice and publication of contractors;

3) unlawfully acquired heads of cattle from the government dispersal program and raised them on ranch lands encroaching on forest zones;

4) unlawfully encroached upon a mangrove-forested section in Masbate, Masbate and converted it into a fishpond;

5) unlawfully amassed funds by obtaining huge credit lines from government financial institutions, and incorporating into their contracts a cost-escalation adjustment provision to justify collection of grossly arbitrary and unconscionable amounts unsupported by evidence of increase in prices;

6) unlawfully imported hundreds of brand-new units of heavy equipment without paying customs duties and other allied taxes amounting to millions of pesos, by falsely representing said heavy equipment to be for official government use and selling them at very low prices to avoid paying the required taxes.[7]

The Republic prayed for: (*a*) the reconveyance to itself of all funds and other property impressed with constructive trust, as well as funds and other property acquired by respondents' abuse of right and power and through unjust enrichment, plus interests; (*b*) accounting of all beneficial interests in funds, properties and assets in excess of their unlawful earnings; and (*c*) payment of actual damages to be proved during the trial, moral damages of ₱50,000,000,000.00, temperate, nominal and exemplary damages, attorney's fees, litigation expenses and treble judicial costs.[8]

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[7] *Id.* at 93-95 (Annex A of the complaint enumerated respondents' parcels of land, shares of stocks, bank accounts, receivables and other personal properties).

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

In their amended answer, the Bakunawas alleged that Luz Bakunawa was never the Social Secretary of Imelda Marcos, but only an employee in the office of the Social Secretary; that the properties acquired while Luz Bakunawa was employed in the Government were purchased with honestly earned money and their acquisition was well within their legitimate income; that their family owned and controlled five closed family corporations, namely: (1) Hi-Tri Development Corporation; (2) 7-R Development Corporation; (3) 7-R Heavy Equipment, Inc.; (4) 7-R Sales Company, Inc.; and (5) 7-R Ranch, Inc.; that their public works contracts were awarded to them in accordance with law; that their acquisition of the heads of cattle were legal;[9] and that they did not commit any breach of trust while in public office, and did not possess illegally acquired funds that rendered them liable under constructive trust in favor of the Republic.[10]

During the pre-trial on August 26, 1999, the Bakunawas admitted that: (*a*) the properties enumerated in Annex A of the complaint[11] belonged to or were connected to them, except three corporations, namely: 7-R International Trading, 7-R Enterprise, Inc., and 7-R Group of Companies; and (*b*) two parcels of land that belonged to one of their children.[12]

Also during the pre-trial, the parties agreed on the following statement of the issues, to wit:

> [t]he fundamental issue in this case is whether or not defendant Luz Bakunawa, considering her position in Malacañang during the incumbency of President Ferdinand E. Marcos from 1970 up to 1986, occupied a confidential position in Malacañang, and was able to obtain contracts, run businesses and acquire real properties as enumerated in the Complaint, using her office and the influence of either or both of the [s]pouses Ferdinand and Imelda Marcos. The

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[9] *Id.* at 139-141.

[10] *Id.* at 138-151.

[11] *Id.* at 106-113.

[12] Records, Vol. VII, pp. 79-81.

parties agreed that it is the use of the influence of the Spouses Marcos that constitutes the essence of the case, and not the failure to report the Statement of Assets and Liabilities or any other impropriety in the acquisition of the properties herein, this case having been filed under the authority given to the Presidential Commission on Good Government under Executive Orders No. 1, 2, 14 and 14-a.[13]

After the Republic rested its case, respondents filed their motion to dismiss,[14] insisting that the Republic "has failed to establish even *prima facie,* its case and/or charges against them."[15]

Ruling of the Sandiganbayan

On April 10, 2002, the Sandiganbayan rendered its decision in favor of respondents, to wit:[16]

x x x x x x x x x

As the evidence stands, neither the presence of the link with the Marcoses, nor the irrefutability of the evidence against the Bakunawas for their misuse of that connection exists to justify the instant action by the PCGG.

In view of all the above, this Court is constrained to grant the Motion to Dismiss, as it hereby dismisses, the Complaint of the plaintiff for its failure to prove the essential allegations thereof.

The writs of sequestration issued and in force against the properties of the Bakunawas as enumerated in Annex A of the Complaint (page 24 and p. 34, Vol. I, Record) are lifted, set aside and declared of no further force and effect.

SO ORDERED.

The Sandiganbayan justified its decision in the following manner:

x x x x x x x x x

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[13] *Id.*

[14] *Rollo,* pp. 152-166.

[15] *Id.* at 152.

[16] *Supra* note 2.

Many of the plaintiff's allegations in its specific averments (Article V) in the complaint are alluded to in the evidence in a general fashion: engaging in cattle ranching and construction [para. 12 (a)], entering into public works contracts [para. 12 (b)], acquisition of mangrove areas [para. 12 (c)]. Nothing exists in the record, however, with respect to undercapitalization of the corporation, non-compliance with bidding requirements, encroachment of ranches into forest zones, huge credit lines, unjustified claims of cost escalation adjustment, and importation of heavy equipment.

Properties have been shown in the name of the spouses Bakunawa or either of them; testimonies have been rendered about eviction, official documents presented with respect to public works contracts, and finally, a Statement of Assets and Liabilities for the year 1985. Indeed, to hear some of the witnesses, acts of oppression appear to have been committed if not by the wife then by the husband Manuel Bakunawa. There is no indication however, that the acts of oppression involved the improper use of influence on the part of the defendant Luz Bakunawa by reason of her having been employed in the office of the Social Secretary of Imelda Marcos when the latter was the First Lady.

x x x x x x x x x

An examination of the testimonial evidence for the Plaintiff, as summarized in the first part of this decision, shows its concentration in the alleged dispossession of some landowners of their occupied land in the province of Masbate by the defendants Bakunawa and the allegedly (sic) inaction by the Bureau of Forestry and the police agencies thereon. Thus, the almost uniform allegation of witnesses is that they were dispossessed of pasture lands which they believed they were entitled to possess. There were documents presented to prove that, indeed, the witnesses had claims to these pieces of property or had occupied them and had introduced improvements thereon.

The tenor of the testimony of the said witnesses is that while there was no force directly applied in the dispossession of their properties, their lands, however, were fenced in, and occupied by, other people, allegedly the Bakunawas and secured by armed and uniformed men.

There is likewise the contention of the plaintiff's witnesses that they did not know who these men were, although it has been said that one or two of the men who helped in fencing off these properties were employees of the Bakunawas.

What is clear is that with the evidence thus far, the Bakunawas, or more specifically, Manuel Bakunawa, ignored the Bureau of Forestry summons, and caused the unceremonious exclusion of people who had apparently occupied rather large tracts of land under permits for the Bureau or those with pending applications.

There also seems to be evidence that defendant Luz Bakunawa did quite a bit of work in her capacity as a member of the staff of the Social Secretary of Imelda Marcos. While the influence of Luz Bakunawa may be assumed or conjectured, there has been no evidence which would categorically show that the position of defendant Luz Bakunawa in Malacañang "in concert with the spouses Marcos" or either of them was the explanation for the absence of the law enforcement officers or the inaction of the administrative officers of the government.

x x x x x x x x x

The influence may be assumed and in common parlance, it might be reasonably made. But to conclude that there was abuse of office by Luz Bakunawa or her utilization of the influence of her office or of the spouses Marcos cannot be assumed or stated in any certainty.

And since, as aforesaid, the action herein is confiscatory in character, assumptions will not do to obtain judgment against the defendants Bakunawa.[17]

The Sandiganbayan ruled that in civil suits initiated by the Presidential Commission on Good Government (PCGG) for the recovery of illegally acquired property pursuant to Republic Act No. 1379,[18] the Republic must show not only that defendant was a subordinate of the Marcos spouses or of either of them, but also that the relationship was similar to that of an immediate member of the Marcos family or a dummy of the Marcoses.[19] It concluded that no proof established the link between the alleged acts of the Bakunawas and those of the Marcoses, or even the

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[17] *Rollo*, pp. 60-63.

[18] *An Act Declaring Forfeiture In Favor Of The State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer Or Employee And Providing For The Proceedings Therefor* (June 18, 1955).

[19] *Rollo*, pp. 64-65.

proximity of Luz Bakunawa as a Marcos relative or Marcos dummy.

The Republic sought the reconsideration of the decision, arguing that the Sandiganbayan erred in holding that it did not show the Bakunawas' link with the Marcoses, and in ruling that it did not prove that the Bakunawas had abused their connections or close association with the Marcoses.[20]

On November 8, 2007, the Sandiganbayan denied the Republic's motion for reconsideration,[21] reiterating its ruling that the Republic did not discharge its burden of proving the close links between the Bakunawas and the Marcoses, and of proving how the Bakunawas had abused said links, assuming that the links existed.

Hence, this appeal.

Issues

The Republic ascribes the following errors, to wit:

I.

THE QUANTUM OF PROOF REQUIRED TO PROVE PETITIONER'S CASE AGAINST THE BAKUNAWAS IS MERE PREPONDERANCE OF EVIDENCE.

II.

THE LINK BETWEEN AND/OR AMONG THE BAKUNAWAS AND THE MARCOSES WAS SATISFACTORILY ESTABLISHED BY PETITIONER.

III.

PETITIONER WAS ABLE TO ESTABLISH THAT THE BAKUNAWAS AMASSED ASSETS, FUNDS AND PROPERTIES GROSSLY AND MANIFESTLY DISPROPORTIONATE TO THEIR SALARIES AND OTHER LAWFUL INCOME BECAUSE OF THEIR POSITION IN THE GOVERNMENT AND/OR CLOSE

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[20] *Id.* at 179-201.

[21] *Supra* note 3.

ASSOCIATION AND CONNECTION WITH THE MARCOSES TO THE PREJUDICE OF PETITIONER AND THE FILIPINO PEOPLE.[22]

In their comment,[23] respondents mainly submit that the Republic failed to present a justiciable issue to warrant the reversal of the Sandiganbayan's decision; and that the April 10, 2002 decision already become final and could no longer be reviewed and modified because of the belated filing of the petition for review.

On her part, First Lady Marcos opted not to file her comment.[24]

Ruling

The appeal lacks merit.

1.
Appeal of the Republic was timely

The Bakunawas contend that the April 10, 2002 decision already became final because of the Republic's failure to file the petition for review on time.

We cannot sustain the contention.

The Republic had until November 24, 2007 within which to file the petition for review. It filed a motion seeking an extension of 30 days of its period to file, or until December 24, 2007. Although it did not file the petition within the requested extension period, the Court directed it on June 30, 2008 to file the petition for review within 15 days from notice. Considering that it received the resolution of June 30, 2008 on August 11, 2008,[25] its filing of the petition for review on August 26, 2008 was timely.

2.
Preponderance of evidence is required in actions brought to recover ill-gotten wealth

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[22] *Rollo*, pp. 15-16.

[23] *Id.* at 325-346.

[24] *Id.* at 389-392.

[25] *Id.* at 82.

In its decision of April 10, 2002, the Sandiganbayan stated as follows:

> Considering the confiscatory character of proceedings described in E.O. No. 14 in actions for recovery of alleged unlawfully acquired property such as the instant case, evidence must be substantial, if not beyond reasonable doubt, akin to the actions for forfeiture under Republic Act. No. 1379; this, notwithstanding the statements in Sec. 3 of the Executive Order which states the adequacy of mere preponderance of evidence.[26]

The Republic argues that the Sandiganbayan thereby erred in seemingly requiring a degree of proof greater than that required by Executive Order (E.O.) No. 14-A.[27] This was also its submission in the motion for reconsideration *vis-à-vis* the decision of April 10, 2002.

In denying the Republic's motion for reconsideration through the November 8, 2007 resolution, the Sandiganbayan agreed with the Republic's submission to the effect that preponderance of evidence was all that was required for this case. However, the Sandiganbayan pointed out that even on that basis the Republic still did not satisfy its quantum of proof because the facts it established were not sufficient to prove its case against respondents.[28]

We uphold the Sandiganbayan.

We first clarify that the Republic correctly submits that only a preponderance of evidence was needed to prove its demand for reconveyance or recovery of ill-gotten wealth. That is quite clear from Section 1 of E.O. No. 14-A, which provides:

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[26] *Id.* at 62.

[27] Amending Executive Order No. 14, August 18, 1986. Executive Order No. 14 is entitled *Defining The Jurisdiction Over Cases Involving The Ill-Gotten Wealth Of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members Of Their Immediate Family, Close Relatives, Subordinates, Close And/Or Business Associates, Dummies, Agents And Nominees.*

[28] *Rollo*, p. 70.

Section 1. Section 3 of Executive Order No. 14 dated May 7, 1986 is hereby amended to read as follows:

Sec. 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against Ferdinand E. Marcos, Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by a preponderance of evidence.

By preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side. Essentially, preponderance of evidence refers to the comparative weight of the evidence presented by the opposing parties. As such, it has been defined as "the weight, credit, and value of the aggregate evidence on either side," and is usually considered to be synonymous with the term *greater weight of the evidence* or *greater weight of the credible evidence*. It is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[29]

Here, the Bakunawas filed a motion to dismiss, by which they specifically demurred to the evidence adduced against them. A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence that his adversary produced, whether true or not, is insufficient in point of law to make out a case or to sustain the issue. The demurring party thereby challenges the sufficiency of the whole evidence to sustain a judgment. The court, in passing upon the sufficiency of the evidence, is required merely to ascertain whether there is competent or sufficient evidence to sustain the indictment or claim, or to support a verdict of guilt or liability.[30]

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[29] *Encinas v. National Bookstore, Inc.*, G.R. No. 162704, November 19, 2004, 443 SCRA 293, 302.

[30] *Soriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 228, citing *Gutib v. Court of Appeals*, G.R. No. 131209, August 13, 1999, 312 SCRA 365, 371.

Under the rule on preponderance of evidence, the court is instructed to find for and to dismiss the case against the defendant should the scales hang in equipoise and there is nothing in the evidence that tilts the scales to one or the other side. The plaintiff who had the burden of proof has failed to establish its case, and the parties are no better off than before they proceeded upon their litigation. In that situation, the court should leave the parties as they are.[31]

Moreover, although the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on the plaintiff's side if its evidence alone is insufficient to establish its cause of action.[32] Similarly, when only one side is able to present its evidence, and the other side demurs to the evidence, a preponderance of evidence can result only if the plaintiff's evidence is sufficient to establish the cause of action. For this purpose, the sheer volume of the evidence presented by one party cannot tip the scales in its favor. Quality, not quantity, is the primordial consideration in evaluating evidence.

3.

The evidence of the Republic did not preponderantly establish the ill-gotten nature of the Bakunawas' wealth

The decisive query is whether the Republic preponderantly showed that the Bakunawas had acquired ill-gotten wealth during Luz Bakunawa's employment during the Marcos administration.

In *Republic v. Sandiganbayan (First Division)*, decided on April 12, 2011,[33] the Court settled not only the meaning of ill-gotten wealth but also who were the persons liable to illegally acquire or amass such wealth, *viz*:

x x x x x x x x x

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[31] *Rivera v. Court of Appeals*, G.R. No. 115625, January 23, 1998, 284 SCRA 673, 682.

[32] *Sapu-an v. Court of Appeals*, G.R. No. 91869, October 19, 1992, 214 SCRA 701, 705-706.

[33] *Supra* note 1, at 129-136.

II
The Concept and Genesis of Ill-Gotten Wealth in the Philippine Setting

A brief review of the Philippine law and jurisprudence pertinent to *ill-gotten wealth* should furnish an illuminating backdrop for further discussion.

In the immediate aftermath of the peaceful 1986 EDSA Revolution, the administration of President Corazon C. Aquino saw to it, among others, that rules defining the authority of the government and its instrumentalities were promptly put in place. It is significant to point out, however, that the administration likewise defined the limitations of the authority.

The first official issuance of President Aquino, which was made on February 28, 1986, or just two days after the EDSA Revolution, was Executive Order (E.O.) No. 1, which created the Presidential Commission on Good Government (PCGG). Ostensibly, E.O. No. 1 was the first issuance in light of the EDSA Revolution having come about mainly to address the pillage of the nation's wealth by President Marcos, his family, and cronies.

E.O. No. 1 contained only two WHEREAS Clauses, to wit:

> WHEREAS, **vast resources of the government** have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;
>
> WHEREAS, there is an urgent need to recover **all ill-gotten wealth**;

Paragraph (4) of E.O. No. 2[34] further required that the wealth, to be ill-gotten, must be "acquired by them through or as a result

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[34] (4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were **acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at**

of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines."

Although E.O. No. 1 and the other issuances dealing with ill-gotten wealth (*i.e.*, E.O. No. 2, E.O. No. 14, and E.O. No. 14-A) only identified the subject matter of ill-gotten wealth and the persons who could amass ill-gotten wealth and did not include an explicit definition of *ill-gotten wealth*, we can still discern the meaning and concept of *ill-gotten wealth* from the WHEREAS Clauses themselves of E.O. No. 1, in that *ill-gotten wealth* consisted of the "*vast resources of the government*" amassed by "former President Ferdinand E. Marcos, his immediate family, relatives and close associates both here and abroad." It is clear, therefore, that *ill-gotten wealth* would not include all the properties of President Marcos, his immediate family, relatives, and close associates but only the part that originated from the "vast resources of the government."

In time and unavoidably, the Supreme Court elaborated on the meaning and concept of *ill-gotten wealth*. In *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*, or *BASECO*, for the sake of brevity, the Court held that:

> x x x until it can be determined, through appropriate judicial proceedings, **whether the property was in truth "ill-gotten,"** *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of **funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions,** or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.

The *BASECO* definition of *ill-gotten wealth* was reiterated in *Presidential Commission on Good Government v. Lucio C. Tan*, where the Court said:

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the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philipppines.

On this point, we find it relevant to define "ill-gotten wealth." In *Bataan Shipyard and Engineering Co., Inc.*, this Court described "ill-gotten wealth" as follows:

"Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction."

Concerning respondents' shares of stock here, there is no evidence presented by petitioner that they belong to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions. Nor is there evidence that respondents, taking undue advantage of their connections or relationship with former President Marcos or his family, relatives and close associates, were able to acquire those shares of stock.

Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*, the Court rendered an identical definition of *ill-gotten wealth, viz*:

x x x. We may also add that 'ill-gotten wealth', by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through **or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships**, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." **Clearly, the assets and properties referred to supposedly originated from the government itself**. **To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury**, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding

consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as *ill-gotten wealth*, namely: (*a*) they must have "originated from the government itself," and (*b*) they must have been taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.

But settling the sources and the kinds of assets and property covered by E.O. No. 1 and related issuances did not complete the definition of *ill-gotten wealth*. The further requirement was that the assets and property should have been amassed by former President Marcos, his immediate family, relatives, and close associates both here and abroad. In this regard, identifying former President Marcos, his immediate family, and relatives was not difficult, but identifying other persons who *might be* the *close associates* of former President Marcos presented an *inherent difficulty*, because it was not fair and just to include within the term *close associates* everyone who had had any association with President Marcos, his immediate family, and relatives.

Again, through several rulings, the Court became the arbiter to determine who were the close associates within the coverage of E.O. No. 1.

In *Republic v. Migriño*, the Court held that respondents Migriño, *et al.* were not necessarily among the persons covered by the term *close subordinate* or *close associate* of former President Marcos by reason alone of their having served as government officials or employees during the Marcos administration, *viz*:

> **It does not suffice, as in this case, that the respondent is or was a government official or employee during the administration of former Pres. Marcos. There must be a *prima facie* showing that the respondent unlawfully accumulated wealth by virtue of his close association or relation with former Pres. Marcos and/or his wife**. This is so because otherwise the respondent's case will fall under existing general laws and procedures on the matter. x x x

In *Cruz, Jr. v. Sandiganbayan*, the Court declared that the petitioner was not a *close associate* as the term was used in E.O. No. 1 just because he had served as the President and General Manager of the GSIS during the Marcos administration.

In *Republic v. Sandiganbayan*, the Court stated that respondent Maj. Gen. Josephus Q. Ramas' having been a Commanding General of the Philippine Army during the Marcos administration "d[id] not automatically make him a subordinate of former President Ferdinand Marcos as this term is used in Executive Order Nos. 1, 2, 14 and 14-A absent a showing that he enjoyed close association with former President Marcos."

It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required *competent evidentiary substantiation* made in *appropriate judicial proceedings* to determine: (*a*) whether the assets or properties involved had come from the vast resources of government, and (*b*) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The requirement of *competent evidentiary substantiation* made in *appropriate judicial proceedings* was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed. Indeed, in *BASECO*, the Court made this clear enough by emphatically observing:

> 6. *Government's Right and Duty to Recover All Ill-gotten Wealth*
>
> There can be no debate about the validity and eminent propriety of the Government's plan "to recover all ill-gotten wealth."
>
> Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.
>
> **But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise** which are deemed pillars of a free society such as ours, and to which all members of that society may without exception lay claim.

> x x x Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. *Along with these freedoms are included economic freedom and freedom of enterprise* within reasonable bounds and under proper control. x x x Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. *Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution*. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.
>
> ***a. Need of Evidentiary Substantiation in Proper Suit***
>
> Consequently, **the factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated;** although there are some who maintain that the fact — that an immense fortune, and "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad," and they have resorted to all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions — is within the realm of judicial notice, being of so extensive notoriety as to dispense with proof thereof. **Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14.**

Accordingly, the Republic should furnish to the Sandiganbayan in proper judicial proceedings the competent evidence proving who were the close associates of President Marcos who had amassed assets and properties that would be rightly considered as *ill-gotten wealth.*

x x x x x x x x x

As can be gleaned from the foregoing pronouncement, evidentiary substantiation of the allegations of how the wealth was illegally acquired and by whom was necessary. For that purpose, the mere holding of a position in the Marcos administration did not necessarily make the holder a close associate within the context of E.O. No.1. According to *Republic v. Migriño*,[35] the term *subordinate* as used in E.O. No. 1[36] and E.O. No. 2[37] referred to a person who enjoyed a close association with President Marcos and/or his wife similar to that of an immediate family member, relative, and close associate, or to that of a close relative, business associate, dummy, agent, or nominee. Indeed, a *prima facie* showing must be made to show that one unlawfully accumulated wealth by virtue of a close association or relation with President Marcos and/or his wife.[38] It would not suffice, then, that one served during the administration of President Marcos as a government official or employee.

The Republic particularly insists that Luz Bakunawa served as the Social Secretary or the Assistant Social Secretary of First Lady Marcos; and mentions several other circumstances that indicated her close relationship with the Marcoses, such as her assumption of office in the early part of the Marcos administration,[39] the accommodations extended to her during her various travels,[40] the fact that her close relationship with the Marcoses was of common knowledge among the Masbateños,[41]

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[35] G.R. No. 89483, August 30, 1990, 189 SCRA 289, 297-298.

[36] *Creating the Presidential Commission on Good Government* (February 28, 1986).

[37] *Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees (*March 12, 1986).

[38] *Supra* note 35.

[39] *Rollo,* p. 18.

[40] *Id.*

[41] *Id.* at 19.

and the negotiated contracts the Bakunawas entered into during the Marcos administration.[42]

However, Luz Bakunawa maintains that she was not First Lady Marcos' Social Secretary but a mere member of the staff of the Social Secretary; and that the assets of the Bakunawas were honestly earned and acquired well within the legitimate income of their businesses.

We hold that the Sandiganbayan correctly ruled that the evidence of the Republic was able to establish, at best, that Luz Bakunawa had been an employee in Malacañang Palace during the Marcos administration, and did not establish her having a close relationship with the Marcoses, or her having abused her position or employment in order to amass the assets subject of this case. Consequently, Luz Bakunawa could not be considered a close associate or subordinate of the Marcoses within the context of E.O. No. 1 and E.O. No. 2.

The determination by the Sandiganbayan of the equiponderance or insufficiency of evidence involved its appreciation of the evidence. We cannot undo such determination unless the Republic makes a strong demonstration to us that the determination was whimsical or capricious.[43] Alas, the Republic did not make such demonstration. Its evidence could not sustain the belief that the Bakunawas had used their influence, or the Marcoses' influence in acquiring their properties. Nor did it prove that the ties or relationship between the Bakunawas and the Marcoses had been "similar to that of an immediate member of the family or a dummy."

On another important aspect, the evidence of the Republic was likewise wanting. The Sandiganbayan enumerated in its decision five activities in which the Bakunawas had acquired their ill-gotten wealth, namely: (*a*) land-grabbing and cattle-ranching; (*b*) engaging in government construction projects; (*c*) operating

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[42] *Id.* at 21.

[43] *Municipality of Candijay, Bohol v. Court of Appeals*, G.R. No. 116702, December 28, 1995, 251 SCRA 530, 534.

fishponds; (*d*) obtaining credit lines from government financial institutions; and (*e*) importing heavy equipment.[44] However, the decision dwelt only on land-grabbing and the construction projects for the reason that the Republic attempted to substantiate only those two activities. The Court is thus limited to the review of the findings on the two activities.

Anent land-grabbing, the records show that although the Bakunawas had ignored the summons from the Bureau of Forestry, and that the several persons occupying large tracts of land under permits from the Bureau of Forestry or under still-pending applications had been dispossessed thereof, the dispossessed persons whom the Republic presented as witnesses could not tell in court that the Bakunawas had employed the people who had fenced or occupied the lands in question. Such witnesses admitted that they did not put up much resistance against their forcible dispossession because of their belief that the Bakunawas had been very influential and had enjoyed very close ties with the Marcoses. However, they did not show that they had at the time any direct contact or communication with the Bakunawas, which could only mean that they only surmised and suspected the participation of the Bakunawas in their dispossession. As such, the Republic's evidence in that regard could not be sufficient, for surmises and suspicions could not support any conclusion either that the Bakunawas had taken advantage of their close ties with the Marcoses in order to dispossess the affected witnesses, or that Luz Bakunawa had abused her influence arising from her close association with the Marcoses.

The Republic presented documents tending to prove that the dispossessed witnesses had retained claims to the affected properties,[45] and that the Bakunawas themselves had been issued pasture leases over the same areas.[46] Given that both the dispossessed witnesses and the Bakunawas held legal rights of possession respecting the same areas independently of each other,

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[44] *Rollo,* pp. 75-76.

[45] *Id.* at 61.

[46] *Id.* at 77.

the Sandiganbayan did not err in ruling that "the plaintiff's evidence is not conclusive proof of the ill-gotten character of the lands in the possession of the defendants Bakunawas."[47] This is really a good reason for the Sandiganbayan to hold that the Republic had not preponderantly shown that the acts of dispossession and oppression had involved the improper use of her influence by Luz Bakunawa on account of her close association with the Marcoses.[48]

Concerning the negotiated construction contracts, the Republic posits that the contracts had been entered into when Luz Bakunawa was a member of the Presidential Staff during the Marcos administration, laying heavy emphasis on the notations and handwritten instructions by President Marcos found on the written communications from Manuel Bakunawa to then DPWH Secretary Baltazar Aquino.

Yet, the Republic offered the negotiated contracts solely to prove that the Bakunawas had been incorporators or owners, or had held key positions in the corporations that entered into the contracts.[49] The Sandiganbayan correctly ruled, therefore, that the contracts could be considered and appreciated only for those stated purposes, not for the purpose of proving the irregularity of the contracts, opining as follows:

> x x x. The documents appear to be public documents and are, therefore, considered *prima facie* evidence of the fact of their issuance and that they were signed by the persons whose signatures appear therein. It is, indeed, apparent on the face of the documents that government projects were awarded to the defendants Bakunawas through negotiated contracts, and that at least one was approved by then President Marcos himself. Outside of these, however, there can be no other facts that can be inferred from the aforesaid documents.[50]

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[47] *Id.*

[48] *Id.* at 62.

[49] *Id.* at 79.

[50] *Id.* at 78.

The Court upholds the Sandiganbayan. It was basic enough that the Sandiganbayan could not consider any evidence that was not formally offered; and could consider evidence only for the purposes it was specifically offered. Section 34, Rule 132 of the *Rules of Court* explicitly states:

> Section 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

The need to formally offer evidence by specifying the purpose of the offer cannot be overemphasized. This need is designed to meet the demand for due process by apprising the adverse party as well as the trial court on what evidence the court would soon be called upon to decide the litigation. The offer and purpose will also put the trial court in the position to determine which rules of evidence it shall apply in admitting or denying admission to the evidence being offered. According to *Union Bank of the Philippines v. Tiu*:[51]

> x x x a formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. It has several functions: (1) to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence; (2) to allow opposing parties to examine the evidence and object to its admissibility; and (3) to facilitate review by the appellate court, which will not be required to review documents not previously scrutinized by the trial court. x x x.

Expounding on the office of the offer and statement of the purposes, the Court has cogently said in *Candido v. Court of Appeals*:[52]

> A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered,

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[51] G.R. Nos. 173090-91, September 7, 2011, 657 SCRA 86, 110-111, citing *Heirs of Pedro Pasag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

[52] G.R. No. 107493, February 1, 1996, 253 SCRA 78, 82-83.

and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. A formal offer is necessary since judges are required to base their findings of fact and judgment only — and strictly — upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.

At any rate, the Court must point out that negotiated contracts are not *per se* illegal. A negotiated contract is one that is awarded on the basis of a direct agreement between the Government and the contractor, without going through the normal procurement process, like obtaining the prior approval from another authority, or a competitive bidding process. It is generally resorted to for convenience, or "when time is of the essence, or where there is a lack of qualified bidders or contractors, or where there is conclusive evidence that *greater economy* and *efficiency* would be achieved."[53] The Court has upheld the validity of a negotiated contract made pursuant to law, like a negotiated contract entered into by a City Mayor pursuant to the then existing Local Government Code,[54] or a negotiated contract that eventually redounded to the benefit of the general public, even if there was no specific covering appropriation pursuant to COA rules,[55] or a negotiated contract that was made due to an emergency in

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[53] Section 4 of P.D. No. 1594 entitled *Prescribing Policies, Guidelines, Rules And Regulations For Government Infrastructure Contracts* (June 11, 1978).

[54] *City of Quezon v. Lexber Incorporated*, G.R. No. 141616, March 15, 2001, 354 SCRA 493.

[55] *Royal Trust Construction v. COA*, G.R. No. 84202, November 23, 1988 (Resolution of the Court *en banc*), per *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 738.

the health sector,[56] or a negotiated contract for long overdue repair and renovation needed to provide better health services.[57]

Absent evidence proving that the negotiated construction contracts had been irregularly entered into by the Bakunawas, or that the public had been thereby prejudiced, it is pointless for the Court to declare their invalidity. On the contrary, the Sandiganbayan correctly observed that the presumption of the validity of the contracts prevailed.[58]

It is true that the recovery of ill-gotten wealth should be relentlessly pursued. But the pursuit should not be mindless as to be oppressive towards anyone. Due process requires that there be sufficient competent evidence of the asset being ill-gotten wealth, and of the person or persons charged with the illegal acquisition of ill-gotten wealth being a close associate or subordinate of the Marcoses who took advantage of such ties with the Marcoses to enrich themselves. In that effort, the Republic carries the heavy burden of proof, and must discharge such burden fully; otherwise, the effort would fail and fall.

WHEREFORE, we **DENY** the petition for review on *certiorari* for its lack of merit; and **AFFIRM** the decision rendered on April 10, 2002, without pronouncements on costs of suit.

SO ORDERED.

Sereno, C.J., Abad,[*] *Mendoza,*[**] and *Reyes, JJ.,* concur.

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[56] *Baylon v. Ombudsman,* G.R. No. 142738, December 14, 2001, 372 SCRA 437.

[57] *National Center for Mental Health Management v. Commission on Audit*, G.R. No. 114864, December 6, 1996, 265 SCRA 390.

[58] *Rollo,* p. 80.

[*] Vice Associate Justice Teresita J. Leonardo De Castro, who took part in the Sandiganbayan, per the raffle of July 8, 2013.

[**] Vice Associate Justice Martin S. Villarama, Jr., who is on leave, per Special Order No. 1502 dated August 8, 2013.

SECOND DIVISION

[G.R. No. 187174. August 28, 2013]

FELY Y. YALONG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and LUCILA C. YLAGAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL TO THE COURT OF APPEALS; CASES DECIDED BY THE REGIONAL TRIAL COURT (RTC) IN THE EXERCISE OF ORIGINAL JURISDICTION SHALL BE TAKEN BY FILING A NOTICE OF APPEAL WITH THE RTC WHICH RENDERED THE SAME; FAILURE TO FILE NOTICE OF APPEAL WITHIN THE REGLEMENTARY PERIOD SHALL RENDER THE RTC DECISION FINAL; APPLICATION IN CASE AT BAR.— While the Rules of Court (Rules) do not specifically state that the inappropriate filing of a petition for review instead of a required notice of appeal is dismissible (unlike its converse, *i.e.*, the filing of a notice of appeal when what is required is the filing of a petition for review), Section 2(a), Rule 41 of the Rules nonetheless provides that appeals to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the latter court. x x x In the case at bar, records reveal that Yalong filed a petition for *certiorari* with the RTC and that the latter court rendered a Resolution dated April 2, 2008 dismissing the same. It is fundamental that a petition for *certiorari* is an original action and, as such, it cannot be gainsaid that the RTC took cognizance of and resolved the aforesaid petition in the exercise of its original jurisdiction. Hence, based on the above-cited rule, Yalong should have filed a notice of appeal with the RTC instead of a petition for review with the CA. As a consequence of Yalong's failure to file a notice of appeal with the RTC within the proper reglementary period, the RTC Decision had attained finality which thereby bars Yalong from further contesting the same.

2. ID.; ID.; ID.; NOTICE OF APPEAL DISTINGUISHED FROM FILING A PETITION FOR REVIEW.— [A] notice of appeal is filed with the regional trial court that rendered the assailed

decision, judgment or final order, while a petition for review is filed with the CA. Also, a notice of appeal is required when the RTC issues a decision, judgment or final order in the exercise of its original jurisdiction, while a petition for review is required when such issuance was in the exercise of its appellate jurisdiction. Thus, owing to these differences, Yalong's filing of the subject petition for review cannot be simply accorded the same effect as the filing of a notice of appeal.

3. ID.; ID.; PERFECTION OF APPEAL, JURISDICTIONAL; RATIONALE.— Verily, jurisprudence dictates that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such requirements is considered fatal and has the effect of rendering the judgment final and executory. To be sure, the rules on appeal must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business, and to put an end to controversies. Though as a general rule, rules of procedures are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations, which are not present in the instant case.

4. CRIMINAL LAW; VIOLATION OF BATAS PAMBANSA BLG. 22 (B.P. 22); TRANSITORY OR CONTINUING CRIME; A CRIMINAL CASE FOR VIOLATION OF B.P. 22 MAY BE FILED IN ANY OF THE PLACES WHERE ANY OF ITS ELEMENTS OCCURRED.— It is well-settled that violation of BP 22 cases is categorized as transitory or continuing crimes, which means that the acts material and essential thereto occur in one municipality or territory, while some occur in another. Accordingly, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Stated differently, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed. Applying these principles, a criminal case for violation of BP 22 may be filed in any of the places where any of its elements occurred

– in particular, the place where the check is drawn, issued, delivered, or dishonored.

APPEARANCES OF COUNSEL

Bernardo & Placido Law Offices for petitioner.
The Solicitor General for public respondent.
Amorado Moraleja & Associates for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated August 1, 2008[2] and March 10, 2009[3] of the Court of Appeals (CA) in CA-G.R. SP No. 104075 which dismissed petitioner Fely Y. Yalong's (Yalong) Petition for Review[4] dated June 26, 2008 (subject petition for review), finding the same to be the improper mode of appeal.

The Facts

Stemming from a complaint filed by respondent Lucila C. Ylagan (Ylagan), an Information was filed before the Municipal Trial Court in Cities of Batangas City, Branch 1 (MTCC), docketed as Criminal Case No. 45414, charging Yalong for the crime of violation of Batas Pambansa Bilang 22[5] (BP 22) as follows:

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[1] *Rollo*, pp. 14-45.

[2] *Id.* at 48. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Bienvenido L. Reyes (now Supreme Court Justice) and Apolinario D. Bruselas, Jr., concurring.

[3] *Id.* at 49-50. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes (now Supreme Court Justice) and Sixto C. Marella, Jr., concurring.

[4] *Id.* at 110-150.

[5] "AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES."

That on or about April 2, 2002 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, well-knowing that she does not have funds in or credit with the Export and Industry Bank, Juan Luna Branch, did then and there wilfully, unlawfully and feloniously draw, make and issue to Major Lucila Ylagan, Export and Industry Bank Check No. 0002578833 dated May 3, 2002 in the amount of FOUR HUNDRED FIFTY THOUSAND PESOS (₱450,000.00), Philippine Currency, to apply on account or for value, but when said check was presented for full payment with the drawee bank, the same was dishonored by the drawee bank on the ground of "Account Closed," which in effect is even more than a dishonor for insufficiency of funds, despite notice of dishonor and demands made upon her to make good her check by making proper arrangement with the drawee bank or pay her obligation in full directly to Major Lucila Ylagan, accused failed and refused to do so, which acts constitute a clear violation of the aforecited law, to the damage and prejudice of transaction in commercial documents in general and of Major Lucila Ylagan in particular in the aforementioned amount.

CONTRARY TO LAW.[6]

Upon arraignment, Yalong pleaded not guilty to the aforesaid charge. Hence, the case was set for pre-trial and thereafter, trial ensued.[7]

During trial, Ylagan testified that sometime on April 2, 2002, Yalong borrowed from her the amount of ₱450,000.00 with a verbal agreement that the same would be paid back to her in cash and, as payment thereof, issued to her, *inter alia*, a postdated check dated May 3, 2002 in the similar amount of ₱450,000.00 (subject check). However, when Ylagan presented the subject check for payment on August 27, 2002, it was dishonored and returned to her for the reason "Account Closed." As verbal and written demands made on Yalong to pay her loan proved futile, Ylagan was constrained to file the instant criminal case.[8]

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[6] *Rollo*, p. 69.

[7] *Id.* at 70.

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

In her defense, Yalong averred that she already paid her loan but did not require Ylagan to issue a receipt or acknowledge the same. Likewise, she claimed that the subject check belonged to her husband and that while she knew that the said check was not covered by sufficient funds, it was already signed by her husband when she handed it to Ylagan.[9]

The MTCC Ruling and Subsequent Proceedings

On August 24, 2006, the MTCC rendered its Judgment[10] (MTCC Decision), finding Yalong guilty beyond reasonable doubt of the crime of violation of BP 22 and accordingly sentenced her to suffer the penalty of imprisonment for a term of one year and ordered her to pay Ylagan the amount of ₱450,000.00, with legal interest of 12% per annum from October 10, 2002, including ₱25,000.00 as attorney's fees and costs of suit.[11]

The MTCC found all the elements of the crime charged to have been duly established. It did not give credence to Yalong's defense that she did not own the checking account and that she was not the one who issued the subject check. On this score, it cited the case of *Ruiz v. People*[12] wherein it was held that "[BP 22] is broad enough to include, within its coverage, the making and issuing of a check by one who has no account with a bank, or where such account was already closed when the check was presented for payment."[13] Further, it observed that Yalong failed to prove by clear and convincing evidence that she has completely paid the loan and thus, such defense must likewise fail.[14]

Yalong filed a Supplemental Motion for Reconsideration and Recall the Warrant of Arrest[15] dated October 15, 2006 which

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

[10] *Id.* at 69-76. Penned by Acting Judge Alberico B. Umali.

[11] *Id.* at 75.

[12] G.R. No. 160893, November 18, 2005, 475 SCRA 476.

[13] *Id.* at 489.

[14] *Rollo*, pp. 74-75.

[15] *Id.* at 77-87.

the MTCC treated as an original motion for reconsideration. The said motion was, however, denied in an Order[16] dated December 5, 2006.

Consequently, Yalong filed a Notice of Appeal[17] dated January 2, 2007 which was denied due course in an Order[18] dated January 19, 2007, considering that the judgment against her was promulgated *in absentia* on account of her unjustified absence.

Dissatisfied, Yalong filed a Petition for Relief from Order and Denial of Appeal[19] which was dismissed in an Order[20] dated July 25, 2007 on the ground that Yalong had lost the remedies available to her under the law when she: (*a*) failed to appear without justifiable reason at the scheduled promulgation of the MTCC Decision; (*b*) did not surrender within 15 days from the date of such promulgation; (*c*) did not file a motion for leave of court to avail of the remedies under the law; and (*d*) remained at large. Yalong moved for reconsideration[21] which was, however, denied in an Order[22] dated October 25, 2007. Aggrieved, Yalong filed a Petition for *Certiorari* with Petition for Bail (*certiorari* petition), docketed as Civil Case No. 8278, before the Regional Trial Court of Batangas City, Branch 7 (RTC).[23]

The RTC Ruling

In a Resolution[24] dated April 2, 2008 (RTC Resolution), the RTC denied Yalong's *certiorari* petition, finding the promulgation of the MTCC Decision *in absentia* to be valid as Yalong was

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[16] *Id.* at 88-90. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

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

[18] *Id.* at 93.

[19] *Id.* at 21.

[20] *Id.* at 99-100.

[21] *Id.* at 21.

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

[23] *Id.* at 21.

[24] *Id.* at 104-107. Penned by Pairing Judge Ernesto L. Marajas.

duly notified of the scheduled date of promulgation on October 6, 2006 and yet failed to appear thereat.[25] Furthermore, the RTC observed that Yalong did not make any effort to surrender within the time allowed by the rules and thus, lost the remedies available to her under the law.[26]

Yalong filed a motion for reconsideration on April 30, 2008[27] which was eventually denied in an Order[28] dated May 27, 2008. As such, on June 26, 2008, she filed the subject petition for review before the CA.[29]

The CA Ruling

In a Resolution[30] dated August 1, 2008, the CA dismissed the subject petition for review on the ground that the "Order of the [RTC] was issued in the exercise of its original jurisdiction — where appeal [by filing a notice of appeal with the RTC] — and not a petition for review is the proper remedy."

Yalong filed a motion for reconsideration dated November 20, 2008[31] which was, however, denied in a Resolution[32] dated March 10, 2009. Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA properly dismissed the subject petition for review on the ground of improper appeal.

The Court's Ruling

The petition is bereft of merit.

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[25] *Id.* at 105.

[26] *Id.* at 107.

[27] *Id.* at 22.

[28] *Id.* at 108-109.

[29] *Id.* at 22.

[30] *Id.* at 48.

[31] *Id.* at 51-68.

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

While the Rules of Court (Rules) do not specifically state that the inappropriate filing of a petition for review instead of a required notice of appeal is dismissible (unlike its converse, *i.e.*, the filing of a notice of appeal when what is required is the filing of a petition for review),[33] Section 2(a), Rule 41 of the Rules nonetheless provides that appeals to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the latter court. The said provision reads:

SEC. 2. *Modes of appeal.* —

(a) *Ordinary appeal.* — **The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from** and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner. (Emphasis and underscoring supplied)

In the case at bar, records reveal that Yalong filed a petition for *certiorari* with the RTC and that the latter court rendered a Resolution dated April 2, 2008 dismissing the same. It is fundamental that a petition for *certiorari* is an original action[34]

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[33] Under Section 2, Rule 50 of the Rules, the filing of a notice of appeal instead of a required petition for review is considered an erroneous appeal and is dismissible outright, *viz.*:

SEC. 2. *Dismissal of improper appeal to the Court of Appeals*. – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. **Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed**. (Emphasis supplied)

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[34] "x x x [A] petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. x x x." (*China Banking Corporation v. Cebu Printing*

and, as such, it cannot be gainsaid that the RTC took cognizance of and resolved the aforesaid petition in the exercise of its original jurisdiction. Hence, based on the above-cited rule, Yalong should have filed a notice of appeal with the RTC instead of a petition for review with the CA. As a consequence of Yalong's failure to file a notice of appeal with the RTC within the proper reglementary period, the RTC Decision had attained finality which thereby bars Yalong from further contesting the same.

In this relation, it must be pointed out that Yalong's contention that a petition for review may be treated as a notice of appeal since the contents of the former already include the required contents of the latter cannot be given credence since these modes of appeal clearly remain distinct procedures which cannot, absent any compelling reason therefor, be loosely interchanged with one another. For one, a notice of appeal is filed with the regional trial court that rendered the assailed decision, judgment or final order, while a petition for review is filed with the CA. Also, a notice of appeal is required when the RTC issues a decision, judgment or final order in the exercise of its original jurisdiction, while a petition for review is required when such issuance was in the exercise of its appellate jurisdiction. Thus, owing to these differences, Yalong's filing of the subject petition for review cannot be simply accorded the same effect as the filing of a notice of appeal.

Verily, jurisprudence dictates that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such requirements is considered fatal and has the effect of rendering the judgment final and executory. To be sure, the rules on appeal must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business, and to put an end to controversies. Though as a general rule, rules of procedures are liberally construed, the provisions with respect

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and Packaging Corporation, G.R. No. 172880, August 11, 2010, 628 SCRA 154, 167, citing *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 441.)

to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations, which are not present in the instant case.[35] As it stands, the subject petition for review was the wrong remedy and perforce was properly dismissed by the CA.

Besides, even discounting the above-discussed considerations, Yalong's appeal still remains dismissible on the ground that, *inter alia*, the MTCC had properly acquired jurisdiction over Criminal Case No. 45414. It is well-settled that violation of BP 22 cases is categorized as transitory or continuing crimes, which means that the acts material and essential thereto occur in one municipality or territory, while some occur in another. Accordingly, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Stated differently, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.[36] Applying these principles, a criminal case for violation of BP 22 may be filed in any of the places where any of its elements occurred – in particular, the place where the check is drawn, issued, delivered, or dishonored.[37]

In this case, while it is undisputed that the subject check was drawn, issued, and delivered in Manila, records reveal that Ylagan presented the same for deposit and encashment at the LBC Bank in Batangas City where she learned of its dishonor.[38] As such, the MTCC correctly took cognizance of Criminal Case No. 45414 as it had the territorial jurisdiction to try and resolve the same. In this light, the denial of the present petition remains warranted.

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[35] See *Heirs of Gaudiano v. Benemerito*, G.R. No. 174247, February 21, 2007, 516 SCRA 416, 421-422.

[36] See *Rigor v. People*, G.R. No. 144887, November 17, 2004, 442 SCRA 450, 463-464.

[37] *Id.* at 464.

[38] *Rollo*, p. 89.

As the Court finds the above-stated reasons already sufficient to deny the present petition, it is unnecessary to delve on the other ancillary issues in this case.

WHEREFORE, the petition is **DENIED**. Accordingly, the Resolutions dated August 1, 2008 and March 10, 2009 of the Court of Appeals in CA-G.R. SP. No. 104075 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188514. August 28, 2013]

MARIA LOURDES D. CASTELLS and SHALIMAR CENTI-MANDANAS, *petitioners, vs.* **SAUDI ARABIAN AIRLINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; THE COURT HAS RECOGNIZED EXCEPTIONS TO THE STRICT COMPLIANCE WITH THE RULES, BUT ONLY FOR THE MOST COMPELLING REASONS WHERE STUBBORN OBEDIENCE THERETO WOULD DEFEAT RATHER THAN SERVE THE ENDS OF JUSTICE.— It is well-settled that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay

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[*] Designated Acting Member per Special Order No. 1525 dated August 22, 2013.

in the resolution of rival claims and in the administration of justice. From time to time, however, the Court has recognized exceptions to the strict application of such rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice. These exceptions, as enumerated in the case of *Labao v. Flores.*

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; 60-DAY REGLEMENTARY PERIOD; COURTS MAY EXTEND THE 60-DAY PERIOD, DESPITE THE RIGID WORDING OF THE RULE, SUBJECT TO ITS SOUND DISCRETION; APPLICATION IN CASE AT BAR.—[D]espite the rigid wording of Section 4, Rule 65 of the Rules, as amended by A.M. No. 07-7-12-SC – which now disallows an extension of the 60-day reglementary period to file a petition for *certiorari* – courts may nevertheless extend the same, subject to its sound discretion. As instructively held in *Republic v. St. Vincent de Paul Colleges, Inc.*, x x x In this case, the CA had already exercised its sound discretion in granting the extension to file the subject petition thru a Resolution dated January 29, 2008. Consequently, it could not renege on such grant by rendering another issuance almost seven months later, *i.e.*, Resolution dated August 28, 2008, which resulted in the refusal to admit the same petition. Such course of action is clearly antithetical to the tenets of fair play, not to mention the undue prejudice to petitioners' rights. Verily, the more appropriate course of action would have been to admit the subject petition and resolve the case on the merits. Thus, in order to rectify this lapse, the Court deems it prudent to have the case remanded to the CA for its proper resolution.

APPEARANCES OF COUNSEL

Ronald B. Ariete for petitioners.
Kapunan Tamano Javier & Associates for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions[2] dated August 28, 2008 and June 16, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 101971 which dismissed the petition for *certiorari* (subject petition) filed by petitioners Maria Lourdes D. Castells (Castells) and Shalimar Centi-Mandanas (Centi-Mandanas), for being filed out of time.

The Facts

On August 24, 2004, respondent Saudi Arabian Airlines (SAUDIA) issued a memo regarding the transfer of 10 flight attendants, including Castells and Centi-Mandanas (petitioners), from Manila to Jeddah, Saudi Arabia (Jeddah) due to "operational requirements" (transfer order). Centi-Mandanas complied with the transfer order while Castells did not.[3]

Centi-Mandanas alleged that upon her arrival in Jeddah, she was told that her contract would no longer be renewed and that she was asked to sign a pre-typed resignation letter. She averred that while she never wished to resign, SAUDIA left her with no other viable choice as it would terminate her services anyway. Thus, she filled out the resignation form handed to her.[4]

For her part, Castells alleged that upon her non-compliance with the transfer order, she prepared a resignation letter stating that she felt she was being forced to resign. She then alleged that the SAUDIA Manila Office Manager told her to amend the same to state that she was voluntarily resigning; this she reluctantly followed.[5]

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[1] *Rollo*, pp. 9-47.

[2] *Id.* at 56-58 and 53-54, respectively. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza (now Supreme Court Justice), concurring.

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

[4] *Id.* at 66.

[5] *Id.*

In view of the foregoing, petitioners, along with a co-flight attendant, Maria Joy Teresa O. Bilbao (Bilbao), filed a complaint for illegal dismissal against SAUDIA, with prayer for reinstatement, full backwages, moral and exemplary damages, and attorney's fees. They alleged that they have been hearing stories that Jeddah-based flight attendants aged 39 to 40 years old, (the same age as them) were already processing their respective resignations and that the transfer order was made so that they would be terminated upon their arrival in Jeddah.[6]

For their defense, SAUDIA maintained that the resignations were intelligently and voluntarily made. It asserted, *inter alia*, that petitioners and Bilbao's resignation letters (subject letters) were penned and duly signed by them and that they have voluntarily executed an undertaking (subject undertaking) acknowledging receipt of various sums of money and irrevocably and unconditionally releasing SAUDIA, its directors, stockholders, officers, and employees from any claim or demand whatsoever in law or equity which they may have in connection with their employment with SAUDIA.[7]

The LA Ruling

In a Decision[8] dated August 31, 2006, the Labor Arbiter (LA) held SAUDIA guilty of illegal dismissal and ordered it to pay each of petitioners and Bilbao full backwages from the time of their illegal dismissal until finality of the decision and separation pay of one month salary for every year of service, less the amount they already received, including attorney's fees.[9] It found that petitioners and Bilbao did not voluntarily resign and that SAUDIA forced them to do so only because of their "old" age, as evidenced by its scheme of "transferring" them to Jeddah and by eventually coercing them to resign under the pain of actual termination. It further held that the subject

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[6] *Ibid.*

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

[8] *Id.* at 75-89. Penned by Labor Arbiter Ramon Valentin C. Reyes.

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

undertaking, which was akin to a quitclaim, did not bar petitioners and Bilbao from filing a case against SAUDIA. However, it noted that their acceptance of the benefits pursuant thereto would merely result in the deduction of the monetary awards due to them.[10]

Dissatisfied, SAUDIA appealed to the National Labor Relations Commission (NLRC).

The NLRC Ruling

In a Resolution[11] dated June 25, 2007, the NLRC reversed and set aside the LA's ruling and thereby dismissed the illegal dismissal complaint against SAUDIA.[12] Contrary to the findings of the LA, the NLRC held that the presence of words of gratitude in the subject letters negates the claim that they were products of any form of coercion or threat on SAUDIA's part. It equally held that the subject undertaking executed by petitioners and Bilbao was valid, observing that they were well-educated individuals and, hence, cannot be easily tricked or inveigled into signing it. Likewise, it noted that they have received "a more than sufficient consideration" upon execution of the same.[13]

Consequently, petitioners and Bilbao filed their respective motions for reconsideration which were all denied in a Resolution[14] dated October 26, 2007. Aggrieved, they separately elevated the matter to the CA.

The CA Proceedings

On January 16, 2008, petitioners filed with the CA a Motion for Extension to File a Petition for *Certiorari*,[15] praying that

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[10] *Id.* at 86-88.

[11] *Id.* at 64-74. Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III, concurring.

[12] *Id.* at 73.

[13] *Id.* at 69-71.

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

[15] *Id.* at 118-120.

they be given a period of 15 days from January 18, 2008, or until February 2, 2008, within which to file the subject petition. The said motion was granted in a Resolution[16] dated January 29, 2008. Since February 2, 2008 was a Saturday, petitioners filed the subject petition on the next working day, or on February 4, 2008, and the CA admitted the same.

On even date, SAUDIA filed a Motion for Reconsideration,[17] primarily contending that A.M. No. 07-7-12-SC,[18] which took effect on December 27, 2007, no longer allowed the filing of an extension of time to file a petition for *certiorari*; thus, the CA should not have admitted the subject petition. In a Resolution[19] dated August 28, 2008, the CA reconsidered its earlier resolution and granted SAUDIA's motion. It deemed the subject petition not admitted due to petitioners' non-compliance with the reglementary period prescribed by Section 4, Rule 65 of the Rules of Court (Rules), as amended by A.M. No. 07-7-12-SC. Hence, it considered the case closed and terminated.

Petitioners filed a Motion for Reconsideration[20] dated September 26, 2008, which was, however, denied in a Resolution[21] dated June 16, 2009, prompting them to institute the instant petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether or not the CA correctly refused admission of the subject petition.

Petitioners argue that despite the wording of A.M. No. 07-7-12-SC, it did not explicitly remove the court's discretion to

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[16] *Id.* at 60.

[17] *Id.* at 108-112.

[18] Entitled, "Amendments to Rules 41, 45, 58, and 65 of The Rules of Court."

