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DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

SEPTEMBER 2, 2013 TO SEPTEMBER 11, 2013

SUPREME COURT
MANILA
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. RTJ-12-2320. September 2, 2013]

COL. DANILO E. LUBATON (Retired, PNP), *complainant, vs.* **JUDGE MARY JOSEPHINE P. LAZARO, REGIONAL TRIAL COURT, BRANCH 74, ANTIPOLO CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; REQUIRES THAT A RESPONDENT IN AN ADMINISTRATIVE PROCEEDING BE MADE AWARE OF THE ALLEGATIONS CONTAINED IN THE LETTERS-COMPLAINT FILED AGAINST HER; CASE AT BAR.— It cannot be denied that the statements contained in the four letters-complaint were a factor in the OCA's adverse outcome of its administrative investigation. Being given the copies would have forewarned respondent Judge about every aspect of what she was being made to account for, and thus be afforded the reasonable opportunity to respond to them, or at least to prepare to fend off their prejudicial influence on the investigation. In that context, her right to be informed of the charges against her, and to be heard thereon was traversed and denied. Verily, while the requirement of due process in administrative proceedings meant only the opportunity to explain one's side, elementary fairness still dictated that, at the very least, she should have been first made aware of the allegations contained in the letters-complaint before the OCA considered them at all

in its adverse recommendation and report. This is no less true despite the similarity of the statements contained in the four letters-complaint, on the one hand, and of the statements contained in the verified complaint, on the other, simply because the number of the complaints could easily produce a negative impact in the mind of even the most objective fact finder.

2. REMEDIAL LAW; RULES OF COURT; CHARGES AGAINST JUDGES; ADMINISTRATIVE PROCEEDINGS AGAINST SITTING JUDGES AND JUSTICES; HOW INSTITUTED.— The requirements for a valid administrative charge against a sitting Judge or Justice are found in Section 1, Rule 140 of the *Rules of Court* x x x. Based on the rule, the three modes of instituting disciplinary proceedings against sitting Judges and Justices are, namely: (*a*) *motu proprio*, by the Court itself; (*b*) upon verified complaint, supported by the affidavits of persons having personal knowledge of the facts alleged therein, or by the documents substantiating the allegations; or (*c*) upon anonymous complaint but supported by public records of indubitable integrity.

3. POLITICAL LAW; JUDICIAL DEPARTMENT; LOWER COURTS; 90-DAY REGLEMENTARY PERIOD WITHIN WHICH TO DECIDE CASES; CONSIDERED MANDATORY BUT IT IS TO BE IMPLEMENTED WITH THE AWARENESS OF THE LIMITATIONS THAT MAY PREVENT A JUDGE FROM BEING EFFICIENT.— The 90-day period within which a sitting trial Judge should decide a case or resolve a pending matter is mandatory. The period is reckoned from the date of the filing of the last pleading. If the Judge cannot decide or resolve within the period, she can be allowed additional time to do so, provided she files a written request for the extension of her time to decide the case or resolve the pending matter. Only a valid reason may excuse a delay. x x x To be clear, the rule, albeit mandatory, is to be implemented with an awareness of the limitations that may prevent a Judge from being efficient. In respondent Judge's case, the foremost limitation was the situation in Antipolo City as a docket-heavy judicial station.

4. ID.; ID.; ID.; ID.; FAILURE TO COMPLY THEREWITH DUE TO INDOLENCE, NEGLECT, OR BAD FAITH, NOT ESTABLISHED IN CASE AT BAR.— Under the circumstances specific to this case, it would be unkind and inconsiderate on the part of the Court to disregard respondent Judge's limitations

and exact a rigid and literal compliance with the rule. With her undeniably heavy inherited docket and the large volume of her official workload, she most probably failed to note the need for her to apply for the extension of the 90-day period to resolve the Motion to Dismiss. This failure does happen frequently when one is too preoccupied with too much work *and* is faced with more deadlines that can be humanly met. Most men call this failure inadvertence. A few characterize it as oversight. In either case, it is excusable except if it emanated from indolence, neglect, or bad faith. With her good faith being presumed, the accuser bore the burden of proving respondent Judge's indolence, neglect, or bad faith. But Lubaton did not come forward with that proof. He ignored the notices for him to take part, apparently sitting back after having filed his several letters-complaint and the verified complaint. The ensuing investigation did not also unearth and determine whether she was guilty of, or that the inadvertence or oversight emanated from indolence, neglect, or bad faith. The Court is then bereft of anything by which to hold her administratively liable for the failure to resolve the Motion to Dismiss within the prescribed period. For us to still hold her guilty nonetheless would be speculative, if not also whimsical.

R E S O L U T I O N

BERSAMIN, *J.*:

For consideration and resolution is the Motion for Reconsideration dated June 25, 2012 filed by respondent Hon. Judge Mary Josephine P. Lazaro, Presiding Judge of Branch 74 of the Regional Trial Court in Antipolo City, whereby she seeks to undo the resolution promulgated on April 16, 2012 fining her in the amount of ₱5,000.00 for her undue delay in resolving a Motion to Dismiss in a pending civil case.

Antecedents

Through the aforecited resolution, the Court adopted and approved the following recommendations contained in the Report dated February 6, 2012 of the Office of the Court Administrator (OCA), to wit:

(1) [T]he instant administrative complaint against Judge Mary Josephine P. Lazaro, Regional Trial Court, Branch 74, Antipolo City, Rizal, is RE-DOCKETED as a regular administrative case; and

(2) Judge Lazaro is FINED in the amount of Five Thousand Pesos (₱5,000.00) and is REMINDED to be more circumspect in the performance of her duties particularly in the prompt disposition of cases pending and/or submitted for decision before her court.[1]

Thereby, the Court declared respondent Judge administratively liable for undue delay in the resolution of the Motion to Dismiss of the defendants in Civil Case No. 10-9049 entitled *Heirs of Lorenzo Gregorio y De Guzman, et al. v. SM Development Corporation, et al.*,[2] considering that she had resolved the Motion to Dismiss beyond the 90-day period prescribed for the purpose without filing any request for the extension of the period.

In her Motion for Reconsideration, respondent Judge alleges that:

a. She had not been furnished copies of the supplemental complaints dated June 13, 2011, June 17, 2011 and July 5, 2011 (with enclosures) mentioned in item no. 2 of the resolution of April 16, 2012, thereby denying her right to due process; and

b. The delay had been only of a few days beyond the period for resolving the Motion to Dismiss in Civil Case No. 10-9049, but such delay was necessary and not undue, and did not constitute gross inefficiency on her part in the manner that the *New Code of Judicial Conduct for the Philippine Judiciary* would consider to be the subject of a sanction.

On July 16, 2012, the Court directed Lubaton to comment on respondent Judge's Motion for Reconsideration within 10 days from notice, but he did not comment despite receiving the notice on September 17, 2012.

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[1] *Rollo*, p. 119.

[2] *Id.* at 15.

Ruling

The Motion for Reconsideration is meritorious.

1.
Respondent Judge's right to due process should be respected

It appears that Lubaton actually filed five complaints, four of them being the letters-complaint he had addressed to Chief Justice Corona (specifically: (1) that dated May 18, 2011;[3] (2) that dated June 13, 2011;[4] (3) that dated June 17, 2011;[5] and (4) that dated July 5, 2011[6]), and the fifth being the verified complaint he had filed in the OCA.[7] All the five complaints prayed that respondent Judge be held administratively liable: (*a*) for gross ignorance of the law for ruling that her court did not have jurisdiction over Civil Case No. 10-9049 because of the failure of the plaintiffs to aver in their complaint the assessed value of the 37,098.34 square meter parcel of land involved in the action; and (*b*) for undue delay in resolving the Motion to Dismiss of the defendants.

In its directive issued on July 27, 2011, however, the OCA required respondent Judge to comment only on the verified complaint dated July 20, 2011.[8] Thus, she was not notified about the four letters-complaint, nor furnished copies of them. Despite the lack of notice to her, the OCA considered the four letters-complaint as "supplemental complaints" in its Report dated February 6, 2012,[9] a sure indication that the four letters-complaint were taken into serious consideration in arriving at the adverse recommendation against her.

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[3] *Id.* at 54-57.

[4] *Id.* at 49-53.

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

[6] *Id.* at 28-29.

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

[8] *Id.* at 68.

[9] *Id.* at 116-119.

Respondent Judge now complains about being deprived of her right to due process of law for not being furnished the four letters-complaint before the OCA completed its administrative investigation.

Respondent Judge's complaint is justified.

It cannot be denied that the statements contained in the four letters-complaint were a factor in the OCA's adverse outcome of its administrative investigation. Being given the copies would have forewarned respondent Judge about every aspect of what she was being made to account for, and thus be afforded the reasonable opportunity to respond to them, or at least to prepare to fend off their prejudicial influence on the investigation. In that context, her right to be informed of the charges against her, and to be heard thereon was traversed and denied. Verily, while the requirement of due process in administrative proceedings meant only the opportunity to explain one's side,[10] elementary fairness still dictated that, at the very least, she should have been first made aware of the allegations contained in the letters-complaint before the OCA considered them at all in its adverse recommendation and report. This is no less true despite the similarity of the statements contained in the four letters-complaint, on the one hand, and of the statements contained in the verified complaint, on the other, simply because the number of the complaints could easily produce a negative impact in the mind of even the most objective fact finder.

Moreover, the OCA's treatment of the four letters-complaint as "supplemental complaints" was legally unsustainable. The requirements for a valid administrative charge against a sitting Judge or Justice are found in Section 1, Rule 140 of the *Rules of Court*, which prescribes as follows:

> Section 1. *How instituted.* – Proceedings for the discipline of judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits

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[10] *Catbagan v. Barte*, A.M. No. MTJ-02-1452, April 6, 2005, 455 SCRA 1, 8.

of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

Based on the rule, the three modes of instituting disciplinary proceedings against sitting Judges and Justices are, namely: (*a*) *motu proprio*, by the Court itself; (*b*) upon verified complaint, supported by the affidavits of persons having personal knowledge of the facts alleged therein, or by the documents substantiating the allegations; or (*c*) upon anonymous complaint but supported by public records of indubitable integrity.[11]

Only the verified complaint dated July 20, 2011 met the requirements of Section 1, *supra*. The four letters-complaint did not include sworn affidavits or public records of indubitable integrity. Instead, they came only with a mere photocopy of the denial of the Motion to Dismiss, which was not even certified. The OCA's reliance on them as "supplemental complaints" thus exposed the unfairness of the administrative investigation.