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

[20] *Id.* at 99-102.

[21] *Id.* at 53-54.

grant extensions to file petitions for *certiorari*, especially when compelling reasons are present.[22]

On the other hand, SAUDIA maintains that by virtue of A.M. No. 07-7-12-SC, motions for extension to file petitions for *certiorari* are no longer allowed and, as such, the CA correctly refused admission of the subject petition and considered the case closed and terminated.[23]

The Court's Ruling

The petition is meritorious.

It is well-settled that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, the Court has recognized exceptions to the strict application of such rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.[24] These exceptions, as enumerated in the case of *Labao v. Flores*,[25] are as follows:

> x x x (*1*) most persuasive and weighty reasons; (*2*) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (*3*) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (*4*) the existence of special or compelling circumstances; (*5*) the merits of the case; (*6*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*7*) a lack of any showing that the review sought is merely frivolous and dilatory; (*8*) the other party will not be unjustly prejudiced thereby; (*9*) fraud, accident, mistake, or excusable

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[22] *Id.* at 39-44.

[23] *Id.* at 149-154.

[24] *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, G.R. No. 170488, December 10, 2012, 687 SCRA 469, 474.

[25] G.R. No. 187984, November 15, 2010, 634 SCRA 723.

negligence without appellant's fault; (*10*) peculiar legal and equitable circumstances attendant to each case; (*11*) in the name of substantial justice and fair play; (*12*) importance of the issues involved; and (*13*) exercise of sound discretion by the judge guided by all the attendant circumstances. x x x.[26] (Citations omitted)

In view of the foregoing, despite the rigid wording of Section 4, Rule 65 of the Rules, as amended by A.M. No. 07-7-12-SC[27] — which now disallows an extension of the 60-day reglementary period to file a petition for *certiorari* — courts may nevertheless extend the same, subject to its sound discretion. As instructively held in *Republic v. St. Vincent de Paul Colleges, Inc.*:[28]

To reiterate, under Section 4, Rule 65 of the Rules of Court [as amended by A.M. No. 07-7-12-SC] x x x, the general rule is that a petition for *certiorari* must be filed within sixty (60) days from notice of the judgment, order, or resolution sought to be assailed. **Under exceptional circumstances, however, and subject to the**

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[26] *Id.* at 732.

[27] Section 4, Rule 65 of the Rules, as amended by A.M. No. 07-7-12-SC reads:

> SEC. 4. *When and where to file the petition.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.
>
> If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an mission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.
>
> In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

[28] G.R. No. 192908, August 22, 2012, 678 SCRA 738.

sound discretion of the Court, said period may be extended x x x.[29] (Emphasis and underscoring supplied)

In this case, the CA had already exercised its sound discretion in granting the extension to file the subject petition thru a Resolution dated January 29, 2008. Consequently, it could not renege on such grant by rendering another issuance almost seven months later, *i.e.*, Resolution dated August 28, 2008, which resulted in the refusal to admit the same petition. Such course of action is clearly antithetical to the tenets of fair play, not to mention the undue prejudice to petitioners' rights. Verily, the more appropriate course of action would have been to admit the subject petition and resolve the case on the merits. Thus, in order to rectify this lapse, the Court deems it prudent to have the case remanded to the CA for its proper resolution.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated August 28, 2008 and June 16, 2009 of the Court of Appeals in CA-G.R. SP No. 101971 are **REVERSED** and **SET ASIDE** and the instant case is hereby **REMANDED** to the same court for further proceedings.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perez, JJ.,* concur.

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[29] *Id.* at 749-750.

[*] Designated Additional Member per Raffle dated July 28, 2010.

FIRST DIVISION

[G.R. No. 188550. August 28, 2013]

DEUTSCHE BANK AG MANILA BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; BRANCH PROFIT REMITTANCE TAX (BPRT); 15% BPRT IMPOSED FOR PROFIT REMITTED BY A BRANCH TO ITS HEAD OFFICE; NOT APPLICABLE TO CASE AT BAR; THE PHILIPPINES IS BOUND TO EXTEND TO THE PETITIONER THE BENEFIT OF A PREFERENTIAL RATE EQUIVALENT TO 10% BRANCH PROFIT REMITTANCE TAX (BPRT) UNDER THE RP-GERMANY TAX TREATY.—** Under Section 28(A)(5) of the NIRC, any profit remitted to its head office shall be subject to a tax of 15% based on the total profits applied for or earmarked for remittance without any deduction of the tax component. However, petitioner invokes paragraph 6, Article 10 of the RP-Germany Tax Treaty, which provides that where a resident of the Federal Republic of Germany has a branch in the Republic of the Philippines, this branch may be subjected to the branch profits remittance tax withheld at source in accordance with Philippine law but shall not exceed 10% of the gross amount of the profits remitted by that branch to the head office. By virtue of the RP-Germany Tax Treaty, we are bound to extend to a branch in the Philippines, remitting to its head office in Germany, the benefit of a preferential rate equivalent to 10% BPRT.

2. **REMEDIAL LAW; JUDGMENTS, ORDERS AND RESOLUTION; A MINUTE RESOLUTION IS NOT A BINDING PRECEDENT; MINUTE RESOLUTION AND DECISION, DISTINGUISHED; DOCTRINE LAID DOWN IN MIRANT CASE (G.R. No. 168531), NOT BINDING.—** [T]his Court's minute resolution on *Mirant* is not a binding precedent. The Court has clarified this matter in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue* as follows: x x x. **With respect to the same subject matter and the same issues concerning the same parties, it**

constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. x x x. Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the *proviso* of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. Even if we had affirmed the CTA in *Mirant*, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution.

3. **TAXATION; TAX TREATIES; EXPOUNDED.—** Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction. Tax treaties are entered into "to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions." *CIR v. S.C. Johnson and Son, Inc*. further clarifies that "tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed

vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate." Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

4. ID.; ID.; LAWS AND ISSUANCES OF THE STATE MUST ENSURE THAT THE RELIEFS GRANTED UNDER TAX TREATIES ARE ACCORDED TO THE PARTIES ENTITLED THERETO, THUS, THE BUREAU OF INTERNAL REVENUE MUST NOT IMPOSE ADDITIONAL REQUIREMENTS THAT WOULD NEGATE THE AVAILMENT OF THE RELIEFS PROVIDED FOR UNDER INTERNATIONAL AGREEMENTS.— "A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken." Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

5. ID.; ID.; RP-GERMANY TAX TREATY *VS*. REVENUE MEMORANDUM (RMO) NO. 1-2000; THE PERIOD OF APPLICATION FOR THE AVAILMENT OF TAX RELIEF AS REQUIRED BY RMO NO-1200 SHOULD NOT DIVEST ENTITLEMENT TO THE RELIEF GRANTED UNDER TAX TREATY AS IT WOULD CONSTITUTE A VIOLATION OF THE DUTY REQUIRED BY GOOD FAITH IN COMPLYING WITH A TAX TREATY; THE OBLIGATION TO COMPLY WITH A TAX TREATY MUST TAKE PRECEDENCE OVER THE OBJECTIVE OF RMO NO. 1-2000.— [I]t must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the

contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations. Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief. The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.

6. ID.; ID.; ID.; NON-COMPLIANCE WITH THE 15-DAY PERIOD FOR PRIOR APPLICATION UNDER RMO NO. 1-2000 SHOULD NOT OPERATE TO AUTOMATICALLY DIVEST ENTITLEMENT TO THE TAX TREATY RELIEF ESPECIALLY IN CLAIMS FOR REFUND; THE UNDERLYING PRINCIPLE OF PRIOR APPLICATION WITH THE BUREAU OF INTERNAL REVENUE BECOMES MOOT IN REFUND CASES, WHERE THE VERY BASIS OF THE CLAIM IS ERRONEOUS OR THERE IS EXCESSIVE PAYMENT ARISING FROM NON-AVAILMENT OF A TAX TREATY RELIEF AT THE FIRST INSTANCE.— Again, RMO No. 1-2000 was implemented to obviate any erroneous interpretation and/or application of the treaty provisions. The objective of the BIR is to forestall assessments against corporations who erroneously availed themselves of the benefits of the tax treaty but are not legally entitled thereto, as well as to save such investors from the tedious process of claims for a refund due to an inaccurate application of the tax treaty provisions. However, x x x, noncompliance with the 15-day period for prior application

should not operate to automatically divest entitlement to the tax treaty relief especially in claims for refund. The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance. In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000. Corollary thereto, Section 229 of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section 229.

7. ID.; ID.; ID.; PETITIONER IS ENTITLED TO A REFUND REPRESENTING THE ERRONEOUSLY PAID BPRT FOR 2002 AND PRIOR TAXABLE YEARS, APPLYING THE PREFERENTIAL TAX RATE OF 10% BPRT PURSUANT TO THE RP-GERMANY TAX TREATY.— It is significant to emphasize that petitioner applied — though belatedly — for a tax treaty relief, in substantial compliance with RMO No. 1-2000. A ruling by the BIR would have confirmed whether petitioner was entitled to the lower rate of 10% BPRT pursuant to the RP-Germany Tax Treaty. x x x The amount of PHP67,688,553.51 paid by petitioner represented the 15% BPRT on its RBU net income, due for remittance to DB Germany amounting to PHP 451,257,023.29 for 2002 and prior taxable years. Likewise, both the administrative and the judicial actions were filed within the two-year prescriptive period pursuant to Section 229 of the NIRC. Clearly, there is no reason to deprive petitioner of the benefit of a preferential tax rate of 10% BPRT in accordance with the RP-Germany Tax Treaty. Petitioner is liable to pay only the amount of PHP 45,125,702.34 on its

RBU net income amounting to PHP 451,257,023.29 for 2002 and prior taxable years, applying the 10% BPRT. Thus, it is proper to grant petitioner a refund of the difference between the PHP 67,688,553.51 (15% BPRT) and PHP 45,125,702.34 (10% BPRT) or a total of PHP 22,562,851.17.

APPEARANCES OF COUNSEL

Salvador & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review[1] filed by Deutsche Bank AG Manila Branch (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax Appeals *En Banc* (CTA *En Banc*) Decision[2] dated 29 May 2009 and Resolution[3] dated 1 July 2009 in C.T.A. EB No. 456.

THE FACTS

In accordance with Section 28(A)(5)[4] of the National Internal Revenue Code (NIRC) of 1997, petitioner withheld and remitted

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[1] *Rollo*, pp. 12-60.

[2] *Id.* at 68-78; penned by Associate Justice Lovell R. Bautista and concurred in by then Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez.

[3] *Id.* at 79-80.

[4] SEC. 28. Rates of Income Tax on Foreign Corporations. —
(A) Tax on Resident Foreign Corporations. —

x x x x x x x x x

(5) Tax on Branch Profits Remittances. – Any profit remitted by a branch to its head office shall be subject to a tax of fifteen percent (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57

to respondent on 21 October 2003 the amount of PHP 67,688,553.51, which represented the fifteen percent (15%) branch profit remittance tax (BPRT) on its regular banking unit (RBU) net income remitted to Deutsche Bank Germany (DB Germany) for 2002 and prior taxable years.[5]

Believing that it made an overpayment of the BPRT, petitioner filed with the BIR Large Taxpayers Assessment and Investigation Division on 4 October 2005 an administrative claim for refund or issuance of its tax credit certificate in the total amount of PHP 22,562,851.17. On the same date, petitioner requested from the International Tax Affairs Division (ITAD) a confirmation of its entitlement to the preferential tax rate of 10% under the RP-Germany Tax Treaty.[6]

Alleging the inaction of the BIR on its administrative claim, petitioner filed a Petition for Review[7] with the CTA on 18 October 2005. Petitioner reiterated its claim for the refund or issuance of its tax credit certificate for the amount of PHP 22,562,851.17 representing the alleged excess BPRT paid on branch profits remittance to DB Germany.

THE CTA SECOND DIVISION RULING[8]

After trial on the merits, the CTA Second Division found that petitioner indeed paid the total amount of PHP 67,688,553.51 representing the 15% BPRT on its RBU profits amounting to

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and 58 of this Code: Provided, That interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

[5] *Rollo*, pp. 69-70.

[6] *Id.* at 70.

[7] *Id.* at 150-157.

[8] *Id.* at 109-125; CTA Second Division Decision dated 29 August 2008, penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

PHP 451,257,023.29 for 2002 and prior taxable years. Records also disclose that for the year 2003, petitioner remitted to DB Germany the amount of EURO 5,174,847.38 (or PHP 330,175,961.88 at the exchange rate of PHP 63.804:1 EURO), which is net of the 15% BPRT.

However, the claim of petitioner for a refund was denied on the ground that the application for a tax treaty relief was not filed with ITAD prior to the payment by the former of its BPRT and actual remittance of its branch profits to DB Germany, or prior to its availment of the preferential rate of ten percent (10%) under the RP-Germany Tax Treaty provision. The court *a quo* held that petitioner violated the fifteen (15) day period mandated under Section III paragraph (2) of Revenue Memorandum Order (RMO) No. 1-2000.

Further, the CTA Second Division relied on *Mirant (Philippines) Operations Corporation (*formerly *Southern Energy Asia-Pacific Operations [Phils.], Inc.) v. Commissioner of Internal Revenue*[9]

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[9] C.T.A. EB No. 40 (CTA Case No. 6382), 7 June 2005, penned by Associate Justice Erlinda P. Uy and concurred in by then Presiding Justice Ernesto D. Acosta, and Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez. The case was affirmed by the Supreme Court in the Resolutions dated 12 November 2007 and 18 February 2008 in G.R. No. 168531; <http://cta.judiciary.gov.ph/decres#> (visited 5 June 2013). Pertinent portion of *Mirant* provides:

"However, it must be remembered that a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provisions of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.

Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the

(*Mirant*) where the CTA *En Banc* ruled that before the benefits of the tax treaty may be extended to a foreign corporation wishing to avail itself thereof, the latter should first invoke the provisions of the tax treaty and prove that they indeed apply to the corporation.

THE CTA *EN BANC* RULING[10]

The CTA *En Banc* affirmed the CTA Second Division's Decision dated 29 August 2008 and Resolution dated 14 January 2009. Citing *Mirant*, the CTA *En Banc* held that a ruling from the ITAD of the BIR must be secured prior to the availment of a preferential tax rate under a tax treaty. Applying the principle of *stare decisis et non quieta movere*, the CTA *En Banc* took into consideration that this Court had denied the Petition in G.R. No. 168531 filed by Mirant for failure to sufficiently show any reversible error in the assailed judgment.[11] The CTA *En Banc* ruled that once a case has been decided in one way, any other case involving exactly the same point at issue should be decided in the same manner.

The court likewise ruled that the 15-day rule for tax treaty relief application under RMO No. 1-2000 cannot be relaxed for petitioner, unlike in *CBK Power Company Limited v. Commissioner of Internal Revenue.*[12] In that case, the rule was relaxed and the claim for refund of excess final withholding taxes was partially granted. While it issued a ruling to CBK Power Company Limited after the payment of withholding taxes, the ITAD did not issue any ruling to petitioner even if it filed a request for confirmation on 4 October 2005 that the remittance of branch profits to DB Germany is subject to a preferential tax rate of 10% pursuant to Article 10 of the RP-Germany Tax Treaty.

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granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same."

[10] *Supra* note 2.

[11] SC Minute Resolutions dated 12 November 2007 and 18 February 2008.

[12] *CBK Power Company Limited v. Commissioner of Internal Revenue*, C.T.A. Case Nos. 6699, 6884 & 7166, 12 February 1999, penned by Associate Justice Caesar A. Casanova and concurred in by then Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

ISSUE

This Court is now confronted with the issue of whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty.

THE COURT'S RULING

The Petition is meritorious.

Under Section 28(A)(5) of the NIRC, any profit remitted to its head office shall be subject to a tax of 15% based on the total profits applied for or earmarked for remittance without any deduction of the tax component. However, petitioner invokes paragraph 6, Article 10 of the RP-Germany Tax Treaty, which provides that where a resident of the Federal Republic of Germany has a branch in the Republic of the Philippines, this branch may be subjected to the branch profits remittance tax withheld at source in accordance with Philippine law but shall not exceed 10% of the gross amount of the profits remitted by that branch to the head office.

By virtue of the RP-Germany Tax Treaty, we are bound to extend to a branch in the Philippines, remitting to its head office in Germany, the benefit of a preferential rate equivalent to 10% BPRT.

On the other hand, the BIR issued RMO No. 1-2000, which requires that any availment of the tax treaty relief must be preceded by an application with ITAD at least 15 days before the transaction. The Order was issued to streamline the processing of the application of tax treaty relief in order to improve efficiency and service to the taxpayers. Further, it also aims to prevent the consequences of an erroneous interpretation and/or application of the treaty provisions (*i.e.*, filing a claim for a tax refund/ credit for the overpayment of taxes or for deficiency tax liabilities for underpayment).[13]

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[13] REVENUE MEMORANDUM ORDER NO. 01-00
SUBJECT : Procedures for Processing Tax Treaty Relief Application
TO : All Internal Revenue Officers and Others Concerned

I. Objectives:

This Order is issued to streamline the processing of the tax treaty relief application in order to improve efficiency and service to the taxpayers.

The crux of the controversy lies in the implementation of RMO No. 1-2000.

Petitioner argues that, considering that it has met all the conditions under Article 10 of the RP-Germany Tax Treaty, the CTA erred in denying its claim solely on the basis of RMO No. 1-2000. The filing of a tax treaty relief application is not a condition precedent to the availment of a preferential tax rate. Further, petitioner posits that, contrary to the ruling of the CTA, *Mirant* is not a binding judicial precedent to deny a claim for refund solely on the basis of noncompliance with RMO No. 1-2000.

Respondent counters that the requirement of prior application under RMO No. 1-2000 is mandatory in character. RMO No. 1-2000 was issued pursuant to the unquestioned authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of the NIRC. Thus, courts cannot ignore administrative issuances which partakes the nature of a statute and have in their favor a presumption of legality.

Furthermore, it is to the best interest of both the taxpayer and the Bureau of Internal Revenue that any availment of the tax treaty provisions be preceded by an application for treaty relief with the International Tax Affairs Division (ITAD). In this way, the consequences of any erroneous interpretation and/or application of the treaty provisions (*i.e.*, claim for tax refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment) can be averted before proceeding with the transaction and or paying the tax liability covered by the tax treaty.

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III. Policies:

In order to achieve the above-mentioned objectives, the following policies shall be observed:

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2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction *i.e.* payment of dividends, royalties, *etc.*, accompanied by supporting documents justifying the relief. Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO 10-92 are hereby declared obsolete.

x x x x x x x x x.

The CTA ruled that prior application for a tax treaty relief is mandatory, and noncompliance with this prerequisite is fatal to the taxpayer's availment of the preferential tax rate.

We disagree.

A minute resolution is not a binding precedent

At the outset, this Court's minute resolution on *Mirant* is not a binding precedent. The Court has clarified this matter in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*[14] as follows:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
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> **With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent**. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "ha(d) no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to

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[14] G.R. No. 167330, 18 September 2009, 600 SCRA 413, 446-447.

decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the *proviso* of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. (Emphasis supplied)

Even if we had affirmed the CTA in *Mirant*, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution.

Tax Treaty vs. RMO No. 1-2000

Our Constitution provides for adherence to the general principles of international law as part of the law of the land.[15] The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith.[16] More importantly, treaties have the force and effect of law in this jurisdiction.[17]

Tax treaties are entered into "to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions."[18] *CIR v. S.C. Johnson and Son, Inc.* further clarifies that "tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter

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[15] Art. 2, Sec. 2.

[16] Vienna Convention on the Law on Treaties (1969), Art. 26.

[17] *Luna v. Court of Appeals,* G.R. Nos. 100374-75, 27 November 1992, 216 SCRA 107, 111-112.

[18] *CIR v. S.C. Johnson and Son, Inc.*, 368 Phil. 388, 404 (1999).

and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate."[19] Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

"A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken."[20] Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required

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[19] *Id.* at 404-405.

[20] *Tañada v. Angara*, 388 Phil. 546, 592 (1997).

by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.

Prior Application vs. Claim for Refund

Again, RMO No. 1-2000 was implemented to obviate any erroneous interpretation and/or application of the treaty provisions. The objective of the BIR is to forestall assessments against corporations who erroneously availed themselves of the benefits of the tax treaty but are not legally entitled thereto, as well as to save such investors from the tedious process of claims for a refund due to an inaccurate application of the tax treaty provisions. However, as earlier discussed, noncompliance with the 15-day period for prior application should not operate to automatically divest entitlement to the tax treaty relief especially in claims for refund.

The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance. In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period

prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000.

Corollary thereto, Section 229[21] of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section 229.

Petitioner is entitled to a refund

It is significant to emphasize that petitioner applied – though belatedly – for a tax treaty relief, in substantial compliance with RMO No. 1-2000. A ruling by the BIR would have confirmed whether petitioner was entitled to the lower rate of 10% BPRT pursuant to the RP-Germany Tax Treaty.

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[21] Section 229. *Recovery of Tax Erroneously or Illegally Collected*. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Nevertheless, even without the BIR ruling, the CTA Second Division found as follows:

> Based on the evidence presented, both documentary and testimonial, petitioner was able to establish the following facts:
>
> a. That petitioner is a branch office in the Philippines of Deutsche Bank AG, a corporation organized and existing under the laws of the Federal Republic of Germany;
>
> b. That on October 21, 2003, it filed its Monthly Remittance Return of Final Income Taxes Withheld under BIR Form No. 1601-F and remitted the amount of ₱67,688,553.51 as branch profits remittance tax with the BIR; and
>
> c. That on October 29, 2003, the *Bangko Sentral ng Pilipinas* having issued a clearance, petitioner remitted to Frankfurt Head Office the amount of EUR5,174,847.38 (or ₱330,175,961.88 at 63.804 Peso/Euro) representing its 2002 profits remittance.[22]

The amount of PHP 67,688,553.51 paid by petitioner represented the 15% BPRT on its RBU net income, due for remittance to DB Germany amounting to PHP 451,257,023.29 for 2002 and prior taxable years.[23]

Likewise, both the administrative and the judicial actions were filed within the two-year prescriptive period pursuant to Section 229 of the NIRC.[24]

Clearly, there is no reason to deprive petitioner of the benefit of a preferential tax rate of 10% BPRT in accordance with the RP-Germany Tax Treaty.

Petitioner is liable to pay only the amount of PHP 45,125,702.34 on its RBU net income amounting to PHP 451,257,023.29 for 2002 and prior taxable years, applying the 10% BPRT. Thus, it is proper to grant petitioner a refund of the difference between the PHP 67,688,553.51 (15% BPRT) and PHP 45,125,702.34 (10% BPRT) or a total of PHP 22,562,851.17.

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[22] *Rollo,* pp. 114-115.

[23] *Id.* at 117-118.

[24] *Id.* at 117.

WHEREFORE, premises considered, the instant Petition is **GRANTED**. Accordingly, the Court of Tax Appeals *En Banc* Decision dated 29 May 2009 and Resolution dated 1 July 2009 are **REVERSED** and **SET ASIDE**. A new one is hereby entered ordering respondent Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of petitioner Deutsche Bank AG Manila Branch the amount of **TWENTY TWO MILLION FIVE HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED FIFTY ONE PESOS AND SEVENTEEN CENTAVOS** (PHP 22,562,851.17), Philippine currency, representing the erroneously paid BPRT for 2002 and prior taxable years.

SO ORDERED.

Leonardo-de Castro, Bersamin, Mendoza,[*] and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 188595. August 28, 2013]

SEA POWER SHIPPING ENTERPRISES, INC., and/or BULK CARRIERS LIMITED and SPECIAL MARITIME ENTERPRISES, and M/V MAGELLAN, *petitioners, vs.* **NENITA P. SALAZAR, on behalf of deceased ARMANDO L. SALAZAR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; POEA CONTRACT; COMPENSATION AND BENEFITS; TO BE ENTITLED

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[*] Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per Special Order No. 1502.

TO DEATH BENEFITS, ONE MUST HAVE SUFFERED A WORK-RELATED DEATH DURING THE TERM OF HIS CONTRACT; APPLICATION IN CASE AT BAR.— Section 20(A) of the POEA Contract, and a long line of jurisprudence explaining the provision, require that for respondent to be entitled to death benefits, Armando must have suffered a work-related death during the term of his contract. x x x Here, it is undisputed that Armando died on 1 March 2005 or six months after his repatriation. Thus, on the basis of Section 20(A), his beneficiaries are precluded from receiving death benefits. In relying upon this provision, both the LA and the NLRC correctly exercised their discretion in denying respondent's claims for death benefits.

2. ID.; ID.; ID.; AS AN EXCEPTION TO THE RULE, COMPENSATION IS ALLOWED FOR THE DEATH OF THE SEAFARER OCCURING AFTER THE TERMINATION OF EMPLOYMENT CONTRACT ON ACCOUNT OF WORK-RELATED ILLNESS; REQUISITES. — Unlike Section 20(A), Section 32-A of the POEA Contract considers the possibility of compensation for the death of the seafarer occurring after the termination of the employment contract on account of a work-related illness. But, for death under this provision to be compensable, the claimant must fulfill the following: 1. The seafarer's work must involve the risks describe herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; 4. There was no notorious negligence on the part of the seafarer.

3. ID.; ID.; ID.; ID.; PROOF REQUIRED IS SUBSTANTIAL EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— It must reach the level of relevant evidence as a reasonable mind might accept as sufficient to support a conclusion. Given these parameters, the CA was expected to weigh substantial pieces of evidence proving that Armando's death was compensable because (1) he was ill during the term of his contract; (2) his illness was work-related, as his work involves considerable exposure to the risks of contracting his illness; and (3) his contracted illness caused his death. Unfortunately, the CA failed to establish its factual basis for awarding respondent her death benefits claim. x x x There was no

documentation or account of any illness contracted by Armando aboard *M/V Magellan*. x x x A plain reading of the pleadings on record will easily reveal that the parties vehemently contested the actual job description of Armando. Petitioners claimed that he worked with the deck contingent, while respondent asserted that he was assigned to the ship's cargo. These conflicting contentions were not resolved by either the LA or the NLRC. Therefore, since the CA proceeded from a disputed and unresolved factual claim, its resulting inference on the work connection may be disregarded. Indeed, no ruling shall be rendered by any court without clearly and distinctly stating therein the facts on which the ruling is based. x x x [F]or respondents to be entitled to death benefits under Section 32-A of the POEA Contract, the CA must further find that the alleged work-related illness of Armando caused his death. x x x Absent any semblance of causation, it cannot be inferred that the death of Armando after the term of his contract is compensable, if the inference is based solely on the circumstance that he was confined within two days and died within six months after his repatriation. Since the CA grounded its ruling mainly on this factor, this Court resolves against the grant of death benefits to respondent. x x x As we have ruled in *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*, citing *Government Service Insurance System v. Cuntapay*, claimants in compensation proceedings must show credible information that there is probably a relation between the illness and the work. probability and not mere possibility is required; otherwise, the resulting conclusion would proceed from deficient proofs.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
Byrone M. Timario for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 petition,[1] seeking a reversal of the Court of Appeals (CA) Decision[2] and Resolution[3] in CA-G.R. SP No. 104593. The CA awarded death benefits, minor child's allowance and burial expenses on top of the sickness allowance, hospitalization expenses, moral damages, and attorney's fees granted by the National Labor Relations Commission (NLRC) to respondent Nenita P. Salazar (Salazar) as the beneficiary of the deceased seafarer, Armando L. Salazar (Armando).

The antecedent facts are as follows:

On 11 April 2003, Armando was employed[4] as an Able Seaman by petitioner Sea Power Shipping Enterprises, Inc. (agency) on behalf of its principal, Atlantic Bulk Carriers Limited, for a term of nine months plus a three month-consented extension. At the time of his employment, he had already passed his pre-employment medical examination and had been declared "fit to work."

On 20 April 2003, Armando boarded the *M/V Magellan*. After 17 months, his contract ended, and on 8 September 2004, he returned to our shores.[5] Two days after, he was taken to the Tanza Family General Hospital, where he was confined in the

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[1] *Rollo*, pp. 9-37; Petition for Review on *Certiorari* filed on 24 August 2009.

[2] *Id.* at 39-55; The CA Decision dated 29 April 2009 was penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Magdangal M. de Leon and Ramon R. Garcia concurring.

[3] CA *rollo*, pp. 250-251; CA Resolution dated 29 June 2009.

[4] *Rollo*, p. 74; Contract of Employment dated 11 April 2003.

[5] *Id.* at 78, 80; His visa stamp indicates that he returned to the Philippines on 8 September 2004 although the Certification from petitioner agency states that he was repatriated on 30 August 2004 on account of his completion of the contract.

Intensive Care Unit (ICU) for three days. According to medical reports, he suffered from pneumonia.

Because of his confinement, Armando was unable to see the agency's physician for a post-employment medical examination (PEME) that was supposed to be conducted within 72 hours from his repatriation. Nevertheless, on the 7th or 8th day of Armando's confinement, Salazar informed petitioners of her husband's condition and even asked them for the insurance proceeds. The agency denied her claims. It reasoned that without the requisite PEME required by the 2005 Philippine Overseas Employment Administration Standard Employment Contract for Seafarers (POEA Contract), his beneficiaries could not avail themselves of the sickness allowance.

Armando checked in and out of several hospitals thereafter. At the Philippine General Hospital where he was transferred in October 2004, he was diagnosed as suffering from lung carcinoma with brain metastases.[6] On 1 March 2005, he succumbed to metastatic lung carcinoma and died of cardio-respiratory arrest, secondary to acute respiratory failure, and secondary to multi-organ failure.[7]

Subsequently, his widow instituted before the labor arbiter (LA) a collection suit[8] against petitioners for seafarer benefits under Section 20 of the POEA Contract. Salazar sought the payment of hospitalization and medical expenses, burial expenses, compensation and death benefits, minor child's allowance for their daughter Alice, moral and exemplary damages, and attorney's fees.

Salazar insisted that the agency owed her both death and illness benefits, because her husband died of an illness that he had contracted while he was at sea. She narrated that Armando

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[6] *Id.* at 84; Medical Certificate issued by the Philippine General Hospital dated 8 November 2004.

[7] *Id.* at 85; Certificate of Death issued by the Office of the Civil Registrar dated 1 March 2005.

[8] *Id.* at 56-69; Complainant's Position Paper dated 21 July 2005.

used to work as an Able Seaman in the ship cargo without any protective gear. She further alleged that his work environment exposed him to deleterious elements emanating from the cargo. In turn, these conditions caused him to suffer constant headaches, which led to the worsening of his health.

Petitioners denied liability. According to the agency, claims for death benefits, minor child's allowance, and burial expenses under Section 20(A) of the POEA Contract (Death Benefits) would only prosper if the seafarer died during his employment term. Considering that Armando died six months after his repatriation, it argued that Salazar could not claim death benefits.

The agency further disputed the benefits under Section 20(B) of the POEA Contract, consisting of medical expenses and sickness allowance (Illness Benefits). In support of its allegation, it highlighted the fact that Armando never reported or complained of any health problem while at sea. As regards the causality between his lung cancer and his work, it categorically denied that he had been exposed to effluvia or emission from any machinery that would have triggered the formation of cancer. The agency contended that as an Able Seaman, Armando only worked as a deck contingent.[9] Unfortunately, as per the records, none of the parties or the courts *a quo* provided any reference depicting his actual tasks.

In her Decision,[10] the LA denied all of respondent's monetary claims. The LA explained that for the benefits under the POEA Contract to arise, a claimant must show that the death of the seafarer, as well as the illness that caused his death, (1) transpired during his service and (2) resulted from his work conditions.

In this case, the LA appreciated that Armando could not have contracted lung cancer during his service, since there was no report in the ship's records of any of his alleged health problems. Since he died after his repatriation, respondent's claim for death

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[9] *Id.* at 75; Employment Contract cover page submitted to POEA.

[10] *Id.* at 150-159; Decision dated 31 January 2006 penned by Labor Arbiter Daisy G. Cauton-Barcelona in NLRC-NCR OFW Case No. (M) 05-03-00572-00.

benefits was denied. Lastly, the LA ruled that the beneficiaries of Armando were prevented from claiming benefits under the POEA Contract, because the seafarer had not gone through the mandatory PEME within 72 hours from his repatriation.

Aggrieved, respondent appealed to the NLRC. Citing Internet websites, she included in her appeal the job description of an Able Seaman as reasonable proof that the work of Armando increased the risk of his lung cancer.[11] She also highlighted the statements in her own Affidavit to bolster her claim that Armando suffered from constant headaches while at sea.[12]

This time around, respondent obtained a favorable ruling from the NLRC, which awarded her illness benefits.[13] It ruled that the immediate confinement of Armando a mere two days after his arrival could only mean that he was already in a deteriorating physical condition when he disembarked.

As regards the lack of a medical report during his service, the NLRC took judicial notice of the "evil practice" of denying sick seafarers "the necessary medical attention during the period of their employment so that their employers could later on disclaim liability for their injury, illness or death on the ground that they did not sustain any injury or suffer any illness during the period in question."[14]

Finally, the NLRC held that petitioners failed to dispute the legal presumption in Section 32 in relation to Section 20(B)(4) of the POEA Contract characterizing lung cancer as a work-related illness. Thus, the NLRC ordered petitioners to pay respondent the following amounts:[15]

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[11] *Id.* at 168; Notice of Appeal and Memorandum of Appeal dated 2 May 2006.

[12] *Id.* at 137; *Sinumpaang Salaysay* dated 29 November 2005.

[13] *Id.* at 212-222; Decision dated 26 July 2007 penned by Commissioner Angelita A. Gacutan with Commissioners Raul T. Aquino and Victoriano R. Calaycay concurring.

[14] *Id.* at 220.

[15] *Id.* at 221-222.

1. The amount of ₱47,144.00 representing the cost of seafarer Salazar's medicines and hospitalization;
2. The equivalent in Philippine currency at the time of actual payment of US$1,540.00 representing seafarer Salazar's sickness allowance (US$385 x 4 mos. = US$1,540.00);
3. The amount of ₱500,000.00 as moral damages; and
4. Ten percent (10%) of the total judgment award as and for attorney's fees.

Noticeably, the NLRC did not award death benefits to respondent. It simply stated that the death of Armando was not compensable, because he did not die during the term of his contract.

Dissatisfied with the grant of illness benefits only, Salazar filed a Motion for Reconsideration[16] in order to claim death benefits. For their part, petitioners filed a Motion for Reconsideration,[17] praying that the LA Decision denying all of respondent's claims be reinstated. In a minute Resolution,[18] the NLRC denied both motions.

Through a Rule 65 petition, respondent assailed before the CA the denial of death benefits by the LA and the NLRC.[19] On the other hand, petitioners no longer instituted an action for *certiorari*. At this point therefore, the NLRC's grant of monetary awards consisting of illness benefits, moral damages, and attorney's fees are already final and binding on both parties.

In the original action for *certiorari*, Salazar argued that since the NLRC already found that Armando had contracted a work-related illness, it must also grant her death benefits, notwithstanding that her husband died after his repatriation. Petitioners no longer filed a comment or memorandum to address her argument.[20]

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[16] *Id.* at 237-245.

[17] *Id.* at 223-236.

[18] *Id.* at 251-253; Resolution dated 23 April 2008.

[19] *Id.* at 254-281; Petition for *Certiorari* dated 10 July 2008.

[20] CA *rollo*, pp. 188, 202.

In its assailed Decision, the CA granted respondent's additional claim for death benefits, thereby reversing the rulings of both the LA and the NLRC. Heavily relying on *Wallem Maritime Services, Inc. v. NLRC*,[21] the CA pieced together these various circumstances to conclude that the death of Armando resulting from a work-related illness was compensable: (1) he was declared fit to work at the start of his service; (2) he handled the cargo of the ship and was thus exposed to hazardous elements; and (3) he was confined in the ICU two days after his repatriation. After making this inference, the CA no longer gave significance to the fact that he failed to report his health problems while he was at sea, and that he did not go through the mandatory PEME within 72 hours from his repatriation. The CA explained thus:[22]

> While it may be true that there was no record to prove that Armando was ill while on board the vessel as there was no report of any illness on his part, nor did he ask for medical attention during the term of his contract, medical history and human experience would show that lung carcinoma does not just develop in one day or much less, deteriorate that fast. The fact that Armando was hospitalized and confined at the ICU two days after he was repatriated, would prove that Armando's illness was already in its advance [sic] stage. While his death may have occurred after his contract was terminated, it is safe to presume that his illness was work-related or that his work aggravated his illness.
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> x x x x x x x x x
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> Admittedly, Armando did not report to private respondents within the required period of 72 hours upon his arrival. However, for a person who is terminally ill, such as Armando, it is understandable, as he is physically incapacitated to do it. The mere fact that he was confined at the ICU two days after his repatriation bespeaks of his condition. Private respondents cannot deny that they were notified of this fact as petitioner Salazar went to their office on the 7th or 8th day of Armando's first confinement and asked for her husband's insurance proceeds and assistance only to be rebuffed. This is more than sufficient notice to private respondents of Armando's condition. (Underscoring supplied)

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[21] 376 Phil. 378 (1999).

[22] *Rollo*, pp. 46-49.

Moreover, the CA rejected the contention that Armando died after his service in this wise:[23]

> x x x. It would be error to conclude that death benefits are recoverable only when the seafarer's death occurs during the period of his contract when evidence show that at the time he was repatriated he was already terminally ill but was not given medical attention. From the time he was confined at the ICU he never recovered and was in and out of the hospital several times. He may not have died during the period of his contract, but 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.

As a result, the CA granted respondent death benefits consisting of the following:[24]

1. US$50,000.00 as death benefits;
2. US$7,000.00 as the minor child's allowance; and
3. US$1,000.00 as burial expenses.

Petitioners moved for reconsideration, but their motion was denied by the CA.[25] Consequently, they filed the present Rule 45 petition. They strongly refute not only the additional grant of death benefits, but also the award of illness benefits already given by the NLRC.

Petitioners harp on the absence of substantial evidence to prove that the illness of Armando during his service, if it already existed at the time, was work-related. They also fault the CA for only making a "safe presumption" that his alleged work-related illness led to his demise. Aside from emphasizing respondent's lack of proof, petitioners advance the argument that death benefits cannot be awarded to respondent, because her husband did not die during the term of his contract. In turn, respondent counters in her Comment[26] that since the NLRC found

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[23] *Id.* at 50.

[24] *Id.* at 52.

[25] CA *rollo*, pp. 250-251; Resolution dated 29 June 2009.

[26] *Rollo*, pp. 302-316; Comment filed on 23 November 2009.

that Armando contracted a work-related illness resulting in the grant of illness benefits, it then follows that death benefits are likewise due to her.

Through this Petition for Review on *Certiorari*, this Court now reviews whether the CA correctly deemed that the LA and the NLRC committed a grave abuse of discretion amounting to the lack or excess of jurisdiction in refusing to award death benefits on top of the illness benefits allegedly due to respondent.

RULING OF THE COURT

In compensation proceedings for seafarers, this Court refers to the provisions of the POEA Contract as it memorializes the minimum rights of a seafarer and the concomitant obligations of an employer.[27] Section 20(A) thereof pertinently discusses the rules on granting death benefits. Nevertheless, on account of the liberal interpretation permeating seafarer's agreements,[28] we also consider the possibility of compensation for the death of the seafarer under Section 32-A of the POEA Contract.

Death Benefits under Section 20(A) of the POEA Contract

Section 20(A) of the POEA Contract, and a long line of jurisprudence explaining the provision,[29] require that for respondent to be entitled to death benefits, Armando must have suffered a work-related death during the term of his contract. The provision reads:

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[27] *Cootauco v. MMS Phil. Maritime Services, Inc.,* G.R. No. 184722, 15 March 2010, 615 SCRA 529.

[28] *The Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, 30 April 2008, 553 SCRA 649.

[29] *Medline Management, Inc. v. Roslinda,* G.R. No. 168715, 15 September 2010, 630 SCRA 471, citing *Southeastern Shipping v. Navarra, Jr.*, 621 SCRA 361 (2010)*; Klaveness Maritime Agency, Inc. v. Beneficiaries of Allas*, 566 Phil. 579 (2008), citing *Gau Sheng Phils., Inc. v. Joaquin*, 481 Phil. 222 (2004), and *Prudential Shipping and Management Corporation v. Sta. Rita*, 544 Phil. 94 (2007).

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In case of work-related death of the seafarer, during the term of his contract the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x x x x x x

4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:

x x x x x x x x x

c. The employer shall pay the beneficiaries of the seafarer the Philippines currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

Here, it is undisputed that Armando died on 1 March 2005 or six months after his repatriation. Thus, on the basis of Section 20(A), his beneficiaries are precluded from receiving death benefits. In relying upon this provision, both the LA and the NLRC correctly exercised their discretion in denying respondent's claims for death benefits.

Death Benefits under Section 32-A of the POEA Contract

Under its auspices, however, the CA found that the labor courts had gravely abused their discretion in refusing to grant death benefits to respondent. According to the CA, petitioners must pay USD 58,000 death benefits under Section 20(B)(4) in relation to Section 32 of the POEA Contract.

Section 20(B)(4) of the POEA Contract provides that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work related." Given that Armando's lung cancer

is not listed under Section 32,[30] it follows that the CA correctly afforded respondent the benefit of the presumption under the law.

However, the CA failed to appreciate that Section 20(B)(4) only affords a disputable presumption. In *Leonis Navigation Co., Inc. v. Villamater*,[31] we explained that the legal presumption in Section 20(B)(4) should be read together with the requirements specified by Section 32-A of the POEA Contract.

Unlike Section 20(A), Section 32-A of the POEA Contract considers the possibility of compensation for the death of the seafarer occurring after the termination of the employment contract on account of a work-related illness. But, for death under this provision to be compensable, the claimant must fulfill the following:

1. The seafarer's work must involve the risks describe herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

In fulfilling these requisites, respondent must present no less than substantial evidence. Substantial evidence is more than a mere scintilla. It must reach the level of relevant evidence as a reasonable mind might accept as sufficient to support a conclusion.[32]

Given these parameters, the CA was expected to weigh substantial pieces of evidence proving that Armando's death

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[30] Under Sec. 32 of the POEA Contract, only two types of cancer are listed as occupational diseases. These are cancer of the epithelial lining of the bladder and cancer, *epithellomatous* or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product.

[31] G.R. No. 179169, 3 March 2010, 614 SCRA 182, 196.

[32] *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, 14 December 2011, 662 SCRA 670, 678-679.

was compensable because (1) he was ill during the term of his contract; (2) his illness was work-related, as his work involves considerable exposure to the risks of contracting his illness; and (3) his contracted illness caused his death. Unfortunately, the CA failed to establish its factual basis for awarding respondent her death benefits claim.

Firstly, as admitted by respondent, there was no documentation or account of any illness contracted by Armando aboard *M/V Magellan*. In fact, the NLRC and the CA acknowledged in their rulings this gap in the records as discussed above. Without any record of illness during his voyage, it is thus difficult to say that he acquired or developed lung cancer during his service.

Notwithstanding the lack of evidence, the CA resorted to inference. It made much about the circumstances that Armando was initially declared fit to work, and that he was then confined within two days after his disembarkation. Based on these facts, it inferred that his lung cancer was contracted during his service because that illness "does not just develop in one day, or much less, deteriorate that fast."[33]

In so ruling, the CA analogously applied our pronouncement in *Wallem v. Maritime Services, Inc.*[34] In that case, we granted death compensation to the beneficiaries of the deceased seafarer who was also confined two days after his repatriation.

However, *Wallem* does not apply to the case of Armando. Apart from the time element between his confinement and repatriation, other special considerations distinguish these two cases. In *Wallem*, the seafarer's deteriorating state of health at the time he disembarked was established not only by the proximity of his confinement to his repatriation, but also by the fact that his employment contract was preterminated by "mutual consent." The courts in that case have consistently interpreted such mutually agreed pretermination to mean that the seafarer had contracted illness aboard the ship. In contrast, respondent can only rely

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[33] *Rollo*, p. 46.

[34] *Supra* note 21.

on the element of proximity to deduce that Armando suffered the fatal illness during his service.

Secondly, neither the LA nor the NLRC made a factual determination of Armando's actual work as an Able Seaman. Respondent's website definition of an Able Seaman was not even recognized in the NLRC Decision. Hence, at the level of the labor tribunals, there was already no premise on which to base the conclusion that Armando's work involved considerable exposure to the risks of contracting lung cancer.

Nevertheless, on *certiorari*, the CA held that there was a reasonable connection between the job of Armando and his lung disease. It even stated that it was undisputed[35] that he had worked in the cargo section of the vessel.

The CA's appreciation is manifestly erroneous. A plain reading of the pleadings on record will easily reveal that the parties vehemently contested the actual job description of Armando. Petitioners claimed that he worked with the deck contingent, while respondent asserted that he was assigned to the ship's cargo. These conflicting contentions were not resolved by either the LA or the NLRC. Therefore, since the CA proceeded from a disputed and unresolved factual claim, its resulting inference on the work connection may be disregarded. Indeed, no ruling shall be rendered by any court without clearly and distinctly stating therein the facts on which the ruling is based.[36]

In any event, even if it were proven that Armando worked in the cargo section of the ship, the CA must still find justification for how his work environment caused his constant headaches, whether he recovered from his ailment,[37] and how it worsened into the alleged fatal illness.[38]

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[35] *Rollo*, p. 46.

[36] *Nicos Industrial Corporation v. Court of Appeals*, G.R. No. 88709, 11 February 1992, 206 SCRA 127, citing the Constitution, Art. VIII, Sec. 14.

[37] *Hermogenes v. OSCO Shipping Services, Inc.*, 504 Phil. 564, 570 (2005).

[38] *Prudential Shipping and Management Corporation v. Sta. Rita*, *supra* note 29.

This explanation need not show a direct causal connection; but positive propositions[39] on employment factors like age, position, actual work, dietary provisions,[40] exposure to substances,[41] and possibility of recovery[42] have been considered by the Court as adequate in compensation proceedings. In this instance, the NLRC and the CA failed to discuss the employment conditions that had led to the ailment of Armando.

Thirdly, for respondents to be entitled to death benefits under Section 32-A of the POEA Contract, the CA must further find that the alleged work-related illness of Armando caused his death.

At most, based on the allegations of respondent, Armando claimed to have suffered from constant headaches aboard *M/V Magellan.* However, there was no determination of the link between his ailment (headaches) and his cause of death (lung cancer). In *Medline Management, Inc. v. Roslinda*[43] citing *Hermogenes v. OSCO Shipping Services, Inc.*[44] and *Gau Sheng Phil., Inc. v. Joaquin*,[45] we have discussed death arising from a seafarer's illness in this wise:

> Indeed, the death of a seaman several months after his repatriation for illness does not necessarily mean that: (a) the seaman died of the same illness; (b) his working conditions increased the risk of contracting the illness which caused his death; and (c) the death is compensable, unless there is some reasonable basis to support otherwise. x x x.

Absent any semblance of causation, it cannot be inferred that the death of Armando after the term of his contract is compensable, if the inference is based solely on the circumstance that he was

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[39] *Spouses Aya-ay v. Arpaphil Shipping Corp.*, 516 Phil. 628, 641 (2006).

[40] *Leonis Navigation Co., Inc. v. Villamater*, *supra* note 31.

[41] *Klaveness Maritime Agency, Inc. v. Beneficiaries of Allas*, *supra* note 29.

[42] *Hermogenes v. OSCO Shipping Services, Inc.*, *supra* note 37.

[43] *Supra* note 29.

[44] *Supra* note 37.

[45] *Supra* note 29.

confined within two days and died within six months after his repatriation. Since the CA grounded its ruling mainly on this factor, this Court resolves against the grant of death benefits to respondent.

Our Conclusion: The Benefits Due to Respondent

In summary, the NLRC and the CA were excessively fixated on the proximity of the time between the repatriation and the death of the seafarer to automatically conclude that he contracted a fatal illness during his service. The CA even stressed in its ruling that it was safe to make that presumption.

This approach to case disposition by the CA —making factual findings based only on presumptions,[46] and absent the quantum of evidence required in labor cases[47] — is an erroneous application of the law on compensation proceedings. As we have ruled in *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*,[48] citing *Government Service Insurance System v. Cuntapay*,[49] claimants in compensation proceedings must show credible information that there is probably a relation between the illness and the work. Probability, and not mere possibility, is required; otherwise, the resulting conclusion would proceed from deficient proofs.[50] Thus, since the CA crafted a legal conclusion out of conjectures and without substantial evidence, we rule that a reversible error of law attended its award of death benefits, minor child's allowance, and burial expenses. For this reason, we delete the grant thereof to respondent.

Notably, in resolving a special civil action for *certiorari*, the CA was only reviewing whether the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction in denying

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[46] *Spouses Aya-ay v. Arpaphil Shipping Corp.*, *supra* note 39.

[47] *Jebsens Maritime, Inc. v. Undag*, *supra* note 322.

[48] G.R. No. 188637, 15 December 2010.

[49] G.R. No. 168862, 30 April 2008, 553 SCRA 520.

[50] *Id.*

the aforementioned benefits to respondent.[51] Given that there were ample grounds to deny her claims based on Section 20(A) of the POEA Contract and on the dearth of evidence of causality, the CA should have sustained the NLRC's denial of her claims for death benefits, minor child's allowance, and burial expenses.

In the course of resolving the propriety of awarding death benefits, minor child's allowance, and burial expenses under Section 20(A) of the POEA Contract, this Court inevitably finds that grave abuse of discretion also attended the NLRC's grant of medicine and hospitalization expenses and sickness allowance under Section 20(B) of the POEA Contract, moral damages, and attorney's fees to respondent. Specifically, we find that the labor court failed to establish in the first place that, during the term of his contract, Armando contracted an illness that was work related. Nevertheless, since its findings — albeit unsubstantiated — were no longer appealed, we no longer address the same.

WHEREFORE, the Court **PARTIALLY GRANTS** the Petition for Review on *Certiorari*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 104593 are hereby **AFFIRMED with MODIFICATION**, in that the imposition to respondent of death benefits, minor child's allowance and burial expenses under Section 20(A) of the POEA Contract in the total amount of USD 58,000 is **DELETED**. On the other hand, this Court **sustains** the grant to respondent by the National Labor Relations Commission in NLRC NCR CA NO. 049598-06 of the following amounts: PHP 47,144 as medicine and hospitalization expenses and USD 1,540 sickness allowance under Section 20(B) of the POEA Contract, PHP 500,000 as moral damages, and ten percent (10%) of the total judgment award as and for attorney's fees.

SO ORDERED.

Leonardo-de Castro, Bersamin, Mendoza,[*] and *Reyes, JJ.*, concur.

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[51] See *Magsaysay Maritime Corporation v. NLRC (Second Division)*, G.R. No. 186180, 22 March 2010, 616 SCRA 362.

[*] Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per Special Order No. 1502.

SECOND DIVISION

[G.R. No. 189125. August 28, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **BIENVENIDO CASTRO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657); DEPARTMENT OF AGRARIAN REFORM (DAR) ADMINISTRATIVE ORDER NO. 5, SERIES OF 1998; APPLICATION OF THE FORMULA PROVIDED THEREIN IN THE COMPUTATION OF JUST COMPENSATION FOR LANDS SUBJECT OF ACQUISITION WHETHER UNDER VOLUNTARY TO SELL OR COMPULSORY ACQUISITION IS MANDATED BY LAW.— The determination of compensation under such circumstances has been the subject of various decisions of this Court. We stated in *Land Bank of the Philippines v. Goduco*, referring to *Land Bank of the Philippines v. Barrido*; *Land of the Philippines v. Esther Rivera*; and *Land Bank of the Philippines v. DAR*: Pursuant to the rule-making power of DAR under Section 49 of Republic Act No. 6657, a formula was outlined in DAR Administrative Order No. 5, series of 1998 in computing just compensation for lands subject of acquisition whether under voluntary to sell (VOS) or compulsory acquisition (CA). x x x We stated in *Goduco* that the application of the formula is mandated by law. We said that the presence or absence of one or more factors in formula and the amounts that correspond to the factors are that which are determined by the SAC as the trier of facts. This is, in so many words, a re-statement of *Land Bank of the Philippines v. Celada* as mentioned in *Land Bank of the Philippines v. DAR*: While SAC 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 powers** under Section 49 of RA

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. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing basic formula by which the factors mentioned therein may be taken into account. **The SAC was at no liberty to disregard the formula which was devised to implement the said provision**. The complementary pronouncements that the formula is already a translation of the land valuation factors, such that the SAC is not at liberty to disregard the formula, had since been thereafter honored and followed.

2. ID.; ID.; ID.; ID.; THE DAR FORMULA, DETERMINED BY ADMINISTRATIVE EXPERTISE SERVES AS THE IMMEDIATE GUIDE FOR JUDICIAL DETERMINATION OF JUST COMPENSATION, THE EXACT APPLICATION BEING SUBJECT TO JUDICIAL DISCRETION.— We are reminded, however, of decisions that state a principle as vital as that which enjoins the SAC from disregarding the DAR formula: The determination of just compensation is a judicial function which cannot be unduly restricted, and of which the SAC cannot be deprived. x x x While apparently discordant, one rule but completes the other. The DAR formula, determined by administrative expertise serves as the immediate guide for judicial determination of just compensation, the exact application being subject to judicial discretion. x x x While the courts should be mindful of the different formula created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.

3. ID.; ID.; ID.; ID.; THERE WAS AN UNEXPLAINED DISREGARD FOR THE GUIDE ADMINISTRATIVE FORMULA, NEGLECTING SUCH FACTORS AS CAPITALIZED NET INCOME, COMPARABLE SALES AND MARKET VALUE PER TAX DECLARATION; NO INDICATION WAS MADE WHY THE ADMINISTRATIVE GUIDE AS REGARDS THE INTERPLAY OF SUCH FACTORS AS NET INCOME AND MARKET VALUE COULD NOT BE APPLIED.— There was in this case an unexplained disregard for the guide administrative formula, neglecting such factors as capitalized net income, comparable sales and market value per tax declaration. x x x While there

is a finding that the lot subject of the case was found to be cultivated and suitable for rice production, CNI or Capitalized Net Income was not factored in. Instead of comparable sales, the trial court used the value of lots "of the same condition." There was no explanation why only one factor was used as determinant of valuation. No indication why the administrative guide as regards the interplay of such factors as net income and market value could not be applied.