Although the denial of respondent Judge's right to be informed of the charges against her and to be heard thereon weakened the integrity of the investigation, it was not enough ground to annul the investigation and its outcome in view of her admission of not having filed a motion for extension of the 90-day period to resolve the Motion to Dismiss.

Consequently, the Court should still determine whether she was administratively liable or not.

2.
Respondent Judge's delay in resolving the Motion to Dismiss was not undue

The 90-day period within which a sitting trial Judge should decide a case or resolve a pending matter is mandatory. The

[11] See *Sinsuat v. Hidalgo*, A.M. No. RTJ-08-2133, August 6, 2008, 561 SCRA 38, 46.

period is reckoned from the date of the filing of the last pleading. If the Judge cannot decide or resolve within the period, she can be allowed additional time to do so, provided she files a written request for the extension of her time to decide the case or resolve the pending matter.[12] Only a valid reason may excuse a delay.

Regarding the Motion to Dismiss filed in Civil Case No. 10-9049, the last submission was the Sur-Rejoinder submitted on December 16, 2010 by defendants-movants SM Development Corporation, *et al*. As such, the 90th day fell on March 16, 2011. Respondent Judge resolved the Motion to Dismiss only on May 6, 2011, the 51st day beyond the end of the period to resolve. Concededly, she did not file a written request for additional time to resolve the pending Motion to Dismiss. Nor did she tender any explanation for not filing any such request for time.

To be clear, the rule, albeit mandatory, is to be implemented with an awareness of the limitations that may prevent a Judge from being efficient. In respondent Judge's case, the foremost limitation was the situation in Antipolo City as a docket-heavy judicial station. She has explained her delay through various submissions to the Court (*i.e.*, the Comment dated August 25, 2011, the Rejoinder dated January 20, 2012, and the Motion for Reconsideration), stating that her Branch, being one of only two branches of the RTC in Antipolo City at the time, then had an unusually high docket of around 3,500 cases; that about 1,800 of such cases involved accused who were detained; that her Branch could try criminal cases numbering from 60 to 80 on Mondays and Tuesdays, and civil cases with an average of 20 cases/day on Wednesdays and Thursdays; that despite its existing heavy caseload, her Branch still received an average number from 90 to 100 newly-filed cases each month; that the four newly-created Branches of the RTC in Antipolo City were added only in early 2011, but they did not immediately become

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[12] *Re: Report on the Judicial Audit Conducted in the Regional Trial Court - Branch 56, Mandaue City, Cebu*, A.M. No. 09-7-284-RTC, February 16, 2011. 643 SCRA 407, 413–414.

operational until much later; that she had devoted only Fridays to the study, consideration and resolution of pending motions and other incidents, to the drafting and signing of resolutions and decisions, and to other tasks; that she had spent the afternoons of weekdays drafting and signing decisions and extended orders, issuing warrants of arrest and commitment orders, approving bail, and performing additional duties like the raffle of cases and the solemnization of marriages.

Under the circumstances specific to this case, it would be unkind and inconsiderate on the part of the Court to disregard respondent Judge's limitations and exact a rigid and literal compliance with the rule. With her undeniably heavy inherited docket and the large volume of her official workload, she most probably failed to note the need for her to apply for the extension of the 90-day period to resolve the Motion to Dismiss.

This failure does happen frequently when one is too preoccupied with too much work *and* is faced with more deadlines that can be humanly met. Most men call this failure inadvertence. A few characterize it as oversight. In either case, it is excusable except if it emanated from indolence, neglect, or bad faith.

With her good faith being presumed, the accuser bore the burden of proving respondent Judge's indolence, neglect, or bad faith. But Lubaton did not come forward with that proof. He ignored the notices for him to take part, apparently sitting back after having filed his several letters-complaint and the verified complaint. The ensuing investigation did not also unearth and determine whether she was guilty of, or that the inadvertence or oversight emanated from indolence, neglect, or bad faith. The Court is then bereft of anything by which to hold her administratively liable for the failure to resolve the Motion to Dismiss within the prescribed period. For us to still hold her guilty nonetheless would be speculative, if not also whimsical.

The timing and the motivation for the administrative complaint of Lubaton do not escape our attention. The date of his first letter-complaint –May 18, 2011 – is significant because it indicated that Lubaton had already received or had been notified about the adverse resolution of the Motion to Dismiss. If he

was sincerely concerned about the excessive length of time it had taken respondent Judge to resolve the Motion to Dismiss, he would have sooner brought his complaint against her. The fact that he did not clearly manifested that he had filed the complaint to harass respondent Judge as his way of getting even with her for dismissing the suit filed by his principals.

In conclusion, we deem it timely to reiterate what we once pronounced in an administrative case involving a sitting judicial official, *viz*:

> x x x as always, the Court is not only a court of Law and Justice, but also a court of compassion. The Court would be a mindless tyrant otherwise. The Court does not also sit on a throne of vindictiveness, for its seat is always placed under the inspiring aegis of that grand lady in a flowing robe who wears the mythical blindfold that has symbolized through the ages of man that enduring quality of objectivity and fairness, and who wields the balance that has evinced the highest sense of justice for all regardless of their station in life. It is that Court that now considers and favorably resolves the reiterative plea of Justice Ong.[13]

This reiteration is our way of assuring all judicial officials and personnel that the Court is not an uncaring overlord that would be unmindful of their fealty to their oaths and of their dedication to their work. For as long as they act efficiently to the best of their human abilities, and for as long as they conduct themselves well in the service of our Country and People, the Court shall always be considerate and compassionate towards them.

WHEREFORE, the Court **GRANTS** the Motion for Reconsideration; **RECONSIDERS AND SETS ASIDE** the Resolution promulgated on April 16, 2012; **ABSOLVES** Hon. Judge Mary Josephine P. Lazaro from her administrative fine of ₱5,000.00 for undue delay in resolving a Motion to Dismiss in a pending civil case, but nonetheless **REMINDS** her to apply

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[13] *Asst. Special Prosecutor III Rohermia J. Jamsani-Rodriguez v. Justices Gregory S. Ong, Jose R. Hernandez, and Rodolfo A. Ponferrada, Sandiganbayan*, A.M. No. 08-19-SB-J, February 19, 2013.

for the extension of the period should she be unable to decide or resolve within the prescribed period; and **DISMISSES** this administrative matter for being devoid of substance.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-13-2355. September 2, 2013]
(Formerly A.M. No. 13-7-128-RTC)

Re: Cases Submitted for Decision before Hon. Teofilo D. Baluma, Former Judge, Branch 1, Regional Trial Court, Tagbilaran City, Bohol

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; COURTS; PERIODS FOR DECIDING CASES; FAILURE TO COMPLY THEREWITH IS NOT EXCUSABLE AND IT CONSTITUTES GROSS INEFFICIENCY WARRANTING THE IMPOSITION OF ADMINISTRATIVE SANCTIONS ON THE DEFAULTING JUDGE.— Article VIII, Section 15(1) of the 1987 Constitution provides that lower courts have three months within which to decide cases or resolve matters submitted to them for resolution. Moreover, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and decide cases within the required period. In addition, this Court laid down guidelines in SC Administrative Circular No. 13 which provides, *inter alia*, that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the

Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so." The Court has reiterated this admonition in SC Administrative Circular No. 3-99 which requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases and the failure to comply therewith is considered a serious violation of the constitutional right of the parties to speedy disposition of their cases. The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.

2. ID.; ID.; ID.; REASONABLE EXTENSIONS OF TIME NEEDED TO DECIDE CASES ARE ALLOWED BUT SUCH EXTENSIONS MUST FIRST BE REQUESTED FROM THE SUPREME COURT.— [T]he Court is also aware of the heavy case load of trial courts. The Court has allowed reasonable extensions of time needed to decide cases, but such extensions must first be requested from the Court. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law.

3. REMEDIAL LAW; RULES OF COURT; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; PENALTY.— Under the new amendments to Rule 140 of the Rules of Court, undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not more than ₱20,000.00. Nonetheless, the Court noted in *Re: Cases Submitted for Decision Before Hon. Teresito A. Andoy, Former Judge, Municipal Trial Court, Cainta, Rizal,* that it

has imposed varying amounts of fines for the same offense depending on the circumstances of each case x x x. In the present case, the Court takes into account the x x x survey of cases; together with the number of cases Judge Baluma failed to decide within the reglementary period (23 cases upon his retirement) and the lack of effort on his part to proffer an explanation or express remorse for his offense; but considering as well that he is suffering from depression and that he has no prior infraction, the Court finds that a fine of **₱20,000.00** is adequate.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is the request for Certificate of Clearance of Judge Teofilo D. Baluma (Baluma), former Presiding Judge, Regional Trial Court (RTC), Branch 1, of Tagbilaran City, Bohol, in support of his application for Retirement/Gratuity Benefits under Republic Act No. 910,[1] as amended.

Judge Baluma availed himself of optional retirement on July 22, 2011.

According to the Certification[2] dated August 19, 2011 of Juan J. Lumanas, Jr. (Lumanas), Officer-in-Charge, RTC, Branch 1, Tagbilaran City, Bohol, there were 23 cases submitted for decision/resolution which were left undecided by Judge Baluma. All 23 cases were already beyond the reglementary period for deciding them by the time Judge Baluma retired. Lumanas listed the 23 cases as follows:

CASES SUBMITTED FOR DECISION

Case Number	Accused/Parties/Nature of the Case	Date Submitted for Decision	Due Date of Decision

[1] Providing for the Retirement of Justices and All Judges in the Judiciary.

[2] *Rollo*, p. 8.