4. ID.; ID.; ID.; ID.; THE TRIAL COURT COMMITTED A PATENT MISTAKE WHEN IT PLACED THE VALUATION AT THE THEN PRESENT PRICES; THE PRINCIPLE OF VALUATION AT THE TIME OF TAKING IS THE SPECIFICALLY APPLICABLE VALUATION OF LAND ACQUIRED BY THE GOVERNMENT UNDER R.A. NO. 6657.— The trial court committed yet another patent mistake when it placed the valuation at the then present prices. It looked back at the year 2001 when the tax declarations it said covered Castro's land indicated the market value at ₱223,509.00. Then it perfunctorily took judicial notice "that the market value of land increases every year" and concluded as valuation "for Lot No. 2636, subject of Civil Case No. 1516, at ₱43,327.16 per hectare or a total of ₱404,632.35 for the entire 9.3390 hectares." x x x Fast and loose, the reasoning is, more significantly, against the settled rule that: The fundamental doctrine that private property cannot be taken for public use without just compensation requires that the owner shall receive the market value of his property at the time of the taking, unaffected by any subsequent change in the condition of the property. Our holding in the old case of *Provincial Government of Rizal v. Caro de Araullo,* citing American precedents, remains instructive. The principle of these decisions, which requires compensation for property taken for public use to be estimated with special reference to its value at the time of the appropriation or taking, is manifestly just to all concerned. By no other rule, in cases of condemnations for uses of great public interest and local benefit, could the valuation of property in the assessment of damages be so successfully guarded against the influence of enhanced values resulting specially from the enterprise. x x x **but in the case at bar the plaintiff appropriated the property with the consent of the landowners, and without the filing of any expropriation proceedings, in the expectation that the parties would be**

able to reach an agreement out of court as to the value of the property taken, and the condemnation proceedings were not filed until it was found much later that no such agreement could be reached as to part of the property. Under those circumstances the value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings. The principle of valuation at the time of taking is the specifically applicable valuation of land acquired by the government under RA No. 6657. In *Land Bank v. Livioco*, cited in *Goduco*, we said: Since Livioco's property was acquired under RA 6657 and will be valued under RA 6657, the question regarding the 'time of taking' should follow the general rule in expropriation cases where the "time of taking" is the time when the State took possession of the same and deprived the landowner of the use and enjoyment of his property.

5. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; THE AVERMENTS IN THE PETITION FOR PAYMENT, PARAGRAPH 7, AND THE EVIDENCE MADE PART OF THE PETITION WHICH IS THE TAX DECLARATION IN THE NAME OF THE REPUBLIC AMOUNT TO AN ADMISSION THAT THE CLAIM OR DEMAND SET FORTH IN RESPONDENT'S PETITION HAS BEEN PAID OR OTHERWISE EXTINGUISHED; SUCH ADMISSION IS CONCLUSIVE ON RESPONDENT.— Most significantly, the court below did not pay attention to the fact that the documented and accepted LBP payment for the property squares with the pertinent averment in the complaint that: 7. x x x upon acquisition of the land and tax declaration over which was transferred to the Republic of the Philippines, the Fair Market Value raised to ₱245,615.00, per TDN 99-16-012-00567 x x x The Tax Declaration evidencing "transfer to the Republic of the Philippines" attached to the petitions as Annex "C", declares that the owner is the Republic of the Philippines and that the administrator is Land Bank of the Philippines. This brings us to the reason why the rule on belated defenses cannot be the basis for deciding this case. The averments in the petition for payment, Paragraph 7, and the evidence made part of the petition which is the tax declaration in the name of the Republic amount to an admission that the claim or demand set forth in Castro's petition has been paid or otherwise extinguished. Such admission is conclusive on respondent. All contrary or inconsistent proof submitted by the party who made the

admission should be ignored. And they should be ignored whether the objection is interposed by the other party or not. These pronouncements are standing jurisprudence relied upon in *Alfelor and Alfelor v. Halasan and CA*, citing *Santiago v. De Los Santos* which traced the principles back to a 1912 decision, *Irlanda v. Pitargue*.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Gerardo M. Maglinte for respondent.

D E C I S I O N

PEREZ, *J.*:

Before us is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 01417-MIN which affirmed the Consolidated Decision[2] of the Regional Trial Court (RTC), Branch 27, Tandag, Surigao del Sur, sitting as a Special Agrarian Court (SAC) in Civil Case No. 1516.

First, the facts.

Respondent Bienvenido Castro (Castro) is the owner of an unregistered property identified as Lot No. 2636, Cad. 537-D, with an area of 9.3390 hectares located at *Barangay* Mahayag, San Miguel, Surigao Del Sur, under Tax Declaration No. B-16-12-237.

On 20 June 1994, Castro voluntarily offered to sell the property to the Department of Agrarian Reform (DAR) under Republic Act (RA) No. 6657 or the Comprehensive Agrarian Reform

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[1] *Rollo*, pp. 53-64; Penned by Associate Justice Mario V. Lopez with Associate Justices Romulo V. Borja and Elihu A. Ybañez concurring.

[2] *Id.* at 134-144; Penned by Presiding Judge Ermelindo G. Andal. The Consolidated Decision disposed of three cases covering different, albeit adjacent, properties for determination of just compensation. The other landowners and petitioners before the Regional Trial Court are Esperanza Esteban and Heirs of Eduardo Esteban.

Law. Castro's offered price is ₱60,000.00 per hectare or a total of ₱560,340.00 for the entire 9.3390 hectare lot.

The DAR, petitioner Land Bank of the Philippines (LBP), and the *Barangay* Agrarian Reform Council conducted an ocular inspection, classifying the lot as riceland and suitable for agriculture. Thereafter, the DAR, through the LBP, assessed the property at ₱15,441.25 per hectare or a total price of ₱144,205.90. Castro rejected it. Consequently, the DAR Adjudication Board (DARAB), in DARAB Case No. LVC-XIII-232, conducted a summary administrative proceeding to fix just compensation for the subject property. At the preliminary conference, Castro alleged that LBP's valuation did not constitute fair and just compensation.

On 9 March 2000, the DARAB issued an Order directing LBP to conduct another inspection and to reassess Castro's property. LBP complied, but still reached the same valuation at ₱144,205.90.

Two years later, in 2002, Castro insisted on a higher valuation through a petition to fix just compensation before the RTC, Branch 27, Tandag, Surigao del Sur, sitting as a SAC, docketed as Civil Case No. 1516. In his petition, Castro alleged the following:

> 5. x x x DAR and LBP valued the land only at an aggregate amount of One hundred forty four thousand two hundred five pesos and 90/100 (₱144,205.90), for the entire **9.3390 has.**, or, an equivalent of **₱15,441.25** per hectare, per Claim Folder Profile and Valuation Summary x x x.
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> 6. The valuation made by [DAR and LBP] was unconscionably low and totally unacceptable to [Castro] considering that the said valuation of **₱15,441.25** per hectare or **₱1.54** per sq. m. was not even enough for the cost of the improvements introduced by [Castro].
>
> 7. Proof that the price of the land is of much higher value even based on the standards of DAR and LBP is that during the offer the market value of the land per Assessor's Finding was ₱54,910.00, per TDN B-16-12-237, marked as Annex – "A"; and upon acquisition of the land and tax declaration over which was transferred to the

Republic of the Philippines, the Fair Market Value raised to ₱245,615.00, per TDN 99-16-012-00567, marked as Annex – "C".[3]

In refutation, LBP answered that it had valued the property following the valuation guidelines issued by the DAR which are based on the productivity of the land at the time of the first ocular inspection. LBP asserted that it correctly appraised Castro's property in accordance with RA No. 6657 and applicable DAR Administrative Orders. LBP's main defense was that the case should be dismissed since the DARAB Decision on the amount of just compensation for the subject property was not timely elevated to the SAC within the 15-day reglementary period. Thus, the DARAB Decision had attained finality and constituted a bar to the filing of the case.

Nevertheless, the SAC set the case for pre-trial. Since LBP and Castro had declared in their respective pre-trial briefs that they were willing to enter into a settlement, with LBP specifically stating that it "may take a second look at its valuation [of the subject property] subject first to the resolution[4] of x x x whether the case was filed beyond the fifteen-day period from [Castro's] receipt of the [DARAB's] decision/order,"[5] the SAC gave the parties time to consider the possibility of amicably settling the case.

On 11 November 2003, the SAC issued an Order[6] noting the parties' agreement to conduct another ocular inspection of the subject property for possible revaluation thereof. Pre-trial of the case was reset to 9 December 2003.

Thereafter, on 9 December 2003,[7] the SAC ordered another re-setting of pre-trial because the parties had yet to repair, conduct an ocular inspection and revaluate the subject property. The delay was due to the frequent unavailability of LBP's

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[3] Records, p. 4.

[4] *Id.* at 111.

[5] *Id.*

[6] *Id.* at 134-135.

[7] *Id.* at 141-142.

representative. Consequently, pre-trial of the case was reset anew to 18 February 2004.

On 13 August 2004, the Commissioners submitted the following report, in pertinent part:

> In [the] matter [of] Case No. x x x 1516[,] the designated [C]hairman of [the B]oard of Commissioner[,] the Municipal Assessor set a meeting with [Castro] and their representative on July 21, 2004.
>
> They have agreed to conduct ocular inspection and re-appraisal on July 23, 2004 at 8:00 a.m., but due to unavoidable circumstances, they agreed to re-schedule on July 27, 2004 8:00 a.m., x x x.
>
> x x x x x x x x x
>
> [C]ase No. 1516, Lot No. 2636 Cad 537-D, owned by Bienvenido Castro is partially develop (*sic*) planted to rice and some area have palay harvested (*sic*), the other portion still remain idle not planted, the area planted to rice is 6.42 hectares, more or less, and the area not cultivated remain idle 3.9190 hectares, more or less, brush land.
>
> x x x x x x x x x
>
> Hence, the area is suitable for production of palay (*sic*) the commission have agreed that the price of adjacent lot of Jacinto Esteban value by Land Bank of the Philippines is recommended at ₱43,377.00/hectare to the value the parcel of land under case no. 1514 Lot No. 2493 Cad 537-D owned by Esperanza Esteban, unirrigated Riceland case no. 1516 Lot No. 2636 Cad 537-D owned by Bienvenido Castro, unirrigated Riceland (*sic*).
>
> x x x x x x x x x
>
> Hoping that this commission report shall be given due consideration, x x x.[8]

On 30 November 2004, the SAC received the report.[9]

Forthwith, the SAC issued an Omnibus Order dated 6 December 2004:

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[8] *Id.* at 180-181.

[9] *Id.* at 202.

Record shows that the Board of Commissioners, with the Municipal Assessor of San Miguel, Surigao del Sur, Mr. Godofredo Bago-od as Chairman and with Jerry R. Villason representing DAR and Land Bank of the Philippines and Saturnina R. Gaila representing [Castro and the other landowners], submitted a Consolidated Report. Upon oral motion in open Court[,] [LBP's] counsel, Atty. Felix Mesa, is allowed a period of fifteen days from today within which to comment on the report. Failing thereto, the Court will consider the Report submitted for resolution. The parties will be notified of further proceedings in [these] Cases later.[10]

As of 7 June 2005, the SAC had issued another series of omnibus orders: approving the Consolidated Report, deeming LBP to have waived its opportunity to Comment thereon, and considering the case submitted for resolution.[11]

Relying heavily on the Commissioners' and Supplemental Reports, the SAC rendered a Consolidated Decision[12] fixing the just compensation of Castro's property at ₱43,327.16 per hectare or a total of ₱404,632.35 for the entire 9.3390 hectares. The SAC ratiocinated, thus:

x x x In contrast, Lot No. 2636, subject of Civil Case No. 1516, was also found to be cultivated and suitable for rice production, although not irrigated. Using the adjacent Lot No. 2641 of Jacinto Esteban and adjacent Lot No. 2667 of Julieta Masibay, which were respectively valued by x x x LBP at ₱43,327.16 per hectare and ₱18,427.50 per hectare as references, and finding that Lot Nos. 2493 and 2636 were of the same condition as Lot No. 2641 of Jacinto Esteban, while Lot No. 2665 was of the same condition as Lot No. 2667 of Julieta Masibay, the Commissioners made the above recommendations as to valuations. To repeat, Lot Nos. 2493 and 2636 were recommended to be valued at ₱43,327.16 per hectare, while Lot No. 2665 was recommended to be valued at ₱18,427.50 per hectare.

The Court notes that the Tax Declarations in the name of [Castro and the other landowners] had been cancelled and new tax declarations

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[10] *Id.* at 208-209.

[11] *Id.* at 225-226 and 236.

[12] CA *rollo,* pp. 49-53.

in the name of the Republic of the Philippines issued[,] with x x x LBP as Administrators of the Lots. x x x, and Lot No. 2636, covered by Tax Declaration No. 00567 since the year 2001, had a market value, determined as of that year, of ₱223,509.00. It is a matter of judicial notice that the market value of lands increases every year, that is why, periodically, normally every after (*sic*) three (3) years, the Municipal Assessor makes new assessments of real properties and revises and cancels existing tax declarations and issues revised tax declarations. Accordingly, the Court holds that the respective valuations recommended by the Court Commissioners for subject Lots are fair, reasonable and just under the circumstances.

WHEREFORE, judgment is hereby rendered in favor of [Castro and the landowners and against DAR and LBP], determining and fixing the just compensations for [Castro's and the other landowners'] properties, as follows:

x x x x x x x x x

For Lot No. 2636, subject of Civil Case No. 1516, at ₱43,327.16 per hectare or a total of ₱404,632.35 for the entire 9.3390 hectares.

x x x LBP is ordered to pay [Castro and the other landowners], within fifteen (15) days from finality of this Decision, the aforesaid amounts, the mode of payments of which shall be in accordance with the provisions of Section 18, Chapter VI of R.A. 6657.[13]

Aggrieved, LBP filed a motion for reconsideration of the SAC's decision, asserting that Castro had already accepted LBP's valuation of the subject property at ₱144,205.90 as shown in three documents Castro had signed: two Reply to Notice of Land Valuation and Acquisition dated 18 September 1997 and 13 March 2001, respectively; and the Deed of Confirmation of Transfer Executed by the Landowner dated 5 March 2001. LBP likewise assailed the Commissioners' Report, contending that at the time LBP initially inspected the subject property in 1994, only two hectares were unirrigated riceland while the remaining 7.3390 hectares were forest land, in contrast to the Commissioners' findings based on the Ocular Inspection conducted a decade thereafter in 2004.

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

The SAC was unmoved by LBP's plea for reconsideration and did not reconsider its decision, to wit:

> There is no merit in the instant Motion for Reconsideration. On the claim that [Castro] allegedly agreed to the initial valuation of subject property by [LBP and DAR] as, in fact, in "Landowner's Reply to Notice of Land Valuation and Acquisition, dated September 18, 1997 and March 13, 2001" he "categorically and repeatedly accept(ed) the value being offered by the government to his property in the amount of ONE HUNDRED FORTY FOUR THOUSAND TWO HUNDRED FIVE and 90/100 (₱144,205.90)," [Castro] correctly pointed out that said defense or objection was not alleged in the Answer. Neither was it alleged as a ground of the Motion to Dismiss. [LBP] participated in the proceedings without raising said defense or objection, and invoked it for the first in the instant Motion for Reconsideration. The rule is that "(d)efenses and objection not pleaded in the motion to dismiss or in the answer are deemed waived" x x x. The above defense or objection is not one of the recognized exceptions to the rule enumerated in the said Section.
>
> [LBP] should not fault the Court for considering the Commissioners' Report in fixing the just compensation of subject property. Firstly, [LBP] did not object to the appointment of Court Commissioners as, in fact, it was represented, together with x x x DAR, by Commissioner [J]erry Villason. Secondly, [LBP] did not object to the Commissioners' unanimous Report on the valuation of the subject property. Thirdly, the Commissioners' Report was found by the Court to have considered the factors/criteria provided in Section 17, Chapter VI of R.A. No. 6657, the "Comprehensive Agrarian Reform Law of 1988."
>
> WHEREFORE, for lack of merit the instant Motion for Reconsideration is denied.[14]

On appeal, the Court of Appeals completely agreed with the SAC that LBP was already estopped from raising the defense that Castro has accepted the assessed amount of ₱144,205.90 for the subject property. The appellate court surmised that:

> x x x [P]erhaps LBP was aware of the existence of the contract of sale, but in its desire to obtain a lesser price for the acquisition of

[14] *Id.* at 58-59.

the land, LBP gambled and decided not to raise the defense that Castro already sold the property to the Government but instead, allowed the trial court to proceed with the determination of the just compensation hoping the court will fix a lesser price for the land. After failing to achieve a favorable verdict, LBP casually invoked the existence of the Deed of Confirmation of Transfer and belatedly moved to dismiss the case in its motion for reconsideration. Clearly, LBP is already estopped from invoking a stale defense.[15]

On LBP's argument that the SAC gravely erred in fixing just compensation contrary to the factors set forth in Section 17 of RA No. 6657 as translated into a basic formula in DAR Administrative Order No. 5, Series of 1998, the appellate court again did not side with LBP, ruling that the "x x x formula set in DAR Administrative Order No. 5, Series of 1998 is not a strictly-calibrated standard which obliges the Court to apply in disregard of its judicial discretion x x x; [it] does not and cannot strictly bind the courts which may proceed to make [its] own computation based on the extended list in Section 17 of Republic Act No. 6657."[16]

LBP now appeals by *certiorari* to this Court on the following assigned errors:

A

WHEN IT FAILED TO SUSTAIN THE NATIONAL GOVERNMENT'S SUBSTANTIVE RIGHT TO AVAIL OF THE DEFENSE THAT THE RESPONDENT IS ALREADY ESTOPPED FROM QUESTIONING THE VALUATION OF THE PROPERTY WITH HIS AGREEMENT THERETO AS EVIDENCED BY THE DEED OF CONFIRMATION OF TRANSFER DATED MARCH 5, 2001.

B

WHEN IT FAILED TO USE THE FACTORS PRESCRIBED IN SECTION 17 OF R.A. NO. 6657, AS IMPLEMENTED BY DAR A.O. NO. 5, SERIES OF 1998, WHICH ARE MANDATORY IN NATURE, IN DETERMINING THE JUST COMPENSATION FOR SUBJECT PROPERTY.[17]

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[15] *Id.* at 179-180.

[16] *Id.* at 181-182.

[17] *Id.* at 232-233.

We need to scrape off the procedural lamina to reach the basic issue that it coated: the correctness of the valuation by the courts below of the property of Castro which he offered to sell to the DAR. Vital to the resolution of the issue is the fact stated by Castro in his petition below that "on June 20, 1994, [he] voluntarily offered to sell (VOS) the above described land to the Department of Agrarian Reform (DAR)"[18] such that his petition was precisely captioned "In the Matter of Judicial Determination of Just Compensation of Land Sold Under the Voluntary Offer to Sell (VOS) Under RA 6657, Identified as Lot No. 2636, CAD. 537-D, with an area of 9.3390 Has. located at Brgy. Mahayag, San Miguel, Surigao del Sur."[19] The petition is a prayer for just compensation, under RA No. 6657, of a parcel of land taken when offered in 1994. The determination of compensation under such circumstances has been the subject of various decisions of this Court. We stated in *Land Bank of the Philippines v. Goduco*,[20] referring to *Land Bank of the Philippines v. Barrido*;[21] *Land of the Philippines v. Esther Rivera*;[22] and *Land Bank of the Philippines v. DAR*:[23]

> Pursuant to the rule-making power of DAR under Section 49 of Republic Act No. 6657, a formula was outlined in DAR Administrative Order No. 5, series of 1998 in computing just compensation[24] for lands subject of acquisition whether under voluntary to sell (VOS) or compulsory acquisition (CA)[25] to wit:

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[18] Records, p. 3.

[19] *Id.* at 2.

[20] G.R. No. 181327, 27 June 2012, 675 SCRA 187.

[21] G.R. No. 183688, 18 August 2010, 628 SCRA 454.

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

[23] G.R. No. 171840, 4 April 2011, 647 SCRA 152.

[24] *Land Bank of the Philippines v. Soriano*, G.R. Nos. 180772 and 180776, 6 May 2010, 620 SCRA 347, 353.

[25] Administrative Order No. 05, Series of 1998 entitled "Revised Rules and Regulations Governing the Valuation of Lands Voluntarily or Compulsory Acquired Pursuant to R.A. No. 6657."

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

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

The above formula shall be used if all three factors are present, relevant and applicable.

A1. 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)

A2. 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)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of the land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.[26]

We stated in *Goduco* that the application of the formula is mandated by law. We said that the presence or absence of one or more factors in formula and the amounts that correspond to the factors are that which are determined by the SAC as the trier of facts.[27] This is, in so many words, a re-statement of *Land Bank of the Philippines v. Celada*[28] as mentioned in *Land Bank of the Philippines v. DAR*:[29]

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[26] *Land Bank of the Philippines v. Goduco, supra* note 20 at 201-202.

[27] *Id.* at 202.

[28] 515 Phil. 467 (2006).

[29] *Land Bank of the Philippines v. DAR, supra* note 23 at 162.

While SAC 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 powers** under Section 49 of RA 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. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing basic formula by which the factors mentioned therein may be taken into account. **The SAC was at no liberty to disregard the formula which was devised to implement the said provision**. (Emphasis theirs)

The complementary pronouncements that the formula is already a translation of the land valuation factors, such that the SAC is not at liberty to disregard the formula, had since been thereafter honored and followed. We are reminded, however, of decisions that state a principle as vital as that which enjoins the SAC from disregarding the DAR formula: The determination of just compensation is a judicial function which cannot be unduly restricted, and of which the SAC cannot be deprived. In *LBP v. Heirs of Maximo Puyat*,[30] we said:

Land Bank maintains that, assuming *arguendo* that RA 6657 is the applicable law, the trial and appellate courts wantonly disregard the basic valuation formula in DAR AO No. 5, series of 1998, which implements Section 17 of RA 6657. It insists that courts are not at liberty to dispense of these formulations at will. Land Bank thus asks that the case be remanded to the trial court for a proper determination of the just compensation in accordance with DAR AO No. 5, series of 1998.

We disagree. The trial and appellate courts arrived at the just compensation with due consideration for the factors provided in Section 17 of RA 6657 (prior to its amendment by RA 9700). They

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[30] G.R. No. 175055, 27 June 2012, 675 SCRA 233, 250 citing *Land Bank of the Philippines v. Chico*, G.R. No. 168453, 13 March 2009, 581 SCRA 226, 243; *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, 19 December 2007, 541 SCRA 117, 131-132.

took into account the nature of the property, its actual use or the crops planted thereon, the volume of its produce, and its value according to government assessors. As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. x x x.

While apparently discordant, one rule but completes the other. The DAR formula, determined by administrative expertise serves as the immediate guide for judicial determination of just compensation, the exact application being subject to judicial discretion. We thus repeat the proper appreciation of the rulings:

> While the courts should be mindful of the different formula created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.[31]

There was in this case an unexplained disregard for the guide administrative formula, neglecting such factors as capitalized net income, comparable sales and market value per tax declaration. Thus:

> The Commissioners found Lot No. 2493, subject of Civil Case No. 1514 to be suitable for rice production. At the time of the ocular inspection they found that about 5 hectares of the entire unirrigated area was planted with palay and about 1 hectare was idle. They found Lot No. 2665, subject of Civil Case No. 1515, although suitable for rice production, was not planted with palay at the time and remained idle. In contrast, Lot No. 2636, subject of Civil Case No. 1516, was also found to be cultivated and suitable for rice production, although not irrigated. Using the adjacent Lot No. 2661 of Jacinto Esteban and adjacent Lot No. 2667 of Julieta Masibay, which were respectively valued by respondent LBP at ₱43,327.16 per hectare and ₱18,427.50 per hectare as references, and finding that Lot Nos. 2493 and 2636 were of the same condition as Lot No. 2641 of Jacinto Esteban, while Lot No. 2665 was of the same condition as Lot No. 2667 of Julieta Masibay, the Commissioners

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[31] *Id.*

made the above recommendations as to valuations. To repeat, Lot Nos. 2493 and 2636 were recommended to be valued at ₱43,327.16 per hectare, while Lot No. 2665 was recommended to be valued at ₱18,427.50 per hectare.[32]

While there is a finding that the lot subject of the case was found to be cultivated and suitable for rice production, CNI or Capitalized Net Income was not factored in. Instead of comparable sales, the trial court used the value of lots "of the same condition." There was no explanation why only one factor was used as determinant of valuation. No indication why the administrative guide as regards the interplay of such factors as net income and market value could not be applied.

The trial court committed yet another patent mistake when it placed the valuation at the then present prices. It looked back at the year 2001 when the tax declarations it said covered Castro's land indicated the market value at ₱223,509.00. Then it perfunctorily took judicial notice "that the market value of land increases every year" and concluded as valuation "for Lot No. 2636, subject of Civil Case No. 1516, at ₱43,327.16 per hectare or a total of ₱404,632.35 for the entire 9.3390 hectares."[33] Thus:

> The Court notes that the Tax Declarations in the name of the petitioner's had been cancelled and new [T]ax [D]eclarations in the name of the Republic of the Philippines issued with respondent LBP as Administrators of the Lots. Lot No. 2493, covered by Tax Declaration No. 00539 since 1999, had a market value, determined as of that year, of ₱147,985.00, Lot No. 2665, covered by Tax Declaration No. 00558, since the year 2000, had a market value, determined as of that year, of ₱218,512.00, and Lot No. 2636, covered by Tax Declaration No. 00567 since the year 2001, had a market value, determined as of that year, of ₱223,509.00. It is a matter of judicial notice that the market value of lands increases every year, that is why, periodically, normally every after three (3) years, the Municipal Assessor makes new assessments of real properties and revises and cancels existing tax declarations and issues revised tax declarations. Accordingly, the Court holds that the respective

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[32] *Rollo*, p. 137.

[33] *Id.* at 138.

valuations recommended by the Court Commissioners for subject Lots arefair, reasonable and just under the circumstances.[34]

Fast and loose, the reasoning is, more significantly, against the settled rule that:

> The fundamental doctrine that private property cannot be taken for public use without just compensation requires that the owner shall receive the market value of his property at the time of the taking, unaffected by any subsequent change in the condition of the property.[35]

Our holding in the old case of *Provincial Government of Rizal v. Caro de Araullo*,[36] citing American precedents, remains instructive.

> The principle of these decisions, which requires compensation for property taken for public use to be estimated with special reference to its value at the time of the appropriation or taking, is manifestly just to all concerned. By no other rule, in cases of condemnations for uses of great public interest and local benefit, could the valuation of property in the assessment of damages be so successfully guarded against the influence of enhanced values resulting specially from the enterprise.
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> x x x **but in the case at bar the plaintiff appropriated the property with the consent of the landowners, and without the filing of any expropriation proceedings, in the expectation that the parties would be able to reach an agreement out of court as to the value of the property taken, and the condemnation proceedings were not filed until it was found much later that no such agreement could be reached as to part of the property. Under those circumstances the value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings.** (Emphasis supplied)

The principle of valuation at the time of taking is the specifically applicable valuation of land acquired by the government under

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[34] *Id.* at 137-138.

[35] *Provincial Government of Rizal v. Caro de Araullo*, 58 Phil. 309, 316 (1933).

[36] *Id.* at 316-317.

RA No. 6657. In *Land Bank v. Livioco*,[37] cited in *Goduco*, we said:

> Since Livioco's property was acquired under RA 6657 and will be valued under RA 6657, the question regarding the 'time of taking' should follow the general rule in expropriation cases where the "time of taking" is the time when the State took possession of the same and deprived the landowner of the use and enjoyment of his property.[38]

The clear substantive flaw of the appealed decisions must result in the reversibleness of the judgment which as such should be set aside. The clarity of error in valuation cannot be swept aside by reference to the procedural principle that defenses not raised in a motion to dismiss or alleged as an affirmative defense are considered waived. That defense referred to the acceptance by Castro of the government offered price of ₱144,205.90 as evidenced by the Landowner's Reply to Notice of Land Valuation and Execution dated 18 September 1997 and 23 March 2001; the Request to Pay addressed to LBP by the PARO; and the Deed of Confirmation of Transfer executed by herein respondent. Thus, in its motion for reconsideration of the decision of the SAC, petitioner submitted:

ARGUMENTS AND DISCUSSIONS

1.01 WITH THE COURT'S INDULGENCE, Defendant LBP hereby manifests and presents before this Honorable Court the Landowner's Reply to Notice of Land Valuation and Acquisition dated September 18, 1997 and March 13, 2001, attached as *Annexes "A"* and *"B"* wherein the landowner Bienvenido Castro has **categorically** and **repeatedly accept** the value being offered by the government to his property in the amount of **ONE HUNDRED FORTY FOUR THOUSAND AND TWO HUNDRED FIVE AND 90/100 (₱144,205.90).**

1.02 Furthermore, the acceptance of the landowner of the offered price by the government amounting to ₱144,205.90 was also confirmed when Marino M. Gayramon, Provincial Agrarian Reform Officer

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[37] G.R. No. 170685, 22 September 2010, 631 SCRA 86.

[38] *Land Bank of the Philippines v. Goduco*, *supra* note 20 at 204.

(PARO) has requested the defendant LBP to deposit the compensation proceeds in cash and in bonds, prepare the Deed of Transfer and pay the landowner in lieu of the latter's acceptance of the price as per valuation by LBP of the subject land, improvements and facilities thereon. The said Request to Pay dated September 18, 1997 signed by the PARO is herewith attached as *Annex "C."*

1.03 Also, to further buttress the acceptance of the landowner of the offered price of the government on his 9.3390 hectares property in the amount of P144,205.90, defendant LBP hereby introduce to the court *a quo* the Deed of Confirmation of Transfer executed by the petitioner **Bienvenido Castro**, the transferor, indicating therein that the latter **had accepted** the valuation of **One Hundred Forty Four Thousand Two Hundred Five and 90/100 (₱144,205.90**) as the **TOTAL** and **JUST COMPENSATION for the area of 9.3390 hectares** previously covered by Title No. OCT/TCT Lot 2636 Cad 537-D subjected to the Comprehensive Agrarian Reform Program (CARP). The Deed is attached **herewith as *Annex "D"*** to declare the authenticity of the defendant's position and to establish the fact that the landowner is already in **estoppel** in asking for a new valuation for his property in view of this *repeated acceptance* of the landowner of the offered price by the government for his property.

1.04 **Based on the foregoing, the defendant LBP would like to ask the court *a quo* for a reconsideration on the latter's October 18, 2005 Decision.**[39]

The trial court ruled in its denial of LBP's motion that the defense or objection is not one of the recognized exceptions to the rule on waiver of defenses not pleaded in the answer of motion to dismiss. On appeal, LBP repleaded the fact of payment and argued that Castro is already estopped from questioning the land valuation of the DAR. The Court of Appeals, iterating the trial court, ruled that the failure to raise the defense of consummated sale is a "procedural infirmity which cannot be cured on appeal."[40] The Court of Appeals ignored the fact that the objection was raised in the motion for reconsideration which was duly litigated below and proceeded to say that the defense

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[39] *Rollo*, pp. 148-149.

[40] *Id.* at 59.

was not pleaded during trial so that it cannot be considered on appeal. It ignored Castro's acceptance of the valuation by the DAR in the amount of ₱144,205.90, the payment by LBP to Castro of the determined price of ₱144,205.90, and the receipt of the payment which Castro confirmed. These facts were all documented and, more importantly, all unrebutted by respondent.

Most significantly, the court below did not pay attention to the fact that the documented and accepted LBP payment for the property squares with the pertinent averment in the complaint that:

> 7. x x x upon acquisition of the land and tax declaration over which was transferred to the Republic of the Philippines, the Fair Market Value raised to ₱245,615.00, per TDN 99-16-012-00567 x x x[41]

The Tax Declaration evidencing "transfer to the Republic of the Philippines" attached to the petitions as Annex "C", declares that the owner is the Republic of the Philippines and that the administrator is Land Bank of the Philippines.[42]

This brings us to the reason why the rule on belated defenses cannot be the basis for deciding this case.

The averments in the petition for payment, Paragraph 7, and the evidence made part of the petition which is the tax declaration in the name of the Republic amount to an admission that the claim or demand set forth in Castro's petition has been paid or otherwise extinguished. Such admission is conclusive on respondent. All contrary or inconsistent proof submitted by the party who made the admission should be ignored. And they should be ignored whether the objection is interposed by the other party or not. These pronouncements are standing jurisprudence relied upon in *Alfelor and Alfelor v. Halasan and CA*,[43] citing

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[41] *Id.* at 192.

[42] *Id.* at 201.

[43] 520 Phil. 982, 989 (2006).

Santiago v. De Los Santos[44] which traced the principles back to a 1912 decision, *Irlanda v. Pitargue*.[45]

Santiago is a case where, like the case at hand, the dismissal of the action was based on the judicial admission embodied in the very allegations in the complaint. *Santiago* is a land registration case involving a property claimed as publicly and uninterruptedly possessed since 26 July 1894. However, the pleadings alleged that the parcel of land subject of registration was part of public forest released by the Secretary of Agriculture and Natural Resources by an Order dated 10 August 1961.

We clearly pronounced in *Santiago* that what was so categorically set forth in the pleading which is that the land is part of a public forest is conclusive and binding on the pleader. Therefrom we declared as principle that since the statement in the pleading is conclusive on the pleader, it is unaffected by any contrary proof submitted by the pleader, whether or not objection is interposed by any party. As finale on the issue, we said:

> Even if there had been a full hearing on the case, therefore, the result would not have been any different. There was no choice then for the lower court, except to dismiss the complaint.[46]

The principles in *Santiago*, derived from repeated prior rulings and forwarded to later cases, cover and apply to the present case. The solemn declaration in Castro's pleading is that the Republic is the owner of the land the compensation for which he seeks. The ownership is proved by the tax declaration made part of the pleading naming the Republic as such owner. The judicial admission that Castro no longer owns the property cannot be controverted by Castro as it is conclusive as to him. The proceedings, including the appointment of commissioners who inspected and priced the property for the purpose of compensating

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[44] 158 Phil. 809 (1974).

[45] 22 Phil. 383 (1912).

[46] *Santiago v. De Los Santos*, *supra* note 42 at 814.

Castro, which is inconsistent with ownership by the Republic, should be ignored. The full hearing in the case cannot overcome the fact of government ownership as admitted in the complaint.

The payment by LBP for the property and its transfer to the Republic was fully discussed and submitted before the trial court through LBP's motion for reconsideration. The trial and appellate courts, however, incorrectly viewed the motion as a belated and procedurally unacceptable defense rather than, as it should be, a reminder to the Court about the fact, conclusive on Castro as pleader, of transfer of ownership to the Republic.

WHEREFORE, the Decision of the Court of Appeals affirming the judgment of the trial court is **REVERSED** and **SET ASIDE** and the petition of respondent for judicial determination of just compensation is ordered **DISMISSED.**

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191071. August 28, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIA JARDINEL PEPINO-CONSULTA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; TRIAL COURT'S FINDINGS OF FACT, ESPECIALLY WHEN

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[*] Per Special Order No. 1525 dated 22 August 2013.

AFFIRMED BY THE COURT OF APPEALS ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL.— The Court stated in *People v. Kamad* that "[a]s a general rule, the trial court's findings of fact, especially when affirmed by the [Court of Appeals], are entitled to great weight and will not be disturbed on appeal. This rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied." As will be hereinafter discussed, the above exception holds true in the present case.

2. ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED DOES NOT APPLY DUE TO THE LAPSES COMMITTED IN THE SEIZURE AND HANDLING OF THE ALLEGEDLY SEIZED *SHABU*; CASE AT BAR.— As regards the presumption of regularity in the performance of official duty that the RTC and the Court of Appeals heavily relied upon, we clarified in *People v. Cañete* that: "[W]hile the Court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself constitute proof of guilt beyond reasonable doubt." The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because "First, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, x x x [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt." x x x. In this case, the above presumption was undoubtedly overcome by evidence that the police officers who conducted the buy-bust operation committed lapses in the seizure and handling of the allegedly seized plastic sachets of *shabu*. x x x The Court cannot emphasize enough that zealousness on the part of law enforcement agencies in the pursuit of drug peddlers is indeed laudable. However, it is of paramount importance that the procedures laid down by law be complied with, especially those that involve the chain of custody of the illegal drugs. This is necessary in order to

dispel even the most infinitesimal of doubts on the outcome of arrests and buy-bust operations, so as not to render naught the efforts and the resources put forth in the apprehension and prosecution of violators of our drug laws.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF *SHABU*; ESSENTIAL ELEMENTS THAT MUST BE ESTABLISHED.— We held in *People v. Hernandez* that "[t]o secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof." Furthermore, we explained in *People v. Denoman* that: A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

4. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; NOT COMPLIED WITH IN CASE AT BAR.— The Court also cautioned in *People v. Roble* that "[w]hile a buy-bust operation is legal and has been proved to be an effective method of apprehending drug peddlers, due regard to constitutional and legal safeguards must be undertaken. It is the duty of the Courts to ascertain if the operation was subject to any police abuse." Section 21, paragraph 1, Article II of Republic Act No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 provide the procedural guidelines that police officers must observe in the handling of seized

illegal drugs in order to ensure the preservation of the identity and integrity thereof. x x x In the present case, the above-mentioned procedures were not observed at all by the police officers. Both PO2 Dizon and PO3 Tiongco clearly and categorically admitted during their respective cross-examinations that the five sachets of suspected *shabu* allegedly obtained from the buy-bust operation were not physically inventoried nor photographed in the presence of accused-appellant or her counsel, a representative from the media and the DOJ, and an elective official. In fact, they stated that the buy-bust operation was actually conducted without the presence of the said representatives. Although Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 contains a proviso in the last sentence thereof that may excuse the non-compliance with the required procedures, the same may be availed of only under justifiable grounds and as long as the integrity and evidentiary value of the seized items were properly preserved by the apprehending police officers.

5. ID.; ID.; ID.; ID.; THE CHAIN OF CUSTODY OF THE SEIZED ILLEGAL DRUGS WAS BROKEN EVEN AT THE VERY FIRST LINK THEREOF.— [W]e find that the integrity and evidentiary value of the illegal drugs seized were not shown to have been preserved. Contrarily, the records of the case bear out the glaring fact that the chain of custody of the seized illegal drugs was broken even at the very first link thereof. To recall, the testimonial evidence of the prosecution established that the poseur-buyer in the buy-bust operation was the confidential informant who tipped the police about the drug peddling activities of accused-appellant. Thus, it was the poseur-buyer who supposedly received the suspected illegal drugs from accused-appellant, which allegedly consisted of five plastic sachets of *shabu*. PO2 Dizon and PO3 Tiongco did not participate at all in this transaction. They merely witnessed the exchange while they were seated inside a vehicle parked across the road eight to ten meters away from where accused-appellant and the poseur-buyer were situated. Even more damning was PO2 Dizon's admission that he did not in fact see the item(s) handed by accused-appellant to the poseur-buyer. x x x Clearly, PO2 Dizon was not in a position to say whether the objects handed by accused-appellant to the poseur-buyer were in fact sachets of illegal drugs. Equally vague was the actual number thereof,

i.e., if in fact five sachets were handed to the poseur-buyer, not four or three or any other number. PO3 Tiongco's testimony was also silent on this aspect. The police officers had no personal knowledge whether the alleged transaction between accused-appellant and the poseur-buyer indeed involved illegal drugs. Moreover, the suspected drugs subject of the sale were left for some time in the custody of the informant. PO3 Tiongco testified that while they were arresting accused-appellant, the informant distanced himself from them. The police officers first boarded accused-appellant into their vehicle that was parked on the other side of the road and it was only after that that PO3 Tiongco went back to the informant to retrieve the plastic sachets. Thus, from the time accused-appellant was arrested until the plastic sachets were retrieved by PO3 Tiongco, the suspected drugs were unaccounted for. That the informant may have tampered with, contaminated, substituted, added to or pilfered a portion of the plastic sachets are distinct possibilities that could not be ruled out. Undoubtedly, only the informant who acted as the poseur-buyer could possibly state for certain that accused-appellant indeed handed to him five sachets of suspected *shabu*. Unfortunately, the informant was not presented in court to testify on this matter.

6. ID.; ID.; ID.; THE BREAKS IN THE CHAIN OF CUSTODY GO INTO THE VERY ELEMENTS OF THE CRIME OF ILLEGAL SALE OF DRUGS, SPECIFICALLY, THE ELEMENTS OF IDENTITY OF THE OBJECT OF THE ILLEGAL SALE OF DRUGS AND THE DELIVERY OF THE THING SOLD.— Nevertheless, granting for the sake of argument that there were indeed five sachets of suspected *shabu* sold to the poseur-buyer, there were still more broken links in the chain of custody. x x x In this case, one broken link was that of the turnover of the seized items from the buy-bust team to the police investigator, SPO1 Doria. PO2 Dizon testified that after he placed the marking on the five sachets of suspected *shabu*, he turned them over to SPO1 Doria and the specimens were submitted to the crime laboratory for examination. However, SPO1 Doria did not testify before the trial court so as to shed light on this matter. The Court finds this unfortunate as the prosecution even chose to dispense with his testimony. Still another broken link was that involving the transfer of the drug specimens from SPO1 Doria to the crime laboratory. P/Sr. Insp. Perez testified that the request

for laboratory examination and drug specimens were first received by PO2 Bagaoisan, the Duty Desk Officer. The latter then called her to physically receive the same. However, P/Sr. Insp. Perez stated that she did not actually see if it was SPO1 Doria who transmitted the specimens. She merely relied on the stamp of PO2 Bagaoisan. Furthermore, PO2 Bagaoisan was not presented in court to prove that it was indeed SPO1 Doria who delivered the drug specimens to the crime laboratory. In view of the evident breaks in the chain of custody, very serious doubts arise as to the identity of the seized illegal drugs in this case. Apparently, there can be no absolute certainty if the sachets of *shabu* seized from the informant were the very same drugs handed by accused-appellant, or, later on, the same drugs transmitted to the crime laboratory and eventually presented before the trial court. These breaks in the chain of custody go into the very elements of the crime of illegal sale of drugs that was charged against accused-appellant. Specifically, the elements of the identity of the object of the illegal sale of drugs and the delivery of the thing sold were not proven in this case beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The appeal before this Court seeks to challenge the Decision[1] dated November 19, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02867. The appellate court affirmed the Decision[2] dated May 8, 2007 of the Regional Trial Court (RTC) of the City of San Fernando, Pampanga in Criminal Case No. 14206,

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Normandie B. Pizarro and Francisco P. Acosta, concurring.

[2] Records, pp. 290-309; penned by Judge Divina Luz P. Aquino-Simbulan.

which found accused-appellant Rogelia Jardinel Pepino-Consulta guilty of the crime of illegal sale of methylamphetamine hydrochloride, more popularly known as *shabu*, under Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information[3] dated February 8, 2005, accused-appellant allegedly violated the first paragraph of Section 5, Article II[4] of Republic Act No. 9165 in the following manner:

> That on or about the 7th day of February, 2005 in the City of San Fernando, Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a recidivist who was convicted of the crimes of violation of Secs. 15 and 16, Art. III of R.A. 6425 on March 8, 2002, Rogelia Pepino-Consulta, without having been lawfully authorized, did then and there wilfully, unlawfully and feloniously sell, distribute, deliver and transport five (5) heat sealed transparent plastic sachets containing Methylamphetamine [Hydrochloride] weighing SIX HUNDRED TEN THOUSANDTHS (0.0610) of a gram, FIVE HUNDRED FIFTY[-]SIX THOUSANDTHS (0.0556) of a gram, FIVE HUNDRED TWENTY THOUSANDTHS (0.0520) of a gram, SIX HUNDRED THIRTY[-]EIGHT THOUSANDTHS (0.0638) of a gram and SIX HUNDRED SEVENTY[-]SEVEN THOUSANDTHS (0.0677) of a gram[,] respectively, or a total weight of THREE THOUSAND AND ONE THOUSANDTHS (0.3001) of a gram, dangerous drugs.

When accused-appellant was arraigned on April 25, 2005, she pleaded not guilty to the offense charged.[5]

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[3] *Id.* at 2.

[4] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[5] Records, p. 25.

During the trial of the case, the prosecution presented the testimonies of: (1) Police Senior Inspector (P/Sr. Insp.) Aylin Casignia Perez; (2) Police Officer (PO) 2 Randy Dizon; and (3) PO3 Augusto Tiongco.

The relevant portions of their testimonies are as follows:

P/Sr. Insp. Aylin Casignia Perez testified that on February 7, 2005, she was assigned at the Regional Crime Laboratory Office 3, Camp Olivas, City of San Fernando as a Forensic Chemical Officer. On said date, she received a written request for laboratory examination from the Detective Bureau of the City of San Fernando pertaining to an alleged violation of Republic Act No. 9165. A certain Senior Police Officer (SPO) 1 Noel Doria brought the request and the drug specimens to the crime laboratory, which were received by PO2 Bagaoisan,[6] the Duty Desk Officer. The latter then told her about the request and she received the same together with the specimens. She checked whether the letter-request and the specimens had the same markings and she registered them in their logbook. She thereafter proceeded with the qualitative examination of the specimens.[7]

After conducting the necessary tests, P/Sr. Insp. Perez determined that the contents of the five sachets she examined were indeed dangerous drugs. Her findings were contained in Chemistry Report No. D-027-2005. Afterwards, she gave the report to the Record Custodian and submitted the drug specimens to the Evidence Custodian.[8]

On cross-examination, P/Sr. Insp. Perez told the trial court that she did not see the person who brought the specimens. She merely relied on the printed stamp receipt made by PO2 Bagaoisan. When the specimens were transmitted to their office, they were placed in a small plastic container approximately

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[6] The first name of PO2 Bagaoisan was not specified in the records of the case.

[7] TSN, June 20, 2005, pp. 4-8.

[8] *Id.* at 14-16.

one and a half by two (1 ½ x 2) inches in size. As there were no markings on the small plastic container, she discarded the same and put the sachets in a brown envelope, which she then marked with her initials.[9]

The prosecution's version of the incident in question was derived from the testimonies of PO2 Randy Dizon and PO3 Augusto Tiongco.

PO2 Dizon testified that on February 7, 2005, he was assigned as an operative of the Drug Enforcement Unit, Intelligence Section of the City of San Fernando Police Station. On that date, his unit conducted a buy-bust operation along General Hizon Extension Avenue, Barangay Sta. Lucia, City of San Fernando. The target of the operation was a certain *Manang* who, according to PO2 Dizon, was the accused-appellant in this case. He already knew accused-appellant since 2004 in view of the information he got from fellow police officers that she had a previous drug case. From their office, he proceeded to the place where the buy-bust operation would take place along with PO3 Tiongco and a confidential informant. They rode his private vehicle and arrived at the scene at around 5:45 p.m. When they reached the place, the informant pointed to accused-appellant who was four meters away from them, standing in front of the Akim Restaurant. They passed by her. He gave instructions to the confidential informant to alight from the vehicle, approach accused-appellant, and conduct the buy-bust operation. They turned back and parked the vehicle on the other side of the road in front of the Akim Restaurant. They were about eight to ten meters away from where the accused-appellant was situated.[10]

While PO2 Dizon and PO3 Tiongco remained inside the car, they saw the informant talk to accused-appellant for about five to seven minutes. The informant then handed something to accused-appellant and the latter gave something in return. PO2 Dizon and PO3 Tiongco witnessed this as they were sitting inside

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[9] *Id.* at 24-26.

[10] TSN, July 11, 2005, pp. 4-11.

the vehicle on the other side of the road, watching the informant and accused-appellant sideways. They saw the informant extend his left hand to give the buy-bust money to accused-appellant and the latter handed the object of the sale using her right hand. Thereafter, the informant gave the pre-arranged signal of placing the substance bought inside his pocket. PO2 Dizon and PO3 Tiongco then got out of the vehicle and approached accused-appellant.[11]

PO2 Dizon and PO3 Tiongco introduced themselves as police officers and asked accused-appellant to empty the contents of her pocket. They were able to recover the buy-bust money, which was a five hundred peso (₱500.00) bill that was pre-marked earlier in the police station. The bill had a marking of RD placed after its serial number by PO2 Dizon. They did not recover any other object from accused-appellant and they did not conduct a body search on her anymore. PO2 Dizon stated that it was PO3 Tiongco who arrested accused-appellant, while he recovered the buy-bust money. After they boarded accused-appellant in the vehicle, PO3 Tiongco took the suspected drugs subject of the sale from the informant.[12]

PO2 Dizon said that the meeting of the informant and accused-appellant was a chance meeting. The informant came to their office at around 5:10 p.m. on February 7, 2005 and he informed PO2 Dizon and PO3 Tiongco that accused-appellant was at the Akim Restaurant selling *shabu*. They relayed this information to P/Sr. Insp. Ferdinand Germino, the Chief of their office. They were then tasked to conduct the buy-bust operation. The informant was to act as the poseur-buyer while PO2 Dizon and PO3 Tiongco were the back-up.[13]

PO2 Dizon stated that he was able to see the five pieces of transparent plastic sachets of *shabu* handed by the informant to PO3 Tiongco. After accused-appellant was arrested, they

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

[12] *Id.* at 16-25.

[13] *Id.* at 26-30.

brought her to their office at the City of San Fernando Police Station. PO2 Dizon said that he placed the markings of RD1 to RD5 on the five sachets when they were already at their office. The buy-bust money and the five pieces of plastic sachets were then turned over to SPO1 Noel B. Doria. The five sachets of suspected drug specimens were submitted to the crime laboratory for examination. PO2 Dizon and PO3 Tiongco also executed a Joint Affidavit of Arrest regarding the buy-bust operation they conducted.[14]

On cross-examination, PO2 Dizon stated that the informant who participated in the buy-bust operation on February 7, 2005 came to their office for the first time on said date. Also, the police did not conduct any surveillance to confirm the informant's tip that a certain *Manang* was selling *shabu* on that date. The accused-appellant was, however, already included in their drug watch list. During the conduct of the buy-bust operation, he said that he saw the exchange of the buy-bust money and the *shabu*. Even if the windows of his vehicle were tinted, he can still see from the inside looking out. PO2 Dizon admitted that he did not really see the items exchanged by the informant and accused-appellant because the sachets were small. They merely relied on the pre-arranged signal of the informant to indicate that the sale was consummated. Because the signal was made by the informant, they assumed that the illegal transaction indeed occurred. He also said that at the time of the buy-bust operation, they did not bring a media representative or an elected public official and they did not coordinate the operation with *barangay* officials. The police officers likewise did not take a photograph of the evidence immediately after the same were obtained because they had no available camera then.[15]

PO3 Augusto Tiongco's testimony corroborated that of PO2 Dizon's. He testified that on February 7, 2005, he was a newly assigned operative at the Drug Enforcement Unit of the City of San Fernando Police Station. On said date, he participated in

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[14] *Id.* at 30-33.

[15] TSN, August 8, 2005, pp. 2-15.

a buy-bust operation in front of the Akim Restaurant in Barangay Sta. Lucia, City of San Fernando. The target of the operation was a certain *Manang*, whom he identified in court as the accused-appellant. From their office, they proceeded to the target place using PO2 Dizon's vehicle. When they arrived at the place, the informant pointed to accused-appellant who was standing in front of the Akim Restaurant. The informant alighted and the vehicle was parked across the road from the restaurant. The informant walked towards accused-appellant and he noticed that they made an exchange with their hands. The vehicle they were riding was about eight to ten meters away from the informant and accused-appellant. After the exchange was made, the informant gave the pre-arranged signal of putting the object of the sale in his pocket. PO3 Tiongco said that he and PO2 Dizon got out of the vehicle and proceeded towards accused-appellant. They introduced themselves as police officers. They told accused-appellant that they were arresting her for selling illegal drugs. She just looked at them while she was informed of her constitutional rights. The informant distanced himself a little from them. PO2 Dizon instructed accused-appellant to empty the contents of her pocket and it yielded the marked money that is a ₱500.00 bill. They then brought accused-appellant to their vehicle. Afterwards, PO3 Tiongco went back to the informant who was still in front of the Akim Restaurant to retrieve the five pieces of plastic sachets. He asked the informant to leave so that his identity would not be compromised.[16]

PO3 Tiongco stated that they brought accused-appellant to the City of San Fernando Police Station. The chief of their office talked to accused-appellant then she was turned over to the investigator. PO3 Tiongco and PO2 Dizon executed a Joint Affidavit of Arrest on February 7, 2005.[17]

On cross-examination, PO3 Tiongco stated that it was during the buy-bust operation that he saw accused-appellant for the first time. When they went to the Akim Restaurant, they were

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[16] TSN, August 15, 2005, pp. 5-22.

[17] *Id.* at 24-25.

not accompanied by *barangay* officials. He explained that the operation they conducted was immediate in nature and the suspect might leave the place at any moment. There was no representative either from the media or the Department of Justice (DOJ). After he took custody of the suspected drugs taken from accused-appellant, he did not take a photograph of them or made an inventory thereof that was supposedly signed in the presence of a media representative, a *barangay* official, and a DOJ representative.[18]

On redirect examination, PO3 Tiongco said that he was informed by PO2 Dizon a week before the buy-bust operation that accused-appellant was already under surveillance by the police. He was also told that accused-appellant was their number one target in their drug list and she was one of their priorities for that month. They were not able to coordinate with the *barangay* officials of the place where the buy-bust operation took place since time was of the essence then and their concern was whether accused-appellant would still be there when they arrived.[19]

Originally, the prosecution also intended to present the testimony of SPO1 Noel B. Doria, the officer who prepared the Advance Information and Request for Laboratory Examination. At the trial, the prosecution agreed to stipulate that SPO1 Doria had no personal knowledge of the buy-bust operation conducted on February 7, 2005. The defense further proposed for stipulation that SPO1 Doria had no knowledge of the fact that at the time the specimens were turned over to him, there was no media representative, a *barangay* official or a DOJ representative present. The prosecution and the defense also stipulated on the genuineness and authenticity of the request for laboratory examination of the five plastic sachets of *shabu*, as well as on the fact that SPO1 Doria had no personal knowledge of where and when the *shabu* was taken. In view of the said stipulations, the testimony of SPO1 Doria was dispensed with and his Advance

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[18] TSN, October 24, 2005, pp. 3-4.

[19] *Id.* at 6-7.

Information and Request for Laboratory Examination were marked as evidence for the prosecution.[20]

The testimonial evidence of the defense, however, deviated greatly from the prosecution's version of events. The defense claimed that no buy- bust operation ever took place.