Re: Cases Submitted for Decision before Judge Baluma

CRIMINAL CASES

1. 13161	Bernard I. Escarpe for Viol. of Sec. 5, R.A. 9262	08-16-10	11-14-10
2. 13162	Bernard I. Escarpe for Viol. of Sec. 12, R.A. 9262	08-16-10	11-14-10
3. 13459	Cyrus Keene "LA" D. Apale for Rape	12-30-10	03-29-11
4. 13613	Gualberto Mangala for Viol. of R.A. 9165	04-08-10	04-23-10
5. 14043	Melvin Capa for Frustrated Murder	07-20-10	10-18-10
6. 10515	Merlyn Fabroa, *et al.* for Rebellion	05-12-10	08-10-10
7. 14853	Ernesto Pudalan for Estafa	01-30-11	04-28-11
8. 14892	Ernesto Pudalan for Estafa	02-17-11	05-15-11
9. 14992	Ernesto Pudalan for Estafa	02-15-11	05-15-11
10. 14993	Ernesto Pudalan for Estafa	02-15-11	05-15-11
11. 12766	Bernard Marc Romea for Rape	09-07-10	12-06-10
12. 12767	Bernard Marc Romea for Rape	09-07-10	12-06-10

CIVIL CASES

13. 7243	*Rosalinda Gabronino vs. Sps. Germiniana and Gaudioso Guibone, et al.* for Review, Annulment and Cancellation of Title	07-13-10	10-11-10

CASES SUBMITTED FOR RESOLUTION

Case Number	Accused/Parties/Nature of the Case	Date Submitted for Resolution	Due Date of Resolution

CRIMINAL CASES

14. 14692	Adison Ucang for Viol. of COMELEC Gun Ban	03-18-11	06-16-11
15. 14696	Gabriel Lopez for R.A. 9165	11-11-10	11-26-10
16. 14697	Gabriel Lopez for R.A. 9165	11-11-10	11-26-10
17. 14881	Alberto Dagamac for Viol. of Sec. 11, R.A. 9165	01-15-11	01-30-11

18. 14882	Alberto Dagamac for Viol. of R.A. 8294	01-15-11	04-14-11
19. 14889	Jonas Manzanilla for Viol. of Sec. 11, Art. II, R.A. 9165	01-21-11	02-05-11
20. 14890	Jonas Manzanilla for Viol. of Sec. 12, Art. II, R.A. 9165	01-15-11	01-30-11

CIVIL CASES

21. 4986	*Valerio Nalitan vs. Fortunato Cagas for Annulment* of OCT 9958	12-11-09	03-11-09
22. 7528	*Teresita Aranton vs. Heirs of Marcial Oñada for Reformation of Instrument and Specific Performance*	08-18-10	11-16-10
23. O C T (6 0 5 5) 3239	Heirs of Fabia Jumarito (nature of the case not indicated)	02-03-11	05-03-11[3]

The aforementioned 23 cases were the subject matter of a Memorandum dated July 22, 2011, *Re: Report on the Judicial Audit and Physical Inventory of Pending Cases Conducted at Branch 1, RTC, Tagbilaran City, Bohol*, issued by an audit team of the Office of the Court Administrator (OCA). Deputy Court Administrator Raul Bautista Villanueva required Judge Baluma to explain his failure to act on the 23 cases. However, Judge Baluma failed to comply with said directive.

The processing of Judge Baluma's Application for Clearance has been put on hold pending clearance from the OCA.

In a letter[4] dated April 4, 2013, Judge Baluma's son, Atty. Cristifil D. Baluma, averred that his father was suffering from depression and requested for the early release of Judge Baluma's retirement pay and other benefits. Atty. Baluma appealed that if any amount needs to be withheld from Judge Baluma's

[3] *Id.* at 1-3.

[4] *Id.* at 6.

retirement benefits due to the undecided cases, Judge Baluma's health condition be taken into consideration.

On June 7, 2013, the OCA submitted its report with the following recommendations:

> In view of the foregoing, it is respectfully recommended that: (a) this matter be re-docketed as a regular administrative matter against Hon. TEOFILO D. BALUMA, former Presiding Judge, Branch 1, Regional Trial Court, Tagbilaran City, Bohol; (b) Judge Baluma be **FINED** in the total amount of **FORTY-SIX THOUSAND PESOS (₱46,000.00)** for gross inefficiency for failure to decide the twenty-three (23) cases submitted for decision before him within the reglementary period prior to his retirement, the **amount to be deducted from his retirement benefits**; and (c) considering that retired Judge Baluma is suffering from depression, the equivalent value of his terminal leave be released pending resolution of this Administrative Matter.[5]

The Court agrees with the findings of the OCA, except as to the recommended penalty.

Article VIII, Section 15(1) of the 1987 Constitution provides that lower courts have three months within which to decide cases or resolve matters submitted to them for resolution. Moreover, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and decide cases within the required period. In addition, this Court laid down guidelines in SC Administrative Circular No. 13 which provides, *inter alia*, that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so." The Court has reiterated this admonition in SC Administrative Circular No. 3-99 which requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases and the failure to comply therewith

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[5] *Id.* at 5.

is considered a serious violation of the constitutional right of the parties to speedy disposition of their cases.[6]

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[7]

At the same time, however, the Court is also aware of the heavy case load of trial courts. The Court has allowed reasonable extensions of time needed to decide cases, but such extensions must first be requested from the Court. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law.[8]

The following facts are uncontested herein: Judge Baluma failed to decide 23 cases already submitted for decision/resolution within the mandatory reglementary period for doing so; he left said cases still undecided upon his retirement on July 22, 2011; he did not give any reason/explanation for his failure to comply with the reglementary period for deciding cases; and there were no previous requests by him for extension of time to decide said cases. Judge Baluma's gross inefficiency, evident in his undue delay in deciding 23 cases within the reglementary period, merits the imposition of administrative sanctions.

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[6] *Letter of Judge Josefina D. Farrales, Acting Presiding Judge, RTC, Br. 72, Olongapo City Re: 30 Cases and 84 Motions Submitted for Decision/ Resolution in Said Court*, A.M. No. 06-3-196-RTC, December 24, 2008, 575 SCRA 365, 382.

[7] *Report on the Judicial Audit Conducted in the RTC, Br. 22, Kabacan, North Cotabato*, 468 Phil. 338, 344-345 (2004).

[8] *Soluren v. Judge Torres*, A.M. No. MTJ-10-1764, September 15, 2010, 630 SCRA 449, 454.

Under the new amendments to Rule 140[9] of the Rules of Court, undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not more than ₱20,000.00.

Nonetheless, the Court noted in *Re: Cases Submitted for Decision Before Hon. Teresito A. Andoy, Former Judge, Municipal Trial Court, Cainta, Rizal,*[10] that it has imposed varying amounts of fines for the same offense depending on the circumstances of each case, to wit:

> The fines imposed on each judge may vary, depending on the number of cases undecided or matters unresolved by said judge beyond the reglementary period, plus the presence of aggravating or mitigating circumstances, such as the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*.
>
> The Court imposed a fine of **₱10,000.00** upon a judge who failed to decide one case within the reglementary period, without offering an explanation for such delay; another who left one motion unresolved within the prescriptive period; and a third who left eight cases unresolved beyond the extended period of time granted by the Court, taking into consideration that the judge involved was understaffed, burdened with heavy caseload, and hospitalized for more than a month. In another case, the judge was fined **₱10,100.00** for failing to act on one motion. The Court fixed the fine at **₱11,000.00** when the judge failed to resolve a motion for reconsideration and other pending incidents relative thereto because of alleged lack of manpower in his *sala*; when the judge decided a case for forcible entry only after one year and seven months from the time it was submitted for resolution, giving consideration to the fact that said judge was still grieving from the untimely demise of his daughter; when a judge resolved a motion after an undue delay of almost eight months; when a judge resolved a motion only after 231 days; when a judge failed

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[9] Section 9(1) in relation to Section 11(B); *En Banc* Resolution in A.M. No. 01-8-10-SC dated September 11, 2001 (*Re: Proposed Amendment to Rule 140 of the Rules of Court Regarding the Discipline of Justices and Judges*).

[10] A.M. No. 09-9-163-MTC, May 6, 2010, 620 SCRA 298, 302-305.

to resolve three cases within the reglementary period; and when a judge failed to resolve a motion to cite a defendant for contempt, the penalty being mitigated by the judge's immediate action to determine whether the charge had basis. In one case, the judge was fined **₱12,000.00** for failing to decide one criminal case on time, without explaining the reason for the delay. Still in other cases, the maximum fine of **₱20,000.00** was imposed by the Court on a judge who was delayed in rendering decisions in nine criminal cases, failed altogether to render decisions in 18 other cases, and promulgated decisions in 17 cases even after he had already retired; a judge who failed to decide 48 cases on time and to resolve pending incidents in 49 cases despite the lapse of a considerable length of time; a judge who unduly delayed deciding 26 cases because of poor health; and a judge who failed to decide 56 cases, without regard for the judge's explanation of heavy caseload, intermittent electrical brownouts, old age, and operation on both his eyes, because this already constituted his second offense.

There were cases in which the Court did not strictly apply the Rules, imposing fines well-below those prescribed. The Court only imposed a fine of **₱1,000.00** for a judge's delay of nine months in resolving complainant's Amended Formal Offer of Exhibits, after finding that there was no malice in the delay and that the delay, was caused by the complainant himself. In another case, a judge was fined **₱1,000.00** for his failure to act on two civil cases and one criminal case for an unreasonable period of time. The Court also imposed a fine of **₱5,000.00** on a judge, who was suffering from cancer, for his failure to decide five cases within the reglementary period and to resolve pending incidents in nine cases; and on another judge, who had "end stage renal disease secondary to nephrosclerosis" and died barely a year after his retirement, for his failure to decide several criminal and civil cases submitted for decision or resolution and to act on the pending incidents in over a hundred criminal and civil cases assigned to the two branches he was presiding.

The Court also variably set the fines at more than the maximum amount, usually when the judge's undue delay was coupled with other offenses. The judge, in one case, was fined **₱25,000.00** for undue delay in rendering a ruling and for making a grossly and patently erroneous decision. The judge, in another case, was penalized with a fine of **₱40,000.00** for deciding a case only after an undue delay of one year and six months, as well as for simple misconduct and gross ignorance of the law, considering that the undue delay

was already the judge's second offense. The Court again imposed a fine of **₱40,000.00** upon a judge who failed to resolve one motion, bearing in mind that he was twice previously penalized for violating the Code of Judicial Conduct and for Gross Ignorance of Procedural Law and Unreasonable Delay. (Citations omitted.)

In the present case, the Court takes into account the aforequoted survey of cases; together with the number of cases Judge Baluma failed to decide within the reglementary period (23 cases upon his retirement) and the lack of effort on his part to proffer an explanation or express remorse for his offense; but considering as well that he is suffering from depression and that he has no prior infraction, the Court finds that a fine of **₱20,000.00** is adequate.