Testifying for the defense, Francis Canicon stated that on February 7, 2005, he plied his route as a pedicab driver in front of the Pampanga Provincial Jail. At about 4:00 p.m., accused-appellant came from the Provincial Jail and boarded his pedicab. She asked to be brought to the Cleofers Building, which was near the Akim Restaurant. When they got there, accused-appellant was taken by two police officers, whom he saw were carrying firearms. The police officers boarded accused-appellant into their car. After that incident, Canicon went back to the Provincial Jail to tell accused-appellant's husband, who was a detainee therein, about the apprehension. Canicon knew the husband of accused-appellant as the latter used to be his neighbor. Afterwards, he went home. Canicon said that when the police officers pulled accused-appellant out of his pedicab, he did not see them give a ₱500.00 bill to her. He previously saw accused-appellant count her money before she boarded his pedicab. He also noticed that she had a cellphone.[21]

On cross-examination, Canicon said that he knew accused-appellant as she usually rode on his pedicab from the Provincial Jail to the public market. He had occasion to ask her why she frequently went to the Provincial Jail and she replied that she was visiting her husband. He clarified that accused-appellant boarded his pedicab at exactly 3:00 p.m. on February 7, 2005. They reached the Cleofers Building at about 3:45 p.m. They were in front of the Akim Restaurant when the police officers blocked their way. One of the officers approached accused-appellant, asked the latter what her name was, and she said that her name was Mikaela. The vehicle of the police officers was parked at the other side of the road. Canicon added that

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[20] TSN, July 11, 2005, pp. 35-38.

[21] TSN, February 6, 2006, pp. 4-13.

when the police officers took accused-appellant from his pedicab, accused-appellant asked for help from the bystanders. Canicon said that he just went home because he got nervous. He rested for a while then he went to the Provincial Jail at around 4:30 p.m.[22]

Accused-appellant also took the witness stand. She testified that at around 2:00 p.m. on February 7, 2005, she visited her common-law husband at the Pampanga Provincial Jail. Before she was allowed to enter, a jail guard first conducted a body search on her. She was bringing money and a cellphone at that time. Her visit lasted around 4:00 p.m. From the Provincial Jail, she rode a pedicab to go to the market so that she could catch a ride in a San Matias jeepney. She knew the pedicab driver as a certain Francis, but she did not know his surname. She had known him for almost two years as she was a constant passenger of his pedicab. When they got to the jeepney terminal, the driver thereof was still waiting for more passengers. Since accused-appellant was then in a hurry to get home to breastfeed her baby, she asked Francis to bring her instead to the Cleofers Building. She said that she could catch a jeepney ride from there. They reached Cleofers Building at around 4:15 p.m. There, a male person also boarded the pedicab. That was the first time she saw him. She pointed to that person who was in court as PO2 Randy Dizon.[23]

Accused-appellant stated that PO2 Dizon instructed Francis to turn and go to the other side of the road. Francis followed the instructions and parked the pedicab beside a car. PO2 Dizon made a body search on Francis. Afterwards, PO2 Dizon asked accused-appellant if her name was Mikaela. She told him that her name was Rogelia. PO2 Dizon told her to alight from the pedicab and asked her if she knew Francis. She answered that she was a passenger of Francis's pedicab. PO2 Dizon then asked Francis to leave, which the latter obeyed. PO2 Dizon opened the backseat door of the car and accused-appellant saw PO3

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[22] *Id.* at 13-25.

[23] TSN, March 29, 2006, pp. 3-10.

Tiongco inside. She was pushed inside the backseat of the car as she was shouting for help.[24]

Accused-appellant said that the police officers brought her to a safehouse. They parked the car in front of the safehouse but they did not alight. PO3 Tiongco was the one who talked to her and asked her if she knew anybody who can lend money "at 5-6." It was about 6:00 p.m. when they left the place. They brought her to Bakeline and gave her food. PO2 Dizon left to fetch a female person who was a sales lady in a clothing store near Bakeline. They then went to the police headquarters. There, PO2 Dizon asked the female person to make a body search on accused-appellant. The female person found money in accused-appellant's pocket and gave the same to PO2 Dizon.[25]

Accused-appellant related that when she was arrested in front of Cleofers Building, there were no representatives from the media and the DOJ and there were no *barangay* officials present. She was subsequently brought to the Municipal Hall of the City of San Fernando and she was detained. The following day, she was brought to the Hall of Justice Building to undergo inquest proceedings. She was not allowed to present any witnesses and she had no companion at that time. After the inquest, she was brought to the Provincial Jail.[26]

On cross-examination, accused-appellant said that she told Francis to bring her to the market in the City of San Fernando, not in front of Cleofers Building as Francis testified to. When she discovered that she still had to wait for the passenger jeepney to get filled up, she decided to go to the Cleofers Building. Accused-appellant stated that she already knew that PO2 Dizon was a police officer as she had seen him in the probation office, while she was a probationer. There were also times when she would see him in uniform when she visited the Provincial Jail. Back then, she did not know PO2 Dizon's name. She admitted

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[24] TSN, June 19, 2006, pp. 3-6.

[25] TSN, September 6, 2006, pp. 4-6.

[26] TSN, January 17, 2007, pp. 3-6.

that she previously pleaded guilty to the charge of selling and possessing illegal drugs, for which she was sentenced to probation. She belied the testimony of Francis that she told PO2 Dizon that her name was Mikaela.[27]

The Judgment of the RTC

On May 8, 2007, the trial court adjudged accused-appellant guilty of the crime of selling illegal drugs. The trial court explained that:

> Prosecution evidence showed that on February 7, 2005 at 5:10 in the afternoon or thereabouts, a buy-bust operation was conducted in front of Akim Restaurant located at Cleofer's building City of San Fernando against a certain '*Manang*' who was later identified as the accused Rogelia Jardinel Pepino-Consulta. The operation yielded a positive result – 5 sachets of *shabu* weighing 0.3001 gram were recovered from the poseur buyer. The substance confiscated from the accused turned out to be positive for methylamphetamine hydrochloride or *shabu* (Exhibit "C").
>
> On the other hand, the accused denied that there was a buy-bust operation conducted against her and that she was only framed up. She, however, failed to establish by convincing proof any motive or reason why the arresting officers will falsely impute the crime charged on her. x x x Furthermore, the two oral evidences presented by the defense contradict each other on material points and lack credibility with the accused even stating that her witness – Francis Canicon lied under oath.
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> The defense of denial or frame up, like alibi, has been invariably viewed by the courts with disfavor for it can just easily be concocted and is [a] common standard defense ploy in most prosecutions for violations of [the] Dangerous Drugs Act (*People vs. Solomon, 244 SCRA 554*). While testimonies of arresting officers with no motive or reason to falsely impute offenses on the accused are credible (*People vs. Ramos, 240 SCRA 191*).
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> In several drug cases, the courts consistently held that absent any proof to the contrary, law enforcers are presumed to have regularly performed their duty (*People vs. Ong Co, 245 SCRA 733*). It is

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[27] TSN, April 23, 2007, pp. 8-17.

noteworthy to state that the arresting officers – PO3 Tiongco and PO2 Dizon merely acted upon instruction of their superior which is within the scope of their duties and responsibilities as members of the PNP [Drug] Enforcement Unit of the City of San Fernando.

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Well-settled is the rule that, between the positive assertions of the prosecution witnesses and the negative averments of accused, the former indisputably deserve more credence and entitled to greater evidentiary weight (*People vs. Padre-e, 249 SCRA 422*).

Moreover, the prosecution also successfully proved that the accused is a recidivist since she has been earlier convicted of the crimes of Violation of Sections 15 and 16 of R.A. No. 6425, as amended, under Criminal Case Nos. 12219 and 12220 before this Court and was sentenced to suffer the penalty of one year imprisonment for each case. The accused availed of probation in these cases and her probation was terminated on June 3, 2003.

After a careful evaluation of the evidence presented, the Court finds that the prosecution sufficiently proved all the elements of the offense charged stated in the information filed and the guilt of the accused beyond reasonable doubt.[28]

The RTC, thereafter, decreed:

VIEWED IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine in the amount of **ten million pesos** (**₱10,000,000.00**) in favor of the government *with subsidiary imprisonment in case of insolvency*.

The accused is credited with her preventive suspension.[29]

The Decision of the Court of Appeals

On appeal,[30] the Court of Appeals sustained the conviction of accused-appellant in its assailed Decision. The Court of

[28] Records, pp. 307-308.

[29] *Id.* at 308.

[30] *Id.* at 314.

Appeals held that accused-appellant was validly arrested after she was caught *in flagrante delicto* selling *shabu* to the confidential informant who acted as the poseur-buyer. The same was done in the presence of police officers who were watching the transaction from across the street. At any rate, accused-appellant was estopped from questioning the legality of her arrest since she failed to move for the quashal of the information against her before she was arraigned. Furthermore, the Court of Appeals ruled that the testimonial evidence of the prosecution established the elements of the crime charged, *i.e.*, that the buy-bust operation took place, that the five sachets of *shabu* subject of the illegal sale were brought to and identified in court, and that the buyer and seller were identified.

Likewise, the Court of Appeals stated that non-compliance with the first paragraph of Section 21 of Republic Act No. 9165[31] was not fatal as long as there was justifiable ground therefor and the integrity of the confiscated illegal drugs was properly preserved by the police officers. The appellate court found that the integrity and the evidentiary value of the five sachets of *shabu* were preserved in this case as the seized items were immediately brought to the police station for marking. Afterwards, the five sachets were forwarded to the crime laboratory for the examination of the contents thereof. The police officers identified the sachets in court and accused-appellant had the opportunity

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[31] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

to cross-examine them on said point. According to the appellate court, accused-appellant's denial could not prevail over the straightforward and positive testimonies of the police officers. The presumption of regularity was not overcome as accused-appellant did not ascribe any ill motive on the part of the police officers, which would impel them to fabricate charges against her.

The appellate court disposed of the case as follows:

> **WHEREFORE**, in view of the foregoing, the assailed decision of the Regional Trial Court of San Fernando City, Branch 41, in Criminal Case No. 14206 is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant shall pay a fine in the amount of One Million Pesos (₱1,000,000.00), instead of Ten Million Pesos (₱10,000,000.00), with subsidiary imprisonment in case of insolvency.
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> Upon remand of the records, the Clerk of Court of Branch 41, Regional Trial Court of San Fernando City, Pampanga is **DIRECTED** to immediately transmit the subject five transparent heat-sealed plastic sachets containing the total weight of 0.3001 of a gram of methylamphetamine hydrochloride (Exhibit "B" and series), which are still under the court *a quo*'s custody, to the Philippine Drug Enforcement Agency (PDEA) for disposition in accordance with Republic Act No. 9165.[32]

Accused-appellant appealed[33] the above decision to this Court.

The Ruling of the Court

In pleading for her acquittal, accused-appellant calls our attention to the allegedly fatal procedural lapses committed by the police officers in this case. Accused-appellant stresses that no justification was offered for the failure of the police officers to comply with the provisions of Section 21 of Republic Act No. 9165. Furthermore, accused-appellant claims that the evidentiary value of the items allegedly seized was not preserved.

We find merit in accused-appellant's appeal.

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[32] *Rollo*, p. 16.

[33] *Id.* at 18-20.

The RTC essentially convicted accused-appellant as it gave greater weight to the testimonial evidence of the prosecution. The trial court brushed aside accused-appellant's denial, ruling that she failed to prove that the police officers in this case were impelled by ill motives to falsely accuse her of the crime charged. The RTC held that accused-appellant's evidence failed to overturn the presumption of regularity in the performance of official duties on the part of the police officers. Similarly, the Court of Appeals affirmed the judgment of the RTC by also lending greater credence to the testimonial evidence of the prosecution. Said evidence was found to have sufficiently established the elements of the crime charged, as well as the fact of preservation of the integrity and evidentiary value of the drug specimens seized. The appellate court also upheld the presumption of regularity in favor of the police officers.

We read closely the records of the present case and we saw a different story. We found that the police officers indeed committed serious lapses in procedure in the conduct of the buy-bust operation on February 7, 2005. Additionally, the prosecution adduced evidence that fell short of the exacting degree of proof beyond reasonable doubt required under our criminal laws.

The Court stated in *People v. Kamad*[34] that "[a]s a general rule, the trial court's findings of fact, especially when affirmed by the [Court of Appeals], are entitled to great weight and will not be disturbed on appeal. This rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied." As will be hereinafter discussed, the above exception holds true in the present case.

We held in *People v. Hernandez*[35] that "[t]o secure a conviction for illegal sale of *shabu*, the following essential elements must

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[34] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 302.

[35] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 635.

be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof." Furthermore, we explained in *People v. Denoman*[36] that:

> A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails. (Citations omitted.)

The Court also cautioned in *People v. Roble*[37] that "[w]hile a buy-bust operation is legal and has been proved to be an effective method of apprehending drug peddlers, due regard to constitutional and legal safeguards must be undertaken. It is the duty of the Courts to ascertain if the operation was subject to any police abuse."

Section 21, paragraph 1, Article II of Republic Act No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 provide the procedural guidelines that police officers must observe in the handling of seized illegal drugs in order to ensure the preservation of the identity and integrity thereof.

Section 21, paragraph 1, Article II of Republic Act No. 9165 reads:

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[36] G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

[37] G.R. No. 192188, April 11, 2011, 647 SCRA 593, 607.

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

On the other hand, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

In the present case, the above-mentioned procedures were not observed at all by the police officers. Both PO2 Dizon and PO3 Tiongco clearly and categorically admitted during their

respective cross-examinations that the five sachets of suspected *shabu* allegedly obtained from the buy-bust operation were not physically inventoried nor photographed in the presence of accused-appellant or her counsel, a representative from the media and the DOJ, and an elective official. In fact, they stated that the buy-bust operation was actually conducted without the presence of the said representatives.[38]

Although Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 contains a proviso in the last sentence thereof that may excuse the non-compliance with the required procedures, the same may be availed of only under justifiable grounds and as long as the integrity and evidentiary value of the seized items were properly preserved by the apprehending police officers. We held in *People v. Sanchez*[39] that:

> We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. The participation of a representative from the DOJ, the media or an elected official alone can be problematic. For this reason, the last sentence of the implementing rules provides that "*non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.*" Thus, **non-compliance** with the strict directive of Section 21 of R.A. No. 9165 is **not necessarily fatal** to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. These lapses, however, must be recognized and explained in terms of their **justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.**

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[38] TSN, August 8, 2005, pp. 13-15; TSN, October 24, 2005, pp. 3-4.

[39] G.R. No. 175832, October 15, 2008, 569 SCRA 194, 211-212.

Here, we find that the integrity and evidentiary value of the illegal drugs seized were not shown to have been preserved. Contrarily, the records of the case bear out the glaring fact that the chain of custody of the seized illegal drugs was broken even at the very first link thereof.

To recall, the testimonial evidence of the prosecution established that the poseur-buyer in the buy-bust operation was the confidential informant who tipped the police about the drug peddling activities of accused-appellant. Thus, it was the poseur-buyer who supposedly received the suspected illegal drugs from accused-appellant, which allegedly consisted of five plastic sachets of *shabu*. PO2 Dizon and PO3 Tiongco did not participate at all in this transaction. They merely witnessed the exchange while they were seated inside a vehicle parked across the road eight to ten meters away from where accused-appellant and the poseur-buyer were situated. Even more damning was PO2 Dizon's admission that he did not in fact see the item(s) handed by accused-appellant to the poseur-buyer. His testimony during cross-examination pertinently stated thus:

ATTY. DE GUZMAN:

Q: Mr. Witness, is it correct to say that you cannot possibly see the items that was exchanged by the accused and your confidential agent at a distance of ten (10) meters and at a condition wherein your car is tinted?

A: **Because the sachet is just a small pack, sir, you could not really possibly see it but we have a pre-arranged signal, sir, to prove that the operation was consummated and positive**.

Q: So in other words, Mr. Witness, considering that you cannot see these items you merely rely on the pre-arranged signal of your confidential agent?

A: Yes, sir.

Q: So you are merely waiting for the pre-arranged signal of your confidential agent at that time, am I correct?

A: Yes, sir.

Q: **And because of the said pre-arranged signal made by your confidential agent you assumed, Mr. Witness, that there was indeed [an] illegal transaction that happened between the accused and your confidential agent, correct?**

A: **Yes, sir.**[40] (Emphases ours.)

Clearly, PO2 Dizon was not in a position to say whether the objects handed by accused-appellant to the poseur-buyer were in fact sachets of illegal drugs. Equally vague was the actual number thereof, *i.e.*, if in fact five sachets were handed to the poseur-buyer, not four or three or any other number. PO3 Tiongco's testimony was also silent on this aspect. The police officers had no personal knowledge whether the alleged transaction between accused-appellant and the poseur-buyer indeed involved illegal drugs.

Moreover, the suspected drugs subject of the sale were left for some time in the custody of the informant. PO3 Tiongco testified that while they were arresting accused-appellant, the informant distanced himself from them. The police officers first boarded accused-appellant into their vehicle that was parked on the other side of the road and it was only after that that PO3 Tiongco went back to the informant to retrieve the plastic sachets. Thus, from the time accused-appellant was arrested until the plastic sachets were retrieved by PO3 Tiongco, the suspected drugs were unaccounted for. That the informant may have tampered with, contaminated, substituted, added to or pilfered a portion of the plastic sachets are distinct possibilities that could not be ruled out. Undoubtedly, only the informant who acted as the poseur-buyer could possibly state for certain that accused-appellant indeed handed to him five sachets of suspected *shabu*. Unfortunately, the informant was not presented in court to testify on this matter.

Nevertheless, granting for the sake of argument that there were indeed five sachets of suspected *shabu* sold to the poseur-buyer, there were still more broken links in the chain of custody.

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[40] TSN, August 8, 2005, p. 12.

We elucidated in *People v. Obmiranis*[41] that:

> Be that as it may, although testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance. A unique characteristic of narcotic substances such as *shabu* is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination, substitution and exchange—whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not. It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical. Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied—a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with. (Citations omitted.)

In this case, one broken link was that of the turnover of the seized items from the buy-bust team to the police investigator, SPO1 Doria. PO2 Dizon testified that after he placed the marking on the five sachets of suspected *shabu*, he turned them over to SPO1 Doria and the specimens were submitted to the crime laboratory for examination.[42] However, SPO1 Doria did not testify before the trial court so as to shed light on this matter. The Court finds this unfortunate as the prosecution even chose to dispense with his testimony.

Still another broken link was that involving the transfer of the drug specimens from SPO1 Doria to the crime laboratory. P/Sr. Insp. Perez testified that the request for laboratory examination and drug specimens were first received by PO2 Bagaoisan, the Duty Desk Officer. The latter then called her to

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[41] G.R. No. 181492, December 16, 2008, 574 SCRA 140, 150-151.

[42] TSN, July 11, 2005, pp. 32-33.

physically receive the same.[43] However, P/Sr. Insp. Perez stated that she did not actually see if it was SPO1 Doria who transmitted the specimens. She merely relied on the stamp of PO2 Bagaoisan.[44] Furthermore, PO2 Bagaoisan was not presented in court to prove that it was indeed SPO1 Doria who delivered the drug specimens to the crime laboratory.

In view of the evident breaks in the chain of custody, very serious doubts arise as to the identity of the seized illegal drugs in this case. Apparently, there can be no absolute certainty if the sachets of *shabu* seized from the informant were the very same drugs handed by accused-appellant, or, later on, the same drugs transmitted to the crime laboratory and eventually presented before the trial court.

These breaks in the chain of custody go into the very elements of the crime of illegal sale of drugs that was charged against accused-appellant. Specifically, the elements of the identity of the object of the illegal sale of drugs and the delivery of the thing sold were not proven in this case beyond reasonable doubt.

As regards the presumption of regularity in the performance of official duty that the RTC and the Court of Appeals heavily relied upon, we clarified in *People v. Cañete*[45] that:

"[W]hile the Court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself constitute proof of guilt beyond reasonable doubt." The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because "First, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, x x x [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of

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[43] TSN, June 20, 2005, pp. 7-8.

[44] *Id.* at 24-25.

[45] 433 Phil. 781, 794 (2002).

innocence that prevails if not overthrown by proof beyond reasonable doubt." x x x. (Citations omitted.)

In this case, the above presumption was undoubtedly overcome by evidence that the police officers who conducted the buy-bust operation committed lapses in the seizure and handling of the allegedly seized plastic sachets of *shabu*. Even if accused-appellant failed to present evidence with respect to her defense of denial or the ill motive that impelled the police officers to falsely impute upon her the crime charged, the same is of no moment. The well-entrenched dictum in criminal law is that "[t]he evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense."[46] If the prosecution cannot, to begin with, establish the guilt of accused-appellant beyond reasonable doubt, the defense is not even required to adduce evidence. Thus, the presumption of innocence on the part of accused-appellant in this case must be upheld.

On a final note, the Court cannot emphasize enough that zealousness on the part of law enforcement agencies in the pursuit of drug peddlers is indeed laudable. However, it is of paramount importance that the procedures laid down by law be complied with, especially those that involve the chain of custody of the illegal drugs. This is necessary in order to dispel even the most infinitesimal of doubts on the outcome of arrests and buy-bust operations, so as not to render naught the efforts and the resources put forth in the apprehension and prosecution of violators of our drug laws.

WHEREFORE, We hereby **REVERSE** and **SET ASIDE** the Decision dated November 19, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02867. Accused-appellant Rogelia Jardinel Pepino-Consulta is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention unless she is confined for another lawful cause.

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[46] *People v. De Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652, 669.

Let a copy of this Decision be furnished the Superintendent, Bureau of Corrections, Correctional Institution for Women, City of Mandaluyong for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Mendoza,[*] and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 191253. August 28, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **APOLINARIO MANALILI *Y* JOSE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IDENTIFICATION OF AN ACCUSED BY HIS VOICE HAS BEEN ACCEPTED PARTICULARLY IN CASES WHERE THE WITNESS HAS KNOWN THE MALEFACTOR PERSONALLY FOR SO LONG AND SO INTIMATELY.— Manalili contends that AAA's testimony is not sufficient to convict him because the identity of the accused as the perpetrator of the crime was not positively established. We find such argument untenable. Jurisprudence is instructive that identification of an accused by his voice has been accepted particularly in cases where, such as in this case, the witness has known the malefactor personally for so long and so

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[*] Per Special Order No. 1502 dated August 8, 2013.

intimately. This Court has opined that once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance. Furthermore, settled is the rule that the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused. No law or rule requires the corroboration of the testimony of a single witness in a rape case.

2. ID.; ID.; ID.; TRIAL COURT'S APPRECIATION OF CREDIBILITY DESERVES GREAT WEIGHT AND IS EVEN CONCLUSIVE AND BINDING IF NOT TAINTED WITH ARBITRARINESS OR OVERSIGHT OF SOME FACT OR CIRCUMSTANCE OF WEIGHT AND INFLUENCE.— The trial court noted that during AAA's cross-examination, her testimony bore the hallmarks of truth, as she remained consistent on material points. We find no reason to disturb the trial court's appreciation of the credibility of AAA's testimony. The trial court's assessment deserves great weight, and is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. "[T]he assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts – and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court."

3. ID.; ID.; ID.; IT IS HIGHLY INCONCEIVABLE THAT A MOTHER WOULD WILFULLY AND DELIBERATELY CORRUPT THE INNOCENT MIND OF HER YOUNG DAUGHTER AND PUT INTO HER LIPS IN THE LEWD DESCRIPTION OF A CARNAL ACT TO JUSTIFY A PERSONAL GRUDGE OR ANGER AGAINST APPELLANT.— The accused would have us believe that AAA's mother only forced her to file a complaint for rape because the mother resented the drinking sessions of her husband with the accused. We find this untenable. As aptly pointed out by the Solicitor General, no mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to the prosecution of rape cases, unless she was

motivated by her desire to incarcerate the person for her child's defilement. It is highly inconceivable that a mother would willfully and deliberately corrupt the innocent mind of her young daughter and put into her lips the lewd description of a carnal act to justify a personal grudge or anger against appellant.

4. ID.; ID.; ID.; TESTIMONIES OF RAPE VICTIMS WHO ARE YOUNG AND IMMATURE DESERVE FULL CREDENCE; DELAY IN REPORTING THE RAPE INCIDENT IS ALSO JUSTIFIED.— Moreover, this Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Although she failed to report the incident immediately, such reaction is deemed normal considering that she was only 10 years old at that time.

5. ID.; ID.; ID.; DEFENSES OF ALIBI AND DENIAL; WEAK DEFENSES WHICH MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY.— The accused merely denied the accusation, proffering the alibi that he was outside his house on ZZZ Street at the time of alleged incident. His denial could not prevail over AAA's direct, positive and categorical assertion. For Manalili's alibi to be credible and given due weight, he must show that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission. This Court has consistently held that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected. For the alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission. More importantly, Manalili failed to provide any corroborative evidence that could prove his defense.

6. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS OF THE CRIME; ESTABLISHED IN CASE AT BAR.— The first element of statutory rape, (a) that the victim is a female under 12 years or is demented, was substantiated by the presentation of the Birth Certificate of the victim, while the second element, (b) that the offender had carnal knowledge of the victim, was evidenced by the testimony of the victim herself. Thus, the lower court was correct in sentencing accused-appellant to a penalty of *Reclusion Perpetua*.

7. ID.; ID.; ID.; ABSENCE OF LACERATION AND SEMEN DOES NOT PRECLUDE THE FACT THAT RAPE HAS BEEN COMMITTED.— With regard to the results of the medical examination, this Court holds that the absence of laceration and semen does not preclude the fact that rape has been committed. In the crime of rape, complete or full penetration of the complainant's private part is not at all necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entry or at the very least the introduction of the male organ into the labia of the pudendum is proved. The mere introduction of the male organ into the labia majora of the complainant's vagina, consummates the crime. Likewise, the absence of semen in AAA's vaginal area would not preclude a finding of rape. The presence or absence of spermatozoa is immaterial because the presence of spermatozoa is not an element of rape. Moreover, it has been held that the absence of spermatozoa in the vagina could be due to a number of factors, such as the vertical drainage of the semen from the vagina, the acidity of the vagina or the washing of the vagina immediately after sexual intercourse.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Before this Court for automatic review is the Decision[1] dated 19 October 2009 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 03356, which affirmed with modifications the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 38 dated 29 April 2008, finding Apolinario Manalili *y* Jose guilty beyond reasonable doubt of the crime of statutory rape.

In a Resolution[3] dated 07 April 2010, we required the parties to file their respective supplemental briefs. The parties, however, manifested that they have exhausted their arguments before the CA and thus, will no longer file any supplemental brief.[4]

The Facts

Apolinario Manalili *y* Jose (Manalili) was charged before the RTC of Manila with statutory rape as defined and penalized under Article 266-A, par. 1 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610, otherwise known as "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

The amended information reads:

That on or about the 16th day of March, 1998, in the city of x x x,[5] Philippines, the said accused**,** conspiring and confederating together

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[1] *Rollo*, pp. 2-17; Penned by Associate Justice Sesinando E. Villon with Associate Justices Hakim S. Abdulwahid and Mario V. Lopez concurring.

[2] Records, pp. 171-180; Penned by Presiding Judge Ma. Celestina C. Mangrobang.

[3] *Rollo*, pp. 24-25.

[4] *Id.* at 27-29 and 31-33.

[5] The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004). See *People v. Cabalquinto*, 533 Phil. 703 (2006).

and helping each other, did then and there willfully, unlawfully and knowingly commit abusive acts and lascivious conduct upon the person of AAA, a minor, 10 years of age, by then and there pulling down her panty, caressing her private part, mashing her [breasts], kissing her face and neck and trying to insert his penis on the vagina of said minor, and in the process, the penis of said accused touched the labia of the vagina of said minor, against her will and without her consent, thereby gravely endangering the normal growth and development of the said child.[6] (Underlining omitted)

The antecedent facts were culled from the records of the case.

Upon arraignment, Manalili entered a plea of "not guilty"[7] to the offense charged against him. On 30 August 2004, the pre-trial of the case was ordered closed and terminated,[8] thus, trial on the merits ensued.

According to the prosecution's evidence, the offense transpired on 16 March 1998 at around 7 o'clock in the evening in the house of Manalili located on YYY Street.

AAA, the victim who was then barely eleven (11) years old[9] narrated that on said day and time she was playing with her friends in front of their house, which is near the store owned by BBB. Manalili was drinking with three (3) of his friends in front of his house on ZZZ Street, which is located across the store and is one house away from AAA's house. While AAA was chatting with the son of the store owner, Manalili whom she addresses as "*Ninong* Nario" called her and asked her to go to his other house on YYY street, to get a dustpan because one of his drinking mates vomited. AAA readily complied and went to Manalili's house. No one was around at that time and it was dark inside the house. The drunken Manalili followed AAA in said house on YYY Street and ordered AAA to remove her panty. She refused but Manalili undressed her, laid her down

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[6] Records, pp. 58-59.

[7] *Id.* at 88.

[8] *Id.* at 92.

[9] *Id.* at 103; Exhibits "I" & "I-1".

on the floor and went on top of her naked body. Likewise, Manalili was naked and had no briefs on. Manalili forcibly tried to insert his penis into her vagina. AAA felt pain and cried as Manalili tried to push in his organ. Unsuccessful, Manalili then inserted his finger into AAA's vagina. Feeling severe pain, AAA resisted by holding Manalili's hand. Afterwards, Manalili directed AAA to hold his penis and AAA did as she was told. Manalili ordered her to use her hands to make downward and upward movements on his phallic organ. She felt sticky substance coming out and afterwards wiped off her hands of the said substance. Manalili also kissed her neck and breasts. After Manalili satisfied his lust, AAA was directed to go home and was instructed not to let anyone see her leave the house of Manalili.

The next day, CCC, AAA's mother, saw the marks on AAA's neck and breast and asked AAA what happened. AAA replied, "*nakayod sa yero*."[10] Unconvinced and suspicious, AAA's mother continued questioning her. AAA kept quiet, refused to answer and left for school. Eventually, AAA confided to her aunt, DDD, what actually happened on the night of 16 March 1998. Upon learning of the molestation, DDD immediately told CCC, her sister-in-law and mother of AAA. AAA eventually admitted "*Ninong* Nario" placed the kiss marks.[11] CCC and DDD confronted the accused but the latter denied the accusation. This prompted CCC and DDD to file a complaint before investigator, PO1 Maribel F. Fiedacan. On 18 March 1998, AAA was subjected to a medico genitalia examination conducted by a Medico Legal Officer of the Medico Legal Division of the National Bureau of Investigation (NBI), Manila. AAA also executed a *Sinumpaang Salaysay* dated 18 March 1998[12] assisted by her mother, CCC.[13] According to the victim, she was molested more than three (3) times by Manalili before the incident at hand. AAA claimed that she never told anybody because she was scared.

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[10] TSN, 10 November 2004, p. 5.

[11] *Id.* at 6.

[12] Records, p. 24; Exhibits "G" and "G-1".

[13] *Id.*; Exhibit "G-2".

On cross-examination, AAA clarified that accused is not her godfather but that of her brother and that the house number of the accused is 1672, while theirs is 1670. AAA described the place of the incident in detail. Although it was dark, AAA narrated that she was certain it was Manalili who followed her inside the house. Familiar with Manalili's voice, AAA positively identified Manalili when he instructed her to remove her underwear. Likewise, she was able to touch the back of Manalili when she was laid down. She recalled that while drinking, Manalili was only wearing pants without a t-shirt on. She claims that the man who mounted her only had pants on, without a t-shirt. She explained that she initially did not admit who placed kiss marks on her because of the threats and warnings of Manalili but when her mother and aunt scolded her, she eventually admitted.

Dr. Alvin A. David, the medico-legal officer of the NBI, testified that during the medical examination, he found two (2) contusions, one on the neck and one on the right breast of the victim, as shown in the anatomical diagram he prepared.[14] He explained that in sexual abuse cases, contusions could be caused by suctions on the skin, resulting in discoloration. These kinds of contusions, in layman's terms, are considered love bites or kiss marks. He also observed that the hymen was not violated and still intact. The tests conducted for vaginal smear yielded negative[15] for the presence of spermatozoa.[16]

For his defense, Manalili testified and he vehemently denied the accusations. In open court, he admitted knowing the victim, AAA, as he is one of the godfathers of AAA's sibling and they live on the same street. In denying the alleged rape, he pointed out that he lives with his wife and that on the night of the incident, he was drinking with his friends in front of his house on ZZZ Street. On cross-examination, the accused reasons out that the complaint was filed against him only because CCC, the victim's

[14] *Id.* at 128; Exhibit "B-3".

[15] TSN, 26 September 2005, p. 7.

[16] Records, pp. 172-176.

mother, has always resented her husband's drinking sprees with him.[17]

The RTC Decision

On 29 April 2008, the RTC rendered a decision convicting Manalili of statutory rape. The dispositive portion of the decision states:

> WHEREFORE, in the light of the foregoing premises, the Court finds that the prosecution was able to prove the guilt of the accused beyond reasonable doubt for the crime of Rape under Art. 266-A par. 1 of the Revised Penal Code, as amended, in relation to Sec. 5 (b) of R.A. 7610, accused Apolinario Manalili *y* Jose is hereby sentenced: (1) to suffer the penalty of *Reclusion Perpetua*; (2) to pay the minor [AAA] One Hundred Thousand (₱100,000) Pesos as moral damages; and (3) to pay the costs.[18]

Aggrieved, Manalili appealed to the CA raising the following assignment of errors for consideration:

1. **THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.**
2. **THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE IDENTIFICATION OF THE ACCUSED-APPELLANT AS THE ALLEGED PERPETRATOR OF THE OFFENSE CHARGED WAS NOT CLEAR, POSITIVE AND CONVINCING.**[19]

The CA Decision

In the assailed decision, the CA affirmed with modification the judgement of conviction of the RTC. The CA ruled that the

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[17] *Id.* at 175-176.

[18] *Id.* at 180.

[19] CA *rollo*, p. 37; Brief for the Accused-Appellant.

prosecution was able to prove the existence of all the essential elements of statutory rape beyond reasonable doubt. The dispositive portion of the CA decision reads:

> WHEREFORE, the appealed decision of the RTC of Manila, Branch 38 dated April 29, 2008 is hereby AFFIRMED WITH MODIFICATION. In addition to the imposed penalty of *reclusion perpetua*, appellant is hereby ordered to pay the minor victim AAA the amount of ₱50,000.00 as civil indemnity *ex delicto*, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.[20]

Ruling of this Court

This court finds no merit in the present appeal for reasons to be discussed hereunder. The Court finds no reason to disturb the decisions of the courts below.

We quote with approval the pertinent disquisitions[21] of the CA as follows:

> Rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from the prying eyes, and the crime usually commences solely upon the word of the offended woman herself and conviction invariably turns upon her credibility, as the prosecution's single witness of the actual occurrence.[22] As a corollary, a conviction for rape may be made even on the testimony of the victim herself, as long as such testimony is credible. In fact, the victim's testimony is the most important factor to prove that the felony has been committed.[23]
>
> In reviewing rape cases, the Court had always been guided by the well-entrenched principles: (1) an accusation of rape can be made with facility and while accusation of rape is difficult to prove, it is even more difficult to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime

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[20] *Rollo*, p. 16.

[21] *Id.* at 9.

[22] *Id.* citing *People v. Molleda*, G.R. No. 153219, 1 December 1993, 417 SCRA 53.

[23] *Id.* citing *People v. Antonio*, G.R. No. 145726, 26 March 2003, 399 SCRA 585.

of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.

Manalili contends that AAA's testimony is not sufficient to convict him because the identity of the accused as the perpetrator of the crime was not positively established. We find such argument untenable. Jurisprudence is instructive that identification of an accused by his voice has been accepted particularly in cases where, such as in this case, the witness has known the malefactor personally for so long and so intimately.[24] This Court has opined that once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance.[25] Furthermore, settled is the rule that the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused.[26] No law or rule requires the corroboration of the testimony of a single witness in a rape case.[27]

The trial court noted that during AAA's cross-examination, her testimony bore the hallmarks of truth, as she remained consistent on material points. We find no reason to disturb the trial court's appreciation of the credibility of AAA's testimony. The trial court's assessment deserves great weight, and is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. "[T]he assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand;

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[24] *People v. Tuazon*, 563 Phil. 74, 88 (2007) citing *People v. Intong*, 466 Phil. 73, 742 (2004).

[25] *People v. Reyes*, 369 Phil. 61, 76 (1999).

[26] *People v. Perez*, G.R. No. 182924, 24 December 2008, 575 SCRA 653, 672 citing *People v. Balajadia*, G.R. No. 96988, 2 August 1993, 225 SCRA 22, 28.

[27] *Id.* citing *People v. Limon*, 366 Phil. 29, 38 (1999).

a vantage point denied appellate courts and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court."[28]

The accused would have us believe that AAA's mother only forced her to file a complaint for rape because the mother resented the drinking sessions of her husband with the accused. We find this untenable. As aptly pointed out by the Solicitor General, no mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to the prosecution of rape cases, unless she was motivated by her desire to incarcerate the person for her child's defilement.[29] It is highly inconceivable that a mother would willfully and deliberately corrupt the innocent mind of her young daughter and put into her lips the lewd description of a carnal act to justify a personal grudge or anger against appellant.[30]

Moreover, this Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[31] Although she failed to report the incident immediately, such reaction is deemed normal considering that she was only 10 years old at that time.

With regard to the results of the medical examination, this Court holds that the absence of laceration and semen does not preclude the fact that rape has been committed. In the crime of rape, complete or full penetration of the complainant's private

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[28] *Vidar v. People*, G.R. No. 177361, 1 February 2010, 611 SCRA 216, 230.

[29] *People v. Lomerio*, 383 Phil. 434, 452 (2000).

[30] *People v. Tuazon*, *supra* note 24 at 510 citing *People v. Malones*, 469 Phil. 301, 327 (2004); *Rollo*, pp. 85-86; Brief for the Plaintiff-Appellee.

[31] *People v. Perez*, *supra* note 26 at 671 citing *People v. Villafuerte*, G.R. No. 154917, 18 May 2004, 428 SCRA 427, 433.

part is not at all necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entry or at the very least the introduction of the male organ into the labia of the pudendum is proved. The mere introduction of the male organ into the labia majora of the complainant's vagina, consummates the crime.[32] Likewise, the absence of semen in AAA's vaginal area would not preclude a finding of rape. The presence or absence of spermatozoa is immaterial because the presence of spermatozoa is not an element of rape. Moreover, it has been held that the absence of spermatozoa in the vagina could be due to a number of factors, such as the vertical drainage of the semen from the vagina, the acidity of the vagina or the washing of the vagina immediately after sexual intercourse.[33]

The accused merely denied the accusation, proffering the alibi that he was outside his house on ZZZ Street at the time of alleged incident. His denial could not prevail over AAA's direct, positive and categorical assertion. For Manalili's alibi to be credible and given due weight, he must show that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission. This Court has consistently held that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[34] No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected.[35] For the alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time

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[32] *People v. Balunsat*, G.R. No. 176743, 28 July 2010, 626 SCRA 77, 92 citing *People v. Flores*, 448 Phil. 840, 856 (2003).

[33] *People v. Perez*, *supra* note 26 at 677 citing *People v. Freta*, 406 Phil. 854, 861 (2001).

[34] *People v. Villafuerte*, G.R. No. 154917, 18 May 2004, 428 SCRA 427, 435.

[35] *People v. Sanchez*, 426 Phil. 19, 31 (2002).

of its commission.[36] More importantly, Manalili failed to provide any corroborative evidence that could prove his defense.

The first element of statutory rape, (a) that the victim is a female under 12 years or is demented,[37] was substantiated by the presentation of the Birth Certificate of the victim,[38] while the second element, (b) that the offender had carnal knowledge of the victim,[39] was evidenced by the testimony of the victim herself. Thus, the lower court was correct in sentencing accused-appellant to a penalty of *Reclusion Perpetua*.

Pursuant to recent jurisprudence,[40] there is no longer any debate that the victim in statutory rape is entitled to a civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱30,000.00. The award of civil indemnity of ₱50,000.00 is mandatory upon the finding of the fact of rape. Similarly, the award of moral damages of ₱50,000.00 is mandatory, and made without need of allegation and proof other than that of the fact of rape, for it is logically assumed that the victim suffered moral injuries from her ordeal. In addition, exemplary damages of ₱30,000.00 are justified under Article 2229 of the Civil Code to set an example for the public good and to serve as deterrent to those who abuse the young.

WHEREFORE, all the foregoing considered, the appeal is **DENIED**. The decision of the Court of Appeals promulgated on 19 October 2009 finding accused-appellant Apolinario Manalili *y* Jose guilty beyond reasonable doubt of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua* is

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[36] *People v. Flora*, 389 Phil. 601, 611; 334 SCRA 262, 272 (2000).

[37] *People v. Teodoro*, G.R. No. 175876, 20 February 2013.

[38] Records, p. 103; Exhibit "I".

[39] *People v. Teodoro*, *supra* note 37.

[40] *Id.* citing *People v. Begino*, G.R. No. 181246, 20 March 2009, 582 SCRA 189, 198-199; *People v. Pabol*, G.R. No. 187084, 12 October 2009, 603 SCRA 522, 532; *People v. Matunhay*, G.R. No. 178274, 5 March 2010, 614 SCRA 307, 321; *People v. Tormis*, G.R. No. 183456, 18 December 2008, 574 SCRA 903, 920.

AFFIRMED, with the **MODIFICATION** that he is ordered to pay the victim the amounts of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱30,000.00 as exemplary damages, plus interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this decision.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 193078. August 28, 2013]

B. STA. RITA & CO., INC. and ARLENE STA. RITA KANAPI, *petitioners, vs.* **ANGELINE M. GUECO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; A COMPLAINT-IN-INTERVENTION ESSENTIALLY LATCHES ON THE COMPLAINT FOR ITS LEGAL EFFICACY SO MUCH SO THAT THE DISMISSAL OF THE COMPLAINT LEADS TO ITS CONCOMITANT DISMISSAL.— This course of action is impelled by the fact that Arlene and the Heirs of Edgardo do not have any legal personality to appeal the CA Decision before the Court since: ***first***, they were only intervenors in the reformation case which had already been dismissed by the Court with finality; and ***second***, they were not parties in the surrender of titles case. With respect to the first incident, it bears to stress that Arlene's and the Heirs of Edgardo's complaint-in-intervention in the

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[*] Per Special Order No. 1525 dated 22 August 2013.

dismissed reformation case had been effectively discharged since the principal complaint therein had already been terminated with finality. Clearly, their complaint-in-intervention cannot be treated as an independent action as it is merely an ancillary to and a supplement of the principal action. In other words, the complaint-in-intervention essentially latches on the complaint for its legal efficacy so much so that the dismissal of the complaint leads to its concomitant dismissal. Applying these principles to this case therefore lead to the conclusion that the dismissal of the main complaint in the reformation case necessarily resulted in the dismissal of Arlene's and the Heirs of Edgardo's complaint-in-intervention lodged in the same case.

2. **ID.; ID.; PARTIES-IN-INTEREST; NO PERSON SHALL BE ADVERSELY AFFECTED BY THE OUTCOME OF A CIVIL ACTION OR PROCEEDING IN WHICH HE IS NOT A PARTY.—** Anent the second incident, records disclose that Arlene or the Heirs of Edgardo were not parties – either as defendants or intervenors – in the surrender of titles case nor did they, in any manner, participate in the proceedings of the same. It is a standing rule that no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. In this light, it cannot be gainsaid that Arlene and the Heirs of Edgardo cannot be adversely affected by the outcome of the surrender of titles case and, as such, cannot therefore interpose an appeal therefrom. Thus, due to the above-stated incidents, the Court denies the instant petition for Arlene's and the Heirs of Edgardo's lack of legal personality to appeal the CA Decision.

3. **ID.; ID.; ID.; NO EVIDENCE ON RECORD TO SHOW THAT PETITIONER WAS PROPERLY AUTHORIZED BY THE CORPORATION THROUGH ITS BOARD OF DIRECTORS TO FILE THE APPEAL.—** To note, neither can Arlene file the instant appeal on behalf of B. Sta. Rita since there lies no evidence on record to show that she had been properly authorized by the said corporation to file the same. It is fundamental that the power of a corporation to sue and be sued in any court is lodged with the board of directors and/or its duly authorized officers and agents, which Arlene clearly is not. Consequently, for her lack of authority, the appeal of Arlene on behalf of B. Sta. Rita must necessarily fail. As

a final point, while it has been alleged that B. Sta. Rita had already ceased business operations, there is equally no evidence on record to substantiate this fact. Hence, for all legal intents and purposes, it is presumed that the corporation still exists and, in this accord, the proper authority to institute a case for and in its behalf remains a requirement.

APPEARANCES OF COUNSEL

San Buenaventura Law Office for petitioners.
Edgardo Arandia for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 21, 2010 and Resolution[3] dated July 26, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 87000 which reversed and set aside the Joint Decision[4] dated December 8, 2005 of the Regional Trial Court of Tarlac City, Branch 63 (RTC Branch 63) in Civil Case Nos. 9245 and 9532, effectively upholding the Deed of Absolute Sale[5] dated April 11, 2000 (subject deed) between petitioner B. Sta. Rita & Co., Inc. (B. Sta. Rita) and respondent Angeline M. Gueco[6] (Gueco).

The Facts

On April 11, 2000, Gueco purchased four parcels of land from B. Sta. Rita through its then President, Ben Sta. Rita,

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[1] *Rollo*, pp. 12-37.

[2] *Id.* at 44-57. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Arturo G. Tayag and Elihu A. Ybañez, concurring.

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

[4] *Id.* at 87-89. Penned by Presiding Judge Arsenio P. Adriano.

[5] Records (Civil Case No. 9245) pp. 15-16; records (Civil Case No. 9532), pp. 49-50.

[6] Also referred to in the records as "Angeline Mercado Gueco Dabu."

situated at Barangay San Juan de Mata, Tarlac City (subject properties) and covered by Transfer Certificate of Title (TCT) Nos. T-137998,[7] T-191599,[8] T-191600,[9] and T-191601[10] (subject titles) issued by the Registry of Deeds of Tarlac (Tarlac RD), for the total consideration of ₱1,000,000.00 (sale transaction). The sale transaction was evidenced by the subject deed.[11]

In October 2001, Gueco filed a petition[12] for the surrender of the subject titles against B. Sta. Rita, its corporate secretary Edgardo Kanapi (Edgardo), and the Tarlac RD. The case was docketed as Civil Case No. 9245[13] (surrender of titles case) and was raffled to the Regional Trial Court of Tarlac City, Branch 64 (RTC Branch 64).

In their Answer,[14] B. Sta. Rita and Edgardo claimed that: (*a*) the sale transaction was a conditional sale of the subject properties for the total consideration of ₱25,000,000.00;[15] (*b*) Gueco was the one who demanded that the subject deed evidencing the sale transaction be captioned as a deed of absolute sale for the purpose of obtaining funds to pay the required downpayment;[16] (*c*) Gueco was only able to pay ₱1,565,000.00;[17] and (*d*) B. Sta. Rita continued in possession of the subject properties until Ben Sta. Rita's death in 2001,

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[7] Records (Civil Case No. 9245) p. 22. Including the dorsal portion.

[8] *Id.* at 23. Including the dorsal portion.

[9] *Id.* at 24. Including the dorsal portion.

[10] *Id.* at 30-31.

[11] See *id.* at 45-46.

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

[13] Initially and erroneously docketed as LRC Case No. 9245.

[14] Records (Civil Case No. 9245), pp. 48-55.

[15] *Id.* at 50.

[16] *Id.* at 50-51.

[17] *Id.* at 51.

when Gueco took possession thereof and appropriated the harvest.[18] Hence, B. Sta. Rita and Edgardo prayed that: (*a*) the sale transaction be construed as a conditional sale, and that it be rescinded; (*b*) B. Sta. Rita be restored in the possession of the subject properties; and (*c*) Gueco be adjudged liable to pay ₱500,000.00 as moral damages, ₱300,000.00 as exemplary damages, and ₱50,000.00 per agricultural year by way of damages for the misappropriated crops, among others.[19]

On July 30, 2003, while the surrender of titles case was pending, Alfred Ramos Sta. Rita, Ariel Ramos Sta. Rita, and Arnold Ramos Sta. Rita, (Sta. Ritas), as alleged heirs of the late Ben Sta. Rita and as shareholders[20] of B. Sta. Rita, for themselves, their co-heirs[21] and on behalf of B. Sta. Rita, and by way of a derivative suit,[22] filed a complaint[23] for reformation and rescission of contract and quieting of title against Gueco. The case was docketed as Civil Case No. 9532 (reformation case) and was raffled to RTC Branch 63.

The Sta. Ritas alleged that the sale transaction was a conditional and not an absolute sale, for a consideration of ₱25,000,000.00, of which Gueco paid only ₱1,000,000.00.[24] Further, they maintained that the subject deed was executed only for the purpose of helping Gueco secure a loan with the bank to pay the balance of the purchase price.[25] Unfortunately, Gueco failed to obtain a loan and consequently failed to settle the outstanding balance despite demands;[26] hence, the possession

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[18] *Id.*

[19] *Id.* at 53-54.

[20] Records (Civil Case No. 9532), pp. 13-20.

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

[22] *Id.* at 3.

[23] *Id.* at 1-9.

[24] *Id.* at 5-6.

[25] *Id.* at 4.

[26] *Id.* at 5.

of the subject properties as well as the subject titles properly remained with B. Sta. Rita.

Meanwhile, the Sta. Ritas moved[27] to intervene in the surrender of titles case, claiming similarity of the subject matter and parties, which RTC Branch 64 granted.[28]

On the other hand, Gueco, as defendant in the reformation case, moved[29] to dismiss the complaint on the following grounds, among others: (*a*) that the Sta. Ritas failed to comply with a condition precedent before resorting to a derivative suit, *i.e.*, to show and allege in the complaint that the officers of B. Sta. Rita refused to sue, are the ones being sued, or were the ones who held control of the corporation;[30] and (*b*) that the Sta. Ritas are not parties to the subject deed and therefore, had no legal personality to seek its reformation or rescission.[31]

Gueco's motion to dismiss was, however, denied by RTC Branch 63 in an Order[32] dated August 26, 2003. Later, her motion for reconsideration[33] therefrom was also denied,[34] prompting her to elevate the matter to the CA *via* a petition for *certiorari*, docketed as CA-G.R. SP No. 79932 (*certiorari* case).[35]

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[27] Records (Civil Case No. 9245), pp. 130-134. See Motion for Leave to Intervene dated August 5, 2003.

[28] *Id.* at 189. Order dated August 19, 2003. Penned by Judge Martonino R. Marcos.

[29] Records (Civil Case No. 9532), pp. 54-60. Motion to Dismiss filed on August 14, 2003.

[30] *Id.* at 56-57.

[31] *Id.* at 57-59.

[32] *Id.* at 72-73. Penned by Judge Arsenio P. Adriano.

[33] *Id.* at 74-76.

[34] *Id.* at 82. Order dated September 19, 2003.

[35] Entitled "*Angeline Mercado Gueco-Dabu v. Hon. Arsenio P. Adriano, in his capacity as the Presiding Judge of the Regional Trial Court of Tarlac, Branch 63, Alfred Ramos Sta. Rita, Ariel Ramos Sta. Rita and Arnold Ramos Sta. Rita.*"

Subsequently, or on November 5, 2003, the surrender of titles and the reformation cases were ordered[36] consolidated before RTC Branch 63.

On March 5, 2004, herein petitioner Arlene Sta. Rita Kanapi (Arlene), wife of Edgardo, together with the latter's heirs[37] (Heirs of Edgardo), moved[38] for leave to file their complaint-in-intervention[39] in the reformation case, alleging that she is also a stockholder and director of B. Sta. Rita. The complaint-in-intervention reiterated the Sta. Ritas' allegations in the main complaint. In an Order[40] dated March 15, 2004, RTC Branch 63 admitted the complaint-in-intervention and proceeded to hear the cases jointly.

On July 30, 2004, the CA rendered its Decision[41] in the *certiorari* case, dismissing the reformation case due to the Sta. Ritas' lack of legal personality to bring a derivative suit. Citing Section 5,[42] Rule III of the Rules of Procedure of the Securities and Exchange Commission, the CA found that while the Sta. Ritas may be shareholders of B. Sta. Rita at the time of the institution of their complaint against Gueco, their rights did not antedate nor coincide with the date of the questioned sale. Moreover, records are bereft of any showing that they had made any prior demand upon the Board of Directors of B. Sta. Rita

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[36] Records (Civil Case No. 9245), pp. 219-221. See Order dated November 5, 2003.

[37] See records (Civil Case No. 9245), p. 122. Edgardo Kanapi died on December 12, 2002 per Certificate of Death of even date.

[38] Records (Civil Case No. 9532), pp. 121-123. Motion for Leave (To File Complaint-in-Intervention) dated February 20, 2004.

[39] *Id.* at 124-130. Complaint-in-Intervention dated February 20, 2004.

[40] *Id.* at 137.

[41] CA *rollo*, pp. 144-149.

[42] SEC. 5. Derivative suit. No action shall be brought by a stockholder unless the complainant was a stockholder at the time the questioned transaction occurred as well as the time the action was filed and remains a stockholder during the pendency of the action.

to institute a case to preserve any corporate property which is a requirement for a derivative suit.

Aggrieved, the Sta. Ritas filed a motion for reconsideration which was, however, denied by the CA on October 28, 2004.[43] As such, they filed a petition for review on *certiorari* before the Court, docketed as G.R. No. 165858.[44]

In the meantime, RTC Branch 63 proceeded to hear the surrender of titles case independently of the reformation case.

The RTC Ruling

On December 8, 2005, RTC Branch 63 rendered a Joint Decision[45] (Joint Decision), rescinding the sale transaction and directing the return of the amount of ₱1,000,000.00 to the former, with 6% interest from receipt of the said decision until finality and 12% interest from finality until fully paid.

It concluded that the parties had not intended to enter into a contract of sale but a mere contract to sell for the following reasons: (*a*) there was no immediate transfer of ownership from the seller to the buyer as Gueco only demanded for the delivery of the subject titles on May 21, 2001; (*b*) Gueco did not immediately take possession of the subject properties; and (*c*) B. Sta. Rita continued paying the real estate taxes due. However, it held that since Gueco paid the amount of ₱1,000,000.00, the said sum should be returned to her.[46]

Dissatisfied, Gueco appealed the Joint Decision to the CA, ascribing error[47] on the part of RTC Branch 63 in: (*a*) rendering a joint decision despite a pending incident in the reformation case; (*b*) allowing the intervention of the Sta. Ritas in the surrender of titles case; and (*c*) rescinding the absolute sale.

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[43] *Rollo,* pp. 49-50.

[44] Entitled *"Alfred Ramos Sta. Rita, et al. v. Angeline Mercado Gueco-Dabu."*

[45] *Rollo,* pp. 87-89.

[46] *Id.* at 88.

[47] CA *rollo,* pp. 117-118. See Appellant's Brief dated April 4, 2007.