WHEREFORE, the Court finds **JUDGE TEOFILO D. BALUMA**, former judge of the Regional Trial Court, Branch 1, of Tagbilaran City, Bohol, **GUILTY** of undue delay in rendering a decision or order, for which he is **FINED** in the amount of **₱20,000.00**, to be deducted from his retirement benefits withheld by the Fiscal Management Office, Office of the Court Administrator. The balance of his retirement benefits shall be released without unnecessary delay.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160316. September 2, 2013]

ROSALINDA PUNZALAN, RANDALL PUNZALAN and RAINIER PUNZALAN, *petitioners, vs.* **MICHAEL GAMALIEL J. PLATA and RUBEN PLATA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE CANNOT BE INTERFERED WITH BY THE SUPREME COURT.— The well-established rule is that the conduct of preliminary investigation for the purpose of determining the existence of probable cause is a function that belongs to the public prosecutor. x x x The prosecution of crimes lies with the executive department of the government whose principal power and responsibility is to see that the laws of the land are faithfully executed. "A necessary component of this power to execute the laws is the right to prosecute their violators." Succinctly, the public prosecutor is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime and should be held for trial. x x x Consequently, the Court considers it a sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the DOJ a wide latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of the supposed offenders. The rule is based not only upon the respect for the investigatory and prosecutory powers granted by the Constitution to the executive department but upon practicality as well.

2. ID.; ID.; ID.; ID.; EXCEPTION.— [T]he rule is that this Court will not interfere in the findings of the DOJ Secretary on the insufficiency of the evidence presented to establish probable cause unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion, thus "means

such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction." The party seeking the writ of *certiorari* must establish that the DOJ Secretary exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. x x x Evidently, the conclusions arrived at by the DOJ were neither whimsical nor capricious as to be corrected by *certiorari*. Even on the assumption that the DOJ Secretary made erroneous conclusions, such error alone would not subject his act to correction or annulment by the extraordinary remedy of *certiorari*. After all, not "every erroneous conclusion of law or fact is an abuse of discretion."

APPEARANCES OF COUNSEL

Law Firm of Perlas De Guzman & Partners for petitioners.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 29, 2003 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 62633, which annulled and set aside the June 6, 2000[2] and October 11, 2000[3] Resolutions of the Department of Justice *(DOJ)* and reinstated its (DOJ's) March 23, 2000 Resolution[4] ordering the City Prosecutor of Mandaluyong City to file separate informations charging the petitioners, Rosalinda Punzalan

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[1] *Rollo*, pp. 38-46. Penned by Associate Justice Elvie John S. Asuncion and concurred in by Associate Justice Mercedes Gozo-Dadole and then Associate Justice Lucas P. Bersamin (now a member of this Court).

[2] *Id.* at 123-127.

[3] *Id.* at 140-143.

[4] *Id.* at 95-104.

(Rosalinda), Rainier Punzalan *(Rainier)*, Randall Punzalan *(Randall)* and several other individual with various offenses - three *(3)* counts of Slight Oral Defamation against petitioner Rosalinda Punzalan *(Rosalinda)*; two (2) counts of Light Threat against Alexander "Toto" Ofrin; Attempted Homicide against Alexander "Toto" Ofrin, petitioners Rainier and Randall, Jose Gregorio Lanuzo, Avelino Serrano, Lito Dela Cruz, Emmanuel Nobida, Mark Catap, Ricky Eugenio, Alejandro Diez, Vicente Joven Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar, and Raymond Poliquit; and Malicious Mischief and Theft against petitioners Rainier and Randall, Mark Catap, Alejandro Diez, Jose Fregorio Lanuzo, Alexander "Toto" Ofrin, Herson Mendoza, Emmanuel Nobida, Edwin Vivar, Avelino "Bobby" Serrano, and John Does.

The basic facts as found by the Court in G.R. No. 158543,[5] are as follows:

> The Punzalan and the Plata families were neighbors in Hulo Bliss, Mandaluyong City. At around 11:00 p.m. of August 13, 1997, Dencio dela Peña, a house boarder of the Platas, was in front of a store near their house when the group of Rainier Punzalan, Randall Punzalan, Ricky Eugenio, Jose Gregorio, Alex "Toto" Ofrin, and several others arrived. Ricky Eugenio shouted at Dela Peña, "*Hoy, kalbo, saan mo binili and sumbrero mo*?" Dela Peña replied, "*Kalbo nga ako, ay pinagtatawanan pa ninyo ako*." Irked by the response, Jose Gregorio slapped Dela Peña while Rainier punched him in the mouth. The group then ganged up on him. In the course of the melee, somebody shouted, "*Yariin na 'yan!*" Thereafter, Alex "Toto" Ofrin kicked Dela Peña and tried to stab him with a *balisong* but missed because he was able to run. The group chased him.
>
> While Dela Peña was fleeing, he met Robert Cagara, the Platas' family driver, who was carrying a gun. He grabbed the gun from Cagara and pointed it to the group chasing him in order to scare them. Michael Plata, who was nearby, intervened and tried to wrestle the gun away from Dela Peña. The gun accidentally went off and hit Rainier Punzalan on the thigh. Shocked, Dela Peña, Cagara and Plata ran towards the latter's house and locked themselves in. The

[5] Entitled "*Rosalinda Punzalan, Randall Punzalan and Rainier Punzalan v. Dencio Dela Peña and Robert Cagara*," 478 Phil. 771 (2004).

group ran after them and when they got to the Platas' house, shouted, "*Lumabas kayo d'yan, putang ina ninyo! Papatayin namin kayo*!" Dela Peña, Cagara, and Plata left the house through the back door and proceeded to the police station to seek assistance.

Thereafter, Rainier filed a criminal complaint for Attempted Homicide against Michael Gamaliel Plata *(Michael)* and one for Illegal Possession of Firearms against Robert Cagara *(Cagara)*. On the other hand, Michael, Ruben Plata *(Ruben)* and several others filed several complaints against petitioners Rosalinda, Randall, Rainier, and several individuals before the Office of the City Prosecutor, Mandaluyong City, to wit:

Investigation Slip No. *(I.S. No.)*	**Charge**	**Parties**
97-11485	Slight Physical Injuries	*Roberto Cagara v. Randall Punzalan, Avelino Serrano, Raymond Poliguit, Alex "Toto" Ofrin, Alejandro Diez, Jose Gregorio Lanuzo, Mark Catap, Vicente "Joven" Manda, Mark Labrador and Herson Mendoza*
97-11487	Grave Oral Defamation	*Michael Gamaliel J. Plata v. Rosalinda Punzalan*
97-11492	Grave Threats	*Michael Gamaliel J. Plata v. Rosalinda Punzalan*
97-11520	Grave Threats	*Dencio Dela Peña v. Alex "Toto" Ofrin*
97-11521	Grave Threats	*Dencio Dela Peña v. Alex "Toto" Ofrin*
97-11522	Grave Oral Defamation	*Dencio Dela Peña v. Rosalinda Punzalan*
97-11523	Grave Oral Defamation	*Robert Cagara v. Rosalinda Punzalan*
97-11528	Attempted Murder	*Dencio Dela Peña v. Alexander "Toto" Ofrin, Rainier Punzalan, Jose Gregorio Lanuzo, Avelino Serrano, Lito Dela Cruz, Emmanuel Nobida, Randall Punzalan, Mark Catap, Ricky Eugenio, Alejandro Diez, Vicente*

		"Joven" Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar and Raymond Poliquit
97-11764	Grave Oral Defamation	*Roland Curampes and Robert Cagara v. Avelino Serrano, Randall Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Raymond Poliquit, Alex Pascua, Rainier Punzalan, Alexander "Toto" Ofrin and Edwin Vivar*
97-11765	Malicious Mischief	*Michael Gamaliel J. Plata v. Avelino Serrano, Randall Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Rainier Punzalan, Alexander "Toto" Ofrin, Edwin Vivar, Mark Catap, Joven Manda and Jose Gregorio Lanuzo*
97-11766	Robbery	*Michael Gamaliel J. Plata v. Avelino Serrano, Randall Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Rainier Punzalan, Alexander "Toto" Ofrin, Edwin Vivar, Mark Catap, Vicente "Joven" Manda and Jose Gregorio Lanuzo*
97-11786	Grave Oral Defamation	*Michael Gamaliel J. Plata v. Rosalinda Punzalan*

On July 28, 1998, the Office of the City Prosecutor, in its Joint Resolution,[6] dismissed the complaints filed against the petitioners for lack of sufficient basis both in fact and in law, giving the following reasons:

The investigation and affidavits of all parties reveal that the above cases have no sufficient basis. First, as regards the **Grave Oral Defamation** charges against Rosalinda Punzalan allegedly committed on the 13th of August 1997 and 16th of October 1997 (I.S. Nos. 97-

[6] CA *rollo*, pp. 28-35.

11487, 97-11786; 97-11522 and 97-11523), the alleged defamatory statements are not supported by any evidence to prove that they would 'cast dishonor, discredit or contempt upon another person (Article 359, Revised Penal Code), which are essential requisites of Grave Oral Defamation. Complainants presented no evidence aside from their claims to prove their cases; hence, insufficient. Further, the records show that the alleged defamatory statements were made by respondent during the scheduled hearing of one of the above case, which even if true, must have been said while in a state of distress caused by the filing of the above numerous cases filed against her family, hence, not actionable. The same also holds true with the other Oral Defamation and Grave Threat charges allegedly committed on October 21, 1997 by Avelino Serrano and 15 other persons including the sons of Rosalinda Punzalan named Randall and Rainier against Roberto Cagara and Ronald Curampes (I.S. No. 11764), the alleged defamatory statements are not supported by any evidence that would cause dishonor, discredit or contempt upon another person neither would such utterances constitute an act which may fall under the definition of 'Grave Threat' which complainant's claimed against them because such utterances do not amount to a crime.

> 'Merely insulting or abusive words are not actionable, unless they constitute defamation punishable by law (*Isidro vs. Acuna*, 57 O.G. 3321) as to make the party subject to disgrace, ridicule or contempt or affect one injuriously in his office, profession, trade or occupation (*People vs. Perez*, 11 CA Rep. 207).'

Moreover, the elements of 'PUBLICATION' is not alleged nor proved by complainants, hence, not applicable.

> 'The only element of grave oral defamation not found in intriguing against honor is publication' (*People vs. Alcosaba*, 30 April 1964)

As regards the case of **Attempted Murder** (I.S. No. 97-11528) allegedly committed on 13 August 1997 by Ranier Punzalan, *et al.*, the same is already the subject of other two (2) criminal cases docketed as Crim. Case No. 66879 and 66878 entitled '*People vs. Michael Plata'* for Attempted Homicide and '*People vs. Roberto Cagara*' for Illegal Possession of Firearm, respectively, both pending before Branch 60,

MTC of Mandaluyong; hence, cannot be the subject of another case, conformably with the foregoing pronouncement of the high court:

x x x x x x x x x

In the case at bar, what is undisputed is that RAINIER sustained a gunshot wound in his thigh for which reason he filed a case of frustrated murder and illegal possession of firearms. The version of Michael Plata and Dencio Dela Peña (the defendants in said two cases) is that the latter was seen by Plata and Cagara while Dencio was being mauled by RAINIER, *et al.*, thereby compelling Plata and Cagara to go out of Plata's house and defend Dencio. Dencio run towards Plata and Cagara and took the gun out of Cagara's hand and aimed the gun at RAINIER, *et al.* which, in turn, forced Plata to grapple with Cagara to prevent Cagara from hurting anyone but unfortunately, the gun accidentally fired and hit RAINIER in the thigh.

Thus, whether the shooting of RAINIER arose from Plata's and Cagara's attempt to defend Dencio from the mauling by Rainier, *et al.* or from an accident, the elements of these justifying (defense of strangers) and exempting circumstances (accident) should properly be established WITH CLEAR AND CONVINCING EVIDENCE NOT in the attempted murder case filed against RAINIER, *et. al.* by Dencio but in the attempted homicide case filed against Michael Plata by RAINIER, there being a clear admission as to the fact of shooting which wounded RAINIER who filed a frustrated murder case but was eventually downgraded to attempted homicide.

With regard to the alleged **robbery** (I.S. No. 97-11766) which was allegedly committed on the same date as the malicious mischief (I.S. No. 97-11765), these two (2) cases cannot be the product of the same criminal act for some element of one may be absent in the other, particularly "*animus lucrandi*." Further, it is noted that the complainant in the robbery case, who is the same complainant in the malicious mischief (Michael Plata), use the very "same affidavit" for the two (2) different charges with no other obvious intention aside from harassing the respondents.

As regards the claim of **Slight Physical Injuries** (I.S. No. 97-11485), it appears on the affidavit of the complainants, Robert Cagara ("CAGARA") and Dencio Dela Peña ("DENCIO"), that they have

conflicting statements which were not properly explained during the investigation. According to Cagara, he and Dencio were standing near the gate of the Platas '*bandang looban*' and it was the house which was stoned and Cagara was accidentally hit by one of these stones which were aimed at the house and not at him; however, in Dencio's affidavit, he claimed that Randall Punzalan hit Cagara on the shoulder with a bottle while the latter himself did not even mention this in his own affidavit. These inconsistencies belied their claim. Moreover, it is noted that the complaint for Slight Physical Injuries was filed belatedly (10 October 1997), more than a month after the commission of the alleged act on 30 August 1997 and that the Medical Certificate of Cagara was issued much later (15 October 1997) from the commission of the alleged injuries and Cagara did not even bother to explain this in his affidavit.

As regards the charge of **Grave Threat** (I.S. No. 97-11492, 97-11520 and 97-11521), there is no act which may fall under the definition of "grave threat" because the utterances claimed do not amount to a crime. Further, in I.S. No. 97-11492, the alleged threat was made through telephone conversations and even to the complainant himself, hence, they did not pose any danger to the life and limbs nor to the property of the complainant.

x x x x x x x x x

WHEREFORE, premises considered, the above cases are hereby dismissed for lack of sufficient basis in fact and in law.[7] [Emphases supplied]

The complainants in I.S. Nos. 97-11487, 97-11523, 97-11786, 97-11520, 97-11521, 97-11528, 97-765, and 11-766 filed their separate petitions[8] before the DOJ. On March 23, 2000, the DOJ modified the July 28, 1998 Joint Resolution of the Office of the City Prosecutor and ordered the filing of separate informations for Slight Oral Defamation, Light Threats, Attempted Homicide, Malicious Mischief, and Theft against Rosalinda, Rainier, Randall and the other respondents in the

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[7] *Id.* at 32-35.

[8] *Id.* at 36-44, 45-52.

above cases. The latter filed a motion for reconsideration,[9] dated April 28, 2000. Upon review, the DOJ reconsidered its findings and ruled that there was no probable cause. In its Resolution, dated June 6, 2000, the DOJ set aside its March 23, 2000 Resolution and directed the Office of the City Prosecutor to withdraw the informations.

Not in conformity, the complainants moved for a reconsideration of the June 6, 2000 Resolution but the DOJ denied the motion in its Resolution, dated October 11, 2000.

On January 11, 2001, the complainants elevated the matter to the CA by way of *certiorari* ascribing grave abuse of discretion on the part of the DOJ Secretary which ordered the withdrawal of the separate informations for Slight Oral Defamation, Other Light Threats, Attempted Homicide, Malicious Mischief and Theft.

On September 29, 2003, the CA annulled and set aside the June 6, 2000 and October 11, 2000 Resolutions of the DOJ and reinstated its March 23, 2000 Resolution. In the said decision, the CA explained that:

> In the conduct of a preliminary investigation, the main purpose of the same is to determine "whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof," (*Tandoc vs. Resultan*, 175 SCRA 37). Based on the records We hold that probable cause exists in the subject complaints.
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> Re: the complaints filed for malicious mischief and theft, We hold that said complaints had sufficient basis. Contrary to the second ruling of the Secretary of Justice that there was lack of eye witnesses to support the alleged act constituting the complaint, there were persons who claimed to have seen the respondents as they were running away from the place of incident. The joint affidavit of witnesses Rolando Curampes and Robert Cagara attest and corroborate the allegations in the complaint. Further the circumstances surrounding the incident as well as the presence of the defendants in the scene of the crime yield to strong presumption that the latter may have had some participation in the unlawful act. Since there was positive

[9] *Id.* at 93-103.

identification of the alleged malefactors, the complaints should not be dismissed, and trial should proceed to allow for the presentation of evidence in order for the court to determine the culpability or non-culpability of the alleged transgressors.

As regards the complaints for oral defamation, the Secretary of Justice belatedly maintains that said complaints had no basis and that the evidence presented was not sufficient considering that the alleged defamatory words were uttered in a state of shock and anger. We, however, rule otherwise.

The complaints for oral defamation were filed based on three separate occasions whereupon the respondent Rosalinda Punzalan by harsh and insulting words casted aspersions upon the person of Michael Plata in the presence of other people. To say that the words thus uttered were not malicious and were only voiced because of shock and anger is beyond disbelief since respondent Punzalan could not have been in a state of shock in all three separate occasions when such remarks were made. And even if such remarks were made in the heat of anger, at the very least the act still constitutes light oral defamation.

Likewise, the complaint against Ofrin was not without basis since the supporting affidavits submitted and the allegation of the complainant positively identifying defendant Ofrin as the culprit, were sufficient to establish probable cause. That there were other persons who allegedly did not see any fighting that day and time when the incident took place, was not sufficient reason to dismiss the said complaint for lack of basis. The positive identification made by the witnesses for the complainant must be given credence over the bare denials made by respondents. "Alibi and denial are inherently weak and could not prevail over the positive testimony of the complainant" (*People v. Panlilio*, 255 SCRA 503).

From the above discussions, We find that the Secretary of Justice committed grave abuse of discretion when he issued the assailed June 6, 2000 Resolution where he reversed himself after finding earlier, in his March 23, 2000 Resolution that:

x x x x x x x x x

WHEREFORE, based on the foregoing, the Resolutions of the Secretary of Justice dated June 6, 2000 and October 11, 2000 are hereby ANNULLED and SET ASIDE. The Resolution of the Secretary of

Justice dated March 23, 2000 (Resolution No. 594, Series of 2000) is REINSTATED.

SO ORDERED.[10]

Hence, this petition filed by Rosalinda, Randall and Rainier, anchored on the following:

ASSIGNMENT OF ERRORS

1. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS REVERSIBLE ERROR IN SETTING ASIDE THE RESOLUTIONS OF THE HONORABLE SECRETARY OF JUSTICE DATED JUNE 6, 2000 AND OCTOBER 11, 2000.

2. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT, AT THE VERY LEAST, THE REMARKS MADE BY PETITIONER ROSALINDA PUNZALAN CONSTITUTE SLIGHT ORAL DEFAMATION.

3. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE ALLEGATIONS OF RESPONDENTS' WITNESSES, ROLANDO CURAMPES AND ROBERT CAGARA, ARE SUFFICIENT BASES FOR PROSECUTING PETITIONERS RANDALL AND RAINIER PUNZALAN FOR MALICIOUS MISCHIEF AND THEFT.[11]

In essence, the petitioners argue that the determination of the existence of probable cause is lodged with the prosecutor, who assumes full discretion and control over the complaint. They insist that the DOJ committed no grave abuse of discretion when it issued the June 6, 2000 and October 11, 2000 Resolutions ordering the withdrawal of the informations. In the absence of grave abuse of discretion, they contend that the courts should not interfere with the discretion of the prosecutor.

The Court finds the petition meritorious.

The well-established rule is that the conduct of preliminary investigation for the purpose of determining the existence of

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[10] *Rollo*, pp. 42-45.

[11] *Id.* at 15-16.

probable cause is a function that belongs to the public prosecutor.[12] Section 5, Rule 110 of the Rules of Court, as amended,[13] provides:

Section 5. *Who must prosecute criminal action.* - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The prosecution of crimes lies with the executive department of the government whose principal power and responsibility is to see that the laws of the land are faithfully executed. "A necessary component of this power to execute the laws is the right to prosecute their violators." Succinctly, the public prosecutor is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime and should be held for trial.[14] In the case of *Crespo v. Mogul*,[15] the Court ruled:

It is a cardinal principle that all criminal actions either commenced by a complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution

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[12] *Paredes v. Calilung,* 546 Phil. 198, 224 (2007).

[13] A.M. No. 02-2-07-SC.

[14] *SPO4 Soberano v. People of the Philippines*, 509 Phil. 118, 132-133 (2005).