In the interim, the Court issued a Resolution[48] dated January 25, 2006 in G.R. No. 165858, denying the Sta. Ritas' petition for failure to prosecute, which denial became final and executory on June 16, 2006.[49] In fine, the reformation case had been dismissed with finality.

The CA Ruling

In a Decision[50] dated January 21, 2010 (CA Decision), the CA reversed and set aside the Joint Decision. It held that the final dismissal of the reformation case left only the surrender of titles case for RTC Branch 63 to resolve. As rescission was one of the main issues raised in the dismissed reformation case, it was reversible error on the part of the RTC Branch 63 to have rescinded the sale transaction in favor of the Sta. Ritas. Consequently, the CA struck down the Joint Decision under the principles of the law of the case and *res judicata*.[51]

Due to the CA's adverse ruling, Arlene, for herself and purportedly on behalf of B. Sta. Rita, moved for reconsideration,[52] maintaining that *res judicata* cannot apply, there being no identity of parties as she was not one of the original plaintiffs in the dismissed reformation case. Gueco opposed[53] Arlene's motion, pointing out that the latter filed a complaint-in-intervention in the reformation case and, as a result of its dismissal, the aforementioned complaint was necessarily discharged. Eventually, Arlene's motion for reconsideration was denied by the CA in a Resolution[54] dated July 26, 2010.

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[48] *Id.* at 153.

[49] *Id.* at 154.

[50] *Rollo*, pp. 44-57.

[51] *Id.* at 53-56.

[52] CA *rollo*, pp. 236-244.

[53] *Id.* at 249-250.

[54] *Rollo*, pp. 41-42.

The Issues Before the Court

Undaunted, Arlene, for herself and in representation of the Heirs of Edgardo and B. Sta. Rita, is now before the Court, insisting that the dismissal of the reformation case on the ground of lack of legal personality on the part of the Sta. Ritas should not have affected her complaint-in-intervention. She maintains that the CA erred in applying the doctrine of *res judicata* in reversing the Joint Decision. Finally, she asserts that the sale transaction between Gueco and B. Sta. Rita should have been considered as an equitable mortgage, considering the paltry amount of ₱1,000,000.00 by way of consideration for the subject properties.[55]

The Court's Ruling

The petition must be denied.

This course of action is impelled by the fact that Arlene and the Heirs of Edgardo do not have any legal personality to appeal the CA Decision before the Court since: ***first***, they were only intervenors in the reformation case which had already been dismissed by the Court with finality; and ***second***, they were not parties in the surrender of titles case.

With respect to the first incident, it bears to stress that Arlene's and the Heirs of Edgardo's complaint-in-intervention in the dismissed reformation case had been effectively discharged since the principal complaint therein had already been terminated with finality. Clearly, their complaint-in-intervention cannot be treated as an independent action as it is merely an ancillary to and a supplement of the principal action.[56] In other words, the complaint-

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[55] *Id.* at 20-21.

[56] "Intervention is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party pending legal proceedings, by which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceedings.

in-intervention essentially latches on the complaint for its legal efficacy so much so that the dismissal of the complaint leads to its concomitant dismissal. Applying these principles to this case therefore lead to the conclusion that the dismissal of the main complaint in the reformation case necessarily resulted in the dismissal of Arlene's and the Heirs of Edgardo's complaint-in-intervention lodged in the same case.

Anent the second incident, records disclose that Arlene or the Heirs of Edgardo were not parties – either as defendants or intervenors – in the surrender of titles case nor did they, in any manner, participate in the proceedings of the same. It is a standing rule that no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party.[57] In this light, it cannot be gainsaid that Arlene and the Heirs of Edgardo cannot be adversely affected by the outcome of the surrender of titles case and, as such, cannot therefore interpose an appeal therefrom.

Thus, due to the above-stated incidents, the Court denies the instant petition for Arlene's and the Heirs of Edgardo's lack of legal personality to appeal the CA Decision.

To note, neither can Arlene file the instant appeal on behalf of B. Sta. Rita since there lies no evidence on record to show that she had been properly authorized by the said corporation to file the same. It is fundamental that the power of a corporation

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Fundamentally, therefore, intervention is never an independent action, but is ancillary and supplemental to the existing litigation. Its purpose is not to obstruct nor x x x unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interests.

Otherwise stated, **the right of an intervenor should only be in aid of the right of the original party**. **Where the right of the latter has ceased to exist, there is nothing to aid or fight for; hence, the right of intervention ceases**." (*Cariño v. Ofilada*, G.R. No. 102836, January 18, 1993, 271 SCRA 206, 215; emphases supplied; citations omitted.)

[57] See *Dare Adventure Farm Corporation v. CA*, G.R. No. 161122, September 24, 2012, 681 SCRA 580, 588-589.

to sue and be sued in any court is lodged with the board of directors and/or its duly authorized officers and agents,[58] which Arlene clearly is not. Consequently, for her lack of authority, the appeal of Arlene on behalf of B. Sta. Rita must necessarily fail.

As a final point, while it has been alleged[59] that B. Sta. Rita had already ceased business operations, there is equally no evidence on record to substantiate this fact. Hence, for all legal intents and purposes, it is presumed that the corporation still exists and, in this accord, the proper authority to institute a case for and in its behalf remain a requirement.

In view of the foregoing pronouncements, the Court finds it unnecessary to delve into the other ancillary issues raised in this case.

WHEREFORE, the petition is **DENIED.** Accordingly, the Decision dated January 21, 2010 and the Resolution dated July 26, 2010 of the Court of Appeals in CA-G.R. CV No. 87000 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo*, and *Perez, JJ.*, concur.

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[58] "A corporation has no power, except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. **Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers**. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors." (*Republic v. Coalbrine International Phils., Inc.*, G.R. No. 161838, April 7, 2010, 617 SCRA 491, 498; emphasis supplied; citations omitted.)

[59] *Rollo*, p. 13.

[*] Designated Acting Member per Special Order No. 1525 dated August 22, 2013.

SECOND DIVISION

[G.R. No. 196723. August 28, 2013]

ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioner, vs.* **SUMITOMO CORPORATION,** *respondent.*

[G.R. No. 196728. August 28, 2013]

SUMITOMO CORPORATION, *petitioner, vs.* **ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CONCEPT; HOW COMMITTED.— Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. More particularly, forum shopping can be committed in three ways, namely: (*a*) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (*b*) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (*c*) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). Forum shopping is treated as an act of malpractice and, in this accord, constitutes a ground for the summary dismissal of the actions involved. To be sure, the rule against forum shopping seeks to prevent the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant

the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.

2. ID.; ID.; ID.; THE COURT OF APPEALS COMMITTED NO REVERSIBLE ERROR IN DISMISSING PETITIONER'S FIRST PETITION ON THE GROUND OF FORUM SHOPPING SINCE THE RELIEF SOUGHT AND THE ALLEGATIONS STATED THEREIN ARE IDENTICAL TO ITS OPPOSITION TO RESPONDENT'S CLAIM FOR COSTS FILED BEFORE THE ARBITRAL TRIBUNAL WHILE CIAC CASE NO. 28-2008 WAS STILL PENDING. — In this case, the Court finds that the CA committed no reversible error in dismissing Asian Construction's First CA Petition on the ground of forum shopping since the relief sought (*i.e.*, the reconsideration of the Partial Award) and the allegations stated therein are identical to its opposition to Sumitomo's claim for costs filed before the Arbitral Tribunal while CIAC Case No. 28-2008 was still pending. These circumstances clearly square with the first kind of forum shopping which thereby impels the dismissal of the First CA Petition on the ground of *litis pendentia*. On this score, it is apt to point out that Asian Construction's argument that it merely complied with the directive of the Arbitral Tribunal cannot be given any credence since it (as well as Sumitomo) was only directed to submit evidence to prove the costs it had incurred and paid as a result of the arbitration proceedings. However, at variance with the tribunal's directive, Asian Construction, in its opposition to Sumitomo's claim for costs, proceeded to seek the reversal of the Partial Award in the same manner as its First CA Petition. It cannot, therefore, be doubted that it treaded the course of forum shopping, warranting the dismissal of the aforesaid petition. In any case, the Court observes that the First CA Petition remains dismissible since the CIAC Revised Rules provides for the resort to the remedy of a petition for review only against a final arbitral award, and not a partial award, as in this case. In fine, the Court upholds the CA's dismissal of Asian Construction's petition in CA-G.R. SP No. 112127 (First CA Petition) and based on this, denies its petition in G.R. No. 196723.

3. CIVIL LAW; CIVIL CODE; ARBITRATIONS; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); A

FINAL AWARD RENDERED BY AN ARBITRAL TRIBUNAL IS NOT ABSOLUTELY INSULATED FROM JUDICIAL REVIEW; THE COURT OF APPEALS CORRECTLY REVIEWED AND MODIFIED THE ARBITRAL TRIBUNAL'S FINAL AWARD INSOFAR AS THE AWARD OF ATTORNEY'S FEES IN FAVOR OF RESPONDENT IS CONCERNED SINCE THE SAME AROSE FROM AN ERRONEOUS INTERPRETATION OF LAW.— A brief exegesis on the development of the procedural rules governing CIAC cases clearly shows that a final award rendered by the Arbitral Tribunal is not absolutely insulated from judicial review. To begin, Executive Order No. (EO) 1008, which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, plainly states that the arbitral award "shall be final and inappealable except on questions of law which shall be appealable to the [Court]." Later, however, the Court, in Revised Administrative Circular (RAC) No. 1-95, modified this rule, directing that the appeals from the arbitral award of the CIAC be first brought to the CA on "questions of fact, law or mixed questions of fact and law." This amendment was eventually transposed into the present CIAC Revised Rules which direct that "a petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court." Notably, the current provision is in harmony with the Court's pronouncement that "despite statutory provisions making the decisions of certain administrative agencies 'final,' [the Court] still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law" and that, in particular, "voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review." In this case, the Court finds that the CA correctly reviewed and modified the Arbitral Tribunal's Final Award insofar as the award of attorney's fees in favor of Sumitomo is concerned since the same arose from an erroneous interpretation of the law.

4. ID.; DAMAGES; ATTORNEY'S FEES; DELETION OF AWARD OF ATTORNEY'S FEES IS PROPER; THERE WAS NO GROSS AND EVIDENT BAD FAITH ON THE

PART OF PETITIONER IN FILING ITS COMPLAINT AGAINST RESPONDENT SINCE IT WAS MERELY SEEKING PAYMENT OF ITS UNPAID WORKS DONE PURSUANT TO THE AGREEMENT.— To elucidate, jurisprudence dictates that in the absence of a governing stipulation, attorney's fees may be awarded only in case the plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith. This is embodied in Article 2208 of the Civil Code which states: Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: x x x (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim; x x x In this case, the parties agreed that reasonable attorney's fees shall be paid by the defaulting party if it fails to perform any of its obligations under the Agreement or by the party not prevailing, if any dispute concerning the meaning and interpretation thereto arises. However, since the parties' respective claims under the Agreement had already prescribed pursuant to New York State Law, considering as well that the dispute was not regarding the meaning or construction of any provision under the Agreement, their stipulation on attorney's fees should remain inoperative. Therefore, discounting the application of the foregoing stipulation, the Court proceeds to examine the matter under the lens of bad faith pursuant to the above-discussed rules on attorney's fees. After a careful scrutiny of the records, the Court observes that there was no gross and evident bad faith on the part of Asian Construction in filing its complaint against Sumitomo since it was merely seeking payment of its unpaid works done pursuant to the Agreement. Neither can its subsequent refusal to accept Sumitomo's offered compromise be classified as a badge of bad faith since it was within its right to either accept or reject the same owing to its contractual nature. Verily, absent any other just or equitable reason to rule otherwise, these incidents are clearly off-tangent with a finding of gross and evident bad faith which altogether negates Sumitomo's entitlement to attorney's fees. Hence, finding the CA's review of the Final Award and its consequent deletion of the award of attorney's fees to be proper, the Court similarly denies Sumitomo's petition in G.R. No. 196728.

APPEARANCES OF COUNSEL

Torres Clemencio Cabochan Torres Law Offices and *Yulo & Bello Law Offices* for Asian Construction and Dev't. Corp.
Sycip Salazar Hernandez & Gatmaitan for Sumitomo Corp.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari* which assail separate issuances of the Court of Appeals (CA) in relation to the partial and final awards rendered by the Construction Industry Arbitration Commission's (CIAC) Arbitral Tribunal (Arbitral Tribunal) in CIAC Case No. 28-2008.

In particular, the petition in G.R. No. 196723[1] filed by Asian Construction and Development Corporation (Asian Construction) seeks to annul and set aside the CA's Resolutions dated July 23, 2010[2] and April 18, 2011[3] in CA-G.R. SP No. 112127 which dismissed its appeal from the Arbitral Tribunal's Partial Award[4] dated December 15, 2009 (Partial Award) on the ground of forum shopping; while the petition in G.R. No. 196728[5] filed by Sumitomo Corporation (Sumitomo) seeks to annul and set aside the CA's Decision[6] dated January 26, 2011 and

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[1] *Rollo* (G.R. No. 196723), pp. 3-140.

[2] *Id.* at 146-154. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Bienvenido L. Reyes (now Supreme Court Justice) and Priscilla J. Baltazar-Padilla, concurring.

[3] *Id.* at 156-157. Penned by Associate Justice Bienvenido L. Reyes (now Supreme Court Justice), with Associate Justices Romeo F. Barza and Priscilla J. Baltazar-Padilla, concurring.

[4] *Rollo* (G.R. No. 196723), pp. 1250-1266; *rollo* (G.R. No. 196728), pp. 111-127. Issued by Chairman Alfredo F. Tadiar and Members Jesse B. Grove and Salvador P. Castro, Jr.

[5] *Rollo* (G.R. No. 196728), pp. 49-77.

[6] *Id.* at 16-32. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Mariflor P. Punzalan Castillo and Franchito N. Diamante, concurring.

Resolution[7] dated April 29, 2011 in CA-G.R. SP No. 113828 which modified the Arbitral Tribunal's Final Award[8] dated March 17, 2010 (Final Award) by way of deleting the award of attorney's fees in Sumitomo's favor.

The Facts

On March 15, 1996, Asian Construction entered into a Civil Work Agreement[9] (Agreement) with Sumitomo for the construction of a portion of the Light Rail Transit System along the Epifanio Delos Santos Avenue, specifically, from Shaw Boulevard, Mandaluyong City to Taft Avenue, Pasay City for a total cost of US$19,982,000.00 (Project).[10] The said Agreement provides that the "validity, interpretation, enforceability, and performance of [the same] shall be governed by and construed in accordance with the law of the State of New York, U.S.A. [(New York State Law)], without regard to, or legal effect of, the conflicts of law provisions thereof"[11] and that any dispute, controversy or claim arising therefrom "shall be solely and finally settled by arbitration."[12]

In May 1996, Sumitomo paid Asian Construction the amount of US$2,997,300.00 as advance payment to be recovered in accordance with the terms of the Agreement. Later, an additional advance payment of US$1,998,200.00 was made in October 1997.[13] In all, Asian Construction received from Sumitomo the amount of US$9,731,606.62, inclusive of the advance payments (before withholding tax of US$97,308.44).[14]

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[7] *Id.* at 34-37.

[8] *Rollo* (G.R. No. 196723), pp. 1431-1448; *rollo* (G.R. No. 196728), pp. 128-145.

[9] *Rollo* (G.R. No. 196723), pp. 176-256.

[10] *Rollo* (G.R. No. 196723), p. 1250; *rollo* (G.R. No. 196728), p. 111. See Partial Award.

[11] *Rollo* (G.R. No. 196723), p. 250. See Article 29.1 of the Agreement.

[12] *Id.* at 254. See Article 29.14.1 of the Agreement.

[13] *Rollo* (G.R. No. 196723) p. 1222; *rollo* (G.R. No. 196728), p. 286. See Terms of Reference dated July 1, 2009 (TOR).

[14] *Id.*

On September 1, 1998, Sumitomo informed Asian Construction that it was terminating the Agreement effective September 5, 1998 due to the following reasons: (*a*) Asian Construction's failure "to perform and complete the civil work for [Notice to Proceed] issued construction areas within the duration of the Time Schedule in [the] 'Contract Specification of Civil and Architectural Works (Station No. 8 to Station No. 13) x x x'"; (*b*) Asian Construction's failure to "provide adequate traffic management as required in the Scope of Works [pursuant to] subparagraph 5.2.4 of the Contract Specification of Civil and Architectural Work"; and (*c*) Asian Construction's failure to "[pay] the suppliers of certain materials and equipment used in the construction of the Project in violation of [p]aragraph 3.1.3[,] Article 3 of the Agreement."[15] In view of the foregoing, Sumitomo requested Asian Construction to "make the necessary arrangements for the proper turnover of the Project x x x."[16] Asian Construction, however, claimed that the accomplishments under Progress Billing No. (PB) 018[17] dated June 10, 1998 and PB 019[18] dated July 6, 1998, as well as other various claims, were still left unpaid.[19] Hence, on December 22, 1998, it sent Sumitomo a letter,[20] demanding payment of the total amount of US$6,371,530.89. This was followed by several correspondences between the parties through 1999 to 2007 but no settlement was achieved.[21]

The Proceedings Before the Arbitral Tribunal

On September 2, 2008, Asian Construction filed a complaint[22] with the CIAC, docketed as CIAC Case No. 28-2008, seeking

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[15] *Rollo* (G.R. No. 196723), p. 475.

[16] *Id.*

[17] *Id.* at 261.

[18] *Id.* at 361.

[19] *Id.* at 6-7.

[20] *Id.* at 476-478.

[21] *Id.* at 8-12.

[22] *Id.* at 545-550. See Request for Arbitration/Complaint.

payment for its alleged losses and reimbursements amounting to US$9,501,413.13, plus attorney's fees in the amount of ₱2,000,000.00.[23] As a matter of course, an Arbitral Tribunal was constituted, with Alfredo F. Tadiar being designated as Chairman, and Salvador P. Castro and Jesse B. Grove as Members.[24]

For its part, Sumitomo filed a Motion to Dismiss,[25] questioning the CIAC's jurisdiction over the dispute on the ground that the arbitration should proceed in accordance with the Commercial Arbitration Rules of Japan.[26] However, the aforesaid motion was denied.[27] As such, Sumitomo filed an Answer,[28] reiterating the CIAC's alleged lack of jurisdiction and further asserting that the claim was already time-barred. It added that had Asian Construction discharged its obligations under the Agreement to itemize and justify its claims, the same could have been amicably settled years ago. In this respect, it made a counterclaim for the unutilized portion of the advance payments, attorney's fees and costs of litigation in the amount of at least ₱10,000,000.00.[29]

Subsequently, the parties signed a TOR,[30] stipulating the admitted facts and defining the issues to be determined in the arbitration proceedings.

On December 15, 2009, the Arbitral Tribunal rendered the Partial Award[31] which affirmed its jurisdiction over the dispute

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[23] *Id.* at 549.

[24] *Id.* at 572. See Order dated March 30, 2009.

[25] *Id.* at 552-571. See Motion to Dismiss filed on October 21, 2008.

[26] *Id.* at 554.

[27] *Id*. at 584-588. See Order dated May 7, 2009. The Motion for Reconsideration of Sumitomo's Motion to Dismiss was also denied in an Order dated August 18, 2009 (see *id*. at 939-944).

[28] *Id.* at 589-597. See Answer *Ad Cautelam* dated June 8, 2009.

[29] *Id.* at 595-596.

[30] *Rollo* (G.R. No. 196723), pp. 1221-1228; *rollo* (G.R. No. 196728), pp. 285-292.

[31] *Rollo* (G.R. No. 196723), pp. 1250-1266; *rollo* (G.R. No. 196728), pp. 111-127.

but held that the parties were bound by their Agreement that the substantive New York State Law shall apply in the resolution of the issues.[32] It proceeded to dismiss both the claims and counterclaims of the parties on the ground that these had already prescribed under New York State Law's six-year statute of limitations[33] and ruled that, in any case, were it to resolve the same on the merits, "it would not produce an affirmative recovery for the claimant."[34]

Aggrieved, Asian Construction filed before the CA, on January 5, 2010, a Rule 43 Petition for Review,[35] docketed as CA-G.R. SP No. 112127 (First CA Petition), seeking the reversal of the Partial Award.

Meanwhile, notwithstanding its dismissal of the claims and counterclaims, the Arbitral Tribunal further directed the parties to itemize their respective claims for costs and attorney's fees and to submit factual proof and legal bases for their entitlement thereto.[36] Pursuant to this directive, Sumitomo submitted evidence to prove the costs it had incurred and paid as a result of the arbitration proceedings.[37] Asian Construction, on the other hand, did not present any statement or document to substantiate its claims but, instead, submitted an Opposition[38] dated March 8, 2010 (opposition) to Sumitomo's claim for costs. The Arbitral Tribunal did not act upon the opposition because it was treated, in effect, as a motion for reconsideration which was prohibited

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[32] *Rollo* (G.R. No. 196723), pp. 1257-1261; *rollo* (G.R. No. 196728), pp. 118-122.

[33] *Rollo* (G.R. No. 196723), pp. 1261-1262; *rollo* (G.R. No. 196728), pp. 122-125.

[34] *Rollo* (G.R. No. 196723), p. 1264; *rollo* (G.R. No. 196728), p. 125.

[35] *Rollo* (G.R. No. 196723), pp. 1268-1379.

[36] *Rollo* (G.R. No. 196723), p. 1266; *rollo* (G.R. No. 196728), p. 127.

[37] *Rollo* (G.R. No. 196728), pp. 312-501. See Submission (Re. Costs) dated January 29, 2010.

[38] *Id.* at 502-517.

under the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Revised Rules).[39]

On March 17, 2010, the Arbitral Tribunal rendered the Final Award[40] which granted Sumitomo's claim for attorney's fees in the amount of US$200,000.00. It held that while the filing of the arbitration suit cannot be regarded as "clearly unfounded" because of the two progress billings that were left unpaid, Asian Construction's disregard of the Agreement to have the dispute resolved in accordance with New York State Law had forced Sumitomo to incur attorney's fees in order to defend its interest.[41] It further noted that if Asian Construction had accepted the settlement offered by Sumitomo, then, the arbitration proceedings would have even been aborted.[42] On the other hand, a similar claim for attorney's fees made by Asian Construction was denied by reason of the latter's failure to submit, as directed, proof of its entitlement thereto.[43] As to the matter of costs, the Arbitral Tribunal declared Sumitomo relieved from sharing *pro-rata* in the arbitration costs and, consequently, directed Asian Construction to shoulder the same costs in full and reimburse Sumitomo the amount of ₱849,532.45. However, it ordered Sumitomo to bear all the expenses related to the appointment of the foreign arbitrator considering that such service was secured upon its own initiative and without the participation and consent of Asian Construction.[44]

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[39] *Rollo* (G.R. No. 196723), p. 1436; *rollo* (G.R. No. 196728), p. 133. See also Section 17.2 of the CIAC Revised Rules.

[40] *Rollo* (G.R. No. 196723), pp. 1431-1448; *rollo* (G.R. No. 196728), pp. 128-145.

[41] *Rollo* (G.R. No. 196723), pp. 1440 and 1444; *rollo* (G.R. No. 196728), pp. 137 and 141.

[42] *Rollo* (G.R. No. 196723), p. 1440; *rollo* (G.R. No. 196728), p. 137.

[43] *Rollo* (G.R. No. 196723), pp. 1439 and 1443; *rollo* (G.R. No. 196728), pp. 136 and 140.

[44] *Rollo* (G.R. No. 196723), pp. 1445-1446; *rollo* (G.R. No. 196728), pp. 142-143.

Dissatisfied with the Arbitral Tribunal's ruling, Asian Construction filed another Rule 43 Petition for Review[45] before the CA, on May 3, 2010, docketed as CA-G.R. SP No. 113828 (Second CA Petition), this time, to set aside the Final Award. In this light, it claimed gross negligence and partiality on the part of the Arbitral Tribunal and asserted, *inter alia*, that, apart from being a non-arbitrable issue, an award of attorney's fees would be premature since the prevailing party can only be determined when the case is decided with finality. Moreover, it maintained that both claims of Asian Construction and the counterclaims of Sumitomo had already been dismissed for being time-barred.[46]

The CA Ruling

On July 23, 2010, the CA rendered a Resolution[47] (July 23, 2010 Resolution), dismissing Asian Construction's First CA Petition against the Partial Award on the ground of forum-shopping, after it was shown that: (*a*) the aforesaid petition was filed while the arbitration case was still pending final resolution before the Arbitral Tribunal; and (*b*) Asian Construction's opposition to Sumitomo's claim for costs filed before the Arbitral Tribunal had, in fact, effectively sought for the same relief and stated the same allegations as those in its First CA Petition. The CA also noted Asian Construction's premature resort to a petition for review because what was sought to be nullified was not a final award, but only a partial one. The CA eventually denied Asian Construction's motion for reconsideration in a Resolution[48] dated April 18, 2011. Hence, Asian Construction's petition before the Court, docketed as G.R. No. 196723.

Meanwhile, the CA gave due course to Asian Construction's Second CA Petition assailing the Final Award and rendered a

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[45] *Rollo* (G.R. No. 196728), pp. 518-542.

[46] *Id.* at 537-540.

[47] *Rollo* (G.R. No. 196723), pp. 146-154.

[48] *Id.* at 156-157.

Decision[49] on January 26, 2011, upholding the Arbitral Tribunal's ruling except the award of attorney's fees in favor of Sumitomo. The CA held that the fact that Asian Construction initiated an action or refused to compromise its claims cannot be considered unjustified or made in bad faith as to entitle Sumitomo to the aforesaid award. Consequently, Sumitomo moved for reconsideration,[50] asserting that Asian Construction's Second CA Petition should have instead been dismissed in its entirety considering their Agreement that the Arbitral Tribunal's decisions and awards would be final and non-appealable. However, in a Resolution[51] dated April 29, 2011, the CA denied the motion for reconsideration. Thus, Sumitomo's petition before the Court, docketed as G.R. No. 196728.

The Issues Before the Court

The essential issues for the Court's resolution are as follows: (*a*) in G.R. No. 196723, whether or not the CA erred in dismissing Asian Construction's First CA Petition on the ground of forum shopping; and (*b*) in G.R. No. 196728, whether or not the CA erred in reviewing and modifying the Final Award which Sumitomo insists to be final and unappealable.

The Court's Ruling

The petitions should be denied.

A. Dismissal of Asian Construction's First CA Petition; forum shopping.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining

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[49] *Rollo* (G.R. No. 196728) pp. 16-32.

[50] *Id.* at 570-603. Dated April 26, 2011.

[51] *Id.* at 34-37.

a favorable decision if not in one court, then in another. More particularly, forum shopping can be committed in three ways, namely: (*a*) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (*b*) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (*c*) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[52] Forum shopping is treated as an act of malpractice and, in this accord, constitutes a ground for the summary dismissal of the actions involved.[53] To be sure, the rule against forum shopping seeks to prevent the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.[54]

In this case, the Court finds that the CA committed no reversible error in dismissing Asian Construction's First CA Petition on the ground of forum shopping since the relief sought (*i.e.*, the reconsideration of the Partial Award) and the allegations stated therein are identical to its opposition to Sumitomo's claim for costs filed before the Arbitral Tribunal while CIAC Case No. 28-2008 was still pending. These circumstances clearly square with the first kind of forum shopping which thereby impels the dismissal of the First CA Petition on the ground of *litis pendentia*.

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[52] *Villanueva v. CA*, G.R. No. 163433, August 22, 2011, 655 SCRA 707, 718.

[53] *Chemphil Export and Import Corporation v. CA*, G.R. Nos. 112438-39 and 113394, December 12, 1995, 251 SCRA 257, 292; and *Ortigas & Company Limited Partnership v. Velasco*, G.R. Nos. 109645 and 112564, July 25, 1994, 234 SCRA 455, 500.

[54] *Top Rate Construction and General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003).

On this score, it is apt to point out that Asian Construction's argument that it merely complied with the directive of the Arbitral Tribunal cannot be given any credence since it (as well as Sumitomo) was only directed to submit evidence to prove the costs it had incurred and paid as a result of the arbitration proceedings. However, at variance with the tribunal's directive, Asian Construction, in its opposition to Sumitomo's claim for costs, proceeded to seek the reversal of the Partial Award in the same manner as its First CA Petition. It cannot, therefore, be doubted that it treaded the course of forum shopping, warranting the dismissal of the aforesaid petition.

In any case, the Court observes that the First CA Petition remains dismissible since the CIAC Revised Rules provides for the resort to the remedy of a petition for review only against a final arbitral award,[55] and not a partial award, as in this case.

In fine, the Court upholds the CA's dismissal of Asian Construction's petition in CA-G.R. SP No. 112127 (First CA Petition) and based on this, denies its petition in G.R. No. 196723.

B. Review and modification of the Final Award.

Sumitomo Corporation faults the CA for reviewing and modifying a final and non-appealable arbitral award and insists that the Asian Construction's Second CA Petition should have been, instead, dismissed outright. It mainly argues that by entering into stipulations in the arbitration clause – which provides that "the order or award of the arbitrators will be the sole and exclusive remedy between the parties regarding any and all claims and counterclaims with respect to the matter of the arbitrated dispute"[56] and that "the order or award rendered in connection with an arbitration shall be final and binding upon the parties,"[57]

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[55] See Section 18.2 of the CIAC Revised Rules.

[56] *Rollo* (G.R. No. 196723), pp. 254-255. See also Article 29.14.3 of the Agreement.

[57] *Id.* at 255.

Asian Construction effectively waived any and all appeals from the Arbitral Tribunal's decision or award.

Sumitomo's argument is untenable.

A brief exegesis on the development of the procedural rules governing CIAC cases clearly shows that a final award rendered by the Arbitral Tribunal is not absolutely insulated from judicial review.

To begin, Executive Order No. (EO) 1008,[58] which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, plainly states that the arbitral award "shall be final and inappealable except on questions of law which shall be appealable to the [Court]."[59] Later, however, the Court, in Revised Administrative Circular (RAC) No. 1-95,[60] modified this rule, directing that the appeals from the arbitral award of the CIAC be first brought to the CA on "questions of fact, law or mixed questions of fact and law." This amendment was eventually transposed into the present CIAC Revised Rules which direct that "a petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court."[61] Notably, the current provision is in harmony with the Court's pronouncement that "despite statutory provisions making the decisions of certain administrative agencies 'final,' [the Court] still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law" and that, in particular, "voluntary arbitrators, by the nature

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[58] "CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES," otherwise known as the "Construction Industry Arbitration Law."

[59] Section 19 of EO 1008. See also *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, G.R. No. 187521, March 14, 2012, 668 SCRA 302, 315.

[60] RAC 1-95 dated May 16, 1995.

[61] See Section 18.2 of the CIAC Revised Rules.

of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review."[62]

In this case, the Court finds that the CA correctly reviewed and modified the Arbitral Tribunal's Final Award insofar as the award of attorney's fees in favor of Sumitomo is concerned since the same arose from an erroneous interpretation of the law.

To elucidate, jurisprudence dictates that in the absence of a governing stipulation, attorney's fees may be awarded only in case the plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.[63] This is embodied in Article 2208 of the Civil Code which states:

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

x x x x x x x x x

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[62] As held in *Philrock, Inc. v. CIAC*, G.R. Nos. 132848-49, June 26, 2001, 359 SCRA 632, 643-644:

> Petitioner assails the monetary awards given by the arbitral tribunal for alleged lack of basis in fact and in law. The solicitor general counters that the basis for petitioner's assigned errors with regard to the monetary awards is purely factual and beyond the review of this Court. Besides, Section 19, EO 1008, expressly provides that monetary awards by the CIAC are final and unappealable.
>
> We disagree with the solicitor general. As pointed out earlier, factual findings of quasi-judicial bodies that have acquired expertise are generally accorded great respect and even finality, if they are supported by substantial evidence. **The Court, however, has consistently held that despite statutory provisions making the decisions of certain administrative agencies "final," it still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law**. **Voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review**. (Emphasis supplied; citations omitted)

[63] *National Power Corporation v. Philipp Brothers Oceanic, Inc.*, G.R. No. 126204, November 20, 2001, 369 SCRA 629, 648-649.

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's[64] plainly valid, just and demandable claim;

x x x x x x x x x

In this case, the parties agreed that reasonable attorney's fees shall be paid by the defaulting party if it fails to perform any of its obligations under the Agreement or by the party not prevailing, if any dispute concerning the meaning and interpretation thereto arises.[65] However, since the parties' respective claims under the Agreement had already prescribed pursuant to New York State Law, considering as well that the dispute was not regarding the meaning or construction of any provision under the Agreement,[66] their stipulation on attorney's fees should remain inoperative. Therefore, discounting the application of the foregoing stipulation, the Court proceeds to examine the matter under the lens of bad faith pursuant to the above-discussed rules on attorney's fees.

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[64] Particularly, in the foregoing context, Sumitomo is treated as the plaintiff since it is the party who claims a legal right to attorney's fees. While it is Asian Construction which initiated the complaint before the Arbitral Tribunal, Sumitomo, in effect, interposed a counterclaim for the payment of attorney's fees.

In *Gan Hock v. CA*, G.R. No. 60848, May 20, 1991, 197 SCRA 223, 231; citing *Lee v. Romillo, Jr.*, 161 SCRA 589, 595, the Court clarified that a plaintiff is the party claiming to have legal right which the defendant has violated:

> "x x x. A real party in interest-plaintiff is one who has a legal right while a real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal rights of the former."

Further, under Section 1, Rule 3 of the Rules of Court, the term plaintiff is defined as follows:

> SEC. 1. *Who may be parties*; *plaintiff and defendant*. — x x x The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, *etc*.) – party plaintiff. x x x.

[65] *Rollo* (G.R. No. 196723), p. 255. See also Article 29.15 of the Agreement.

[66] CIAC Case No. 28-2008 arose from Asian Construction's complaint seeking payment of its unpaid claims.

After a careful scrutiny of the records, the Court observes that there was no gross and evident bad faith on the part of Asian Construction in filing its complaint against Sumitomo since it was merely seeking payment of its unpaid works done pursuant to the Agreement. Neither can its subsequent refusal to accept Sumitomo's offered compromise be classified as a badge of bad faith since it was within its right to either accept or reject the same owing to its contractual nature.[67] Verily, absent any other just or equitable reason to rule otherwise,[68] these incidents are clearly off-tangent with a finding of gross and evident bad faith which altogether negates Sumitomo's entitlement to attorney's fees.

Hence, finding the CA's review of the Final Award and its consequent deletion of the award of attorney's fees to be proper, the Court similarly denies Sumitomo's petition in G.R. No. 196728.

WHEREFORE, the petitions are **DENIED**. The Resolutions dated July 23, 2010 and April 18, 2011 of the Court of Appeals in CA-G.R. SP No. 112127, as well as its Decision dated January 26, 2011 and Resolution dated April 29, 2011 in CA-G.R. SP No. 113828 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perez, JJ.,* concur.

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[67] Article 2028 of the Civil Code states:

Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

[68] See par. 11, Article 2208 of the Civil Code.

[*] Designated Acting Member per Special Order No. 1525 dated August 22, 2013.

FIRST DIVISION

[G.R. No. 199890. August 28, 2013]

JEROME M. DAABAY, *petitioner, vs.* **COCA-COLA BOTTLERS PHILS., INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; A PARTY WHO DID NOT APPEAL CANNOT ASSIGN SUCH ERRORS AS ARE DESIGNED TO HAVE THE JUDGMENT MODIFIED ALL THAT HE CAN DO IS TO MAKE A COUNTER-ASSIGNMENT OF ERRORS OR TO ARGUE ON ISSUES RAISED BELOW ONLY FOR THE PURPOSE OF SUSTAINING THE JUDGMENT IN HIS FAVOR.— We emphasize that the appeal to the CA was brought not by Daabay but by Coca-Cola, and was limited to the issue of whether or not the award of retirement benefits in favor of Daabay was proper. Insofar as CA-G.R. SP No. 03369-MIN was concerned, the correctness of the NLRC's pronouncement on the legality of Daabay's dismissal was no longer an issue, even beyond the appellate court's authority to modify. In *Andaya v. NLRC,* the Court emphasized that a party who has not appealed from a decision may not obtain any affirmative relief from the appellate court other than what he had obtained from the lower court, if any, whose decision is brought up on appeal. Further, we explained in *Yano v. Sanchez,* that the entrenched procedural rule in this jurisdiction is that a party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that he can do is to make a counter-assignment of errors or to argue on issues raised below only for the purpose of sustaining the judgment in his favor. Due process prevents the grant of additional awards to parties who did not appeal. Considering that Daabay had not yet appealed from the NLRC's Resolution to the CA, his plea for the modification of the NLRC's findings was then misplaced. For the Court to review all matters that are raised in the petition would be tolerant of what Daabay was barred to do before the appellate court.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TERMINATION OF THE EMPLOYEE

FOR A JUST CAUSE RENDERS NUGATORY ANY ENTITLEMENT TO MANDATORY OR OPTIONAL RETIREMENT PAY SHE MIGHT HAVE PREVIOUSLY POSSESSED.— Daabay was declared by the NLRC to have been lawfully dismissed by Coca-Cola on the grounds of serious misconduct, breach of trust and loss of confidence. Our pronouncement in *Philippine Airlines, Inc. v. NLRC* on the issue of whether an employee who is dismissed for just cause may still claim retirement benefits equally applies to this case. We held: At the risk of stating the obvious, **private respondent was not separated from petitioner's employ due to mandatory or optional retirement but, rather, by termination of employment for a just cause**. Thus, any retirement pay provided by PAL's "Special Retirement & Separation Program" dated February 15, 1988 or, in the absence or legal inadequacy thereof, by Article 287 of the Labor Code does not operate nor can be made to operate for the benefit of private respondent. Even private respondent's assertion that, at the time of her lawful dismissal, she was already qualified for retirement does not aid her case because **the fact remains that private respondent was already terminated for cause thereby rendering nugatory any entitlement to mandatory or optional retirement pay that she might have previously possessed.**

3. ID.; ID.; FINANCIAL ASSISTANCE, OR WHATEVER NAME IT IS CALLED, AS A MEASURE OF SOCIAL JUSTICE, IS ALLOWED ONLY IN INSTANCES WHERE THE EMPLOYEE IS VALIDLY DISMISSED FOR CAUSES OTHER THAN SERIOUS MISCONDUCT OR THOSE REFLECTING ON HIS MORAL CHARACTER; RATIONALE.— Being intended as a mere measure of equity and social justice, the NLRC's award was then akin to a financial assistance or separation pay that is granted to a dismissed employee notwithstanding the legality of his dismissal. Jurisprudence on such financial assistance and separation pay then equally apply to this case. The Court has ruled, time and again, that financial assistance, or whatever name it is called, as a measure of social justice is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. We explained in *Philippine Long Distance Telephone Company*

v. NLRC: [S]eparation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker**, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called**, **on the ground of social justice**. A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution. Clearly, considering that Daabay was dismissed on the grounds of serious misconduct, breach of trust and loss of confidence, the award based on equity was unwarranted.

4. ID.; ID.; RETIREMENT BENEFITS, ALTHOUGH NOT MANDATED BY LAW, MAY STILL BE GRANTED BY AGREEMENT OF THE EMPLOYEES AND THEIR EMPLOYER OR AS A VOLUNTARY ACT OF THE EMPLOYER; NOT PRESENT.— Even the NLRC's reliance on the alleged admission by Coca-Cola in its motion to reduce bond that Daabay is entitled to retirement benefits is misplaced. x x x. [T]he statements made by Coca-Cola were in light of ELA Magbanua's ruling that Daabay was illegally dismissed. Furthermore, any admission was only for the purpose of explaining the non-inclusion of the amount of retirement benefits in the computation of the appeal bond posted with the NLRC. Coca-Cola's statements should be taken in such context, and could not be deemed to bind the company even after the NLRC had reversed the finding of illegal dismissal. And although retirement benefits, where not mandated by law, may still be

granted by agreement of the employees and their employer or as a voluntary act of the employer, there is no proof that any of these incidents attends the instant case.

APPEARANCES OF COUNSEL

Pailagao Law Office for petitioner.
Felix Saarenas for respondent.

D E C I S I O N

REYES, *J.*:

This resolves petitioner Jerome M. Daabay's (Daabay) Verified Petition for Review[1], which assails the Decision[2] dated June 24, 2011 and Resolution[3] dated December 9, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 03369-MIN.

The case stems from a complaint for illegal dismissal, illegal suspension, unfair labor practice and monetary claims filed by Daabay against respondent Coca-Cola Bottlers Phils., Inc. (Coca-Cola) and three officers of the company.[4] The records indicate that the employment of Daabay with Coca-Cola as Sales Logistics Checker was terminated by the company in June 2005,[5] following receipt of information from one Cesar Sorin (Sorin) that Daabay was part of a conspiracy that allowed the pilferage of company property.[6]

The allegations of Sorin were embodied in an affidavit which he executed on April 16, 2005.[7] The losses to the company

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[1] *Rollo,* pp. 3-38.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Abraham B. Borreta and Melchor Quirino C. Sadang, concurring; *id.* at 39-48.

[3] *Id.* at 49-53.

[4] *Id.* at 41.

[5] *Id.* at 81.

[6] *Id.* at 40.

[7] *Id.*

were also confirmed by an inventory and audit conducted by Coca-Cola's Territory Finance Head, Silvia Ang. Such losses comprised of cases of assorted softdrinks, empty bottles, missing shells and missing pallets valued at ₱20,860,913.00.[8]

Coca-Cola then served upon Daabay a Notice to Explain with Preventive Suspension, which required him to explain in writing his participation in the scheme that was reported to involve logistics checkers and gate guards. In compliance therewith, Daabay submitted an Explanation dated April 19, 2005 wherein he denied any participation in the reported pilferage.[9]

A formal investigation on the matter ensued. Eventually, Coca-Cola served upon Daabay a Notice of Termination that cited pilferage, serious misconduct and loss of trust and confidence as grounds. At the time of his dismissal, Daabay had been a regular employee of Coca-Cola for eight years, and was receiving a monthly pay of ₱20,861.00, exclusive of other benefits.[10]

Daabay then filed the subject labor complaint against Coca-Cola and Roberto Huang (Huang), Raymund Salvador (Salvador) and Alvin Garcia (Garcia), who were the President and Plant Logistics Managers, respectively, of Coca-Cola at the time of the dispute.[11] On April 18, 2008, Executive Labor Arbiter Noel Augusto S. Magbanua (ELA Magbanua) rendered his Decision[12] in favor of Daabay. He ruled that Daabay was illegally dismissed because his participation in the alleged conspiracy was not proved by substantial evidence. In lieu of reinstatement and considering the already strained relations between the parties, ELA Magbanua ordered the payment to Daabay of backwages and separation pay or retirement benefits, as may be applicable. The dispositive portion of ELA Magbanua's Decision reads:

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[8] *Id.* at 40, 54.

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

[10] *Id.*

[11] *Id.* at 81.

[12] *Id.* at 54-79.

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant Jerome Daabay as illegal, and ordering respondents to pay complainant his backwages in the amount of [₱]750,996.00.

Additionally, respondents are hereby ordered to pay complainant his separation pay at one (1) month for every year of service, or his retirement benefits based on the latest Collective Bargaining Agreement prior to his suspension/termination.

Other claims are hereby ordered dismissed for failure to substantiate.

SO ORDERED.[13]

Dissatisfied, Coca-Cola, Huang, Salvador and Garcia, appealed from ELA Magbanua's Decision to the National Labor Relations Commission (NLRC). Daabay filed a separate appeal to ask for his reinstatement without loss of seniority rights, the payment of backwages instead of separation pay or retirement benefits, and an award of litigation expenses, moral and exemplary damages and attorney's fees.

The NLRC reversed the finding of illegal dismissal. In a Resolution[14] dated August 27, 2009, the NLRC held that there was "reasonable and well-founded basis to dismiss [Daabay], not only for serious misconduct, but also for breach of trust or loss of confidence arising from such company losses."[15] Daabay's participation in the conspiracy was sufficiently established. Several documents such as checkers receipts and sales invoices that made the fraudulent scheme possible were signed by Daabay.[16] The NLRC also found fault in Daabay for his failure to detect the pilferage, considering that the "timely recording and monitoring as security control for the outgoing [sic] of company products are necessarily connected with the functions, duties and responsibilities reposed in him as Sales Logistics

[13] *Id.* at 79.

[14] *Id.* at 80-91.

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

[16] *Id.* at 86-87.

Checker."[17] Notwithstanding its ruling on the legality of the dismissal, the NLRC awarded retirement benefits in favor of Daabay. The dispositive portion of its Resolution reads:

> **WHEREFORE**, premises considered, the appeal of complainant is **DENIED** for lack of merit, while that of respondent Coca-Cola Bottlers Philippines, Inc. is **GRANTED**.
>
> Accordingly, the assailed 18 April 2008 Decision of the Executive Labor Arbiter is hereby **REVERSED** and **SET ASIDE**, and a *new judgment* is entered **DISMISSING** the present complaint for want of evidence.
>
> Let, however, this case be **REMANDED** to the Executive Labor Arbiter or the Regional Arbitration Branch of origin for the *computation* of complainant's retirement benefits in accordance with the latest Collective Bargaining Agreement prior to his termination.
>
> **SO ORDERED.**[18]

Coca-Cola's partial motion for reconsideration to assail the award of retirement benefits was denied by the NLRC in a Resolution[19] dated October 30, 2009. The NLRC explained that there was a need "to *humanize* the severe effects of dismissal"[20] and "tilt the scales of justice in favor of labor as a measure of equity and compassionate social justice."[21] Daabay also moved to reconsider, but his motion remained unresolved by the NLRC.[22] Undaunted, Coca-Cola appealed to the CA.

The CA agreed with Coca-Cola that the award of retirement benefits lacked basis considering that Daabay was dismissed for just cause. It explained:

> We are not oblivious of the instances where the Court awarded financial assistance to dismissed employees, even though they were

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[17] *Id.* at 88.

[18] *Id.* at 91.

[19] *Id.* at 92-94.

[20] *Id.* at 93.

[21] *Id.*

[22] *Id.* at 11, 42.

terminated for just causes. Equity and social justice was the vague justification. Quickly realizing the unjustness of these [s]o-called equitable awards, the Supreme Court took the opportunity to curb and rationalize the grant of financial assistance to legally dismissed employees. Thus, in *Philippine Long Distance Telephone Company v. National Labor Relations Commission,* the Supreme Court recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightfully terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, the Supreme Court also held that the award of financial assistance should not be given to validly terminated employees, whose offenses are *iniquitous* or reflective of some *depravity in their moral character.* x x x.[23] (Citation omitted)

Thus, the dispositive portion of its Decision dated June 24, 2011 reads:

FOR THESE REASONS, the writ of *certiorari* is **GRANTED**; the portion of the Resolution promulgated on 27 August 2009 remanding of the case to the Executive Labor Arbiter or the Regional Arbitration Branch of origin for computation of retirement benefits is **DELETED**.

SO ORDERED.[24]

Daabay's motion for reconsideration was denied in a Resolution[25] dated December 9, 2011; hence, this petition.

It bears stressing that although the assailed CA decision and resolution are confined to the issue of Daabay's entitlement to retirement benefits, Daabay attempts to revive through the present petition the issue of whether or not his dismissal had factual and legal bases. Thus, instead of confining itself to the issue of whether or not Daabay should be entitled to the retirement benefits that were awarded by the NLRC, the petition includes a plea upon the Court to affirm ELA Magbanua's Decision, with the

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[23] *Id.* at 46.

[24] *Id.* at 48.

[25] *Id.* at 49-53.

modification to include: (a) his allowances and other benefits or their monetary equivalent in the computation of his backwages; (b) his actual reinstatement; and (c) damages, attorney's fees and litigation expenses.

We deny the petition.

We emphasize that the appeal to the CA was brought not by Daabay but by Coca-Cola, and was limited to the issue of whether or not the award of retirement benefits in favor of Daabay was proper. Insofar as CA-G.R. SP No. 03369-MIN was concerned, the correctness of the NLRC's pronouncement on the legality of Daabay's dismissal was no longer an issue, even beyond the appellate court's authority to modify. In *Andaya v. NLRC*,[26] the Court emphasized that a party who has not appealed from a decision may not obtain any affirmative relief from the appellate court other than what he had obtained from the lower court, if any, whose decision is brought up on appeal.[27] Further, we explained in *Yano v. Sanchez*,[28] that the entrenched procedural rule in this jurisdiction is that a party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that he can do is to make a counter-assignment of errors or to argue on issues raised below only for the purpose of sustaining the judgment in his favor.[29] Due process prevents the grant of additional awards to parties who did not appeal.[30] Considering that Daabay had not yet appealed from the NLRC's Resolution to the CA, his plea for the modification of the NLRC's findings was then misplaced. For the Court to review all matters that are raised in the petition would be tolerant of what Daabay was barred to do before the appellate court.

Before the CA and this Court, Daabay attempts to justify his plea for relief by stressing that he had filed his own motion

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[26] 502 Phil. 151 (2005).

[27] *Id.* at 159, citing *Policarpio v. CA*, 336 Phil. 329, 341 (1997).

[28] G.R. No. 186640, February 11, 2010, 612 SCRA 347.

[29] *Id.* at 358.

[30] *Unilever Philippines, Inc. v. Maria Ruby M. Rivera*, G.R. No. 201701, June 3, 2013.

for reconsideration of the NLRC's Resolution dated August 27, 2009 but the same remained unacted upon by the NLRC. Such bare allegation, however, is insufficient to allow the issue to be disturbed through this petition. We take note of Daabay's failure to attach to his petition a copy of the motion which he allegedly filed with the NLRC. It is also quite baffling why Daabay does not appear to have undertaken steps to seek the NLRC's resolution on the motion, even after it remained unresolved for more than two years from its supposed filing.

Granting that such motion to reconsider was filed with the NLRC, the labor tribunal shall first be given the opportunity to review its findings and rulings on the issue of the legality of Daabay's dismissal, and then correct them should it find that it erred in its disposition. The Court cannot, by this petition, pre-empt the action which the NLRC, and the CA in case of an appeal, may take on the matter.

Even as we limit our present review to the lone issue that was involved in the assailed CA decision and resolution, the Court finds no cogent reason to reverse the ruling of the CA.

Daabay was declared by the NLRC to have been lawfully dismissed by Coca-Cola on the grounds of serious misconduct, breach of trust and loss of confidence. Our pronouncement in *Philippine Airlines, Inc. v. NLRC*[31] on the issue of whether an employee who is dismissed for just cause may still claim retirement benefits equally applies to this case. We held:

> At the risk of stating the obvious, **private respondent was not separated from petitioner's employ due to mandatory or optional retirement but, rather, by termination of employment for a just cause**. Thus, any retirement pay provided by PAL's "Special Retirement & Separation Program" dated February 15, 1988 or, in the absence or legal inadequacy thereof, by Article 287 of the Labor Code does not operate nor can be made to operate for the benefit of private respondent. Even private respondent's assertion that, at the time of her lawful dismissal, she was already qualified for retirement does not aid her case because **the fact remains that private**

[31] G.R. No. 123294, October 20, 2010, 634 SCRA 18.

respondent was already terminated for cause thereby rendering nugatory any entitlement to mandatory or optional retirement pay that she might have previously possessed.[32] (Citation omitted and emphasis ours)

In ruling against the grant of the retirement benefits, we also take note of the NLRC's lone justification for the award, to wit:

Where from the facts obtaining, as in this case, there is a need to ***humanize*** the severe effects of dismissal and where complainant's entitlement to retirement benefits are even admitted in [Coca-Cola's] motion to reduce bond, **[w]e can do no less but tilt the scales of justice in favor of labor as a measure of equity and compassionate social justice, taking into consideration the circumstances obtaining in this case**.[33] (Emphasis ours)

Being intended as a mere measure of equity and social justice, the NLRC's award was then akin to a financial assistance or separation pay that is granted to a dismissed employee notwithstanding the legality of his dismissal. Jurisprudence on such financial assistance and separation pay then equally apply to this case. The Court has ruled, time and again, that financial assistance, or whatever name it is called, as a measure of social justice is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[34] We explained in *Philippine Long Distance Telephone Company v. NLRC*[35]:

[S]eparation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like

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[32] *Id.* at 44-46; See also *Aquino v. NLRC,* 283 Phil. 118 (1992).

[33] *Rollo,* p. 93.

[34] *Eastern Shipping Lines, Inc., and/or Chiongbian v. Sedan,* 521 Phil. 61, 71 (2006); *San Miguel Corporation v. Lao,* 433 Phil. 890, 898-899 (2002); *Eastern Paper Mills, Inc. v. NLRC,* 252 Phil. 618, 620 (1989).

[35] 247 Phil. 641 (1988).

theft or illicit sexual relations with a fellow worker**, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called**, **on the ground of social justice**.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.[36] (Emphasis ours)

Clearly, considering that Daabay was dismissed on the grounds of serious misconduct, breach of trust and loss of confidence, the award based on equity was unwarranted.

Even the NLRC's reliance on the alleged admission by Coca-Cola in its motion to reduce bond that Daabay is entitled to retirement benefits is misplaced. Apparently, the supposed admission by Coca-Cola was based on the following:

In support of its motion to reduce bond, Coca-cola seeks leniency for its failure to include in the posting of the bond the monetary award for [Daabay's] retirement benefits which, as directed by the Executive Labor Arbiter, should be computed in accordance with the latest Collective Bargaining Agreement prior to his termination. Coca-Cola explains that the amount of the retirement benefits has not been determined and there is a need to compute the same on appeal. x x x.[37]

It is patent that the statements made by Coca-Cola were in light of ELA Magbanua's ruling that Daabay was illegally dismissed. Furthermore, any admission was only for the purpose

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[36] *Id.* at 649.

[37] *Rollo,* pp. 83-84.

of explaining the non-inclusion of the amount of retirement benefits in the computation of the appeal bond posted with the NLRC. Coca-Cola's statements should be taken in such context, and could not be deemed to bind the company even after the NLRC had reversed the finding of illegal dismissal. And although retirement benefits, where not mandated by law, may still be granted by agreement of the employees and their employer or as a voluntary act of the employer,[38] there is no proof that any of these incidents attends the instant case.

WHEREFORE, the petition is **DENIED**. The Decision dated June 24, 2011 and Resolution dated December 9, 2011 of the Court of Appeals in CA-G.R. SP No. 03369-MIN are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 200222. August 28, 2013]

INTEGRATED MICROELECTRONICS, INC., *petitioner, vs.* **ADONIS A. PIONILLA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; REINSTATEMENT WITH

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[38] *Aquino v. NLRC*, G.R. No. 87653, February 11, 1992, 206 SCRA 118.

[*] Acting Member per Special Order No. 1502 dated August 8, 2013.

FULL BACKWAGES; INSTANCES WHERE ONLY REINSTATEMENT WITHOUT FULL BACKWAGES MAY BE VALIDLY ORDERED.— As a general rule, an illegally dismissed employee is entitled to reinstatement (or separation pay, if reinstatement is not viable) and payment of full backwages. In certain cases, however, the Court has carved out an exception to the foregoing rule and thereby ordered the reinstatement of the employee without backwages on account of the following: (*a*) the fact that dismissal of the employee would be too harsh of a penalty; and (*b*) that the employer was in good faith in terminating the employee. x x x For instance, in the case of *Cruz v. Minister of Labor and Employment* the Court ruled as follows: The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of **dismissal which may be too drastic**. **Denial of backwages would sufficiently penalize her for her infractions**. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. **The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages**. Only employees discriminately dismissed are entitled to backpay. Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*, the Court pronounced that "the ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith." The factual similarity of these cases to Remandaban's situation deems it appropriate to render the same disposition.

2. ID.; ID.; ID.; ID.; ID.; DELETION OF AWARD OF BACKWAGES IS PROPER IN CASE AT BAR; PETITIONER WAS IN GOOD FAITH WHEN IT DISMISSED RESPONDENT AS HIS DERELICTION OF ITS COMPANY POLICY ON ID USAGE WAS HONESTLY PERCEIVED TO BE A THREAT TO THE COMPANY'S SECURITY.— In this case, the Court observes that: (*a*) the penalty of dismissal was too harsh of a penalty to be imposed against Pionilla for his infractions; and (*b*) IMI was in good faith when it dismissed Pionilla as his dereliction of its policy on ID usage was honestly perceived to be a threat to the company's security. In this respect, since these concurring circumstances trigger the application of the exception to the

rule on backwages as enunciated in the above-cited cases, the Court finds it proper to accord the same disposition and consequently directs the deletion of the award of backwages in favor of Pionilla, notwithstanding the illegality of his dismissal.

APPEARANCES OF COUNSEL

Alfonso and Associates for petitioner.
Banzuela & Associates for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The Court hereby resolves the Motion for Reconsideration[1] filed by petitioner Integrated Microelectronics, Inc. (IMI) from its Resolution[2] dated January 14, 2013, denying its petition for review on *certiorari*[3] which assailed the Decision[4] dated July 28, 2011 and Resolution[5] dated January 16, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 113274 finding respondent Adonis A. Pionilla (Pionilla) to have been illegally dismissed. For clarity, the Court briefly recounts the antecedents of this case.

The Facts

On November 14, 1996, Pionilla was hired by IMI as its production worker. On May 5, 2005, Pionilla received a notice from IMI requiring him to explain the incident which occurred the day before where he was seen escorting a lady to board the company shuttle bus at the Alabang Terminal. It was reported

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[1] *Rollo*, pp. 390-395. Dated February 14, 2013.

[2] *Id.* at 388.

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

[4] *Id.* at 45-61. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Fernanda Lampas Peralta and Priscilla J. Baltazar-Padilla, concurring.

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

by the bus marshall that the lady was wearing a company identification card (ID) – which serves as a free pass for shuttle bus passengers – even if she was just a job applicant at IMI. In this regard, Pionilla admitted that he lent his ID to the lady who turned out to be his relative. He further intimated that he risked lending her his ID to save on their transportation expenses. Nevertheless, he apologized for his actions.[6]

A Conscience Committee (committee) was subsequently formed to investigate the matter. During the committee hearing, Pionilla admitted that at the time of the incident, he had two IDs in his name as he lost his original ID in November 2004 but was able to secure a temporary ID later. As Pionilla and his relative were about to board the shuttle bus, they were both holding separate IDs, both in his name. Based on the foregoing, IMI found Pionilla guilty of violating Article 6.12 of the Company Rules and Regulations (CRR) which prohibits the lending of one's ID since the same is considered a breach of its security rules and carries the penalty of dismissal. Subsequently, or on August 17, 2005, Pionilla received a letter dated August 16, 2005 informing him of his dismissal from service. Three days after, he filed a complaint for illegal dismissal with damages against IMI.[7]

On May 17, 2007, the Labor Arbiter (LA) rendered a Decision[8] finding Pionilla to have been illegally dismissed by IMI and, as such, ordered the latter to reinstate him to his former position and to pay him backwages in the amount of ₱417,818.78. The LA held that Pionilla was harshly penalized,[9] observing that the latter did not breach the security of the company premises since his companion was not able to enter the said premises nor board the shuttle bus.[10] The LA added that the misdeed was not

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[6] *Id.* at 190.

[7] *Id.* at 190-192.

[8] *Id.* at 150-156. Docketed as NLRC Case No. SRAB-IV-8-8569-05-L. Penned by Labor Arbiter Melchisedek A. Guan.

[9] *Id.* at 155.

[10] *Id.* at 153-154.

tainted with any wrongful intent as it was merely impelled by a mistaken notion of comradeship ("*pakikisama*") and gratitude ("*utang na loob*") on Pionilla's part.[11] Further, the LA held that no dishonesty can be attributed to Pionilla's act of keeping his old ID as this appeared to be a new charge, or at the very least, was merely incidental to the first offense of lending a company ID to another.[12] Dissatisfied, IMI elevated the matter to the National Labor Relations Commission (NLRC).

On appeal, the NLRC, through a Decision dated June 30, 2008,[13] reversed the LA's ruling, finding Pionilla's dismissal to be valid. It pointed out that Pionilla's act of lending his temporary ID was willful and intentional as he, in fact, admitted and apologized for the same.[14] The NLRC further ruled that Pionilla's attitude in violating the CRR could be treated as perverse as bolstered by his failure to surrender his temporary ID despite locating the original one.[15] Dissatisfied, Pionilla filed a petition for *certiorari* before the CA.

On July 28, 2011, the CA rendered a Decision,[16] granting Pionilla's petition. It found that while IMI's regulations on company IDs were reasonable, the penalty of dismissal was too harsh and not commensurate to the misdeed committed. It also stated that while the right of the employer to discipline is beyond question, it, nevertheless, remains subject to reasonable regulation.[17] It further noted that Pionilla worked with IMI for a period of nine years without any derogatory record and even observed that his performance rating had always been

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[11] *Id.* at 154.

[12] *Id.*

[13] *Id.* at 189-195. Docketed as NLRC LAC No. 08-002271-07. Penned by Commissioner Perlita B. Velasco, with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring.

[14] *Id.* at 192.

[15] *Id.* at 192-193.

[16] *Id.* at 45-61.

[17] *Id.* at 57-60.

"outstanding."[18] Undaunted, IMI moved for reconsideration which was, however, denied in a Resolution[19] dated January 16, 2012.

In view of the CA's ruling, IMI filed a petition for review on *certiorari* before the Court which was equally denied in a Resolution[20] dated January 14, 2013, pronouncing that there was no reversible error on the part of the CA in finding Pionilla to have been illegally dismissed. The Court ruled that the imposition of the penalty of dismissal was too harsh and incommensurate to the infraction he committed, this especially considering his nine years of unblemished service. Hence, the present motion for reconsideration.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not its Resolution dated January 14, 2013 should be reconsidered. Among others, IMI contends that to award Pionilla reinstatement and full backwages would not only be excessive and unfair, but would be contrary to existing principles of law and jurisprudence.[21]

The Court's Ruling

The motion for reconsideration is partly granted.

As a general rule, an illegally dismissed employee is entitled to reinstatement (or separation pay, if reinstatement is not viable) and payment of full backwages. In certain cases, however, the Court has carved out an exception to the foregoing rule and thereby ordered the reinstatement of the employee without backwages on account of the following: (*a*) the fact that dismissal of the employee would be too harsh of a penalty; and (*b*) that the employer was in good faith in terminating the employee. The aforesaid exception was recently applied in the case of *Pepsi-*

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[18] *Id.* at 59.

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

[20] *Id.* at 388.

[21] *Id.* at 393.

Cola Products, Phils., Inc. v. Molon,[22] wherein the Court, citing several precedents, held as follows:

> An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.[23] In certain cases, however, the Court has ordered the reinstatement of the employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee. For instance, in the case of *Cruz v. Minister of Labor and Employment*[24] the Court ruled as follows:
>
> > The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of **dismissal which may be too drastic**. **Denial of backwages would sufficiently penalize her for her infractions**. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. **The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages**. Only employees discriminately dismissed are entitled to backpay.
>
> Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*,[25] the Court pronounced that "the ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith."
>
> The factual similarity of these cases to Remandaban's situation deems it appropriate to render the same disposition.[26] (Emphasis and underscoring in the original)

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[22] G.R. No. 175002, February 18, 2013, 691 SCRA 113.

[23] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507, citing *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

[24] 205 Phil. 14, 18-19 (1983).

[25] 202 Phil. 850, 856 (1982).

[26] *Pepsi-Cola Products, Phils., Inc. v. Molon*, *supra* note 22, at 136-137.

In this case, the Court observes that: (*a*) the penalty of dismissal was too harsh of a penalty to be imposed against Pionilla for his infractions; and (*b*) IMI was in good faith when it dismissed Pionilla as his dereliction of its policy on ID usage was honestly perceived to be a threat to the company's security. In this respect, since these concurring circumstances trigger the application of the exception to the rule on backwages as enunciated in the above-cited cases, the Court finds it proper to accord the same disposition and consequently directs the deletion of the award of backwages in favor of Pionilla, notwithstanding the illegality of his dismissal.

WHEREFORE, the motion for reconsideration is **PARTLY GRANTED**. The Court's Resolution dated January 14, 2013 is hereby **MODIFIED**, directing the deletion of the award of backwages in favor of respondent Adonis A. Pionilla.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Reyes,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 201447. August 28, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANASTACIO AMISTOSO *Y* BROCA,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; DEATH OF THE ACCUSED

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[*] Designated Member per Raffle dated February 29, 2012.

PENDING APPEAL OF HIS CONVICTION EXTINGUISHES HIS CRIMINAL LIABILITY, AS WELL AS HIS CIVIL LIABILITY *EX DELICTO*.— [I]t is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability, as well as his civil liability *ex delicto*. Since the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case. Undeniably, Amistoso's death on December 11, 2012 preceded the promulgation by the Court of its Decision on January 9, 2013. When Amistoso died, his appeal before the Court was still pending and unresolved. The Court ruled upon Amistoso's appeal only because it was not immediately informed of his death. Amistoso's death on December 11, 2012 renders the Court's Decision dated January 9, 2013, even though affirming Amistoso's conviction, irrelevant and ineffectual. Moreover, said Decision has not yet become final, and the Court still has the jurisdiction to set it aside.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

Accused-appellant Anastacio Amistoso *y* Broca (Amistoso) was charged before the Regional Trial Court (RTC) of Masbate City, Branch 48, in Criminal Case No. 10106, with the rape of his daughter, AAA,[1] alleged to be 12 years old at the time of the incident. The Information[2] specifically charged Amistoso

[1] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[2] Records, p. 2.

with statutory rape under Article 266-A, paragraph (1) (d) of the Revised Penal Code, as amended.

After trial, on March 23, 2006, the RTC promulgated its Decision[3] finding Amistoso guilty, not of statutory rape, but of qualified rape under Article 266-A, paragraph (1) (a), in relation to Article 266-B, paragraph (1), of the Revised Penal Code, as amended. The dispositive portion of the RTC judgment reads:

> **WHEREFORE**, accused **ANASTACIO AMISTOSO**, having been convicted of **Qualified Rape**, he is hereby sentenced to the capital penalty of **DEATH**; to pay the victim the sum of Seventy[-]Five Thousand Pesos (PhP75,000.00) as indemnity; to pay the said victim the sum of Fifty Thousand Pesos (PhP50,000.00) as for moral damages, and to pay the costs.[4]

The Court of Appeals, in its Decision[5] dated August 25, 2011, in CA-G.R. CR.-H.C. No. 04012, affirmed Amistoso's conviction for qualified rape but modified the penalties imposed in accordance with Republic Act No. 9346[6] and the latest jurisprudence on awards of damages. The appellate court decreed:

> ***WHEREFORE***, the appeal is ***DISMISSED*** and the assailed Decision dated March 23, 2006 of the Regional Trial Court of Masbate City, Branch 48, in Criminal Case No. 10106 is ***AFFIRMED WITH MODIFICATION.***
>
> Accused-appellant Anastacio Amistoso is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. In addition to civil indemnity in the amount of ₱75,000.00, he is ordered to pay the victim ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.[7]

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[3] CA *rollo*, pp. 47-51; penned by Judge Jacinta B. Tambago.

[4] *Id.* at 51.

[5] *Rollo*, pp. 2-13; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring.

[6] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[7] *Rollo*, p. 13.

Insisting upon his innocence, Amistoso appealed to this Court. In its Decision[8] dated January 9, 2013, the Court affirmed with modification the judgment of conviction against Amistoso, expressly making him liable for interest on the amounts of damages awarded, to wit:

> **WHEREFORE**, in view of the foregoing, the instant appeal of Anastacio Amistoso *y* Broca is **DENIED**. The Decision dated August 25, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04012 is **AFFIRMED with the MODIFICATION** that Amistoso is further **ORDERED** to pay interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision.[9]

However, in a letter[10] dated February 7, 2013, Ramoncito D. Roque (Roque), Officer-in-Charge, Inmate Documents and Processing Division of the Bureau of Corrections, informed the Court that Amistoso had died on December 11, 2012 at the New Bilibid Prison (NBP), Muntinlupa City. Roque attached to his letter a photocopy of the Death Report[11] signed by Marylou V. Arbatin, MD, Medical Officer III, NBP, stating that Amistoso, 62 years old, died at about 5:00 p.m. on December 11, 2012 of Cardio Respiratory Arrest. Roque's letter was received by the Court on February 12, 2013.

Penal Institution Supervisor (PIS) Fajardo R. Lansangan, Sr. (Lansangan), Officer-in-Charge, Maximum Security Compound, NBP, wrote another letter[12] dated February 12, 2013, likewise informing the Court of Amistoso's death on December 11, 2012. PIS Lansangan appended to his letter a mere photocopy of Amistoso's Death Certificate.[13] The Court received PIS Lansangan's letter on February 18, 2013.

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[8] *Id.* at 33-53.

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

[10] *Id.* at 54.

[11] *Id.* at 55.

[12] *Id.* at 58.

[13] *Id.* at 59.

Yet, on February 22, 2013, the Public Attorney's Office (PAO), which represented Amistoso and which was apparently also unaware of its client's demise, still filed a Motion for Reconsideration[14] of the Court's Decision dated January 9, 2013.

In a Resolution[15] dated March 20, 2013, the Court required Roque to submit a certified true copy of Amistoso's Death Certificate within 10 days from notice and deferred action on the Motion for Reconsideration filed by the PAO pending compliance with the Court's former directive.

In a letter[16] dated June 20, 2013, and received by the Court on June 25, 2013, PIS Lansangan finally provided the Court with a certified true copy of Amistoso's Death Certificate.[17]

Article 89 of the Revised Penal Code provides:

ART. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

In *People v. Bayotas*,[18] the Court laid down the rules in case the accused dies prior to final judgment:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto in senso strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source

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[14] *Id.* at 60-68.

[15] *Id.* at 69.

[16] *Id.* at 70.

[17] *Id.* at 71.

[18] G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law

b) Contracts

c) Quasi-contracts

d) . . .

e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/ administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription. (Citations omitted.)

Given the foregoing, it is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability, as well as his civil liability *ex delicto*. Since the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case.[19]

Undeniably, Amistoso's death on December 11, 2012 preceded the promulgation by the Court of its Decision on January 9,

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[19] *People v. Bayot*, G.R. No. 200030, April 18, 2012, 670 SCRA 285, 291.

2013. When Amistoso died, his appeal before the Court was still pending and unresolved. The Court ruled upon Amistoso's appeal only because it was not immediately informed of his death.

Amistoso's death on December 11, 2012 renders the Court's Decision dated January 9, 2013, even though affirming Amistoso's conviction, irrelevant and ineffectual. Moreover, said Decision has not yet become final, and the Court still has the jurisdiction to set it aside.

WHEREFORE, the Court **RESOLVES** to:

(1) **NOTE** PIS Lansangan's letter dated June 20, 2013 providing the Court with a certified true copy of Amistoso's Death Certificate;

(2) **SET ASIDE** its Decision dated January 9, 2013 and **DISMISS** Criminal Case No. 10106 before the RTC of Masbate City, Branch 48 by reason of Amistoso's death on December 11, 2012; and

(3) **NOTE WITHOUT ACTION** the Motion for Reconsideration of the Court's Decision dated January 9, 2013 filed by the PAO given the Court's actions in the preceding paragraphs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Mendoza,[*] and *Reyes, JJ.,* concur.

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[*] Per Special Order No. 1502 dated August 8, 2013.

FIRST DIVISION

[G.R. No. 202651. August 28, 2013]

LUCENA B. RALLOS, *petitioner, vs.* **CITY OF CEBU, HONORABLE MICHAEL RAMA, HONORABLE JOY AUGUSTUS YOUNG, HONORABLE SISINIO ANDALES, HONORABLE RODRIGO ABELLANOSA, HONORABLE ALVIN ARCILLA, HONORABLE RAUL ALCOSEBA, HONORABLE MA. NIDA CABRERA, HONORABLE ROBERTO CABARRUBIAS, HONORABLE ALVIN DIZON, HONORABLE RONALD CUENCO, HONORABLE LEA JAPSON, HONORABLE JOSE DALUZ III, HONORABLE EDGARDO LABELLA, HONORABLE MARGARITA OSMEÑA, HONORABLE AUGUSTUS PE, HONORABLE RICHARD OSMEÑA, HONORABLE NOEL WENCESLAO, HONORABLE EDUARDO RAMA, JR., HONORABLE MICHAEL RALOTA, HONORABLE JOHN PHILIP ECHAVEZ-PO, ATTY. JOSEPH BERNALDEZ, ATTY. JUNE MARATAS, ATTY. JERONE CASTILLO, ATTY. MARY ANN SUSON, ATTY. LESLIE ANN REYES, ATTY. CARLO VINCENT GIMENA, ATTY. FERDINAND CAÑETE, ATTY. ISMAEL GARAYGAY III, ATTY. LECEL LLAMEDO and ATTY. MARIE VELLE ABELLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CONCEPT; FORUM SHOPPING EXISTS WHEN THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT OR WHERE A FINAL JUDGMENT IN ONE CASE WILL AMOUNT TO *RES JUDICATA* IN ANOTHER.— "Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or

already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another." "Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case."

2. ID.; ID.; ID.; ID.; ID.; PETITIONER ENGAGED IN FORUM SHOPPING SINCE THE RELIEFS SALIENTLY SOUGHT IN BOTH THE INSTANT PETITION AND SCA NO. CEB-38292 ARE FOUNDED ON THE SAME SET OF FACTS.— In the Verification and Non-Forum Shopping Certification attached to the instant petition and executed by Lucena, she admitted that there are five other pending actions for indirect contempt which she filed relative to Civil Case No. CEB-20388. She, however, claims that the issues in the other five petitions are different from that raised before this Court now. Lucena's claim cannot be sustained. x x x In *Arevalo*, this Court enumerated the three requisites of *litis pendentia*. There is a confluence of these requisites relative to the instant petition and SCA No. CEB-38292. *Litis pendentia* does not require the exact identity of parties involved in the actions. Although the lawyers from the Office of the City Attorney are parties herein but are not made respondents in SCA No. CEB-38292, they do not in any way represent any interest distinct or separate from that of the City of Cebu and the public officers involved. Further, the instant petition superficially makes reference to the Minute Resolutions rendered by this Court in G.R. Nos. 179662 and 194111 which Lucena claims had lapsed into finality and should thus be executed. However, stripped of the unnecessary details, the reliefs saliently sought in both the instant petition and SCA No. CEB-38292 are founded on the same set of facts, to wit, the alleged non compliance by the respondents with the directives contained in the dispositive portion of the Consolidated Order issued by the RTC on March

21, 2002 relative to Civil Case No. CEB-20388. Finally, citation for indirect contempt in either the instant petition or SCA No. CEB-38292 would amount to *res judicata* in the other considering the identities of the parties and issues involved. Since the elements of *litis pendentia* concur in the instant petition and SCA No. CEB-38292, this Court so holds Lucena guilty of forum shopping. "[T]he grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case." Further, "once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice."

3. POLITICAL LAW; LOCAL GOVERNMENT CODE; LOCAL FISCAL ADMINISTRATION; AN APPROPRIATION ORDINANCE SHOULD BE PASSED PRIOR TO THE DISBURSEMENT OF PUBLIC FUNDS.— Even though the rule as to immunity of a state from suit is relaxed, the power of the courts ends when the judgment is rendered. Although the liability of the state has been judicially ascertained, the state is at liberty to determine for itself whether to pay the judgment or not, and execution cannot issue on a judgment against the state. Such statutes do not authorize a seizure of state property to satisfy judgments recovered, and only convey an implication that the legislature will recognize such judgment as final and make provision for the satisfaction thereof." Section 4(1) of P.D. No. 1445 and Section 305(a) of the Local Government Code both categorically state that no money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority. Based on considerations of public policy, government funds and properties may not be seized under writs of execution or garnishment to satisfy judgments rendered by the courts and disbursements of public funds must be covered by the corresponding appropriation as required by law. In the case at bar, no appropriation ordinance had yet been passed relative to the claims of the Heirs of Fr. Rallos. Such being the case, the respondents, as public officers, are acting within lawful

bounds in refusing the execution of the decisions and orders in Civil Case No. CEB-20388.

4. ID.; COMMISSION ON AUDIT (COA); GOVERNMENT AUDITING CODE (P.D. 1445); DESPITE THE RENDITION OF A FINAL AND EXECUTORY JUDGMENT VALIDATING A MONEY CLAIM AGAINST AN AGENCY OR INTRUMENTALITY OF THE GOVERNMENT, ITS FILING WITH THE COA IS A *SINE QUA NON* CONDITION BEFORE PAYMENT CAN BE EFFECTED.— Section 26 of P.D. No. 1445 states that the COA has jurisdiction to examine, audit and *settle* all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. Under Section 5(b), Rule II of COA's Revised Rules of Procedure, local government units are expressly included as among the entities within the COA's jurisdiction. Section 2, Rule VIII lays down the procedure in filing money claims against the Government. Section 4, Rule X provides that any case brought to the COA shall be decided within 60 days from the date it is submitted for decision or resolution. Section 1, Rule XII allows the aggrieved party to file a petition for *certiorari* before this Court to assail any decision, order or resolution of the COA within 30 days from receipt of a copy thereof. This Court, in the case of *University of the Philippines v. Dizon,* thus held that despite the existence of a final and executory judgment validating the claim against an agency or instrumentality of the Government, the settlement of the said claim is still subject to the primary jurisdiction of the COA. Ineluctably, the claimant has to first seek the COA's approval of the monetary claim. Without compliance by Lucena and the Heirs of Fr. Rallos with the provisions of P.D. No. 1445 and the COA's Revised Rules of Procedure, their lamentations that the respondents are unjustly refusing the execution of the decisions and orders in Civil Case No. CEB-20388 do not hold any water.

APPEARANCES OF COUNSEL

Office of the Cebu City Attorney for respondent.

RESOLUTION

REYES, *J.*:

One of the Heirs of Reverend Father Vicente Rallos (Heirs of Fr. Rallos), Lucena B. Rallos[1] (Lucena), is now before this Court with a petition[2] praying for the citation for indirect contempt of the City of Cebu, Mayor Michael Rama (Mayor Rama), the presiding officer and members of the *Sangguniang Panlungsod*, and lawyers from the Office of the City Attorney (respondents). The instant petition is anchored on Lucena's allegation that the respondents impede the execution of final and executory judgments rendered by this Court in G.R. Nos. 179662[3] and 194111.[4] G.R. Nos. 179662 and 194111 were among a string of suits which originated from a Complaint for Forfeiture of Improvements or Payment of Fair Market Value with Moral and Exemplary Damages[5] filed in 1997 by the Heirs of Fr. Rallos before the Regional Trial Court (RTC) of Cebu City, Branch 9, against the City of Cebu relative to two parcels of land[6] with a total area of 4,654 square meters located in *Barangay* Sambag I which were expropriated in 1963 for road construction purposes.

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[1] Sometimes appears in the records as "Lucina B. Rallos".

[2] *Rollo*, pp. 3-56.

[3] On December 5, 2007, this Court issued a Minute Resolution (*id.* at 111-112) denying due to (a) lack of properly executed verification and certification of non-forum shopping, and (b) failure to show any reversible error the Petition for Review on *Certiorari* filed by the City of Cebu against the Heirs of Fr. Rallos to assail the decision rendered by the Court of Appeals in CA-G.R. CV No. 76656.

[4] On December 6, 2010, this Court issued a Minute Resolution (*id.* at 129) denying due to failure to show any reversible error the Petition for Review on *Certiorari* filed by the City of Cebu against Lucina B. Rallos, *et al.* to assail the decision rendered by the Court of Appeals in CA-G.R. SP No. 04418.

[5] Docketed as Civil Case No. CEB-20388.

[6] Now parts of M.H. Aznar Street, Cebu City.

Antecedent Facts

At the root of the controversy are Lots 485-D and 485-E of the Banilad Estate, Sambag I, Cebu City, which were expropriated to be used as a public road in 1963. The Heirs of Fr. Rallos alleged that the City of Cebu occupied the lots in bad faith *sans* the authority of the former's predecessors-in-interest, who were the registered owners of the subject parcels of land.

On June 11, 1997, the Heirs of Fr. Rallos filed before the RTC a Complaint for Forfeiture of Improvements or Payment of Fair Market Value with Moral and Exemplary Damages against the City of Cebu.

In its Answer filed on October 6, 1997, the City of Cebu contended that the subject parcels of land are road lots and are not residential in character. They have been withdrawn from the commerce of men and were occupied by the City of Cebu without expropriation proceedings pursuant to Ordinance No. 416 which was enacted in 1963 or more than 35 years before the Heirs of Fr. Rallos instituted their complaint.

On January 14, 2000, the RTC rendered a Decision,[7] which found the City of Cebu liable to pay the Heirs of Fr. Rallos just compensation in the amount still to be determined by a board of three commissioners, one each to be designated by the contending parties and the court.

To assail the Decision rendered on January 14, 2000, the City of Cebu filed a Motion for Reconsideration, which was however denied by the RTC on February 5, 2001.[8]

The members of the Board of Commissioners thereafter submitted their respective appraisal reports. On July 24, 2001, the RTC rendered a Decision,[9] the dispositive portion of which, in part, reads:

WHEREFORE, the [RTC] hereby renders judgment, ordering [the City of Cebu] to pay [the Heirs of Fr. Rallos] as just compensation

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[7] With then Presiding Judge Benigno G. Gaviola; *rollo,* pp. 57-73.

[8] *Id.* at 74-76.

[9] *Id.* at 77-81.

for Lots 485-D and 485-E the amount of Php34,905,000.00 plus interest at 12% per annum to start 40 days from [the] date of this decision and to continue until the whole amount shall have been fully paid. [The City of Cebu] is further ordered to pay [the Heirs of Fr. Rallos] the following amounts:

1. Php50,000.00 as reimbursement for attorney's fees;
2. Php50,000.00 as reimbursement for litigation expenses.[10]

The contending parties both moved for the reconsideration of the Decision rendered on July 24, 2001. The City of Cebu argued that the reckoning period for the computation of just compensation should be at least not later than 1963 when the said lots were initially occupied. On the other hand, the Heirs of Fr. Rallos insisted that the amount of just compensation payable by the City of Cebu should be increased from Php 7,500.00 to Php 12,500.00 per sq m, the latter being the fair market value of the subject lots. They also prayed for the award of damages in the amount of Php 16,186,520.00, which was allegedly the value of the loss of usage of the properties involved from 1963 to 1997 as computed by Atty. Fidel Kwan, the commissioner appointed by the RTC.

On March 21, 2002, the RTC issued a Consolidated Order[11] denying the Motion for Reconsideration filed by the City of Cebu, but modifying the Decision rendered on July 24, 2001. Through the said order, the RTC increased the amount of just compensation payable to the Heirs of Fr. Rallos from Php 7,500.00 to Php 9,500.00 per sq m.

The City of Cebu filed with the RTC a Notice of Appeal, which was opposed by the Heirs of Fr. Rallos.

In the Decision[12] rendered on May 29, 2007, which resolved the appeal[13] filed by the City of Cebu, the CA opined that the

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[10] *Id.* at 81.

[11] *Id.* at 82-87.

[12] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Isaias P. Dicdican and Stephen C. Cruz, concurring; *id.* at 88-106.

[13] Docketed as CA-G.R. CV No. 76656.

RTC erred in holding that the reckoning point for the determination of the amount of just compensation should be from 1997, the time the complaint for just compensation was filed by the Heirs of Fr. Rallos. Notwithstanding the foregoing, the CA still dismissed on procedural grounds the appeal filed by the City of Cebu. The CA pointed out that pursuant to Sections 2[14] and 9,[15] Rule 41 and Section 1,[16] Rule 50 of the Rules of Court, a record on appeal and not a notice of appeal should have been filed before it by the City of Cebu to assail the RTC's Decisions rendered on January 14, 2000 and July 24, 2001 and the Orders issued on February 5, 2001 and March 21, 2002.

The City of Cebu filed before this Court a Petition for Review on *Certiorari*[17] to assail the Decision rendered by the CA on May 29, 2007. This Court denied the same through a Minute

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[14] Sec. 2. Modes of appeal.

(a) Ordinary appeal.—The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

x x x x x x x x x

[15] Sec. 9. Perfection of appeal; effect thereof. x x x

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

x x x x x x x x x

[16] Sec. 1. Grounds for dismissal of appeal.—An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(b) Failure to file the notice of appeal or the record on the appeal within the period prescribed by these Rules;

x x x x x x x x x

[17] Docketed as G.R. No. 179662.

Resolution[18] issued on December 5, 2007. The said Minute Resolution was recorded in the Book of Entries of Judgments on April 21, 2008.[19]

The Heirs of Fr. Rallos thereafter filed before the RTC a Motion for Execution relative to the Decision rendered on July 24, 2001. They claimed that in 2001, the City of Cebu paid them Php 34,905,000.00, but there remained a balance of Php 46,546,920.00 left to be paid, computed as of September 2, 2008. On its part, the City of Cebu admitted still owing the Heirs of Fr. Rallos but only in the amount of Php 16,893,162.08.[20]

On December 4, 2008, the RTC issued a writ of execution in favor of the Heirs of Fr. Rallos, which in part, reads:

> NOW, THEREFORE, you are hereby commanded to serve a copy hereof to judgment obligor City of Cebu and demand for the immediate payment of Php 44,213,000.00, less the partial payment of Php 34,905,000.00 plus interest at 12% per annum to start 40 days from date of the July 24, 2001 Decision and to continue until the whole amount has been fully paid; Php 50,000.00 as attorney's fees; and Php 50,000.00 as litigation expenses. x x x.[21]

Sheriff Antonio Bellones (Sheriff Bellones) then served upon the City of Cebu a demand letter, dated December 4, 2008, and which was amended on January 26, 2009, indicating that:

> DEMAND is hereby made for the judgment obligor City of Cebu x x x to facilitate the prompt payment of the following: (a) just compensation of Lots 485-D and 485-E in the amount of Php 44,213,000.00 plus interest of 12% per annum starting 40 days from the July 24, 2001 Decision and to continue until the whole amount has been duly paid less partial payment of Php 34,905,000.00 x x x.[22]

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[18] *Rollo*, pp. 111-112.

[19] *Id.* at 113-114.

[20] Culled from the Decision rendered by the Court of Appeals on June 11, 2010 in CA-G.R. SP No. 04418; *id.* at 118.

[21] *Id.*

[22] *Id.* at 119.

The City of Cebu sought the reiteration of the directives stated in the Writ of Execution issued on December 4, 2008 and the setting aside of the amended demand letter served upon it by Sheriff Bellones.

On March 16, 2009, the RTC issued an Order[23] denying the City of Cebu's motion for the reiteration of the writ of execution. The RTC, however, set aside the demand letter served upon the City of Cebu by Sheriff Bellones and interpreted the directives of the writ of execution issued on December 4, 2008 as:

> [T]he entire amount of Php 44,213,000.00 shall be subjected to a 12% interest per annum to start 40 days from the date the decision on July 24, 2001 [was rendered] until the amount of Php 34,905,000.00 was partially paid by the City of Cebu. After the payment by the City of Cebu of a partial amount, the balance shall again be subjected to 12% interest until the same shall have been fully paid.[24]

The Heirs of Fr. Rallos assailed the abovementioned order on the ground that it effectively modified the final and executory Decision rendered on July 24, 2001. They likewise sought the application of Article 2212[25] of the New Civil Code and jurisprudence so as to entitle them to legal interest on the interest due to them pursuant to the Decision rendered on July 24, 2001. In the Order issued on May 20, 2009, the RTC did not favorably consider the preceding claims.

A Petition for *Certiorari* and *Mandamus*[26] was then filed by the Heirs of Fr. Rallos before the CA to challenge the Orders issued by the RTC on March 16, 2009 and May 20, 2009. The CA granted the petition after finding that the two assailed orders effectively modified the final and executory disposition made by the RTC on March 21, 2002. The CA likewise ruled that the case calls for the application of Article 2212 of the New Civil

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[23] Issued by Honorable Geraldine Faith Econg.

[24] *Rollo,* p. 119.

[25] Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[26] Docketed as CA-G.R. SP No. 04418.

Code, hence, it directed the City of Cebu to pay interest at the rate of 12% *per annum* upon the interest due, to be computed from the date of the filing of the complaint until full satisfaction of the obligation. The CA stated:

> Note that the final and executory consolidated decision of July 24, 2001 as modified by the final and executory order of March 21, 2002, clearly directed herein respondent Cebu City to pay interest at the rate of 12% per annum based on the amount of [Php]9,500.00 per square meter starting 40 days from the date of the decision and to continue until the entire amount shall have been fully paid. Yet, the assailed orders x x x, now directed that the 12% interest per annum be paid on the declining balance contrary to the directive in the final and executory judgment x x x.
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> x x x x x x x x x
>
> x x x [The Heirs of Fr. Rallos] are without a doubt entitled to 12% interest per annum on the interest due from finality until its satisfaction x x x. The same is proper even if not expressly stated in the final and executory judgment x x x.[27]

The City of Cebu assailed the Decision in CA-G.R. SP No. 04418 by way of a Petition for Review on *Certiorari*[28] filed before this Court. The same was denied through a Minute Resolution[29] issued on December 6, 2010. The said resolution was recorded in this Court's Book of Entries of Judgments on June 16, 2011.[30]

The Heirs of Fr. Rallos then moved for execution relative to Civil Case No. CEB-20388. The RTC granted the motion through the Order[31] issued on September 23, 2011.

The City of Cebu thereafter filed the following: (1) Urgent Omnibus Motions to Quash the Writ of Execution, and to Set

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[27] *Rollo*, pp. 121-124.

[28] Docketed as G.R. No. 194111.

[29] *Rollo*, p. 129.

[30] *Id.* at 130.

[31] Issued by Honorable James Stewart Ramon E. Himalaloan as Acting Presiding Judge; *id.* at 134-135.

Aside the Notice of Garnishment; (2) Supplemental Urgent Omnibus Motions to Quash the Writ of Execution, and to Set Aside the Notice of Garnishment; (3) Motion for Issuance of *Status Quo* Order Pending Resolution of [the City of Cebu's] Urgent Omnibus Motions to Quash the Writ of Execution and to Set Aside the Notice of Garnishment;[32] and (4) Motion to Strike out or Expunge Urgent Omnibus Motion and Supplemental Urgent Omnibus Motion with Manifestation and Reservation. The RTC denied the four motions in the Order[33] issued on October 26, 2011. The RTC's Order[34] issued on January 26, 2012 likewise did not favorably consider the motion for reconsideration filed by the City of Cebu. The RTC emphasized that the *Convenio*[35] already existed way back in 1940, hence, it cannot be considered as a supervening event which transpired after the judgment in Civil Case No. CEB-20388 had become final and executory. The City of Cebu no longer filed any motion or action to assail the RTC Orders issued on October 26, 2011 and January 26, 2012.

Meanwhile, in response to Mayor Rama's query, the Commission on Audit's (COA) Regional Director Delfin P. Aguilar wrote the former a letter[36] dated October 27, 2011 opining that:

Under Administrative Circular No. 10-2000[37] issued by the Supreme Court, it was clearly stated that the prosecution, enforcement or satisfaction of state liability **must** be pursued in accordance with the rules and procedures laid down in Presidential Decree No. 1445,

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[32] In this motion, it was alleged that a 1940 *Convenio* was discovered wherein the predecessors-in-interest of the Heirs of Fr. Rallos supposedly obligated themselves to donate the two lots subject of the instant controversy to the City of Cebu.

[33] *Rollo*, pp. 136-137.

[34] *Id.* at 138.

[33] *Id.* at 298-313, 314-332.

[36] *Id.* at 333-336.

[37] Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units, issued on October 25, 2000.

otherwise known as the Government Auditing Code of the Philippines, wherein it is provided that all money claims against the government must first be filed with the [COA]. x x x.

Clearly, based on the aforementioned Supreme Court issuance and in the line with the rulings of the Supreme Court in various cases against garnishment of public funds or property to satisfy money judgment against the government, we are of the view that the issuance of the writ of execution for the satisfaction of the money judgment against the City of Cebu may be considered beyond the powers of the court.

On the other hand, Section 1, Rule VIII of the 2009 Revised Rules of Procedure of the COA provides that a money judgment is considered as a money claim which is within the original jurisdiction of the Commission Proper (CP) of the COA and which shall be filed directly with the Commission Secretary x x x.[38]

On February 27, 2012, the RTC issued another Order[39] directing under pain of contempt the Cebu branches of Philippine Veterans Bank and Postal Savings Bank to release to the concerned RTC sheriff certifications indicating the correct account names and numbers maintained by the City of Cebu in the said banks. The Order also directed the *Sangguniang Panlungsod* to enact an appropriation ordinance relative to the money judgment. Upon presentment of the ordinance, the above-mentioned banks were expected to release the amounts stated therein to satisfy the judgment rendered in favor of the Heirs of Fr. Rallos. The City of Cebu filed a Motion for Reconsideration[40] against the Order dated February 27, 2012.

Even before the Motion for Reconsideration to the Order dated February 27, 2012 can be resolved by the RTC, the City of Cebu filed before the CA a Petition for Annulment of Final Decision/s and Order/s with prayer for the issuance of injunctive

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[38] *Rollo*, p. 334.

[39] No copy of the Order is attached to the *rollo*. This Court referred to the City of Cebu's Motion for Reconsideration (*id.* at 139; Only the first page of the motion is found in the *rollo*.) to the said order to determine the latter's contents.

[40] *Id.*

reliefs.[41] The City of Cebu claimed that the act of the Heirs of Fr. Rallos of suppressing the existence of the *Convenio* amounted to extrinsic fraud which would justify the annulment of the RTC's decisions and orders relative to Civil Case No. CEB-20388. In praying for the issuance of injunctive reliefs, the City of Cebu stressed that it had already paid the Heirs of Fr. Rallos Php 56,196,369.42 for a 4,654 sq m property or at a price of Php 12,074.85 per sq m. Further, the procedures prescribed in Presidential Decree (P.D.) No. 1445, this Court's Administrative Circular (Admin. Circular) No. 10-2000 and Rule VIII of the COA's Revised Rules of Procedure were not yet complied with, hence, public funds cannot be released notwithstanding the rendition of the decisions and issuance of the orders by the RTC relative to Civil Case No. CEB-20388.

On April 13, 2012, the CA, through a Resolution,[42] granted the City of Cebu's application for the issuance of a temporary restraining order (TRO) relative to CA-G.R. SP No. 06676. Subsequently, a writ of preliminary injunction was likewise issued through the Resolution[43] dated June 26, 2012.

Lucena then filed the following petitions for indirect contempt, all of which in relation with Civil Case No. CEB-20388:

Title	Docket Number	Date Filed	Forum
Lucina B. Rallos v. Mayor Michael Rama, Eileen Mangubat and Doris Bongcac[44]	SCA No. CEB-38121	October 3, 2011	RTC of Cebu City, Branch 10

[41] Docketed as CA-G.R. SP No. 06676; *id.* at 141-163.

[42] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Pampio A. Abarintos and Victoria Isabel A. Paredes, concurring; *id.* at 339-341.

[43] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Carmelita S. Manahan, concurring; *id.* at 345-347.

[44] *Id.* at 256-271. The respondents are the publisher and chief of reporters of *Cebu Daily News*.

Lucina B. Rallos v. Nicanor Valles, Ricardo Balbido, Jr., and Mayor Michael Rama[45]	SCA No. CEB-38196	October 25, 2011	RTC of Cebu City, Branch 14
Lucina B. Rallos v. Philippine Veterans Bank, et al.	SCA No. CEB-38212	November 4, 2011	RTC of Cebu City, Branch 7
Lucina B. Rallos v. City of Cebu, Michael Rama, et al.[46]	SCA No. CEB-38292	December 6, 2011	RTC of Cebu City, Branch 14
Lucena B. Rallos v. Honorable Justices Gabriel T. Ingles, Pamela Ann Abella Maxino and Carmelita Salandanan Manahan[47]	G.R. No. 202515	July 19, 2012	This Court
The instant petition	G.R. No. 202651	August 1, 2012	This Court

Issue and the Contending Parties' Claims

Lucena anchors the instant petition on the sole issue of whether or not the City of Cebu, Mayor Rama, the presiding officer and members of the *Sangguniang Panlungsod* and the lawyers from the Office of the City Attorney committed several acts of indirect contempt all geared towards preventing the execution

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[45] *Id.* at 272-280. The respondents are bank officers of Philippine Veterans Bank.

[46] *Id.* at 281-297. The respondents are mostly the same ones now involved in the instant petition before this Court.

[47] *Id.* at 363-393. The respondents are justices from the CA Cebu Station.

of final and executory judgments rendered by this Court in G.R. Nos. 179662 and 194111.

Lucena enumerates the allegedly contumacious acts of the respondents as the filing: (a) with the CA of a Petition for Annulment of Final Decision/s and Order/s[48] again on the basis of the *Convenio*, which was already presented and considered in the proceedings before the RTC, and despite the finality of the decisions and orders rendered or issued relative to Civil Case No. CEB-20388; and (b) of several motions[49] before the RTC in Civil Case No. CEB-20388 for the purpose of preventing or delaying the execution of decisions and orders which had already attained finality.

The respondents, on the other hand, seek the dismissal of the instant action contending that: (a) the rules on *litis pendentia* and forum shopping bar this Court from giving due course to Lucena's petition since there are five other contempt proceedings filed involving the same issues and parties; (b) the injunctive writs granted to the City of Cebu by the CA in CA-G-R. SP No. 06676 relative to the execution of the decisions and orders in Civil Case No. CEB-20388 rendered the instant action as moot and academic; (c) the legal remedies they availed of were all pursued to protect public funds; (d) the RTC sheriff, in attempting to execute the decisions and orders in Civil Case No. CEB-20388, miserably failed to comply with the requirements provided for by law, to wit, Section 305(a)[50] of the Local Government Code, this Court's Admin. Circular No. 10-2000,[51]

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[48] *Id.* at 141-163.

[49] (1) Urgent Omnibus Motions to Quash the Writ of Execution and to Set Aside the Notice of Garnishment; (2) Supplemental Urgent Omnibus Motions to Quash the Writ of Execution, and to Set Aside the Notice of Garnishment; and (3) Motion for Issuance of Status Quo Order Pending Resolution of [the City of Cebu's] Urgent Omnibus Motions to Quash the Writ of Execution and to Set Aside the Notice of Garnishment.

[50] No money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law.

[51] *Supra* note 37.

P.D. No. 1445 and Rule VIII of COA's Revised Rules of Procedure; (e) in *Parel v. Heirs of Simeon Prudencio*,[52] this Court declared that a writ of execution may be assailed when it varies the judgment, where there has been a change in the situation of parties making execution unjust or inequitable, or when the judgment debt has been paid or satisfied; (f) it would unduly overburden the City of Cebu to pay Php 133,469,962.55 for the subject lots the huge portions of which are now occupied by settlers and establishments claiming to be owners, practically leaving a very small and insignificant area for use; (g) in the case of *City of Caloocan v. Hon. Allarde*,[53] this Court ruled that government funds maintained in any official depository may not be garnished in the absence of a corresponding appropriation as required by law; and (h) the *Sangguniang Panlungsod* cannot be compelled to pass an appropriations ordinance to satisfy the claims of the Heirs of Fr. Rallos for to do otherwise would be to intrude into the exercise of a discretionary authority to decide a political question.

This Court's Disquisition

The instant petition lacks merit.

Lucena engaged in forum shopping.

"Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another."[54]

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[52] G.R. No. 192217, March 2, 2011, 644 SCRA 496.

[53] 457 Phil. 543 (2003).

[54] *Arevalo v. Planters Development Bank*, G.R. No. 193415, April 18, 2012, 670 SCRA 252, 264, citing *Pilipino Telephone Corp. v. Radiomarine Network, Inc.*, G.R. No. 152092, August 4, 2010, 626 SCRA 702, 728-729.

"Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case."[55]

In the Verification and Non-Forum Shopping Certification[56] attached to the instant petition and executed by Lucena, she admitted that there are five other pending actions for indirect contempt which she filed relative to Civil Case No. CEB-20388. She, however, claims that the issues in the other five petitions are different from that raised before this Court now.

Lucena's claim cannot be sustained.

A comparison of the instant petition with SCA No. CEB-38292[57] filed before the RTC of Cebu City, Branch 14 follows:

	Instant Petition	**SCA No. CEB-38292**
Nature of Action	Petition for Indirect Contempt of Court	Petition for Indirect Contempt
Petitioner	Lucena B. Rallos	Lucina B. Rallos
Respondents	City of Cebu Mayor Michael Rama City Councilors Joy Augustus Young Sisinio Andales Rodrigo Abellanosa	City of Cebu Mayor Michael Rama City Councilors Joy Augustus Young Sisinio Andales Rodrigo Abellanosa

[55] *Id.* at 264-265, citing *Yu v. Lim*, G.R. No. 182291, September 22, 2010, 631 SCRA 172, 184.

[56] *Rollo*, p. 56.

[57] *Id.* at 281-297.

	Alvin Arcilla Raul Alcoseba Ma. Nida Cabrera Roberto Cabarrubias Alvin Dizon Ronald Cuenco Lea Japson Jose Daluz III Edgardo Labella Margarita Osmena Augustus Pe Richard Osmena Noel Wenceslao Eduardo Rama, Jr. Michael Ralota John Philip Echavez-Po Lawyers from the Office of the City Attorney Atty. Joseph Bernaldez Atty. Jun Maratas Atty. Jerone Castillo Atty. Mary Ann Suson Atty. Leslie Ann Reyes Atty. Carlo Vincent Gimena Atty. Ferdinand Canete Atty. Ismael Garaygay III Atty. Lecel Llamedo Atty. Marie Velle Abella	Alvin Arcilla Raul Alcoseba Ma. Nida Cabrera Roberto Cabarrubias Alvin Dizon Ronald Cuenco Lea Japson Jose Daluz III Edgardo Labella Margarita Osmena Augustus Pe Richard Osmena Noel Wenceslao Eduardo Rama, Jr. Michael Ralota John Philip Echavez-Po
Prayer	Respondents be declared guilty of indirect contempt in relation to their non-compliance with the directives contained in the dispositive portion of the Consolidated Order issued on March 21, 2002 by the RTC in Civil Case No. CEB-20388.[58]	Respondents, except the City of Cebu, be imprisoned until they perform the said act of complying or causing the compliance with the specific directives contained in the dispositive portion of the final and executory Consolidated Order dated March 21, 2002.[59]

[58] *Id.* at 48-50.

[59] *Id.* at 295.

In *Arevalo,*[60] this Court enumerated the three requisites of *litis pendentia*. There is a confluence of these requisites relative to the instant petition and SCA No. CEB-38292.

Litis pendentia does not require the exact identity of parties involved in the actions. Although the lawyers from the Office of the City Attorney are parties herein but are not made respondents in SCA No. CEB-38292, they do not in any way represent any interest distinct or separate from that of the City of Cebu and the public officers involved. Further, the instant petition superficially makes reference to the Minute Resolutions rendered by this Court in G.R. Nos. 179662 and 194111 which Lucena claims had lapsed into finality and should thus be executed. However, stripped of the unnecessary details, the reliefs saliently sought in both the instant petition and SCA No. CEB-38292 are founded on the same set of facts, to wit, the alleged non compliance by the respondents with the directives contained in the dispositive portion of the Consolidated Order issued by the RTC on March 21, 2002 relative to Civil Case No. CEB-20388. Finally, citation for indirect contempt in either the instant petition or SCA No. CEB-38292 would amount to *res judicata* in the other considering the identities of the parties and issues involved.

Since the elements of *litis pendentia* concur in the instant petition and SCA No. CEB-38292, this Court so holds Lucena guilty of forum shopping.

"[T]he grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case."[61]

Further, "once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower

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[60] *Supra* note 54.

[61] *Id.* at 267, citing *Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, July 22, 2009, 593 SCRA 440, 450.

court. This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice."[62]

Even if in the higher interest of justice, this Court were to be exceptionally liberal and gloss over Lucena's act of forum shopping, the instant petition would still be susceptible to dismissal.

While this Court does not intend to downplay the rights accruing to the owners of properties expropriated by the government, it bears stressing that the exercise and enforcement of those rights are subject to compliance with the requirements provided for by law to protect public funds.

Lucena avers that the respondents willfully and maliciously defy the execution of final and executory decisions and orders rendered or issued relative to Civil Case No. CEB-20388.

Such averment is untenable.

The respondents allege and Lucena does not refute, that the City of Cebu had already paid the Heirs of Fr. Rallos Php 56,196,369.42 for a 4,654 sq m property or at a price of Php 12,074.85 per sq m. The controversy remains and the parties resort to all legal maneuverings because the Heirs of Fr. Rallos obdurately insist that they are still entitled to collect from the City of Cebu a balance of Php 133,469,962.55.

The Heirs of Fr. Rallos are bent on collecting the amount allegedly still unpaid by the City of Cebu in accordance with the computations stated in the decisions and orders in Civil Case No. CEB-20388. *However, the Heirs of Fr. Rallos are impervious to the requisites laid down by law in enforcing their claims.* The requisites are two-fold as discussed below.

An appropriation ordinance should be passed prior to the disbursement of public funds.

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[62] *Dy v. Mandy Commodities Co., Inc., id.* at 453.

"Even though the rule as to immunity of a state from suit is relaxed, the power of the courts ends when the judgment is rendered. Although the liability of the state has been judicially ascertained, the state is at liberty to determine for itself whether to pay the judgment or not, and execution cannot issue on a judgment against the state. Such statutes do not authorize a seizure of state property to satisfy judgments recovered, and only convey an implication that the legislature will recognize such judgment as final and make provision for the satisfaction thereof."[63]

Section 4(1) of P.D. No. 1445 and Section 305(a) of the Local Government Code both categorically state that no money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority. Based on considerations of public policy, government funds and properties may not be seized under writs of execution or garnishment to satisfy judgments rendered by the courts and disbursements of public funds must be covered by the corresponding appropriation as required by law.[64]

In the case at bar, no appropriation ordinance had yet been passed relative to the claims of the Heirs of Fr. Rallos. Such being the case, the respondents, as public officers, are acting within lawful bounds in refusing the execution of the decisions and orders in Civil Case No. CEB-20388.

Despite the rendition of a final and executory judgment validating a money claim against an agency or instrumentality of the Government, its filing with the COA is a *sine qua non* condition before payment can be effected.

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[63] *Supra* note 53, at 553, citing *Republic of the Philippines v. Hon. Palacio, et al.*, 132 Phil. 369, 375 (1968).

[64] See *University of the Philippines v. Dizon*, G.R. No. 171182, August 23, 2012, 679 SCRA 54, 81.

Section 26 of P.D. No. 1445 states that the COA has jurisdiction to examine, audit and *settle* all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. Under Section 5(b), Rule II of COA's Revised Rules of Procedure, local government units are expressly included as among the entities within the COA's jurisdiction. Section 2,[65] Rule VIII lays down the

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[65] **Sec. 2.** *Money claim.*—A money claim against the government shall be filed directly with the Commission Secretary in accordance with the following:

a) *Petition.*—A claimant for money against the Government, whose claim is cognizable by the Commission Proper, may file a petition. The party seeking relief shall be referred to as "Petitioner" and the government agency or instrumentality against whom a claim is directed shall be referred to as "Respondent". The petition shall also be assigned a docket number as provided in these Rules.

b) *Contents of Petition.*—The petition shall contain the personal circumstances or juridical personality of the petitioner, a concise statement of the ultimate facts constituting his cause of action, a citation of the law and jurisprudence upon which the petition is based and the relief sought. The petition shall be accompanied by certified true copies of documents referred therein and other relevant supporting papers.

c) *Filing of Petition.*—The petition shall be filed with the Commission Secretary, a copy of which shall be served on the respondent. Proof of service of the petition on the respondent together with proof of the payment of filing fee shall be attached to the petition.

d) *Order to Answer.*—Upon the receipt of the petition, the Commission Secretary shall issue an Order requiring respondent to answer the petition within fifteen (15) days from receipt thereof.

e) *Answer.*—Within fifteen (15) days from receipt of the said Order, the respondent shall file with Commission Secretary an Answer to the petition. The answer shall be accompanied by certified true copies of documents referred to therein together with other supporting papers. The answer shall (a) point out insufficiencies or inaccuracies in the petitioner's statement of facts and issues and (b) state the reasons why the petition should be denied or dismissed or granted. Copy of the answer shall be served on the petitioner and proof of service thereof shall be attached to the answer.

f) *Reply.*—Petitioner may file a Reply, copy furnished the respondent, within fifteen (15) days from receipt of the Answer.

g) Comment by Concerned Offices.—Money claims, except court-adjudicated claims, shall first be assigned by the Commission Secretary

procedure in filing money claims against the Government. Section 4, Rule X provides that any case brought to the COA shall be decided within 60 days from the date it is submitted for decision or resolution. Section 1, Rule XII allows the aggrieved party to file a petition for *certiorari* before this Court to assail any decision, order or resolution of the COA within 30 days from receipt of a copy thereof.