[15] 235 Phil. 465 (1987).

under the direction and control of the fiscal is to prevent malicious or unfounded prosecution by private persons. It cannot be controlled by the complainant. Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. They have equally the legal duty not to prosecute when after an investigation they become convinced that the evidence adduced is not sufficient to establish a *prima facie* case.[16]

Consequently, the Court considers it a sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the DOJ a wide latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of the supposed offenders.[17] The rule is based not only upon the respect for the investigatory and prosecutory powers granted by the Constitution to the executive department but upon practicality as well.[18] As pronounced by this Court in the separate opinion of then Chief Justice Andres R. Narvasa in the case of *Roberts, Jr. v. Court of Appeals*,[19]

In this special action, this Court is being asked to assume the function of a public prosecutor. It is being asked to determine whether probable cause exists as regards petitioners. More concretely, the Court is being asked to examine and assess such evidence as has thus far been submitted by the parties and, on the basis thereof, make a conclusion as to whether or not it suffices to engender a well founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.

It is a function that this Court should not be called upon to perform. It is a function that properly pertains to the public prosecutor, one

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[16] *Id.* at 472.

[17] *First Women's Credit Corporation v. Perez*, 524 Phil. 305, 308-309 (2006).

[18] *Buan v. Matugas*, 556 Phil. 110, 119 (2007).

[19] 324 Phil. 568, 619-622 (1996).

that, as far as crimes cognizable by a Regional Trial Court are concerned, and notwithstanding that it involves adjudication process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor. It is moreover a function that in the established scheme of things, is supposed to be performed at the very genesis of, indeed, prefatorily to, the formal commencement of a criminal action. The proceedings before a public prosecutor, it may well be stressed, are essentially preliminary, prefatory, and cannot lead to a final, definite and authoritative adjudgment of the guilt or innocence of the persons charged with a felony or crime.

Whether or not that function has been correctly discharged by the public prosecutor-*i.e.*, whether or not he had made a correct ascertainment of the existence of probable cause in a case- is a matter that the trial court itself does not and may not be compelled to pass upon. There is no provision of law authorizing an aggrieved party to petition for a such a determination. It is not for instance permitted for an accused, upon the filing of an information against him by the public prosecutor, to preempt trial by filing a motion with the Trial Court praying for the quashal or dismissal of the indictment on the ground that the evidence upon which the same is based is inadequate. Nor is it permitted, on the antipodal theory that the evidence is in truth adequate, for the complaining party to present a petition before the Court praying that the public prosecutor be compelled to file the corresponding information against the accused.

Besides, the function this Court is asked to perform is that of a trier of facts which it does not generally do, and if at all, only exceptionally, as in an appeal in a criminal action where the penalty of life imprisonment, *reclusion perpetua*, or death has been imposed by a lower court (after due trial, of course), or upon a convincing showing of palpable error as regards a particular factual conclusion in the judgment of such lower court.

Thus, the rule is that this Court will not interfere in the findings of the DOJ Secretary on the insufficiency of the evidence presented to establish probable cause unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction.[20] Grave

[20] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 330.

abuse of discretion, thus "means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."[21] The party seeking the writ of *certiorari* must establish that the DOJ Secretary exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law.[22]

In the present case, there was no clear evidence of grave abuse of discretion committed by the DOJ when it set aside its March 23, 2000 Resolution and reinstated the July 28, 1998 Resolution of the public prosecutor. The DOJ was correct when it characterized the complaint for attempted murder as already covered by two (2) other criminal cases. As to the other complaints, the Court agrees with the DOJ that they were weak and not adequately supported by credible evidence. Thus, the CA erred in supplanting the prosecutor's discretion by its own. In dismissing the complaint of Michael and Ruben, the DOJ reasoned that:

> Record reveals that Plata and Cagara instituted the instant complaints against herein respondents only after they were charged with attempted homicide and illegal possession of firearms by respondent Rainier Punzalan. Hence, it appears that the complaints are in the **nature of countercharges** against respondents.
>
> Indeed, as found by the investigating prosecutor, the evidence on record is **not sufficient** to **sustain a finding of probable cause** against all of respondents for the crimes charged. When Rosalinda Punzalan uttered the alleged defamatory statements, she was in a state of anger and shock considering that her son Rainier was injured in an altercation between his group and that of Plata's. Thus, the circumstances surrounding the case show that she did not act with malice. Besides, aside from complaints allegations, there is nothing

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[21] *Aduan v. Chong*, G.R. No. 172796, July 13, 2009, 592 SCRA 508, 514.

[22] *Auto Prominence Corporation v. Winterkorn*, G.R. No. 178104, January 27, 2009, 577 SCRA 51, 61.

on record to prove that the utterances were made within the hearing distance of third parties.

Relative to the charge against Alexander "Toto" Ofrin, there is likewise **no corroborative evidence** to show that he drew a knife in a quarrel with Dela Peña. In contradiction, respondents' witnesses Ravina Mila Villegas and Ruben Aguilar, Jr., who were not assailed as biased witnesses, stated that they did not see anyone fighting at the time and in the place of the incident.

With respect to the charge of attempted homicide, the allegations supporting the same should first be threshed out in the full blown trial of the charge for attempted homicide against Plata, wherein, the testimony of complainant Dela Peña will be presented as part of the defense evidence. Moreover, it bears stressing that **aside from Dela Peña's allegations** and the **medical certificate obtained forty-five (45) days after the mauling**, **there is no showing that respondents intended to kill him.**

Further, the charge for malicious mischief and theft are also not supported by evidence. In the **absence of eyewitnesses** who positively identified respondents as the perpetrators of the crime the photographs submitted are incompetent to indicate that respondents committed the acts complained of. The respondents here were merely charged on the basis of conjectures and surmises that they may have committed the same due to their previous altercations.

WHEREFORE, in view of the foregoing, the appealed resolution is REVERSED. The resolution dated March 23, 2000 is set aside and the City Prosecutor of Mandaluyong City is directed to withdraw the separate informations for slight oral defamation, other light threats, attempted homicide, malicious mischief, and theft against all respondents and to report the action taken within ten (10) days from receipt hereof.

SO ORDERED.[23] [Emphases supplied]

Evidently, the conclusions arrived at by the DOJ were neither whimsical nor capricious as to be corrected by *certiorari*. Even on the assumption that the DOJ Secretary made erroneous conclusions, such error alone would not subject his act to

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[23] CA *rollo*, pp. 79-80.

correction or annulment by the extraordinary remedy of *certiorari*.[24] After all, not "every erroneous conclusion of law or fact is an abuse of discretion."[25]

WHEREFORE, the petition is **GRANTED.** The September 29, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 62633 is **REVERSED** and **SET ASIDE**. The June 6, 2000 and the October 11, 2000 Resolutions of the Department of Justice are **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 162226. September 2, 2013]

SANGGUNIANG BARANGAY OF PANGASUGAN, BAYBAY, LEYTE, *petitioner, vs.* **EXPLORATION PERMIT APPLICATION (EXPA-000005-VIII) OF PHILIPPINE NATIONAL OIL COMPANY,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; TWO-FOLD PURPOSE.— It is well-settled that under the doctrine of immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct

[24] *Insular Life Assurance Company, Limited v. Serrano*, 552 Phil. 469, 479 (2007).

[25] *Estrada v. Desierto*, 487 Phil. 169, 188 (2004).

erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. This doctrine has a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.

APPEARANCES OF COUNSEL

Environmental Legal Assistance Center, Inc. for petitioner.
Medado Sinsuat and 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] is the Order[2] dated January 21, 2004 of the Mines Adjudication Board (MAB) declaring its Decision[3] dated September 24, 2002 final and executory. Such Decision, in turn, dismissed the protest of petitioner Sangguniang *Barangay* of Pangasugan, Baybay, Leyte (petitioner) against the application for exploration permit of respondent Philippine National Oil Company–Energy Development Corporation (PNOC-EDC).

The Facts

On July 3, 1996, PNOC-EDC applied for an exploration permit, denominated as EXPA-000005-VIII (subject application) with

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[1] *Rollo*, pp. 3-38.

[2] *Id.* at 41-43. Docketed as MAB Case No. 085-98. Issued by Chairman Elisea G. Gozun and Members Renato A. De Rueda and Horacio C. Ramos.

[3] *Id.* at 156-162. Issued by Chairman Heherson T. Alvarez and Members Horacio C. Ramos and Ramon J. P. Paje.

the Mines and Geosciences Bureau (MGB), Regional Office No. VIII, covering a total area of 16,144 hectares in the Province of Leyte and located within the Leyte Geothermal Reservation.[4]

On November 19, 1996, petitioner passed Resolution No. 58, Series of 1996,[5] expressing its deep concern for the possible environmental damages that may be brought about by PNOC-EDC's activities. Thereafter, it filed a Complaint[6] dated February 18, 1997 praying for the denial of the subject application with the MGB Panel of Arbitrators (PA).[7]

In its Position Paper[8] filed on August 15, 1997, petitioner argued, *inter alia,* that the area covered by the subject application is within a watershed area that is protected under existing laws, which, if granted, would endanger the water supply of the residents and nearby municipalities and cause damage to rivers and forests.[9]

For its part, in its Position Paper[10] dated August 14, 1997, PNOC-EDC argued that the area covered by the subject application is not closed to mining applications as it is not a proclaimed watershed area and no initial component of National Integrated Protected Areas Systems[11] covers the same.[12]

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[4] *Id.* at 156.

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

[6] *Id.* at 91-101.

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

[8] *Id.* at 113-116.

[9] *Id.* at 113-114.

[10] *Id.* at 215-222.

[11] "National Integrated Protected Areas Systems (NIPAS)" is the classification and administration of all designated protected areas to maintain essential ecological processes and life-support systems, to preserve genetic diversity, to ensure sustainable use of resources found therein, and to maintain their natural conditions to the greatest extent possible. (Section 4[a], Republic Act No. 7586, otherwise known as the "National Integrated Protected Areas System Act of 1992.")

[12] *Rollo,* p. 219.

The PA Ruling

In a Resolution[13] dated June 22, 1998, the PA dismissed petitioner's complaint for lack of jurisdiction, but remanded the same to the Mining Environment and Safety Division of the Office of the Regional Director of MGB for appropriate action.[14] It held that petitioner's protest to the subject application relates mainly to the issue of environment which it has no jurisdiction to hear and decide pursuant to Section 2, Rule III of the Rules on Pleading, Practice and Procedure before the PA and the MAB (Rules).[15]

Petitioner filed a Motion for Reconsideration[16] dated July 28, 1998 which was, however, denied in an Order[17] dated September 25, 1998. Aggrieved, petitioner appealed to the MAB.[18]

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[13] *Id.* at 125-130. Docketed as Mining Case No. 97-001. Issued by Presiding Officer Atty. Fiel I. Marmita and Members Atty. Rodrigo O. Dapula and Engr. Amelia O. Blanco.

[14] *Id.* at 130.

[15] Section 2, Rule III of the Rules reads:

SEC. 2. JURISDICTION. – The Panel of Arbitrators shall have exclusive and original jurisdiction to hear and decide on the following:

(a) Disputes involving rights to mining areas;

(b) Disputes involving mining permits, mineral agreements, financial or technical assistance agreement;

(c) Disputes involving surface owners, occupants, and claimholders/ concessionaires; and

(d) Disputes pending before the Regional Office and the Department at the date of the effectivity of the Act; *Provided*, That appealed cases before the Department shall be under the jurisdiction of the Board.

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[16] *Rollo*, pp. 131-135.

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

[18] *Id.* at 149-155. Memorandum of Appeal dated October 12, 1998.

The MAB Ruling

In a Decision[19] dated September 24, 2002, the MAB affirmed the dismissal of petitioner's complaint, albeit on a different ground. While it ruled that the PA has jurisdiction over the complaint, the same is nevertheless dismissible for being premature.[20] The MAB opined that since the complaint is primarily anchored on perceived environmental damages which are still abstract, anticipatory, and not ripe for determination, petitioner lacks a cause of action against PNOC-EDC.[21] Nonetheless, the MAB declared that such dismissal is without prejudice to any protest or opposition to PNOC-EDC's non-compliance with its Environmental Work Program under any exploration permit that may be issued to it.[22]

Petitioner filed a Manifestation and Motion for Time[23] dated October 30, 2002, praying for an extension to file a motion for reconsideration of the aforesaid Decision.

On September 17, 2003, PNOC-EDC, through its Chairman and President/CEO Atty. Sergio A. F. Apostol, requested that an Order be issued declaring the MAB's Decision dated September 24, 2002 final and executory for petitioner's failure to file a motion for reconsideration within the reglementary period.[24]

In an Order[25] dated January 21, 2004, the MAB declared its Decision dated September 24, 2002 final and executory. It cited Section 11, Rule V of the Rules which provides that motions

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[19] *Id.* at 156-162.

[20] *Id.* at 160.

[21] *Id.* at 160-161.

[22] *Id.* at 162.

[23] *Id.* at 164.

[24] *Id.* at 41.

[25] *Id.* at 41-43.

for reconsideration should be filed within 10 days from receipt of the decision, resolution or order sought to be reconsidered. Moreover, it noted that petitioner actually failed to file a motion for reconsideration.[26] Accordingly, the subject application was given due course, subject to pertinent laws, rules, and regulations.[27]

Hence, this petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether or not the MAB is correct in giving due course to the subject application.

The Court's Ruling

The petition is denied.

At the outset, it should be made clear that petitioner itself admits that it is assailing the MAB's Order dated January 21, 2004.[28] However, it is well to emphasize that such Order merely declared the MAB's earlier Decision dated September 24, 2002 final and executory for failure of petitioner to either move for reconsideration or appeal the same.

It is well-settled that under the doctrine of immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.[29] Any act which violates this principle must immediately be struck down.[30] This doctrine

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[26] *Id.* at 42-43.

[27] *Id.* at 43.

[28] *Id.* at 3.

[29] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

[30] *Id.*

has a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist.[31] Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[32] The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.[33]

A close perusal of the arguments in the instant petition readily reveal petitioner's attempt to re-litigate a subject matter of the MAB's Decision dated September 24, 2002 which had long become final and executory. This audacious act of petitioner should not be countenanced.

WHEREFORE, the petition is **DENIED**. The Order dated January 21, 2004 of the Mines Adjudication Board is hereby **AFFIRMED**.

SO ORDERED.

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

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[31] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 4, 2009, 607 SCRA 200, at 213.

[32] *Id.*

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

SECOND DIVISION

[G.R. No. 169461. September 2, 2013]

FIRST GAS POWER CORPORATION, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the Office of the Solicitor General,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; AN APPLICANT WHO SEEKS TO REGISTER A LAND IN HIS NAME HAS THE BURDEN TO SHOW THAT HE IS ITS OWNER IN FEE SIMPLE, EVEN THOUGH THERE IS NO OPPOSITION THERETO.— It is a long-standing rule that an applicant who seeks to have a land registered in his name has the burden of proving that he is its owner in fee simple, even though there is no opposition thereto.

2. ID.; ID.; LAND REGISTRATION PROCEEDINGS; CONSIDERED *IN REM* IN NATURE.— [L]and registration proceedings are *in rem* in nature and, hence, by virtue of the publication requirement, all claimants and occupants of the subject property are deemed to be notified of the existence of a cadastral case involving the subject lots. In this regard, petitioner cannot, therefore, take refuge on the lack of any personal knowledge on its part previous to its application. Case law dictates that a cadastral proceeding is one *in rem* and binds the whole world. Under this doctrine, parties are precluded from re-litigating the same issues already determined by final judgment.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF JUDICIAL STABILITY; PROVIDES THAT THE JUDGMENT OF A COURT OF COMPETENT JURISDICTION MAY NOT BE INTERFERED WITH BY ANY COURT OF CONCURRENT JURISDICTION.— [T]he RTC's Amended Order was issued in violation of the doctrine of judicial stability. This doctrine states that the judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction. The rationale for the same is founded on the concept of jurisdiction – verily, a court that acquires jurisdiction over the case and renders judgment therein has

jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment. Therefore, as the RTC's Amended Order was issued in stark contravention of this rule, the CA correctly ordered its nullification.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE STRICT APPLICATION OF THE RULES ON FILING A PETITION FOR *CERTIORARI* MAY BE RELAXED IN THE EXERCISE OF THE SOUND DISCRETION BY THE JUDGE AS GUIDED BY ALL THE ATTENDANT CIRCUMSTANCES.— [W]hile petitioner points out to the fact that respondent belatedly filed its *certiorari* petition before the CA, it must be observed that the CA had already exercised its discretion in giving due course to the same. Jurisprudence dictates that the strict application of the rules on filing a petition for *certiorari* may be relaxed, among others, in the exercise of the sound discretion by the judge (or the CA) as guided by all the attendant circumstances, as in this case.

APPEARANCES OF COUNSEL

Puno and Puno for petitioner.
The Solicitor General 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 December 6, 2004 and Resolution[3] dated August 23, 2005 of the Court of Appeals (CA) in CA-G.R. SP No.

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[1] *Rollo,* pp. 34-98.

[2] *Id.* at 12-22. Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Remedios A. Salazar-Fernando and Danilo B. Pine, concurring.

[3] *Id.* at 24-26.

67635 which annulled and set aside the Decision[4] dated February 28, 2001 and Amended Order[5] dated September 4, 2001 of the Regional Trial Court of Batangas City, Branch 3 (RTC) in Land Reg. Case No. N-1554 (LRA Rec. No. N-69624), setting aside the final decree of registration issued in favor of petitioner First Gas Power Corporation (petitioner) over the parcels of land subject of this case.

The Facts

Through a Petition dated April 17, 1998 filed before the RTC, petitioner sought for the original registration of two parcels of land situated at Brgy. Sta. Rita, Batangas City, denominated as Lot Nos. 1298 and 1315 (subject lots), both of Cad. 264 of the Batangas Cadastre, which consist of 4,155 and 968 square meters, respectively.[6] The case was docketed as Land Reg. Case No. N-1554 (LRA Rec. No. N-69624) and, as a matter of course, was called for initial hearing. No oppositor appeared during the said hearing except Prosecutor Amelia Panganiban who appeared in behalf of the Office of the Solicitor General (respondent). Consequently, the RTC issued the corresponding Order of Special Default and the reception of evidence was delegated to the Branch Clerk of Court.[7]

For land registration purposes, the subject lots were both investigated and inspected separately by Special Land Investigator Rodolfo A. Fernandez and Forester I Loida Y. Maglinao of the Department of Environment and Natural Resources (DENR) CENRO of Batangas City. Based on their findings, the subject lots are within the alienable and disposable zone under project no. 13, lc map no. 718 issued on March 16, 1928. Also, in a letter dated January 18, 1999 from Robert C. Pangyarihan, Chief of the Surveys Division of the DENR Region

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[4] *Id.* at 136-140. Penned by Presiding Judge (now Court of Appeals Associate Justice) Romeo F. Barza.

[5] *Id.* at 141.

[6] *Id.* at 13, and 136-137.

[7] *Id.* at 137.

IV – Land Management Sector, copy furnished the RTC, it is stated that the subject lots are not portion of/nor identical to any approved isolated survey.[8]

During the reception of evidence, the government, through respondent, was given the opportunity to examine the authenticity of the documents presented by petitioner in support of its application for land registration as well as cross-examine the latter's witnesses. Without any objection from the former, all exhibits offered by petitioner were admitted by the RTC. Meanwhile, respondent did not present any evidence to contradict petitioner's application.[9]

The RTC Ruling and Subsequent Proceedings

In a Decision[10] dated February 28, 2001, the RTC granted petitioner's application for the registration of the subject lots. It found that petitioner was able to substantiate its *bona fide* claim of ownership over the subject lots as it was shown, *inter alia*, that: (*a*) petitioner purchased Lot No. 1298 from its previous owner, Pio Benito Aguado, by virtue of a Deed of Absolute Sale dated March 23, 1995, while Lot No. 1315 was purchased from its previous owner, Glenn Manipis, as per Deed of Absolute Sale dated March 2, 1995; (*b*) petitioner and its predecessors-in-interest have been in open, peaceful, continuous, public, and uninterrupted possession of the subject lots even before 1945; and (*c*) the subject lots had already been declared for taxation purposes under the name of petitioner and the corresponding realty taxes have been equally paid by it.[11] Finding petitioner's application to be well-founded and fully substantiated by evidence sufficient under the law, the RTC directed the registration of the subject lots in favor of petitioner and the issuance of the corresponding decree by the Land Registration Authority (LRA) upon finality of its decision.[12]

[8] *Id.* at 139.

[9] *Id.*

[10] *Id.* at 136-140.

[11] *Id.* at 138.

[12] *Id.* at 140.