This Court, in the case of *University of the Philippines v. Dizon*,[66] thus held that despite the existence of a final and executory judgment validating the claim against an agency or instrumentality of the Government, the settlement of the said claim is still subject to the primary jurisdiction of the COA. Ineluctably, the claimant has to first seek the COA's approval of the monetary claim.[67]

Without compliance by Lucena and the Heirs of Fr. Rallos with the provisions of P.D. No. 1445 and the COA's Revised Rules of Procedure, their lamentations that the respondents are unjustly refusing the execution of the decisions and orders in Civil Case No. CEB-20388 do not hold any water.

IN VIEW OF THE FOREGOING, the instant petition is **DISMISSED**. Further, on account of Lucena Rallos' act of forum shopping, the Regional Trial Court of Cebu City, Branch 14, is likewise directed to dismiss her petition for contempt, docketed as SCA No. CEB-38292, which she filed against the respondents.

SO ORDERED.

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

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to the appropriate Central or Regional Office, for comment and recommendation prior to referral to the Legal Services Sector for preparation of the decision and formal deliberation by the Commission Proper.

[66] G.R. No. 171182, August 23, 2012, 679 SCRA 54.

[67] *Id.* at 80.

[*] Acting Member per Special Order No. 1502 dated August 8, 2013.

INDEX

INDEX

ACTIONS

Consolidation of two or more actions — A procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously while providing justice to the parties. (Neri *vs*. Sandiganbayan, G.R. No. 202243, Aug. 07, 2013) p. 186

— Designed to avoid multiplicity of suits, guards against oppression and abuse, and attain justice with the least expense and vexation to litigants. *(Id.)*

— Should not be ordered if it would undermine the accused's right to speedy disposition of cases. *(Id.)*

Jurisdiction — The power and authority of the court to hear, try, and decide a case is conferred by law. (Dolot *vs*. Hon. Paje, G.R. No. 199199, Aug. 27, 2013) p. 458

Venue — Improper venue does not warrant the outright dismissal of the petition as venue may be waived. (Dolot *vs*. Hon. Paje, G.R. No. 199199, Aug. 27, 2013) p. 458

— Relates only to the place of trial or the geographical location in which an action or proceeding should be brought and does not equate to the jurisdiction of the court. *(Id.)*

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Causing undue injury to any party, including the government or giving any party any unwarranted benefit, advantage or preference in the discharge of his or her function — Essential elements are: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (3) that his action caused any undue injury to any party, including the government or giving any private party unwarranted benefits, advantage or preference in the discharge of his

functions. (Sanchez *vs*. People, G.R. No. 187340, Aug. 14, 2013) p. 397

APPEALS

Appeal to the Court of Appeals — Under Sec. 2(a), Rule 41 of the Rules of the Court, it provides that appeals to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the latter court. (Yalong *vs*. People, G.R. No. 187174, Aug. 28, 2013) p. 657

Appeal to the Court of Appeals under Rule 43 — Proper remedy to assail the decision of the Civil Service Commission. (City Gov't. of Makati *vs*. Odeña, G.R. No. 191661, Aug. 13, 2013) p. 284

Effect of — A non-appellant cannot seek an affirmative relief such as additional benefits. (Phil. Nat'l. Bank *vs*. Arcobillas, G.R. No. 179648, Aug. 07, 2013) p. 75

— A party who did not appeal cannot assign such errors as are designed to have the judgment modified; all that he can do is to make a counter assignment of errors or to argue on issues raised below only for the purpose of sustaining the judgment in his favor. (Daabay *vs*. Coca-Cola Bottlers Phils., Inc. G.R. No. 199890, Aug. 28, 2013) p. 806

Factual findings of labor officials — Accorded not only respect but also finality. (Malayang Manggagawang Stayfast Phils., Inc. *vs.* NLRC, G.R. No. 155306, Aug. 28, 2013) p. 500

Factual findings of lower courts — Generally binding on the Supreme Court especially when it is affirmed by the Court of Appeals; exception. (People *vs*. Consulta, G.R. No. 191071, Aug. 28, 2013) p. 733

(Tan *vs*. Andrade, G.R. No. 171904, Aug. 07, 2013) p. 49

Factual findings of the Commission on Audit — Accorded not only respect but also finality when not tainted with unfairness or arbitrariness that would amount to grave

abuse of discretion. (Delos Santos *vs*. COA, G.R. No. 198457, Aug. 13, 2013) p. 322

Factual findings of the Court of Appeals — When supported by substantial evidence are binding, final and conclusive upon the Supreme Court, except: (1) When the conclusion is a finding grounded entirely on speculation, surmises, and conjectures; (2) When the inference made is manifestly mistaken, absurd, and impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (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. (National Union of bank Employees *vs*. Philnabank Employees Assn., G.R. No. 174287, Aug. 12, 2013) p. 218

Factual findings of the Sandiganbayan — Conclusive upon the Court, except under any of the following circumstances: (1) the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on want of evidence and are contradicted by evidence on record. (Sanchez *vs*. People, G.R. No. 187340, Aug. 14, 2013) p. 397

Notice of appeal distinguished from petition for review — A notice of appeal is filed with the Regional Trial Court that rendered the assailed decision, judgment, or final order,

while a petition for review is filed with the Court of Appeals; also a notice of appeal is required when the RTC issued a decision, judgment or final order in the exercise of its original jurisdiction, while a petition for review is required when such issuance was in the exercise of its appellate jurisdiction. (Yalong *vs*. People, G.R. No. 187174, Aug. 28, 2013) p. 657

Perfection of appeal — Jurisprudence dictates that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such requirements is considered fatal and has the effect of rendering the judgment final and executory. (Yalong *vs*. People, G.R. No. 187174, Aug. 28, 2013) p. 657

Petition for review on certiorari to the Supreme Court under Rule 45 — Proper remedy to obtain a reversal of judgment on the merits, final order or resolution, 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, or resolution. (Malayang Manggagawang Stayfast Phils., Inc. *vs*. NLRC, G.R. No. 155306, Aug. 28, 2013) p. 500

Rules on appeal — Must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice. (Yalong *vs*. People, G.R. No. 187174, Aug. 28, 2013) p. 657

ATTORNEY'S FEES

As a form of damages — Awarded in case a party acted in bad faith. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

BANGKO SENTRAL NG PILIPINAS, CREATION OF (R.A. NO. 7653)

"Close now, hear later" doctrine — Founded on practical and legal consideration to obviate unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders, and the

general public. (Vivas *vs*. Monetary Board of the Bangko Sentral ng Pilipinas, G.R. No. 191424, Aug. 07, 2013) p. 132

Monetary Board — Empowered to close and place a bank under receivership without prior notice and hearing and said power does not amount to undue delegation of judicial power. (Vivas *vs*. Monetary Board of the Bangko Sentral ng Pilipinas, G.R. No. 191424, Aug. 07, 2013) p. 132

BANKS

Duties — Banking institutions are obliged to exercise the highest degree of diligence as well as high standard of integrity and performance in all their transactions because their business is imbued with public interest. (Comsavings Bank *vs*. Sps. Capistrano, G.R. No. 170942, Aug. 28, 2013) p. 547

Principle of respondeat superior — Banks are made to shoulder part of the loss suffered by its clients due to the negligence of its employees. (Phil. Nat'l. Bank *vs*. Arcobillas, G.R. No. 179648, Aug. 07, 2013) p. 75

BOUNCING CHECKS LAW (B.P. BLG. 22)

Violation of — Being a transitory or continuing crime, criminal case for violation of B.P. Blg. No. 22 may be filed in any of the places where any of its elements occurred. (Yalong *vs*. People, G.R. No. 187174, Aug. 28, 2013) p. 657

BRIBERY

Qualified bribery — Requires that the offender be a public officer entrusted with law enforcement who refrains from arresting or prosecuting an offender in consideration of any promise, gift or present. (Judge Buenaventura *vs*. Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Petition for — Failure to implead and notify affected or interested parties may be cured by the publication of the notice of hearing. (Rep. of the Phils. *vs*. Dr. Lugsanay Uy, G.R. No. 198010, Aug. 12, 2013) p. 254

— Failure to implead and notify affected or interested parties may be excused where the interested parties themselves initiated the corrections; when there is no actual or presumptive awareness of the existence of the interested parties; or when a party is inadvertently left out. *(Id.)*

— Substantial errors in the Civil Registry may be corrected and the true facts established provided the parties aggrieved by the errors avail themselves of the appropriate adversary proceedings. *(Id.)*

— Two sets of notices to different potential oppositors are: one given to the persons named in the petition and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. *(Id.)*

— When petition involves substantial and controversial alterations, a strict compliance with the requirements of Rule 108 of the Rules of Court is mandated. *(Id.)*

CERTIORARI

Grave abuse of discretion — Means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal, or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. (Sec. of the Dep't. of Finance *vs*. Court of Tax Appeals, G.R. No. 168137, Aug. 07, 2013) p. 38

— More than mere imputation of caprice, whimsicality or arbitrariness and it is not present when the acts are found to be mere errors of judgment or simple abuse of discretion. (Abdulrahman *vs*. Office of the Ombudsman for Mindanao, G.R. No. 175977, Aug. 28, 2013) p. 592

Petition for — Court may extend the sixty (60) day reglementary period, despite the rigid wording of the Rule, subject to its sound discretion. (Castels *vs*. Saudi Arabian Airlines, G.R. No. 188514, Aug. 28, 2013) p. 667

— Court may reject and dismiss a petition for *certiorari* when there is no showing of grave abuse of discretion by any court, agency or branch of the government or when there are procedural errors, except in clearly meritorious cases, where the higher demands of substantial justice must transcend rigid observance of procedural rules. (Abdulrahman *vs*. Office of the Ombudsman for Mindanao, G.R. No. 175977, Aug. 28, 2013) p. 592

— Dismissal of the petition for failure to implead a party to the petition is not proper for neither the misjoinder nor the non-joinder of parties is a ground for the dismissal of an action. *(Id.)*

— Failure to file a motion for reconsideration is a fatal infirmity and the proceeding entertaining the petition and the decision rendered therein are null and void. (Phil. Nat'l. Bank *vs*. Arcobillas, G.R. No. 179648, Aug. 07, 2013) p. 75

— Filing of a motion for reconsideration before resort to *certiorari* will lie is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case. (Malayang Manggagawang Stayfast Phils., Inc. *vs*. NLRC, G.R. No. 155306, Aug. 28, 2013) p. 500

— Filing of a motion for reconsideration is a condition precedent. (Abdulrahman *vs*. Office of the Ombudsman for Mindanao, G.R. No. 175977, Aug. 28, 2013) p. 592

— May be treated as petition for review on *certiorari* when: (1) the petition has been filed within the 15-day reglementary period; (2) public welfare and the advancement of public policy dictate such treatment; (3) the broader interest of justice require such treatment; (4) the writs issued were null and void; or (5) the questioned

decision or order amounts to an oppressive exercise of judicial authority. (Dongon *vs*. Rapid Movers and Forwarders Co., Inc., G.R. No. 163431, Aug. 28, 2013) p. 533

— Not proper when appeal is available. (Malayang Manggagawang Stayfast Phils., Inc. *vs*. NLRC, G.R. No. 155306, Aug. 28, 2013) p. 500

— Petition for *certiorari* assailing the grant of the motion to release the goods is rendered moot by the rendition of a decision on the main case. (Sec. of the Dep't. of Finance *vs*. Court of Tax Appeals, G.R. No. 168137, Aug. 07, 2013) p. 38

— Petitioner should demonstrate with definiteness the grave abuse of discretion, that is, 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. (Malayang Manggagawang Stayfast Phils., Inc. *vs.* NLRC, G.R. No. 155306, Aug. 28, 2013) p. 500

— Proper remedy to assail any act of the Monetary Board placing a bank under conservatorship, receivership or liquidation. (Vivas *vs*. Monetary Board of the Bangko Sentral ng Pilipinas, G.R. No. 191424, Aug. 07, 2013) p. 132

— Question of fact cannot be raised in an original action for *certiorari* for only established or admitted facts can be considered. (Malayang Manggagawang Stayfast Phils., Inc. *vs*. NLRC, G.R. No. 155306, Aug. 28, 2013) p. 500

CIVIL SERVICE COMMISSION

Jurisdiction — The Commission cannot take cognizance of a letter-complaint which was actually a prohibited appeal of a court decision that has long become final and executory. (City Gov't. of Makati *vs*. Odeña, G.R. No. 191661, Aug. 13, 2013) p. 284

Resolutions of — Considered void and ineffectual if it varies the tenor of a former court decision. (City Gov't. of Makati *vs*. Odeña, G.R. No. 191661, Aug. 13, 2013) p. 284

CIVIL SERVICE LAW

Retirement benefits — Quitclaims executed by a retiree is void and of no effect insofar as it foreclosed her entitlement to her retirement benefits. (City Gov't. of Makati *vs*. Odeña, G.R. No. 191661, Aug. 13, 2013) p. 284

CLERKS OF COURT

Conduct of — Branch clerk of court serves as a sentinel of justice and any act of impropriety on her part immeasurably affects the honor and dignity of the Judiciary and confidence in it. (Judge Buenaventura *vs*. Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

COMMISSION ON AUDIT (COA)

Factual findings of — Accorded not only respect but also finality when not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. (Delos Santos *vs*. COA, G.R. No. 198457, Aug. 13, 2013) p. 322

Powers of — The Commission is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditure of government funds. (Delos Santos *vs*. COA, G.R. No. 198457, Aug. 13, 2013) p. 322

COMMISSION ON ELECTIONS (COMELEC)

Decision of — Decision of the trial court as to the winning candidate reiterated by the Commission, is ordered remanded to the trial court for execution of decision. (Manalo *vs*. COMELEC, G.R. No. 201672, Aug. 13, 2013) p. 339

COMPREHENSIVE AGRARIAN REFORM PROGRAM (R.A. NO. 6657)

Just compensation — Application of the formula provided in DAR Adm. Order No. 5, Series of 1998 in the computation of just compensation for lands subject of acquisition whether under voluntary to sell or compulsory acquisition is mandated by law. (Land Bank of the Phils. *vs*. Castro, G.R. No. 189125, Aug. 28, 2013) p. 711

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — 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. (People *vs*. Consulta, G.R. No. 191071, Aug. 28, 2013) p. 733

Illegal sale of dangerous drugs — The following elements must be established: (1) the identities of the buyer and the seller, the object and consideration of the sale; and (3) the delivery to the buyer of the thing sold and receipt by the seller of the payment therefor. (People *vs*. Consulta, G.R. No. 191071, Aug. 28, 2013) p. 733

(People *vs*. Blanco, G.R. No. 193661, Aug. 14, 2013) p. 408

Prosecution of drug cases — Non-presentation of confidential informant is not fatal. (People *vs*. Blanco, G.R. No. 193661, Aug. 14, 2013) p. 408

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION

Decision of — Not absolutely insulated from judicial review. (Asian Construction and Dev't. Corp. *vs*. Sumitomo Corp., G.R. No. 196723, Aug. 28, 2013) p. 788

CONTRACTS

Interpretation — The decisive factor in evaluating the agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. (Hur Tin Yang *vs*. People, G.R. No. 195117, Aug. 14, 2013) p. 416

Negotiated contract — Generally resorted to for convenience, or "when time is of the essence, or when there is a lack of qualified bidders or contractors, or where there is conclusive evidence that greater economy and efficiency would be achieved. (Rep. of the Phils. *vs*. Reyes-Bakunawa, G.R. No. 180418, Aug. 28, 2013) p. 629

— One that is awarded on the basis of a direct agreement between the government and the contractor, without going through the normal procurement process, like obtaining the prior approval from another authority, or a competitive bidding process. *(Id.)*

CO-OWNERSHIP

Prescription of title in favor of a co-owner — The following requisites must concur: (1) the co-owner has performed unequivocal acts of repudiation amounting to an ouster of the other co-owners; (2) such positive acts of repudiation have been made known to the other co-owners; and (3) the evidence thereof is clear and convincing. (Ining *vs*. Vega, G.R. No. 174727, Aug. 12, 2013) p. 237

Rights of co-owners — As co-owners, they may use the property owned in common provided they do so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. (Ining *vs*. Vega, G.R. No. 174727, Aug. 12, 2013) p. 237

COURT OF APPEALS

Jurisdiction — Includes the review of the resolution of the Secretary of the Department of Justice via petition for *certiorari* under Rule 65 of the Rules of Court solely on the ground that the Secretary committed grave abuse of discretion. (Hasegawa *vs*. Giron, G.R. No. 184536, Aug. 14, 2013) p. 364

COURT PERSONNEL

Conduct prejudicial to the best interest of the service — Refers to acts or omissions that violate the norm of public accountability and diminish or tend to diminish the people's faith in the Judiciary, and the same need not be related or connected to a public officer's official functions. (Judge Buenaventura *vs.* Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

— Utterance and text messages of threats to get even demonstrate conduct unbecoming of a court personnel. *(Id.)*

COURTS

Hierarchy of courts doctrine — The Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of *certiorari*, prohibition, or *mandamus* calling for the exercise of its primary jurisdiction. (Vivas *vs.* Monetary Board of the Bangko Sentral ng Pilipinas, G.R. No. 191424, Aug. 07, 2013) p. 132

CRIMINAL LIABILITY, EXTINCTION OF

Death of accused — Death of accused pending appeal on his conviction extinguishes his criminal liability as well as his civil liability. (People *vs.* Amistoso, G.R. No. 201447, Aug. 28, 2013) p. 825

DAMAGES

Actual damages — There must be competent proof of the actual amount of loss. (Comsavings Bank *vs.* Sps. Capistrano, G.R. No. 170942, Aug. 28, 2013) p. 547

Attorney's fees — May be recovered when exemplary damages are awarded, when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest, and where the

defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. (Asian Construction and Dev't. Corp. *vs*. Sumitomo Corp., G.R. No. 196723, Aug. 28, 2013) p. 788

(Comsavings Bank *vs*. Sps. Capistrano, G.R. No. 170942, Aug. 28, 2013) p. 547

Exemplary damages — Awarded to set an example for the public good. (Comsavings Bank *vs*. Sps. Capistrano, G.R. No. 170942, Aug. 28, 2013) p. 547

Moral damages — Meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. (Comsavings Bank *vs*. Sps. Capistrano, G.R. No. 170942, Aug. 28, 2013) p. 547

Temperate damages — May be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. (Comsavings Bank *vs*. Sps. Capistrano, G.R. No. 170942, Aug. 28, 2013) p. 547

EDUCATION

Academic freedom — Gives the institutions of higher learning the prerogative to establish requirements for graduation. (Calawag *vs*. UP Visayas, G.R. No. 207412, Aug. 07, 2013) p. 208

Right to education — Not absolute. (Calawag *vs*. UP Visayas, G.R. No. 207412, Aug. 07, 2013) p. 208

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogatives — Upheld so long as it is not wielded as an implement to circumvent the laws and oppress labor. (Dongon *vs*. Rapid Movers and Forwarders Co., Inc., G.R. No. 163431, Aug. 28, 2013) p. 533

Termination of — Employer's act of tearing to pieces the employee's time card was considered an outright and not only symbolic termination of the parties' employment relationship. (Ang *vs*. San Joaquin, Jr., G.R. No. 185549, Aug. 07, 2013) p. 115

EMPLOYMENT, TERMINATION OF

Abandonment as a ground — Negated by the employee's filing of complaint for illegal dismissal. (MZR Industries *vs*. Colambot, G.R. No. 179001, Aug. 28, 2013) p. 617

— Not appreciated when employee's repeated absences were caused by employer's oppressive treatment and indifference which the employee simply grew tired of and wanted a break from. (Ang *vs*. San Joaquin, Jr., G.R. No. 185549, Aug. 07, 2013) p. 115

Cessation or closure of establishment as a ground — It 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. (Sanoh Fulton Phils., Inc. *vs*. Bernardo, G.R. No. 187214, Aug. 14, 2013) p. 378

Constructive dismissal — Occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit. (Ang *vs*. San Joaquin, Jr., G.R. No. 185549, Aug. 07, 2013) p. 115

Dismissal — Where the employee's failure to work was occasioned neither by abandonment nor termination, each party must bear his own loss. (MZR Industries *vs*. Colambot, G.R. No. 179001, Aug. 28, 2013) p. 617

Gross negligence as a ground — Denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. (Phil. Nat'l. Bank *vs*. Arcobillas, G.R. No. 179648, Aug. 07, 2013) p. 75

Illegal dismissal — Before the employer must bear the burden of proving that the dismissal is legal, the employee must first establish by substantial evidence the fact of his dismissal from service. (MZR Industries *vs*. Colambot, G.R. No. 179001, Aug. 28, 2013) p. 617

— Illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowance and other benefits or their monetary equivalent. (Integrated Microelectronics, Inc. *vs*. Pionilla, G.R. No. 200222, Aug. 28, 2013) p. 818

(Sanoh Fulton Phils., Inc. *vs*. Bernardo, G.R. No. 187214, Aug. 14, 2013) p. 378

— Recomputation of the monetary consequences of illegal dismissal does not violate the principle of immutability of final judgments. (Nacar *vs*. Gallery Frames, G.R. No. 189871, Aug. 13, 2013) p. 267

Retirement benefits — Although not mandated by law, it may still be granted by agreement of the employees and their employer or as a voluntary act of the employer. (Daabay *vs*. Coca-Cola Bottlers Phils., Inc. G.R. No. 199890, Aug. 28, 2013) p. 806

Retrenchment — Lull caused by lack of orders or shortage of materials must be of such nature as would severely affect the continued business operations of the employer to the detriment of all and sundry if not properly addressed. (Sanoh Fulton Phils., Inc. *vs*. Bernardo, G.R. No. 187214, Aug. 14, 2013) p. 378

— Requires: (1) proof that retrenchment is necessary to prevent losses or impending losses; (2) service of written notices to the employees and to the Department of Labor

and Employment at least one (1) month prior to the intended date of retrenchment; and (3) payment of 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. *(Id.)*

(Sanoh Fulton Phils., Inc. *vs*. Bernardo, G.R. No. 187214, Aug. 14, 2013; *Carpio, J., separate concurring opinion*) p. 378

— Retrenchment must be reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, and if only expected, are reasonably imminent as perceived objectively and in good faith by the employer. *(Id.)*

— The burden clearly falls upon the employer to prove economic or business losses with sufficient supporting evidence. *(Id.)*

— 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. (Sanoh Fulton Phils., Inc. *vs*. Bernardo, G.R. No. 187214, Aug. 14, 2013) p. 378

Valid dismissal — Financial assistance or whatever name it is called, as a measure of social justice is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. (Daabay *vs*. Coca-Cola Bottlers Phils., Inc. G.R. No. 199890, Aug. 28, 2013) p. 806

— Renders nugatory any entitlement to mandatory or optional retirement she might have previously possessed. *(Id.)*

— The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal rests on the employer. (Sanoh Fulton Phils., Inc. *vs*. Bernardo, G.R. No. 187214, Aug. 14, 2013) p. 378

Willful disobedience to the lawful orders of an employer as a ground — It is required that (1) the conduct of the employee must be willfull or intentional; and (2) the order of the employer must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge. (Dongon *vs*. Rapid Movers and Forwarders Co., Inc., G.R. No. 163431, Aug. 28, 2013) p. 533

ESTOPPEL

Application —Unavailing if the claim is based on a null and void deed of sale. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

EVIDENCE

Demurrer to evidence — An objection by one of the parties in an action to the effect that the evidence that his adversary produced, whether true or not, is insufficient in point of law to make out a case or to sustain the issue. (Rep. of the Phils. *vs*. Reyes-Bakunawa, G.R. No. 180418, Aug. 28, 2013) p. 629

Offer of evidence — Designed to meet the demand of due process. (Rep. of the Phils. *vs*. Reyes-Bakunawa, G.R. No. 180418, Aug. 28, 2013) p. 629

Preponderance of evidence — Means that the evidence adduced by one side is, as a whole superior to that of the other side. (Rep. of the Phils. *vs*. Reyes-Bakunawa, G.R. No. 180418, Aug. 28, 2013) p. 629

— The court is instructed to find for and to dismiss the case against the defendant should the scales hang in equipoise and there is nothing in the evidence that tilts the scales to one or the other side. *(Id.)*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — Before a party may seek the intervention of the court, he should first avail himself of all the means afforded him by administrative processes, the issue which administrative agencies are authorized to decide should

not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation. (Mayor Corales *vs*. Rep. of the Phils., G.R. No. 186613, Aug. 27, 2013) p. 432

FORUM SHOPPING

Concept — Can be committed in three ways, namely: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved; or by (3) by filing multiple cases based on the same cause of action but with different prayers. (Asian Construction and Dev't. Corp. *vs*. Sumitomo Corp., G.R. No. 196723, Aug. 28, 2013) p. 788

— Forum shopping takes place when a litigant files multiple suits involving the same parties, either simultaneously or successively to secure a favorable judgment. (Rallos *vs*. City of Cebu, G.R. No. 202651, Aug. 28, 2013) p. 832

(Asian Construction and Dev't. Corp. *vs*. Sumitomo Corp., G.R. No. 196723, Aug. 28, 2013) p. 788

(Pilar Dev't. Corp. *vs*. CA, G.R. No. 155943, Aug. 28, 2013) p. 519

— Treated as an act of malpractice and, in this accord, constitutes a ground for the summary dismissal of the actions involved. (Asian Construction and Dev't. Corp. *vs*. Sumitomo Corp., G.R. No. 196723, Aug. 28, 2013) p. 788

GOVERNMENT AUDITING CODE (P.D. NO. 1445)

Money claim against a government agency — Despite the rendition of a final and executory judgment validating a money claim against an agency or instrumentality of the government, its filing with the Commission on Audit is a sine qua non condition before payment can be effected. (Rallos *vs*. City of Cebu, G.R. No. 202651, Aug. 28, 2013) p. 832

INSURANCE

Concealment — Committed when there is a transfer of the location of the risk insured against without the insurer's notice and consent. (Malayan Insurance Co., Inc. *vs*. Pap Co., Ltd. [Phil. Branch], G.R. No. 200784, Aug. 07, 2013) p. 155

Fire insurance contract — May be rescinded by the insurer in case of an alteration in the use or condition of the thing insured when the following conditions are present, to wit: (1) the policy limits the use or condition of the thing insured; (2) there is an alteration in said use or condition; (3) the alteration is without the consent of the insurer; (4) the alteration is made by means within the insured's control; and (5) the alteration increases the risk of loss. (Malayan Insurance Co., Inc. *vs*. Pap Co., Ltd. [Phil. Branch], G.R. No. 200784, Aug. 07, 2013) p. 155

INTERESTS

Legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgment — Will be six percent (6%) per annum effective July 01, 2013. (Nacar *vs*. Gallery Frames, G.R. No. 189871, Aug. 13, 2013) p. 267

INTERVENTION

Complaint-in-intervention — Essentially latches on the complaint for its legal efficacy so much so that the dismissal of the complaint leads to its concomitant dismissal. (B. Sta. Rita & Co., Inc. *vs*. Gueco, G.R. No. 193078, Aug. 28, 2013) p. 776

Motion to intervene — Intervention of a private prosecutor in a perjury case is allowed when injury to personal credibility and reputation of a party as well as potential injury to a corporation are undeniable. (Lee *vs*. Chua, G.R. No. 181658, Aug. 07, 2013) p. 89

JUDGMENT

Conclusiveness of judgment — Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot be again litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. (National Housing Authority *vs*. Baello, G.R. No. 200858, Aug. 07, 2013) p. 171

Execution, satisfaction and effect of — Generally, order of execution is not appealable; exceptions. (City Gov't. of Makati *vs*. Odeña, G.R. No. 191661, Aug. 13, 2013) p. 284

Immutability of judgment doctrine — Not violated in case of re-computation of money claims as a consequence of illegal dismissal. (Nacar *vs*. Gallery Frames, G.R. No. 189871, Aug. 13, 2013) p. 267

JUDICIAL REVIEW

Power of judicial review — For the court to exercise the power, the following must be extant: (1) there must be an actual case calling for the exercise of judicial power; (2) the question must be ripe for adjudication; and (3) the person challenging must have the standing. (Mayor Corales *vs*. Rep. of the Phils., G.R. No. 186613, Aug. 27, 2013) p. 432

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements of the crime are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than three (3) days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or

detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. (Hasegawa *vs*. Giron, G.R. No. 184536, Aug. 14, 2013) p. 364

LABOR ORGANIZATIONS

Local unions — Has the right to disaffiliate from its mother union, unless forbidden under the latter's constitution. (National Union of Bank Employees *vs*. Philnabank Employees Assn., G.R. No. 174287, Aug. 12, 2013) p. 218

Valid disaffiliation, effect — The vinculum that previously bound the two entities are completely severed. (National Union of Bank Employees *vs*. Philnabank Employees Assn., G.R. No. 174287, Aug. 12, 2013) p. 218

LACHES

Doctrine of — Issue on the applicability of the doctrine of laches must be raised at the earliest opportunity possible. (Pilar Dev't. Corp. *vs*. CA, G.R. No. 155943, Aug. 28, 2013) p. 519

— Sets in when a party took fourteen (14) years before filing a complaint for reconveyance. (Tan *vs*. Andrade, G.R. No. 171904, Aug. 07, 2013) p. 49

— Unavailing if the claims are based on a null and void deed of sale. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

LAND REGISTRATION ACT (ACT NO. 496)

Application for — Proper to sale of unregistered land. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

Decree of registration — Registration does not vest title. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

— Registration of the subsequent sale does not have any effect on the rights of the first buyer. *(Id.)*

Free patent — Certificate of title issued pursuant to a free patent becomes indefeasible after one year from the date of issuance; exception. (Rep. of the Phils. *vs*. Bellate, G.R. No. 175685, Aug. 07, 2013) p. 60

LITIS PENDENTIA

Concept — Requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs being founded on the same facts; and (3) identity with respect to the two preceding cases, regardless of which party is successful would amount to *res judicata* in the other case. (Rallos *vs*. City of Cebu, G.R. No. 202651, Aug. 28, 2013) p. 832

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Fiscal administration — An appropriation ordinance should be passed prior to the disbursement of public funds. (Rallos *vs*. City of Cebu, G.R. No. 202651, Aug. 28, 2013) p. 832

MANDAMUS

Petition for — May only be resorted to when there is no appeal or any other plain, speedy, and adequate remedy on the ordinary course of the law. (Mayor Corales *vs*. Rep. of the Phils., G.R. No. 186613, Aug. 27, 2013) p. 432

Petition for continuing mandamus — Failure to furnish the respondents a copy of the petition is not a fatal defect warranting the dismissal of the case. (Dolot *vs*. Hon. Paje, G.R. No. 199199, Aug. 27, 2013) p. 458

— Including of judicial affidavits is not mandatory, it is only if the evidence of the petitioner would consist of testimony of witnesses that it would be the time that judicial affidavits must be attached to the petition/complaint. *(Id.)*

— Should be sufficient in form and substance before a court may take further action, otherwise, the court may dismiss the petition outright. *(Id.)*

Writ of continuing mandamus — A command of continuing compliance with a final judgment as it permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision. (Dolot *vs*. Hon. Paje, G.R. No. 199199, Aug. 27, 2013) p. 458

— Under Rule 8 of the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC), the writ enjoys a distinct procedure than that of ordinary civil actions for the enforcement/violation of environmental laws, which are covered by Part II (Civil Procedure). *(Id.)*

MOOT AND ACADEMIC CASES

Case of — Courts generally decline jurisdiction on the ground of mootness except when, *inter alia*, a compelling legal or constitutional issue raised requires the formulation of a controlling principle to guide the bench, the bar, and the public or when the case is capable of repetition yet evading judicial review. (Neri *vs*. Sandiganbayan, G.R. No. 202243, Aug. 07, 2013) p. 186

MOTION TO DISMISS

Denial of — Not appealable, the only remedy of the party is a special civil action for *certiorari* showing that such denial was made with grave abuse of discretion. (Mayor Corales *vs*. Rep. of the Phils., G.R. No. 186613, Aug. 27, 2013) p. 432

OBLIGATIONS, EXTINGUISHMENT OF

Compensation — In order that compensation may be proper, it is necessary: (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced

by third persons and communicated in due time to the debtor. (Soriano *vs*. People, G.R. No. 181692, Aug. 14, 2013) p. 352

— Its object is the prevention of unnecessary suits and payments through the mutual extinction by operation of law of concurring debts. *(Id.)*

OMBUDSMAN, OFFICE OF

Powers of — Power to impose administrative liability is not merely advisory, but actually mandatory in nature but said power is shared with the head of office or any other officer concerned. (Abdulrahman *vs*. Office of the Ombudsman for Mindanao, G.R. No. 175977, Aug. 28, 2013) p. 592

OWNERSHIP

Builder in bad faith — Not entitled to reimbursement of the expenses incurred. (National Housing Authority *vs*. Baello, G.R. No. 200858, Aug. 07, 2013) p. 171

PARTIES TO CIVIL ACTIONS

Parties-in-interest — No person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. (B. Sta. Rita & Co., Inc. *vs*. Gueco, G.R. No. 193078, Aug. 28, 2013) p. 776

PARTY-LIST SYSTEM (R.A. NO. 7941)

Registration of party-list representatives — Change of name or alteration of the order of names in the list must be made within the prescribed period. (Cocofed-Phil. Producers Federation, Inc. *vs*. COMELEC, G.R. No. 207026, Aug. 06, 2013) p. 19

— Failure to submit the list of five (5) nominees before the election warrants the cancellation of a sectoral party's registration. *(Id.)*

— The fact that a party-list group is entitled only to three (3) seats in Congress does not render mandatory requirement of submitting five (5) nominees permissive. *(Id.)*

— The petition is not moot as the issue on the validity of the cancellation of a sectoral party's registration is not dependent on the outcome of the election. *(Id.)*

PHILIPPINE MINING ACT (R.A. NO. 7942)

Panel of arbitrators — Has no jurisdiction over a petition not involving a mining dispute and does not entail the technical knowledge and expertise of the members of the panel and where the questions raised are legal in nature and require the application and interpretation of laws and jurisprudence. (Dolot *vs.* Hon. Paje, G.R. No. 199199, Aug. 27, 2013) p. 458

PLEADINGS

Negative pregnant — Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a negative pregnant exists and the only qualification or modification is denied, while the fact itself is admitted. (Venzon *vs.* Rural Bank of Buenavista [Agusan del Norte], Inc., G.R. No. 178031, Aug. 28, 2013) p. 607

POEA STANDARD EMPLOYMENT CONTRACT

Death and disability benefits — For possibility of compensation for the death of a seafarer occurring after the termination of the employment contract on account of a work-related illness, the claimant must fulfill the following: (1) the seafarer's work must involve the risks described in the rules; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer. (Sea Power Shipping Enterprises, Inc. *vs.* Salazar, G.R. No. 188595, Aug. 28, 2013) p. 693

— Proof required is substantial evidence in claiming the benefits. *(Id.)*

— Seafarer must establish that the injury or illness is work-related and that it occurred during the term of the contract. *(Id.)*

PRELIMINARY INJUNCTION

Preliminary mandatory injunction — Since it commands the performance of an act, it does not preserve the status *quo* and is thus more cautiously regarded than a mere prohibitive injunction. (Calawag *vs*. UP Visayas, G.R. No. 207412, Aug. 07, 2013) p. 208

Writ of — For issuance of a writ, the following requisites must concur, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and (3) that there is an urgent and paramount necessity for the writ to prevent serious damage. (Calawag *vs*. UP Visayas, G.R. No. 207412, Aug. 07, 2013) p. 208

PRELIMINARY INVESTIGATION

Probable cause — Courts will not interfere with the conduct of preliminary investigation, or reinvestigation, or in the determination of what constitutes sufficient probable cause for the filing of the corresponding information against an offender except if it was attended by grave abuse of discretion. (Hasegawa *vs.* Giron, G.R. No. 184536, Aug. 14, 2013) p. 364

— 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. *(Id.)*

— The decision whether or not to dismiss the criminal complaint against the accused depends on the sound discretion of the prosecutor. *(Id.)*

PRESCRIPTION OF ACTION

As a defense — Unavailing if the claims are based on a null and void deed of sale. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

PRESUMPTIONS

Regularity in the performance of official duties — Negated by the inconsistencies of police officers amounting to procedural lapses in observing the chain of custody of evidence. (People *vs*. Consulta, G.R. No. 191071, Aug. 28, 2013) p. 733

PROHIBITION AND INJUNCTION

Petition for — Cannot be availed of to restrain an act that is already accomplished or consummated. (Vivas *vs*. Monetary Board of the Bangko Sentral ng Pilipinas, G.R. No. 191424, Aug. 07, 2013) p. 132

Writ of — Its function is to prevent the doing of an act which is about to be done. (Vivas *vs*. Monetary Board of the Bangko Sentral ng Pilipinas, G.R. No. 191424, Aug. 07, 2013) p. 132

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal partnership of gains — For the presumption that all property of the marriage is presumed to belong to a conjugal partnership to apply, it must be proved that the property was indeed acquired during the marriage; failure to prove rendered the subject property exclusive property of a spouse. (Tan *vs*. Andrade, G.R. No. 171904, Aug. 07, 2013) p. 49

PROSECUTION OF OFFENSES

Complaint or information — Allegations therein are crucial to the success or failure of a criminal prosecution. (Neri *vs*. Sandiganbayan, G.R. No. 202243, Aug. 07, 2013) p. 186

Dismissal of criminal case — Trial court may immediately dismiss a criminal case if the evidence on record fails to show probable cause. (Law Firm of Chavez Miranda and Aseoche *vs*. Atty. Fria, G.R. No. 183014, Aug. 07, 2013) p. 105

PUBLIC OFFICERS AND EMPLOYEES

Duties of — A public servant must exhibit the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. (Judge Buenaventura *vs*. Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

Insubordination — A refusal to obey some order, which a superior officer is entitled to give and have obeyed. (Judge Buenaventura *vs*. Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

Misconduct — A transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence of a public officer. (Judge Buenaventura *vs*. Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

— It becomes 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. *(Id.)*

— The act of threatening the life of a superior cannot be considered as misconduct, not being related to the discharge of the employee's official functions. *(Id.)*

Misconduct in office — By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. (Judge Buenaventura *vs*. Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

Officers who are custodians of government funds — Shall be liable for their failure to ensure that such funds are safely guarded against loss or damage, and that they are expected, utilized, disposed of, or transferred in accordance with the law and existing regulations, and on the basis of prescribed documents and necessary records. (Delos Santos *vs*. COA, G.R. No. 198457, Aug. 13, 2013) p. 322

Simple misconduct — Imposable penalty. (Judge Buenaventura *vs*. Mabalot, A.M. No. P-09-2726, Aug. 28, 2013) p. 476

QUASI-CONTRACT

Solutio indebiti — If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. (Venzon *vs*. Rural Bank of Buenavista [Agusan del Norte], Inc., G.R. No. 178031, Aug. 28, 2013) p. 607

RAPE

Commission of — Complete or full penetration of the complainant's private part is not at all necessary. (People *vs*. Manalili, G.R. No. 191253, Aug. 28, 2013) p. 762

Prosecution of rape cases —It is highly inconceivable that a mother would willfully and deliberately corrupt the innocent mind of her young daughter and put her lips in the lewd description of a carnal act to justify a personal grudge or anger against the accused. (People *vs*. Manalili, G.R. No. 191253, Aug. 28, 2013) p. 762

Statutory rape — Elements of the crime are: (1) that the victim is a female under 12 years or is demented; (2) that the offender had carnal knowledge of the victim. (People *vs*. Manalili, G.R. No. 191253, Aug. 28, 2013) p. 762

— Punishable by *reclusion perpetua*. *(Id.)*

REGIONAL TRIAL COURT

Jurisdiction — Claim for moral damages cannot be included in determining the jurisdictional amount. (Cabrera *vs*. Francisco, G.R. No. 172293, Aug. 28, 2013) p. 574

— Includes action for quieting of title regardless of the value of the property. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

RES JUDICATA

Application — The evidence or set of facts used in a complaint for quieting of title is the same as that which is necessary in a case for annulment of title, the difference in form and nature of the two actions is immaterial and is not a reason to exempt the party from the effects of *res judicata*. (Pilar Dev't. Corp. *vs*. CA, G.R. No. 155943, Aug. 28, 2013) p. 519

Doctrine of — Requisites are: (1) that the former judgment is final; (2) that it has been rendered by a court of competent jurisdiction; (3) that it is a judgment on the merits; and (4) that, between the first and the second actions, there is identity of parties, subject matter, and cause of action. (Pilar Dev't. Corp. *vs*. CA, G.R. No. 155943, Aug. 28, 2013) p. 519

— When a right or a fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. (*(Id.)*

Identity of causes of action as a requisite — Does not mean absolute identity otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. (Pilar Dev't. Corp. *vs*. CA, G.R. No. 155943, Aug. 28, 2013) p. 519

RULES OF PROCEDURE

Construction — Court has recognized exceptions to the strict compliance with the rules, but only for the most compelling reasons where stubborn obedience thereto would defeat rather than serve the ends of justice. (Castels *vs*. Saudi Arabian Airlines, G.R. No. 188514, Aug. 28, 2013) p. 667

SALES

Buyer's good or bad faith — Does not apply in sales involving unregistered land. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

Contract of sale — Defense of prescription, laches and estoppels are unavailing if the claims are based on a null and void deed of sale. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

Double sale — Prior sale of a land via an unnotarized deed of sale prevails over a subsequent sale via a notarized document. (Sps. Sabitsana, Jr. *vs*. Muertegui, G.R. No. 181359, Aug. 05, 2013) p. 1

— Registration of the subsequent sale does not have any effect on the rights of the first buyer. *(Id.)*

SUPREME COURT

Minute resolutions — Does not require the certification of the Chief Justice. (Deutsche Bank AG Manila Branch *vs*. Commissioner of Internal Revenue, G.R. No. 188550, Aug. 28, 2013) p. 676

— Not published in the Philippine Reports. *(Id.)*

Minute resolutions distinguished from decision — A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. (Deutsche Bank AG Manila Branch *vs*. Commissioner of Internal Revenue, G.R. No. 188550, Aug. 28, 2013) p. 676

— The constitutional requirement under Sec. 14, Art. VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to a minute resolution. *(Id.)*

— With respect to the same subject matter and the same issues concerning the same parties, decision constitutes *res judicata*, while a minute resolution is not a binding precedent. *(Id.)*

TAX TREATIES

Effect of — Entered into to reconcile the national fiscal obligations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions. (Deutsche Bank AG Manila Branch *vs.* Commissioner of Internal Revenue, G.R. No. 188550, Aug. 28, 2013) p. 676

— Laws and issuance of the state must ensure that the reliefs granted under the tax treaties are accorded to the parties entitled thereto. *(Id.)*

— Tax treaties have the force and effect of law in this jurisdiction. *(Id.)*

— The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. *(Id.)*

RP-Germany Tax Treaty — As against Revenue Memorandum (RMO) No. 1-2000, the period of application for the availment of tax relief as required by RMO No. 1-2000 should not divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty; the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. *(Id.)*

— The Philippines is bound to extend to a branch in the Philippines, remitting to its head office in Germany, the benefit of a preferential rate equivalent to ten percent (10%) branch profit remittance tax. *(Id.)*

TRIAL

Consolidation of trial — Permissible where the action arises from the same act, event or transaction, involves the same or like issues, and depends largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice

the substantial rights of any of the parties. (Neri *vs*. Sandiganbayan, G.R. No. 202243, Aug. 07, 2013) p. 186

TRUST RECEIPTS LAW (P.D. NO. 115)

Trust receipts transaction — One where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. (Hur Tin Yang *vs*. People, G.R. No. 195117, Aug. 14, 2013) p. 416

— When both parties enter into an agreement knowing fully well that the return of the goods subject of the trust receipts is not possible even without any fault on the part of the trustee, it is not trust receipt transaction penalized under Sec. 13 of P.D. No. 113 in relation to Art. 315, par. 1(b) of the Revised Penal Code, as the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction, the transaction becoming a mere loan. *(Id.)*

VALUE-ADDED TAX

Input taxes — Compliance with the VAT invoicing requirements is necessary to be able to file a claim for input taxes attributable to zero-rated sales. (J.R.A. Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 171307, Aug. 28, 2013) p. 566

WITNESSES

Credibility of — Findings of trial court are not disturbed on appeal, especially when they are affirmed by the Court of Appeals; exceptions. (People *vs*. Manalili, G.R. No. 191253, Aug. 28, 2013) p. 762

— Identification of an accused by his voice has been accepted particularly in cases where the witness has known the malefactor personally for so long and so intimately. *(Id.)*

— Imperfection or inconsistencies on details which are neither material nor relevant to the case do not detract from the credibility of the testimony of the witnesses much less justify the total rejection of the same. (People *vs*. Blanco, G.R. No. 193661, Aug. 14, 2013) p. 408

— Not affected by delay in reporting the incident when such delay is justified. (People *vs*. Manalili, G.R. No. 191253, Aug. 28, 2013) p. 762

— Testimonies of rape victims who are young and immature deserve credence. *(Id.)*

CITATION

Page

I. LOCAL CASES

AAG Trucking *vs*. Yuag, G.R. No. 195033, Oct. 12, 2011, 659 SCRA 91, 104 ..... 86, 314
Abad *vs*. Roselle Cinema, 520 Phil. 135, 146 (2006) 626
Abedes *vs*. CA, 562 Phil. 262, 276 (2007) 515
Abel *vs*. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 696 561
Abraham *vs*. National Labor Relations Commission, 406 Phil. 310, 316 (2001) 85
Acop *vs*. Guingona, Jr., G.R. No. 134855, July 2, 2002, 383 SCRA 577 196
Advocates for Truth in Lending, Inc., et al. *vs*. Bangko Sentral Monetary Board, G.R. No. 192986, Jan.15, 2013, 688 SCRA 530, 547 281
Agabon *vs*. National Labor Relations Commission, G.R. No. 158693, Nov. 17, 2004, 442 SCRA 573, 693 544
Agoy *vs*. NLRC, 322 Phil. 636 (1996) 319
Agra *vs*. Commission on Audit, G.R. No. 167807, Dec. 6, 2011, 661 SCRA 563, 585 ..... 313, 430
Aguirre *vs*. CA, G.R. No. 131520, Jan. 28, 2000, 323 SCRA 771, 774 425
Agustin *vs*. De la Fuente, 84 Phil. 525 (1949) 145
Alabang Country Club, Inc. *vs*. NLRC, 503 Phil. 937, 949 (2005) 388
Alba *vs*. CA, 503 Phil. 451 (2005) 261-262
Albert *vs*. Sandiganbayan, G.R. No. 164015, Feb. 26, 2009, 580 SCRA 279, 289-290 404
Alberto *vs*. CA, G.R. Nos. 182130, 182132, June 19, 2013 48
Alfelor, et al. *vs*. Halasan, et al., 520 Phil. 982, 989 (2006) 731
Aliten *vs*. U-Need Lumber & Hardware, G.R. No. 168931, Sept. 12, 2006, 501 SCRA 577, 586 627
Aliviado *vs*. Procter and Gamble Phils., Inc., G.R. No. 160506, Mar. 9, 2010, 614 SCRA 563, 587 388
Alliance of Nationalist and Genuine Labor Org. *vs*. Samahan ng mga Manggagawang Nagkakaisa sa Manila Bay Spinning Mills, 327 Phil. 1011, 1016 (1996) 235

Page

Almira *vs*. B.F. Goodrich Philippines, Inc., G.R. No. L-34974, July 25, 1974, 58 SCRA 120, 131 546
Ampo *vs.* CA, G.R. No. 169091, Feb. 16, 2006, 482 SCRA 563 56
Anabe *vs*. Asian Construction (ASIAKONSTRUKT), G.R. No. 183233, Dec. 23, 2009, 609 SCRA 213 394
Andaya *vs*. NLRC, 502 Phil. 151 (2005) 814
Andres *vs*. Cuevas, 499 Phil. 36, 49-50 (2005) 376
Apo Fruits Corporation *vs*. CA, G.R. No. 164195, Dec. 19, 2007, 541 SCRA 117, 131-132 725
Aquino *vs*. NLRC, 283 Phil. 118 (1992) 816
Aquino *vs*. NLRC, G.R. No. 87653, Feb. 11, 1992, 206 SCRA 118 818
Arcenio *vs*. Pagorogon, A.M. Nos. MTJ-89-270, MTJ-92-637, July 5, 1993, 224 SCRA 246, 254 494
Arevalo *vs*. Planters Development Bank, G.R. No. 193415, April 18, 2012, 670 SCRA 252, 264 ..... 848, 851
Arias *vs*. Sandiganbayan, 259 Phil. 794 (1989) 402
Ariola *vs*. Philex Mining Corp., 503 Phil. 765 (2005) 394
Asian Alcohol Corporation *vs*. National Labor Relations Commission, 364 Phil. 912 (1999) 394
Atienza *vs*. Villarosa, G.R. No. 161081, May 10, 2005, 458 SCRA 385 215
Atlas Fertilizer Corporation *vs*. NLRC, 273 SCRA 549 (1997) 540
Atong Paglaum, Inc., etc., et al. *vs*. Commission on Elections, G.R. No. 203766, April 2, 2013 ..... 25, 32
Baguio *vs*. Republic of the Philippines, 361 Phil. 374, 379 (1999) 71
Balajonda *vs*. COMELEC, 492 Phil. 714 (2005) 344
Balayan *vs*. Acorda, 523 Phil. 305, 309 (2006) 513
Baldo, Jr. *vs*. Commission on Elections, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310-311 47
Balindong *vs*. CA, 488 Phil. 203 (2004) 312
Banaga *vs*. Majaducon, 526 Phil. 641 (2006) 307
Banal *vs*. Tadeo, Jr., 240 Phil. 326, 331 (1987) 100
Bangko Sentral ng Pilipinas Monetary Board *vs*. Antonio-Valenzuela, G.R. No. 184778, Oct. 2, 2009, 602 SCRA 698 151

Page

Bank of Commerce *vs*. Planters Development Bank and Bangko Sentral Ng Pilipinas, G.R. Nos. 154470-71, Sept. 24, 2012, 681 SCRA 521, 555 146
Bañares *vs*. Barican, 157 Phil. 134, 138 (1974) 615
Barangay Association for National Advancement and Transparency (BANAT) *vs.* Commission on Elections, G.R. Nos. 179271,179295, April 21, 2009, 586 SCRA 210, 243 33
Barco *vs*. CA, 465 Phil. 39 (2004) 261-262, 266
Bargayo *vs*. Camumot, 40 Phil. 857, 872 (1920) 247
Basmala *vs*. Commission on Elections, G.R. No. 176724, Oct. 6, 2008, 567 SCRA 664 38
Bautista *vs*. Negado, 108 Phil. 283, 289 (1960) 499
Baylon *vs*. Ombudsman, G.R. No. 142738, Dec. 14, 2001, 372 SCRA 437 656
Baytan vs. COMELEC, 444 Phil. 812 (2003) 32
Beradio *vs*. CA, 191 Phil. 153, 168 (1981) 130
Best Wear Garments *vs*. De Lemos, G.R. No. 191281, Dec. 5, 2012 128
Bio Quest Marketing, Inc. *vs*. Rey, G.R. No. 181503, Sept. 18, 2009, 600 SCRA 721 384
Binay, in her capacity as Mayor of the City of Makati, et al. *vs*. Odeña, G.R. No. 163683, G.R. No. 163683, June 8, 2007, 524 SCRA 248 ..... 290, 292-293, 300
Blue Dairy Corporation *vs*. National Labor Relations Commission, 373 Phil. 179, 186 (1999) 124
Boncalon *vs*. Ombudsman (Visayas), G.R. No. 171812, Dec. 24, 2008, 575 SCRA 449 604
Bongcac *vs*. Sandiganbayan, G.R. Nos. 156687-88, May 21, 2009, 588 SCRA 64 317
Boracay Foundation, Inc. *vs*. Province of Aklan, G.R. No. 196870, June 26, 2012, 674 SCRA 555, 606 472
Bugarin *vs*. Palisoc, 513 Phil. 59, 66 (2005) 513
Bustamante *vs*. NLRC, G.R. No. 111651, Nov. 28, 1996, 265 SCRA 61, 69-70 391
Cabanero *vs*. Torres, 61 Phil. 522 (1935) 145
Candido *vs*. CA, G.R. No. 107493, Feb. 1, 1996, 253 SCRA 78, 82-83 654

Page

Caños *vs*. Peralta, 201 Phil. 422, 426 (1982) 199
Cariño *vs*. Ofilada, G.R. No. 102836, Jan. 18, 1993,
271 SCRA 206, 215 786
Carlos A. Gothong Lines, Inc. *vs*. NLRC, G.R. No. 96685,
Feb. 15, 1999, 303 SCRA 164, 170 544
Casal *vs*. COA, 538 Phil. 634 (2006) 336
Casimiro *vs*. Stern Real Estate Inc. Rembrandt Hotel
and/or Meehan, 519 Phil. 438 (2006) 394
Cayco *vs*. Cruz, 106 Phil. 65 (1959) 529
Cerezo *vs*. People, G.R. No. 185230, June 1, 2011,
650 SCRA 222, 229 582
Cerna Corporation *vs*. CA, G.R. No. 91622,
April 6, 1993, 221 SCRA 19, 25 71
Ceruila *vs*. Delantar, 513 Phil. 237 (2005) 263-265
Chan *vs*. CA, G.R. No. L-27488, June 30, 1970,
33 SCRA 737 68
Chemphil Export and Import Corporation *vs*. CA,
G.R. Nos. 112438-39, 113394, Dec. 12, 1995,
251 SCRA 257, 292 799
China Banking Corporation *vs*. Cebu Printing and
Packaging Corporation, G.R. No. 172880, Aug. 11, 2010,
628 SCRA 154, 167 664-665
China Banking Corporation *vs*. Co, G.R. No. 174569,
Sept. 17, 2008, 565 SCRA 600, 606-607 214
China Road and Bridge Corporation *vs*. CA,
401 Phil. 590 (2000) 456-457
Chua *vs*. CA, 485 Phil. 644 (2004) 102
Chua *vs*. Civil Service Commission, G.R. No. 88979,
Feb. 7, 1992, 206 SCRA 65 215
Chua Huat *vs*. CA, 276 Phil. 1, 18 (1991) 48
CIR *vs*. S.C. Johnson and Son, Inc.,
368 Phil. 388, 404 (1999) 688
Cirtek Employees Labor Union-Federation of Free
Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515,
June 6, 2011, 650 SCRA 656, 663 ..... 230, 233
City Engineer of Baguio *vs*. Baniqued, G.R. No. 150270,
Nov. 26, 2008, 57 SCRA 617, 625 144

Page

City of Caloocan *vs*. Allarde, 457 Phil. 543 (2003) 848
City of Quezon *vs*. Lexber Incorporated, G.R. No. 141616, Mar. 15, 2001, 354 SCRA 493 655
Civil Service Commission *vs*. Cortez, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 607 ..... 493, 498-499
Clay & Feather International, Inc. *vs*. Lichaytoo, G.R. No. 193105, May 30, 2011, 649 SCRA 516, 525-526 376
CMTC International Marketing Corporation *vs*. Bhagis International Trading Corporation, G.R. No. 170488, Dec. 10, 2012, 687 SCRA 469, 474 673
Coastal Subic Bay Terminal, Inc. *vs*. Department of Labor and Employment – Office of the Secretary, 537 Phil. 459 (2006) 232-233
Coca-Cola Bottlers Phils., Inc. *vs*. Daniel, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 509-510 546
Coca-Cola Bottlers, Phils., Inc. *vs*. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW, G.R. No. 148205, Feb. 28, 2005, 452 SCRA 480, 497 543
Colinares *vs*. CA, G.R. No. 90828, Sept. 5, 2000, 339 SCRA 609, 623-624 431
Compañia General de Tabacos *vs*. French, et al., 39 Phil. 34, 51 (1918) 360
Consolacion *vs*. Gambito, A.M. Nos. P-06-2186/P-12-3026, July 3, 2012, 675 SCRA 452, 463 496-497
Cootauco *vs*. MMS Phil. Maritime Services, Inc., G.R. No. 184722, Mar. 15, 2010, 615 SCRA 529 703
Corinthian Gardens Association, Inc. *vs*. Tanjangco, G.R. No. 160795, June 27, 2008, 556 SCRA 154, 166 88
Cortez-Estrada *vs*. Heirs of Samut, 491 Phil. 458 (2005) 601
Cruz *vs*. CA, 517 Phil. 572, 585 (2006) 531
Cruz *vs*. Minister of Labor and Employment, 205 Phil. 14, 18-19 (1983) 824
Cuyo *vs*. People, G.R. No. 192164, Oct. 12, 2011, 659 SCRA 69, 73 602
Dacanay *vs*. People, G.R. No. 101302, Jan. 25, 1995, 240 SCRA 490, 493 199
Dalmacio-Joaquin *vs*. Dela Cruz, A.M. No. P-07-2321, April 24, 2009, 586 SCRA 344, 349 496

Page

Dalton-Reyes *vs*. CA, G.R. No. 149580, Mar. 16, 2005, 453 SCRA 498, 509-510 543
Dare Adventure Farm Corporation *vs*. CA, G.R. No. 161122, Sept. 24, 2012, 681 SCRA 580, 588-589 786
Dasmariñas Water District *vs*. Leonardo-De Castro, G.R. No. 175550, Sept. 17, 2008, 565 SCRA 624, 637 153
David *vs*. Macapagal-Arroyo, G.R. Nos. 171396, **etc.,** May 3, 2006, 489 SCRA 160, 215 196
De Leon *vs*. Public Estates Authority, G.R. Nos. 181970, 182678, Aug. 3, 2010, 626 SCRA 547 313
De Los Santos-Dio *vs*. CA, G.R. Nos. 178947, 179079, June 26, 2013 112
Demetria *vs*. Alba, G.R. No. 71977, Feb. 27, 1987, 148 SCRA 208, 212-213 196
Department of Education, Culture and Sports *vs*. San Diego, G.R. No. 89572, Dec. 21, 1989, 180 SCRA 533 217
Deutsche Bank AG *vs*. CA, G.R. No. 193065, Feb. 27, 2012, 667 SCRA 82, 91 28
Didipio Earth-Savers Multi-Purpose Association, Inc., (DESAMA) *vs*. Gozun, 520 Phil. 457, 471-472 (2006) 452
Dimabayao *vs*. National Labor Relations Commission, G.R. No. 122178, Feb. 25, 1999, 303 SCRA 655, 659 543-544
Dimagan *vs*. Dacworks United, Incorporated, G.R. No. 191053, Nov. 28, 2011, 661 SCRA 438, 446 129
Ditching *vs*. CA, 331 Phil. 665, 678 (1996) 613
Domdom *vs*. Sandiganbayan, G.R. Nos. 182382-83, Feb. 24, 2010, 613 SCRA 528 193
Dy *vs*. Mandy Commodities Co., Inc., G.R. No. 171842, July 22, 2009, 593 SCRA 440, 450 851-852
E.Y. Industrial Sales, Inc. *vs*. Shen Dar Electricity and Machinery Co., Ltd., G.R. No. 184850, Oct. 20, 2010, 634 SCRA 363, 374-375 56
Eastern Paper Mills, Inc. *vs*. NLRC, 252 Phil. 618, 620 (1989) 816
Eastern Shipping Lines, Inc. *vs*. CA, G.R. No. 97412, July 12, 1994, 234 SCRA 78 ..... 278, 281
Eastern Shipping Lines, Inc. *vs*. Philippine Overseas Employment Administration, 248 Phil. 762, 771 (1998) 153

Page

Eastern Shipping Lines, Inc., and/or Chiongbian *vs*. Sedan, 521 Phil. 61, 71 (2006) 816
Eastern Telecommunications Philippines, Inc. *vs*. CIR, G.R. No. 168856, Aug. 29, 2012, 679 SCRA 305, 313 573
Eastridge Golf Club, Inc. *vs*. Eastridge Golf Club, Inc., Labor Union-Super, G.R. No. 166760, Aug. 22, 2008, 563 SCRA 93, 106 388
Edge Apparel, Inc. *vs*. NLRC, Fourth Division, G.R. No. 121314, Feb. 12, 1998, 286 SCRA 302, 311-312 389
Encinas *vs*. National Bookstore, Inc., G.R. No. 162704, Nov. 19, 2004, 443 SCRA 293, 302 642
Escobin *vs*. National Labor Relations Commission, G.R. No. 118159, April 15, 1998, 289 SCRA 48, 67 544
Eslao *vs*. Commission on Audit, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 738 655
Estreller *vs*. Ysmael, G.R. No. 170264, Mar. 13, 2009, 581 SCRA 247, 253 16
Exodus International Construction Corporation *vs*. Biscocho, G.R. No. 166109, Feb. 23, 2011, 644 SCRA 76, 86-88, 92 ..... 388, 624, 626, 628
F.F. Cruz & Co., Inc. *vs*. HR Construction Corp., G.R. No. 187521, Mar. 14, 2012, 668 SCRA 302, 315 802
Fajardo *vs*. Ombudsman, G.R. No. 173268, Aug. 23, 2012, 679 SCRA 97 604
Fenequito *vs*. Vergara, Jr., G.R. No. 172829, July 18, 2012, 677 SCRA 113, 120-121 374
Fermo *vs*. COMELEC, 384 Phil. 584, 592 (2000) 345
Flight Attendants and Stewards Association of the Philippines *vs*. Philippine Airlines, Inc., 581 Phil. 228 (2008) 394
Flight Attendants and Stewards Association of the Philippines *vs*. Philippine Airlines, Inc., G.R. No. 178083, July 22, 2008, 559 SCRA 252 394
Floria *vs*. Sunga, 420 Phil. 637, 650 (2001) 497
Fort Bonifacio Development Corporation *vs*. Commissioner of Internal Revenue, G.R. Nos. 158885, 170680, Oct. 2, 2009, 602 SCRA 159, 164 35

Page

Freeman, Inc. *vs.* SEC, G.R. No. 110265, July 7, 1994,
233 SCRA 735 318
Fua, Jr. *vs*. COA, G.R. No. 175803, Dec. 4, 2009,
607 SCRA 347, 352 454
Fuentes *vs*. CA, 335 Phil. 1163 (1997) 69
Gabunas, Sr. *vs*. Scanmar Maritime Services, Inc.,
G.R. No. 188637, Dec. 15, 2010 709
Galang *vs*. Malasugui, G.R. No. 174173, Mar. 7, 2012,
667 SCRA 622, 634-635 129
Galofa *vs*. Nee Bon Sing, 130 Phil. 51, 54 (1968) 615
Gamboa, Rodriguez, Rivera & Co., Inc. *vs*. CA,
G.R. No. 117456, May 6, 2005, 458 SCRA 68, 74 565
Gan Hock *vs*. CA, G.R. No. 60848, May 20, 1991,
197 SCRA 223, 231 804
Garcia *vs*. CA, 334 Phil. 621, 631-632 (1997) 100
The Faculty Admission Committee, Loyola School
of Theology, 160-A Phil. 929, 943 (1975) 216
The Faculty Admission Committee, Loyola School
of Theology, G.R. No. L-40779, Nov. 28, 1975,
68 SCRA 277 216
Gateway Electronics Corporation *vs*. Land Bank
of the Philippines, G.R. Nos. 155217, 156393,
July 30, 2003, 407 SCRA 454, 462 214
Gau Sheng Phils., Inc. *vs*. Joaquin,
481 Phil. 222 (2004) 703, 708
Genuino Ice Company, Inc. *vs*. Lava, G.R. No. 190001,
Mar. 23, 2011, 646 SCRA 385, 389 ..... 387, 393
Geotina *vs*. CTA, 148-B Phil. 273, 282-283 (1971) 45, 48
Gilles *vs*. CA, G.R. No. 149273, June 5, 2009,
588 SCRA 298, 316 129
Global Business Holdings, Inc. *vs*. Surecomp Software, B.V.,
G.R. No. 173463, Oct. 13, 2010, 633 SCRA 94, 101 457
Go *vs*. Yamane, G.R. No. 160762, May 3, 2006,
489 SCRA 107 57
Go, Jr. *vs*. CA, G.R. No. 172027, July 29, 2010,
626 SCRA 180, 189 601
Gochan and Sons Realty Corporation *vs*. Heirs of Raymundo
Baba, 456 Phil. 569, 578 (2003) 16

Page

Golangco *vs*. Fung, 535 Phil. 331, 341 (2006) 87
Gomez-Castillo *vs*. Commission on Elections, G.R. No. 187231, June 22, 2010, 621 SCRA 499, 507 ..... 468, 470
Gonzales *vs*. Climax Mining Ltd., 492 Phil. 682, 696-697 (2005) 474
Gonzales vda. de Toledo *vs*. Toledo, 462 Phil. 738 (2003) 303
Gordon *vs*. Veridiano II, No. 55230, Nov. 8, 1988, 167 SCRA 51 215
Government Service Insurance System *vs*. Cuntapay, G.R. No. 168862, April 30, 2008, 553 SCRA 520 709
Great Southern Maritime Services Corporation *vs*. Acuña, 492 Phil. 518 (2005) 602
Guerrero *vs*. Domingo, G.R. No. 156142, Mar. 23, 2011, 646 SCRA 175, 180, 182 ..... 145, 453
Gutib *vs*. CA, G.R. No. 131209, Aug. 13, 1999, 312 SCRA 365, 371 642
Gutierrez *vs*. CA, 165 Phil. 752, 757 (1976) 616
Gutierrez *vs*. Department of Budget and Management, G.R. No. 153266, Mar. 18, 2010, 616 SCRA 1, 25 153
Hacienda Luisita, Incorporated *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, July 5, 2011, 653 SCRA 154 215
Hanjin Engineering and Construction Co., Ltd. *vs*. CA, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 96 541
Hantex Trading Co., Inc. *vs*. CA, 438 Phil. 737, 746 (2002) 124
Heirs of Lydio Falame *vs*. Baguio, 571 Phil. 428, 442 (2008) 17-18
Heirs of Gaudiano *vs*. Benemerito, G.R. No. 174247, Feb. 21, 2007, 516 SCRA 416, 421-422 666
Heirs of Pedro Pasag *vs*. Parocha, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416 654
Heirs of Spouses Teofilo M. Reterta and Elisa Reterta *vs*. Spouses Lorenzo Mores and Virginia Lopez, G.R. No. 159941, Aug. 17, 2011, 655 SCRA 580, 592 456
Heirs of Eugenia V. Roxas, Inc. *vs*. Intermediate Appellate Court, 255 Phil. 558 (1989) 145
Hermogenes *vs*. OSCO Shipping Services, Inc., 504 Phil. 564, 570 (2005) 707-708

Page

Hernando *vs*. Bengson A.M. No. P-09-2686,
Mar. 28, 2011, 646 SCRA 439 497
Hilado *vs*. David, 84 Phil. 569, 576-577 (1949) 18
Hilario *vs*. Salvador, 497 Phil. 327, 336 (2005) 590
Hongkong and Shanghai Banking Corp. *vs*.
National Labor Relations Commission, G.R. No. 116542,
July 30, 1996, 260 SCRA 49, 56 545
Hyatt Taxi Services, Inc. *vs*. Catinoy,
412 Phil. 295, 306 (2001) 129
Icawat *vs*. NLRC, 389 Phil. 441, 445 (2000) 627
Iloilo La Filipina Uygongco Corporation *vs*. CA,
G.R. No. 170244, Nov. 28, 2007, 539 SCRA 178, 187-188 541
Insular Life Assurance Company, Ltd. *vs*. CA,
G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86 57
Integrated Bar of the Philippines *vs*. Atienza,
G.R. No. 175241, Feb. 24, 2010, 613 SCRA 518, 523 196
Interorient Maritime Enterprises, Inc. *vs*. Remo,
G.R. No. 181112, June 29, 2010, 622 SCRA 237, 248 319
Irlanda *vs*. Pitargue, 22 Phil. 383 (1912) 732
Itogon-Suyoc Mines, Inc. *vs*. National Labor Relations
Commission, 202 Phil. 850, 856 (1982) 824
J.A.T. General Services *vs*. NLRC,
465 Phil. 785, 794 (2004) 387
J.P. & Sons, Inc. *vs*. Lianga Industries, Inc.,
139 Phil. 77, 83 (1969) 616
J.R.A. Philippines, Inc. *vs*. CIR, Oct.11, 2010,
632 SCRA 517, 525-527 573
Jebsens Maritime, Inc. *vs*. Undag, G.R. No. 191491,
Dec. 14, 2011, 662 SCRA 670, 678-679 ..... 705, 709
Jose Clavano, Inc. *vs*. HLURB, 428 Phil. 208 (2002) 316
Judy Philippines, Inc. *vs*. National Labor Relations
Commission, 352 Phil. 593, 606 (1998) 88
Julie's Bakeshop *vs*. Arnaiz, G.R. No. 173882,
Feb. 15, 2012, 666 SCRA 101, 115 545
King *vs*. CA, 514 Phil. 465, 470 (2005) 28
Klaveness Maritime Agency, Inc. *vs*. Beneficiaries of Allas,
566 Phil. 579 (2008) 703, 708

Page

Korea Technologies Co., Ltd. *vs*. Lerma,
566 Phil. 1, 35 (2008) 517
Labao *vs*. Flores, G.R. No. 187984, Nov. 15, 2010,
634 SCRA 723 673
Labayo-Rowe *vs*. Republic. 250 Phil. 300 (1988) 263, 265-266
Lagatic *vs*. National Labor Relations Commission,
G.R. No. 121004, Jan. 28, 1998, 285 SCRA 251, 257 544
Lakpue Drug, Inc. *vs*. Belga, G.R. No. 166379, Oct. 20, 2005,
473 SCRA 617, 624 544
Lambert Pawnbrokers and Jewelry Corporation *vs*.
Binamira, G.R. No. 170464, July 12, 2010,
624 SCRA 705 ..... 389, 393-394, 396
Land Bank of the Philippines *vs*. Barrido, G.R. No. 183688,
Aug. 18, 2010, 628 SCRA 454 723
Celada, 515 Phil. 467 (2006) 724
Chico, G.R. No. 168453, Mar. 13, 2009,
581 SCRA 226, 243 725
DAR, G.R. No. 171840, April 4, 2011,
647 SCRA 152 723-724
Goduco, G.R. No. 181327, June 27, 2012,
675 SCRA 187 ..... 723-724, 729
Heirs of Maximo Puyat, G.R. No. 175055,
June 27, 2012, 675 SCRA 233, 250 725
Livioco, G.R. No. 170685, Sept. 22, 2010,
631 SCRA 86 729
Perez, G.R. No. 166884, June 13, 2012,
672 SCRA 117 ..... 425, 427
Rivera, G.R. No. 182431, Nov. 17, 2010,
635 SCRA 285 723
Soriano, G.R. Nos. 180772, 180776, May 6, 2010,
620 SCRA 347, 353 723
Suntay, G.R. No. 188376, Dec. 14, 2011,
662 SCRA 614 314
Villegas, G.R. No. 180384, Mar. 26, 2010,
616 SCRA 626, 630 467
Largo *vs*. CA, 563 Phil. 293 (2007) 494-495
Layug *vs*. Sandiganbayan, 392 Phil. 691, 707 (2000) 130
Ledesma *vs*. CA, 503 Phil. 396 (2005) 604-605

Page

Lee *vs*. Romillo, Jr., 161 SCRA 589, 595 804
Legend Hotel (Manila) *vs*. Realuyo, G.R. No. 153511, July 18, 2012, 677 SCRA 10, 26 389
Leonardo *vs*. NLRC, 389 Phil. 118, 128 (2000) 628
Leonis Navigation Co., Inc. *vs*. Villamater, G.R. No. 179169, Mar. 3, 2010, 614 SCRA 182, 196 ..... 705, 708
Ley Construction & Development Corporation *vs*. Philippine Commercial & International Bank, G.R. No. 160841, June 23, 2010, 621 SCRA 526, 534-535 179
Leyte IV Electric Cooperative, Inc. *vs*. Leyeco IV Employees Union-ALU, G.R. No. 157775, Oct. 19, 2007, 537 SCRA 154, 166 542
Libudan *vs*. Gil, G.R. Nos. L-21163, L-25495, May 17, 1972, 45 SCRA 17, 27 71
Lim *vs*. COMELEC, G.R. No. 171952, Mar. 8, 2007, 518 SCRA 1, 5 345
Lim Tek Goan *vs.* Yatco, 94 Phil. 197 96
Lizares *vs.* Tengco, G.R. Nos. L-45425, L-45965, Mar. 27, 1992, 207 SCRA 600, 613 529
Lokin, Jr. vs. Commission on Elections, G.R. Nos. 179431-32, June 22, 2010, 621 SCRA 385, 409 ..... 28, 34-35
Lopez *vs*. Padilla, 150-A Phil. 391, 401 (1972) 70
Luna *vs*. CA, G.R. Nos. 100374-75, Nov. 27, 1992, 216 SCRA 107, 111-112 688
Luzon Development Bank *vs*. Conquilla, 507 Phil. 209 (2005) 531
Macalinao *vs*. Ong, G.R. No. 146635, Dec. 14, 2005, 477 SCRA 740, 760 561
Macasero *vs*. Southern Industrial Gases Philippines, G.R. No. 178524, Jan. 30, 2009, 577 SCRA 500, 507 824
Machica *vs*. Roosevelt Services Center, Inc., 523 Phil. 199 (2006) 625
Mactan-Cebu International Airport Authority *vs*. Urgello, 549 Phil. 302, 322 35
Madrigal Transport, Inc. *vs*. Lapanday Holdings Corporation, G.R. No. 156067, Aug. 11, 2004, 436 SCRA 123, 136 542

Page

Magdalo Para sa Pagbabago *vs*. Commission on Elections, G.R. No. 190793, June 19, 2012, 673 SCRA 651, 668 32
Magsaysay Maritime Corporation *vs*. NLRC (Second Division), G.R. No. 186180, Mar. 22, 2010, 616 SCRA 362 710
Malaloan *vs*. CA, G.R. No. 104879, May 6, 1994, 232 SCRA 249, 261 468
Manatad *vs*. Philippine Telegraph and Telephone Corporation, G.R. No. 172363, Mar. 7, 2008, 548 SCRA 64, 80-81 387
Mandaue Dinghow Dimsum House Co., Inc. *vs*. NLRC, 571 SCRA 108 (2008) 314
Manila International Airport Authority *vs*. Olongapo Maintenance Services, Inc., 567 Phil. 255, 281-282 (2008) 471
Manuel *vs*. Calimag, Jr., 367 Phil. 162, 166 (1999) 490, 494
Mari *vs*. Gonzales, G.R. No. 187728, Sept. 12, 2011, 657 SCRA 414, 423-426 206
Martinez *vs*. B&B Fish Broker, G.R. No. 179985, Sept. 18, 2009, 600 SCRA 691, 696 130
Masagana Concrete Products *vs*. National Labor Relations Commission, 372 Phil. 459, 478 (1999) 124
Matrido *vs*. People, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 540 200-201
Medalla *vs*. Laxa, G.R. No. 193362, Jan.18, 2012, 663 SCRA 461, 465 556
Medina *vs*. CA, G.R. No. 137582, Aug. 29, 2012, 679 SCRA 191, 201 231
Medline Management, Inc. *vs*. Roslinda, G.R. No. 168715, Sept. 15, 2010, 630 SCRA 471 ..... 703, 708
Megaforce Security and Allied Services, Inc. *vs*. Lactao, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 118 131
Mendiola *vs*. CA, G.R. No. 159746, July 18, 2012, 677 SCRA 27, 50 469
Mendiola *vs*. CA, G.R. No. 159333, July 31, 2006, 497 SCRA 346, 360 545
Mendoza *vs*. Commission on Elections, G.R. No. 188308, Oct. 15, 2009, 603 SCRA 692, 710) 32

Page

Metro Transit Organization, Inc. *vs*. CA,
440 Phil. 743, 751 (2002) 78
Metro Transit Organization, Inc. *vs*. National Labor
Relations Commission, 367 Phil. 259, 263 (1999) 518
Metropolitan Bank & Trust Company *vs*. Gonzales,
G.R. No. 180165, 7 April 2009, 584 SCRA 631, 640-641 374
Metropolitan Manila Development Authority *vs*.
Concerned Residents of Manila Bay,
G.R. Nos. 171947-48, Dec.18, 2008, 574 SCRA 661 470
Microsoft Philippines, Inc. *vs*. CIR, G.R. No. 180173,
April 6, 2011, 647 SCRA 398 573
Montemayor *vs*. Millora, G.R. No. 168251,
July 27, 2011, 54 SCRA 580 317
Montes *vs*. CA, 523 Phil. 98, 110 (2006) 145
Morales *vs*. Board of Regents of the University
of the Philippines, G.R. No. 161172, Dec. 13, 2004,
446 SCRA 227, 229 217
MSMG-UWP *vs*. Hon. Ramos, 383 Phil. 329,
371-372 (2000) 231-232, 627
Mt. Carmel College *vs*. Resuena, G.R. No. 173076,
Oct. 10, 2007, 535 SCRA 518, 541 824
Municipality of Candijay, Bohol *vs*. CA, G.R. No. 116702,
Dec. 28, 1995, 251 SCRA 530, 534 651
Nadela *vs*. Engineering and Construction Corporation
of Asia (ECCO-ASIA), 510 Phil. 653, 666 (2005) 360
Natam *vs*. Capule, 91 Phil. 640, 648-649 (1952) 18
National Center for Mental Health Management *vs*.
Commission on Audit, G.R. No. 114864, Dec. 6, 1996,
265 SCRA 390 656
National Housing Authority *vs*. Baello,
480 Phil. 502, 530-533 (2004) 176, 184
National Power Corporation *vs*. Philipp Brothers
Oceanic, Inc., G.R. No. 126204, Nov. 20, 2001,
369 SCRA 629, 648-649 803
Navarro *vs*. Lardizabal, 134 Phil. 331 (1968) 145
Ng *vs*. People, G.R. No. 173905, April 23, 2010,
619 SCRA 291 425-426

Page

Nicos Industrial Corporation *vs*. CA, G.R. No. 88709,
Feb. 11, 1992, 206 SCRA 127 707
Nombrado *vs*. Hernandez, 135 Phil. 5, 9 (1968) 18
Nuñez *vs*. GSIS Family Bank, G.R. No. 163988,
Nov. 17, 2005, 475 SCRA 305, 316 542
Office of the Court Administrator *vs*. Lopez,
A.M. No. P-10-2788, Jan. 18, 2011, 639 SCRA 633, 638 494
Office of the Court Administrator *vs*. Matas,
317 Phil. 9 (1995) 468
Olympic Mines and Development Corp. *vs*. Platinum
Group Metals Corporation, G.R. No. 178188,
Aug. 14, 2009, 596 SCRA 314 474
Ombudsman *vs*. Beltran, G.R. No. 168039, June 5, 2009,
588 SCRA 574 604
CA, 554 Phil. 656 (2007) 604
CA, 537 Phil. 751 (2006) 604
Lucero, 537 Phil. 917 (2006) 604
Ortigas & Company Limited Partnership *vs*. Velasco,
G.R. Nos. 109645, 112564, July 25, 1994,
234 SCRA 455, 500 799
Osumo *vs*. Serrano, 429 Phil. 626, 633 (2002) 580
Padlan *vs*. Dinglasan, G.R. No. 180321,
Mar. 20, 2013 ..... 576, 584
PAGCOR *vs*. Aumentado, Jr., G.R. No. 173634,
July 22, 2010, 625 SCRA 241 304-305
Palanca *vs*. Querubin, G.R. Nos. L-29510-31,
Nov. 29, 1969, 30 SCRA 738, 745 198
Panado *vs*. CA, 358 Phil. 593 (1998) 311
Parel *vs*. Heirs of Simeon Prudencio, G.R. No. 192217,
Mar. 2, 2011, 644 SCRA 496 848
People *vs*. Agulay, G.R, No. 181747, Sept. 26, 2008,
566 SCRA 571 415
Antonio, G.R. No. 145726, Mar. 26, 2003,
399 SCRA 585 771
Balajadia, G.R. No. 96988, Aug. 2, 1993,
225 SCRA 22, 28 772
Balunsat, G.R. No. 176743, July 28, 2010,
626 SCRA 77, 92 774

Page

Bayot, G.R. No. 200030, April 18, 2012, 670 SCRA 285, 291 830
Bayotas, G.R. No. 102007, Sept. 2, 1994,
236 SCRA 239, 255-256 829
Begino, G.R. No. 181246, Mar. 20, 2009,
582 SCRA 189, 198-199 775
Cabalquinto, 533 Phil. 703 (2006) 766, 826
Cañete, 433 Phil. 781, 794 (2002) 760
Catalan, G.R. No. 189330, Nov. 28, 2012 414
Cruz, G.R. No. 187047, June 15, 2011, 652 SCRA 286 414
Cruz, G.R. No. 185381, Dec.16, 2009,
608 SCRA 350, 364 415
De Guzman, G.R. No. 186498, Mar. 26, 2010,
616 SCRA 652, 669 761
De la Cruz, G.R. No. 177324, Mar. 30, 2011,
646 SCRA 707 414-415
Denoman, G.R. No. 171732, Aug. 14, 2009,
596 SCRA 257, 267 754
Doria, 361 Phil. 601, 622 (1999) 415
Estrada, 130 Phil. 108 (1968) 307
Flora, 389 Phil. 601, 611, 334 SCRA 262, 272 (2000) 775
Flores, 448 Phil. 840, 856 (2003) 774
Freta, 406 Phil. 854, 861 (2001) 774
Hernandez, G.R. No. 184804, June 18, 2009,
589 SCRA 625, 635 753
Intong, 466 Phil. 73, 742 (2004) 772
Kamad, G.R. No. 174198, Jan. 19, 2010,
610 SCRA 295, 302 753
Limon, 366 Phil. 29, 38 (1999) 772
Lomerio, 383 Phil. 434, 452 (2000) 773
Malones, 469 Phil. 301, 327 (2004) 773
Mantaleba, G.R. No. 186227, July 20, 2011,
654 SCRA 188 414
Matunhay, G.R. No. 178274, Mar. 5, 2010,
614 SCRA 307, 321 775
Molleda, G.R. No. 153219, Dec. 1, 1993,
417 SCRA 53 771
Obmiranis, G.R. No. 181492, Dec. 16, 2008,
574 SCRA 140, 150-151 759

Page

Pabol, G.R. No. 187084, Oct. 12, 2009,
603 SCRA 522, 532 775
Perez, G.R. No. 182924, Dec. 24, 2008,
575 SCRA 653, 672 772-774
Presas, G.R. No. 182525, Mar. 2, 2011,
644 SCRA 443 415
Reyes, 369 Phil. 61, 76 (1999) 772
Roble, G.R. No. 192188, April 11, 2011,
647 SCRA 593, 607 754
Sanchez, 426 Phil. 19, 31 (2002) 774
Sanchez, G.R. No. 175832, Oct. 15, 2008,
569 SCRA 194, 211-212 756
Sandiganbayan, G.R. No. 149495, Aug. 21, 2003,
409 SCRA 419, 424 ..... 199, 205, 207
Teodoro, G.R. No. 175876, Feb. 20, 2013 775
Tormis, G.R. No. 183456, Dec. 18, 2008,
574 SCRA 903, 920 775
Tuazon, 563 Phil. 74, 88 (2007) 772-773
Villafuerte, G.R. No. 154917, May 18, 2004,
428 SCRA 427, 433, 435 773-774
People of Paombong, Bulacan *vs*. CA, G.R. No. 99845,
Feb. 4, 1993, 218 SCRA 423 317
People's Industrial and Commercial Employees and
Workers Org. (FFW) *vs*. People's Industrial and
Commercial Corp., 198 Phil. 166, 178 (1982) 234
Pepsi- Cola Products, Phils., Inc. *vs*. Molon, G.R. No. 175002,
Feb. 18, 2013, 691 SCRA 113 824-825
Petilla *vs*. CA, G.R. No. L-38188, June 18, 1987,
151 SCRA 1, 12 565
Philippine Advertising Counsellors, Inc. *vs*. Revilla,
152 Phil. 213, 222 (1973) 616
Philippine Airlines, Inc. *vs*. NLRC, G.R. No. 123294,
Oct. 20, 2010, 634 SCRA 18 815
Philippine Bank of Commerce *vs*. Court of Appeals,
336 Phil. 667 (1997) 87
Philippine Carpet Employees Association *vs*.
Sto. Tomas, 518 Phil. 299 (2006) 394

Page

Philippine Commercial International Bank *vs*. Abad,
492 Phil. 657, 667-668 (2005) 591
Philippine Commercial International Bank *vs*. CA,
G.R. Nos. 121413, 121479, 128604, Jan. 29, 2001,
350 SCRA 446, 472 561
Philippine Federation of Petroleum Workers (PFPW), et al.
vs. CIR, et al., 147 Phil. 674, 698 (1971) 236
Philippine Health Care Providers, Inc. *vs*. Commissioner
of Internal Revenue, G.R. No. 167330, Sept. 18, 2009,
600 SCRA 413, 446-447 687
Philippine Long Distance Telephone Company *vs*.
NLRC, 247 Phil. 641 (1988) 816
Philippine National Bank *vs*. Barretto,
52 Phil. 818 (1929) 529
Chea Chee Chong, G.R. Nos. 170865, 170892,
April 25, 2012, 671 SCRA 49, 62-63 561
Pike, G.R. No. 157845, Sept. 20, 2005,
470 SCRA 328, 347 561
Philippine Retirement Authority *vs*. Rupa,
415 Phil. 713, 721 (2001) 87
Philippine Rural Reconstruction Movement *vs*. Pulgar,
G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256 624
Philippine Skylanders, Inc. *vs.* National Labor Relations
Commission, G.R. No. 127374 , G.R. No. 127431,
Jan. 31, 2002, 375 SCRA 369 232
Philippine Veterans Bank *vs*. Monillas,
573 Phil. 298, 315 (2008) 147
Philrock, Inc. *vs*. CIAC, G.R. Nos. 132848-49,
June 26, 2001, 359 SCRA 632, 643-644 803
Pilipino Telephone Corp. *vs*. Radiomarine Network, Inc.,
G.R. No. 152092, Aug. 4, 2010, 626 SCRA 702, 728-729 848
Pimentel, Jr. *vs*. Aguirre, 391 Phil. 84, 106 (2000) 31
Pioneer Texturizing Corp. *vs*. National Labor Relations
Commission, G.R. No. 118651, Oct. 16, 1997,
280 SCRA 806, 816 546
Pizza Hut/Progressive Development Corporation *vs*.
National Labor Relations Commission,
322 Phil. 579, 588 (1996) 129

Page

Platinum Tours & Travel, Inc. *vs*. Panlilio,
457 Phil. 961, 967 (2003) 467
PLDT *vs*. Imperial, 524 Phil. 204 (2006) 601
PNB MADECOR *vs*. Uy, 415 Phil. 348, 359 (2001) 360
Policarpio *vs*. CA, 336 Phil. 329, 341 (1997) 814
Premiere Development Bank *vs*. Mantal, G.R. No. 167716,
Mar. 23, 2006, 485 SCRA 234, 239 561
Presidential Ad Hoc Fact-Finding Committee on
Behest Loans *vs*. Desierto, G.R. No. 135703,
April 15, 2009, 585 SCRA 18 603
Presidential Commission on Good Government *vs*.
Sandiganbayan, 495 Phil. 485, 509 (2005) 18
Provincial Government of Rizal *vs*. Caro de Araullo,
58 Phil. 309, 316 (1933) 728
Prudential Shipping and Management Corporation *vs*.
Sta. Rita, 544 Phil. 94 (2007) 703, 707
Quiambao *vs*. Desierto, 481 Phil. 852, 866 (2004) 376
Radiowealth Finance Co. *vs*. Palileo,
274 Phil. 516, 521-522 (1991) 16
Ramas *vs*. COMELEC, 349 Phil. 857 (1998) 343
Ramcar, Inc. *vs*. Hi-Power Marketing,
527 Phil. 699, 708 (2006) 517
Ramiscal, Jr. *vs*. Hon. Sandiganbayan,
487 Phil. 384 (2004) 101
Raquel-Santos *vs*. CA, G.R. Nos. 174986, 175071,
July 7, 2009, 592 SCRA 169, 196 362
RDS Trucking *vs*. National Labor Relations Commission,
356 Phil. 122, 131 (1998) 128
Re: Deceitful Conduct of Ignacio S. del Rosario,
Cash Clerk III, Records and Miscellaneous Matter
Section, Checks Disbursement Division, FMO-OCA,
A.M. No. 2011-05-SC, Sept. 6, 2011,
656 SCRA 731, 738 496-497
Remalante *vs*. Tibe, 241 Phil. 930 (1988) 66, 68
Republic of the Philippines *vs*. CA, 255 SCRA 335 (1996) 71

Page

Coalbrine International Phils., Inc., G.R. No. 161838, April 7, 2010, 617 SCRA 491, 498 787
Coseteng-Magpayo, G.R. No. 189476, Feb.2, 2011, 641 SCRA 533 ..... 263, 265-266
Kho, G.R. No. 170340, June 29, 2007, 526 SCRA 177 ..... 261-262, 266
Migriño, G.R. No. 89483, Aug. 30, 1990, 189 SCRA 289, 297-298 650
Palacio, et al., 132 Phil. 369, 375 (1968) 853
Pantranco North Express, Inc. (PNEI), G.R. No. 178593, Feb.15, 2012, 666 SCRA 199, 205 85-86
Sandiganbayan (First Division), G.R. No. 166859, G.R. No. 169203, G.R. No. 180702, April 12, 2011, 648 SCRA 47, 132-133 632
Sandiganbayan (Fourth Division), G.R. No. 152375, Dec.13, 2011, 662 SCRA 152, 186, 190 ..... 196, 605
St. Vincent de Paul Colleges, Inc., G.R. No. 192908, Aug. 22, 2012, 678 SCRA 738 674
Valencia, 225 Phil. 408 (1986) 261
Reyes *vs*. Balde II, G.R. No. 168384, Aug. 7, 2006, 498 SCRA 186 109
Reyes *vs*. Pearlbank Securities, Inc., G.R. No. 171435, July 30, 2008, 560 SCRA 518, 534-535 374
Reyna *vs*. COA, G.R. No. 167219, Feb. 8, 2011, 642 SCRA 210, 228 335
Rigor *vs*. People, G.R. No. 144887, Nov. 17, 2004, 442 SCRA 450, 463-464 666
Rivera *vs*. CA, G.R. No. 115625, Jan. 23, 1998, 284 SCRA 673, 682 643
Robles *vs*. CA, 384 Phil. 635, 649-650 (2000) 251
Rodriguez *vs*. Gadiane, 527 Phil. 691 (2006) 97
Romy's Freight Service *vs*. Castro, 523 Phil. 540, 545 (2006) 514, 517
Rudolf Lietz Holdings, Inc. *vs*. Registry of Deeds of Parañaque, 398 Phil. 626, 632 (2000) 469
Ruiz *vs*. People, G.R. No. 160893, Nov. 18, 2005, 475 SCRA 476 661

Page

Rural Bank of Buhi, Inc. *vs*. CA, 245 Phil. 263 (1988) 151
Sacay *vs*. Sandiganbayan, 226 Phil. 497, 512 (1986) 68
Salvador *vs*. Serrano, A.M. No. P-06-2104,
516 Phil. 412, 426 (2006) 495
Samarca *vs*. Arc-Men Industries, Inc.,
459 Phil. 506, 515 (2003) 627
San Diego *vs*. Cardona, 70 Phil. 281, 283 (1940) 530
San Jose *vs*. Cruz, 57 Phil. 792, 794 (1933) 18
San Miguel Corporation *vs*. Lao,
433 Phil. 890, 898-899 (2002) 816
Santiago *vs*. De Los Santos, 158 Phil. 809 (1974) 732
Santos *vs*. CA, 413 Phil. 41, 53 (2001) 600
Committee on Claims Settlement, G.R. No. 158071,
April 2, 2009, 583 SCRA 152, 159-160 200
Rasalan, 544 Phil. 35, 44 (2007) 493, 499
Sapu-an *vs*. CA, G.R. No. 91869, Oct. 19, 1992,
214 SCRA 701, 705-706 643
Sarona *vs*. National Labor Relations Commission,
G.R. No. 185280, Jan.18, 2012, 663 SCRA 394, 413 85
Security & Credit Investigation, Inc. *vs*. NLRC,
403 Phil. 264, 273 (2001) 624
Segura *vs*. Segura, 247-A Phil. 449, 458 (1988) 247
Serrano *vs*. Galant Maritime Services, Inc.,
455 Phil. 992, 997 (2003) 601
Session Delights Ice Cream and Fast Foods *vs*.
CA (Sixth Division), G.R. No. 172149, Feb. 8, 2010,
612 SCRA 10 ..... 275, 277
Seven Star Textile Company *vs*. Dy, G.R. No. 166846,
Jan. 24, 2007, 512 SCRA 486, 499 627
Shimizu Phils. Contractors Inc. *vs*. Callanta,
G.R. No. 165923, Sept. 29, 2010, 631 SCRA 529, 540 ..... 388, 393
Singson *vs*. Isabela Sawmill, 177 Phil. 575, 588-589 (1979) 586
Sison *vs*. Tablang, G.R. No. 177011, June 5, 2009,
588 SCRA 727, 731 454
Sistoza *vs*. Desierto, 437 Phil. 117, 121-122 (2002) 407
Solidbank Corporation *vs*. Arrieta, G.R. No. 152720,
Feb. 17, 2005, 451 SCRA 711, 720 561
Soriano, Jr. *vs*. Soriano, 558 Phil. 627 (2007) 304

Page

Soriquez *vs*. Sandiganbayan (Fifth Division),
510 Phil. 709, 719-720 (2005) 403
Soriquez *vs*. Sandiganbayan, G.R. No. 153526,
Oct. 25, 2005, 474 SCRA 222, 228 642
Southeastern Shipping *vs*. Navarra, Jr.,
621 SCRA 361 (2010) 703
Spouses Abrigo *vs*. De Vera, 476 Phil. 645, 652 (2004) 16
Spouses Aya-ay *vs*. Arpaphil Shipping Corp.,
516 Phil. 628, 641 (2006) 708-709
Spouses Ong *vs*. Spouses Olasiman,
520 Phil. 338, 345-346 (2006) 14
Spouses Rasdas *vs*. Estenor, 513, 676, Phil. 664 (2005) 180
Spouses Santos *vs*. National Labor Relations
Commission, 354 Phil. 918, 931 (1998) 518
Springfield Development Corp., Inc. *vs*. Hon. Presiding
Judge of RTC, Branch 40., Cagayan de Oro City,
Misamis Oriental, 543 Phil. 298, 315 (2007) 147
St. Martin Funeral Home *vs*. National Labor Relations
Commission, G.R. No. 130866, Sept. 16, 1998,
295 SCRA 494, 503-504 541
St. Michael's Institute *vs*. Santos, G.R. No. 145280,
Dec. 4, 2001, 371 SCRA 383, 393 544
Staff Builders International, Inc. *vs*. Magsino,
411 Phil. 730, 739-740 (2001) 391
Standard Electric Manufacturing Corporation *vs*.
Standard Electric Employees Union-NAFLU-KMU,
418 Phil. 418, 427 (2005) 627
Stilianopulos *vs*. The City of Legaspi,
374 Phil. 879, 897 (1999) 531
Suarez *vs*. Municipality of Naujan, Oriental Mindoro,
124 Phil. 1298 (1966) 530
Suliguin *vs*. COMELEC, 520 Phil. 92 (2006) 38
Sy Tiong Shiou *vs*. Sy Chim, G.R. No. 174168,
Mar. 30, 2009, 582 SCRA 517, 530 374
Tagle *vs*. Equitable PCI Bank, G.R. No. 172299,
April 22, 2008, 552 SCRA 424, 441 665

Page

Talidano *vs*. Falcon Maritime & Allied Services, Inc., G.R. No. 172031, July 14, 2008, 558 SCRA 279, 291 541
Tañada *vs*. Angara, 388 Phil. 546, 592 (1997) 690
Tavera-Luna, Inc. *vs*. Nable, 67 Phil. 340, 344 (1939) 48
The Consolidated Bank & Trust Corp. *vs*. CA, 457 Phil. 688 (2003) 87
The Director of Lands *vs*. De Luna, et al., 110 Phil. 28, 33 (1960) 71
The Estate of Posedio Ortega *vs*. CA, G.R. No. 175005, April 30, 2008, 553 SCRA 649 703
The Special Audit Team, Commission on Audit *vs*. CA, et al., G.R. No. 174788, April 11, 2013 454
Tible & Tible Company, Inc. *vs*. Royal Savings and Loan Association, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 575 542
Tichangco *vs*. Enriquez, G.R. No. 150629, June 30, 2004, 433 SCRA 324, 333 542
Toledo *vs*. Perez, A.M. Nos. P-03-1677, P-07-2317, July 15, 2009, 593 SCRA 5, 11-12 ..... 496, 499
Toledo-Banaga *vs*. CA, 361 Phil. 1006 (1999) 313
Tomas *vs*. Santos, G.R. No. 190448, July 26, 2010, 625 SCRA 645, 650-651 475
Top Rate Construction and General Services, Inc. *vs*. Paxton Development Corporation, 457 Phil. 740, 748 (2003) 799
Toshiba Information Equipment (Phils.), Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 157594, Mar. 9, 2010, 614 SCRA 526, 545 362
Tropical Hut Employees' Union-CGW *vs*. Tropical Hut Food Market, Inc., 260 Phil. 182, 194 (1990) 235
Ungria *vs*. CA, G.R. No. 165777, July 25, 2011, 654 SCRA 314, 324-325 586
Unicorn Safety Glass, Inc. *vs*. Basarte, G.R. No. 154689, Nov. 25, 2004, 444 SCRA 287, 297 545
Unilever Philippines, Inc. *vs*. Rivera, G.R. No. 201701, June 3, 2013 814
Union Bank of the Philippines *vs*. People, G.R. No. 192565, Feb. 28, 2012, 667 SCRA 113, 122 469

Page

Union Bank of the Philippines *vs*. Tiu, G.R. Nos. 173090-91, Sept. 7, 2011, 657 SCRA 86, 110-111 654
Union Motor Corporation *vs*. National Labor Relations Commission, 487 Phil. 197, 209 (2004) 86
United Coconut Planters Bank *vs*. E. Ganzon, Inc., G.R. No. 168859, June 30, 2009, 591 SCRA 321, 338-341 146
University of San Carlos *vs*. CA, G.R. No. 79237, Oct. 18, 1988, 166 SCRA 570, 574 217
University of the Philippines *vs*. Dizon, G.R. No. 171182, Aug. 23, 2012, 679 SCRA 54, 81 ..... 853, 855
University of the Philippines Board of Regents *vs*. CA, G.R. No. 134625, Aug. 31, 1999, 313 SCRA 404, 423 216
Uriarte *vs*. People, 540 Phil. 477, 494-495 (2006) 404
Valdez *vs*. CA, G.R. No. 140715, Sept. 24, 2004, 439 SCRA 55 58
Valdez, Jr. *vs*. Gabales, 507 Phil. 227, 235 (2005) 492
Varias *vs*. Commission on Elections, G.R. No. 189078, Mar. 30, 2010, 617 SCRA 214, 229 546
Vda. *de* Rigonan *vs*. Derecho, G.R. No. 159571, July 15, 2005, 463 SCRA 627, 648 59
Veloso *vs*. COA, G.R. No. 193677, Sept. 6, 2011, 656 SCRA 767, 776 332
Vergara, Sr. *vs*. Suelto, 240 Phil. 719, 730 (1987) 616
Vidar *vs*. People, G.R. No. 177361, Feb. 1, 2010, 611 SCRA 216, 230 773
Villanueva *vs*. CA, G.R. No. 163433, Aug. 22, 2011, 655 SCRA 707, 718 799
Villar *vs*. National Labor Relations Commission, 387 Phil. 706, 714 (2000) 124
Villena *vs*. Rupisan, 549 Phil. 146, 158 (2007) 514
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Wallem Maritime Services, Inc. *vs*. NLRC, 376 Phil. 378 (1999) 701, 706
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Page

Western Mindanao Power Corporation *vs*. CIR,
G.R. No. 181136, June 13, 2012, 672 SCRA 350, 362 571
Yasuda *vs*. CA, 386 Phil. 594 (2002) 308
Yau *vs*. Silverio, 567 Phil. 493 (2008) 313
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631 SCRA 172, 184 849
Reyes-Carpio, G.R. No. 189207, June 15, 2011,
652 SCRA 341, 348 ..... 48, 114, 515
Sandiganbayan, 410 Phil. 619, 627 (2001) 374

II. FOREIGN CASES

Ison *vs*. Ison, 115 SW 2d. 330, 272 Ky. 836 615
Watkins *vs*. Sedberry, 261 U.S. 571, 67 L. ed. 802 (1923) 17

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1987 Constitution
Art. III, Sec. 7 34
Sec. 20 431
Art. IV, Sec.5 740
Art. VI, Sec. 5(1) 34
Art. VIII, Sec. 14 707
Art. XI, Sec. 13(3) 604

B. STATUTES

Act
No. 3344 14-15
Batas Pambansa
B.P. Blg. 22 ..... 659, 666
B.P. Blg. 65 610
B.P. Blg. 129, Sec. 18 468
Sec. 19 578

Page

(1-2) 584
(8) 588, 590
Civil Code, New
Art. 20 ..... 560, 564
Art. 160 57
Art. 173 9
Art. 449 185
Arts. 476, 1607 14
Art. 486 250
Arts. 493 251
Art. 494 251
par.5 ..... 246, 252
Art. 777 250
Art. 1141 ..... 244, 252
Art. 1169 282
Art. 1170 560
Art. 1278 360
Art. 1279 ..... 360, 362
Art. 1290 362
Art. 1358 15
Art. 1544 ..... 8-9, 11-12, 14
Art. 1875 581
Art. 2028 805
Art. 2154 616
Art. 2208 ..... 12, 565, 803
Sec. 11 805
Art. 2212 841
Art. 2219 564
Art. 2224 565
Commonwealth Act
C.A. No. 141 5
Sec. 91 ..... 66, 70-71
Sec. 101 71
Executive Order
E.O. Nos. 1-2 650-651
E.O. No. 14-A, Sec. 1 641
E.O. No. 80 220
E.O. No. 628 213-214

Page

E.O. No. 1008, Sec. 19 802
Family Code
Art. 150 252
Insurance Code
Sec. 26 170
Sec. 27 ..... 163, 170
Secs. 45, 74 163
Sec. 168 170
Sec. 169 158
Labor Code
Art. 241 (d) 234
Art. 248(e) 511
Art. 264(e) 508
Art. 279 277-278
Art. 283 ..... 386, 392
Art. 296 (formerly Art. 282) 543-544
Local Government Code, 1991
Sec. 305 (a) 847, 854
National Internal Revenue Code
Sec. 109 (q) 569
Sec. 110 (A) (1) 571
Sec. 113 (A) in relation to Sec. 238 570-571
Sec. 229 691-692
Secs. 237-238 572
National Internal Revenue Code (NIRC) of 1997
Sec. 28(A) (5) 681, 685
Penal Code, Revised
Art. 89 829
Art. 100 100
Arts. 105-107 99
Art.183 94-95
Art. 210 486
Art. 231 107
Art. 266-A, par. 1 766
(d) 827
Art. 266-B, par. 1 827
Art. 267 374
Art. 315, par. 1(b) 419, 424-425, 427, 429

Page

Presidential Decree
P.D. No. 115 ..... 419, 423-424, 427, 429
Sec. 4 425
Sec. 13 ..... 420, 427
P.D. No. 442, Arts. 130-131 543
P.D. No. 1445 ..... 848, 855
Sec. 4(1) 853
Sec. 26 854
Secs. 104-105 338
Secs. 123- 124 (Government Auditing Code of the Philippines) 335
P.D. No. 1529, Sec. 32 71
Sec. 113 11
P.D. No. 1594, Sec. 4 655
P.D. No. 1866, Sec. 3 91
Public Act
P.A. No. 2612 220
Republic Act
R.A. No. 265, Secs. 32-34 149
R.A. No. 720, Sec. 5 (Rural Banks Act) 610
R.A. No. 1379 638
R.A. No. 1937, Sec. 2530, pars. (f), (g), (l) 1, (l) 3, (l) 5 41
R.A. No. 3019 400
Sec. 3 (e) 399, 401, 403-404, 484
(h) 190, 201
R.A. No. 6657 ..... 715, 723, 723, 729
Sec. 17 722
R.A. No. 6770, Sec. 15(3) 604
R.A. No. 7076 (People's Small-Scale Mining Act of 1991) 465
R.A. No. 7160, Sec. 477 (b) 406
R.A. No. 7353, Sec. 11 ..... 143, 147-148, 152
Sec. 14 ..... 143, 148
R.A. No. 7610, Sec. 5 (b) 766
Sec. 29 826
R.A. No. 7651 43
R.A. No. 7653 ..... 149, 154

Page

Secs. 25, 34 140
Sec. 28 ..... 138, 140
Sec. 30 ..... 143-144, 150, 152-153
R.A. No. 7691 584
Sec. 3 11
Sec. 5 ..... 578, 589
No. 7916, Sec. 24 (The Special Economic Zone Act of 1995) 569
R.A. No.7941, Sec. 2 37
Sec. 4 29
Sec. 5 28
Sec. 6 ..... 28, 32
(5) 30
Sec. 8 ..... 24-25, 28, 30-31
Sec. 16 34
R.A. No. 7942 (Philippine Mining Act of 1995) 465
Sec. 77 473
R.A. No. 8294, Secs. 1, par. 2, 5 91
R.A. No. 8424, Sec. 229 568
R.A. No. 8760 334
R.A. No. 9165, Art. II, Sec. 2 (2) 409
Sec. 5 (1) 409, 739
Sec. 11, par. 3 409
Sec. 21 751-752
(a) 754-756
R.A. No. 9262 766
Sec. 44 826
R.A. No. 9346 827
R.A. No. 9500 214
R.A. No. 10151 543
Revised Rules of Criminal Procedure
Rule 112, Sec.5 (a) 111-112
Rules of Court, Revised
Rule 1, Sec. 4 472
Rule 3, Sec. 1 804
Sec. 3 579
Sec. 11 602
Rule 8 474

Page

Sec. 4 471
Sec. 7 473
Rule 10, Sec.12 100
Rule 31, Sec. 1 197
Rule 41 ..... 611, 613, 672
Sec. 1 (f) 306, 307
Secs. 2, 9 839
Sec. 2 (a) 664
Rule 43 ..... 289, 292, 300, 306, 798
Sec. 1 304
Rule 45 ..... 56-57, 62, 66-67
Sec. 1 512
Sec. 2 513
Rule 46, Sec. 3 612
Rule 50, Sec. 1 839
Sec. 2 664
Rule 58 672
Rule 63 13-14
Rule 64 ..... 23, 323
Rule 65 ..... 23, 84, 300, 306, 323
Sec. 1 512
Sec. 4 ..... 146, 672, 674
Sec. 5 602
Rule 108 262-263
Secs. 1-3, 6-7 259-260
Sec. 4 ..... 259-260, 263, 265
Sec. 5 ..... 259-260, 265
Rule 119, Sec. 22 ..... 197-198, 207
Rule 132, Sec. 34 654
Rules on Civil Procedure, 1997
Rule 39, Sec. 47 (b) 532
Rule 41, Sec. 1 (f) 301
Rule 43 227
Rule 45 ..... 90, 173, 220, 681
Rule 64 340
Rule 65 340,
Sec. 2 ..... 145, 453

Page

Rules on Criminal Procedure Revised
Rule 110, Secs. 12, 16 100
Rule 111, Sec. 1 100
Tariff and Customs Code
Sec. 102 (k) 45
Sec. 1202 ..... 42, 45
Sec. 1207 48
Sec. 2301 ..... 46, 48
Sec. 2313 ..... 43, 47
Sec. 2503 42

C. OTHERS

CIAC Revised Rules
Sec. 18.2 801-802
Civil Service Rules
Rule IV, Sec. 52 (A) (20) 497
Sec. 52 (B) (2) 497
Secs. 54-55 498
COA's Revised Rules of Procedure
Rule II, Sec. 5 (b) 854
Rule VIII 845, 848
Sec. 2 854
Rule X, Sec. 4 855
Rule XII, Sec. 1 855
Internal Rules of the Supreme Court
(A.M. No. 10-4-20-SC Revised)
Rule 4, Sec. 3 470
Omnibus Rules of Appointments and Other Personnel Actions
Rule IV, Sec. 5 438
1997 Revised Rules of Procedure of the COA
Rule V, Sec. 1 453
Rule VI, Sec. 1 453
Rule XI, Sec. 1 453

Page

Rules and Regulations Implementing the Local Government Code of 1991
Art. 169(I) 438
Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC)
Rule 2, Sec. 3 474
Rule 8, Sec. 2 469
Sec. 8 473
Rules of Procedure in Election Contests before the Court Involving Elective Municipal and Barangay Officials (A.M. No. 07-4-15-SC)
Rule 14, Sec. 2 345
Sec. 7 343
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Page

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