On July 17, 2001, petitioner filed a Manifestation with Motion (manifestation with motion), manifesting to the RTC the existence of an LRA Report dated November 24, 1998 (LRA Report) which states that the subject lots were previously applied for registration and were both decided under Cadastral Case No. 37 (Cad. Case No. 37) and, in this regard, moved that the aforesaid decision be set aside. The said manifestation with motion reads in part:

> 2. LRA Record Book of Cadastral Lots on file in this Authority shows that **lots 1298 and 1315, Cad. 264, Batangas Cadastre were previously applied for registration of title in the Cadastral proceedings and were both decided under Cadastral Case No. 37**, GLRO Record No. 1696, and are subject of the following annotation, to quote:
>
> "Lots 1298 (45-1)
>
> 1315 (61-1) Pte. De Nueva doc."
>
> x x x x x x x x x
>
> WHEREFORE, to avoid duplication in the issuance of titles covering the same parcels of land, the foregoing is respectfully submitted to the Honorable Court with the recommendation that x x x should the instant application be granted, an order be issued setting aside the decision in the cadastral proceeding with respect to lots 1298 and 1315, Cad[.] 264, under Cad. Case No. 37.[13] (Emphasis and underscoring supplied)

In the same pleading, petitioner maintained its prayer for the issuance of a decree of registration in its favor.[14] Subsequently, the RTC issued an Amended Order[15] dated September 4, 2001, (*a*) setting aside any decision affecting the subject lots in Cad. Case No. 37 in view of petitioner's manifestation and motion and upon the LRA's recommendation; and (*b*) reiterating the issuance of the corresponding decree of registration in favor of petitioner due to the finality of the RTC Decision, to wit:

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[13] *Id.* at 14.

[14] *Id.*

[15] *Id.* at 141.

In view of the Manifestation and Motion filed by the applicant thru counsel and upon recommendation of the Land Registration Authority in its Report dated November 24, 1998 together with the letter dated June 18, 1999 from Robert C. Pangyarihan, Chief Survey[s] Division, DENR, Region IV, Land Management Sector, stating that Lots 1298 and 1315 are not portion of/nor identical to any approved isolated survey, **this Court hereby sets aside any decision in the cadastral proceedings for Lots 1298 and 1315, Cad. 264, under Case No. 37**, and **hereby reiterates that the Land Registration Authority may now issue the corresponding decree of registration and certificate of title as stated in the Decision dated February 28, 2001 which had attained finality**. This amends the Order dated August 6, 2001.

SO ORDERED.[16] (Emphases and underscoring supplied)

Claiming that the RTC's Amended Order was tainted with grave abuse of discretion, respondent filed a petition for *certiorari* (*certiorari* petition) before the CA which was initially denied due course on November 26, 2001. Upon reconsideration, the CA admitted respondent's *certiorari* petition and directed petitioner to file its comment thereto. The parties thereafter filed their respective memoranda.[17]

The CA Ruling

In a Decision[18] dated December 6, 2004, the CA granted respondent's *certiorari* petition and thereby, annulled and set aside the RTC Decision and Amended Order as well as the final decree of registration issued in favor of petitioner over the subject lots.

At the outset, it noted that while the issue of the propriety of setting aside the decision in Cad. Case No. 37 was raised, the CA was not furnished a copy of the said decision. Thus, in a Resolution dated September 30, 2004, it directed the LRA

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[16] *Id.*

[17] *Id.* at 15-16.

[18] *Id.* at 12-22.

to submit a copy of the same and, in relation thereto, the LRA submitted a certification of status and certification of non-availability of the record for the subject lots.[19] The LRA further informed the CA that decrees of registration had already been issued for the subject lots.[20] In view of these considerations, the CA proceeded and ruled that petitioner should have raised in its application for registration the existence of a decision in Cad. Case No. 37 as it is required to prove its absolute ownership over the same and that no controversy regarding the matter of its ownership exists.[21] Moreover, the CA pronounced that the RTC's Amended Order which set aside the decision in Cad. Case No. 37 was in utter disregard of the policy of judicial stability, stating further that only the CA can annul judgments of the RTC.[22] Finally, the CA held that it was erroneous for the RTC to direct the issuance of the corresponding certificate of titles without determining the bearing of the previous decision in Cad. Case No. 37 to petitioner as the applicant.[23]

Aggrieved, petitioner moved for reconsideration which was, however, denied in a Resolution dated August 23, 2005.[24] Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in annulling and setting aside the RTC Decision and Amended Order as well as the final decree of registration issued in favor of petitioner over the subject lots.

The Court's Ruling

The petition is bereft of merit.

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[19] *Id.* at 16.

[20] *Id.*

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

[22] *Id.* at 20-21.

[23] *Id.* at 21.

[24] *Id.* at 24-26.

It is a long-standing rule that an applicant who seeks to have a land registered in his name has the burden of proving that he is its owner in fee simple, even though there is no opposition thereto. As held in *Republic v. Lee*:[25]

> The most basic rule in land registration cases is that "no person is entitled to have land registered under the Cadastral or Torrens system unless he is the owner in fee simple of the same, even though there is no opposition presented against such registration by third persons. x x x In order that the petitioner for the registration of his land shall be permitted to have the same registered, and to have the benefit resulting from the certificate of title, finally, issued, the burden is upon him to show that he is the real and absolute owner, in fee simple."[26] (Citation omitted)

In this case, records disclose that petitioner itself manifested during the proceedings before the RTC that there subsists a decision in a previous cadastral case, *i.e.*, Cad. Case No. 37, which covers the same lots it applied for registration. Petitioner even posits in the present petition that it was apprised of the existence of the foregoing decision even before the rendition of the RTC Decision and Amended Order through the LRA Report dated as early as November 24, 1998 which, as above-quoted, states that the subject lots "were previously applied for registration of title in the [c]adastral proceedings and were both decided under [Cad. Case No. 37], GLRO Record No. 1969, and are subject to the following annotation x x x: 'Lots 1298 (45-1) [and] 1315 (61-1) Pte. Nueva doc.'"[27] Since it had been duly notified of an existing decision which binds over the subject lots, it was incumbent upon petitioner to prove that the said decision would not affect its claimed status as owner of the subject lots in fee simple.

To note, the fact that the RTC did not order petitioner to address the matter or that it did not properly determine the effects of the existing decision to petitioner's application does

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[25] G.R. No. 64818, May 13, 1991, 197 SCRA 13.

[26] *Id.* at 19.

[27] *Rollo*, pp. 14 and 45-46.

not justify the latter's entitlement to have the subject lots registered in its name. Neither can the recommendation of the LRA to have the case set aside be perceived as an ample justification for the RTC's dispositions since this action is precluded by the doctrine of judicial stability as will be discussed below. These missteps just magnify the patent and gross errors of the RTC in these proceedings.

Further, as the CA correctly pointed out, land registration proceedings are *in rem* in nature and, hence, by virtue of the publication requirement, all claimants and occupants of the subject property are deemed to be notified of the existence of a cadastral case involving the subject lots.[28] In this regard, petitioner cannot, therefore, take refuge on the lack of any personal knowledge on its part previous to its application. Case law dictates that a cadastral proceeding is one *in rem* and binds the whole world.[29] Under this doctrine, parties are precluded from re-litigating the same issues already determined by final judgment.[30]

Moreover, as amply addressed by the CA, the RTC's Amended Order was issued in violation of the doctrine of judicial stability. This doctrine states that the judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction.[31] The rationale for the same is founded on the concept of jurisdiction – verily, a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment.[32] Therefore, as the RTC's Amended Order

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[28] *Id.* at 18.

[29] *Republic v. Vera*, G.R. Nos. L-35778 and L-35779, January 27, 1983, 120 SCRA 210, 217.

[30] *Id.* (Citation omitted)

[31] *Gianan v. Imperial*, G.R. No. L-37963, February 28, 1974, 55 SCRA 755, 757-758, citing *Mas v. Dumara-og*, G.R. No. L-16252, September 29, 1964, 12 SCRA 34, 37.

[32] *Cabili v. Balindong*, A.M. No. RTJ-10-2225, September 6, 2011, 656 SCRA 747, 753.

was issued in stark contravention of this rule, the CA correctly ordered its nullification.

Finally, while petitioner points out to the fact that respondent belatedly filed its *certiorari* petition before the CA, it must be observed that the CA had already exercised its discretion in giving due course to the same. Jurisprudence dictates that the strict application of the rules on filing a petition for *certiorari* may be relaxed, among others, in the exercise of the sound discretion by the judge (or the CA) as guided by all the attendant circumstances,[33] as in this case.

Indeed, the Court can only commiserate with petitioner as it has already gone through the rigors of proving its cause before the RTC only to fall short of its ultimate objective. Yet, the Court's duty to uphold the principles of law and jurisprudential pronouncements as herein discussed remains staunch and unyielding. Definitively, the Court cannot sanction the registration

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[33] In *Labao v. Flores* (G.R. No. 187984, November 15, 2010, 634 SCRA 723, 730-732), the Court held that:

> Under Section 4 of Rule 65 of the 1997 Rules of Civil Procedure, *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed. The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.
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> x x x x x x x x x
>
> However, there are recognized exceptions to their strict observance, such as: (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 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. (Emphasis supplied, citations omitted)

of the subject lots when there stands an existing decision binding over the same. Neither can the Court allow the RTC to set aside the ruling of a co-equal and coordinate court. Based on these reasons, the Court is therefore constrained to sustain the nullification of the RTC Decision and Amended Order as well as the final decree of registration issued in favor of petitioner. Notably, this course of action is without prejudice to the re-filing of another application for registration wherein petitioner can prove, among others, that the decision in Cad. Case No. 37 does not affect its title to the subject lots. Petitioner may also choose to pursue any other remedy available to it under the law.

In view of the foregoing, the Court deems it unnecessary to delve into the other ancillary issues raised before it.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated December 6, 2004 and the Resolution dated August 23, 2005 of the Court of Appeals in CA-G.R. SP No. 67635 are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170604. September 2, 2013]

HEIRS OF MARGARITA PRODON, *petitioners, vs.* **HEIRS OF MAXIMO S. ALVAREZ AND VALENTINA CLAVE, REPRESENTED BY REV. MAXIMO ALVAREZ, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DOCUMENTARY EVIDENCE; BEST EVIDENCE RULE; EXCLUDES ANY EVIDENCE OTHER THAN THE ORIGINAL WRITING TO PROVE THE CONTENTS THEREOF; EXCEPTION.— The Best Evidence Rule stipulates that in proving the terms of a written document the original of the document must be produced in court. The rule excludes any evidence other than the original writing to prove the contents thereof, unless the offeror proves: (*a*) the existence or due execution of the original; (*b*) the loss and destruction of the original, or the reason for its non-production in court; and (*c*) the absence of bad faith on the part of the offeror to which the unavailability of the original can be attributed.

2. ID.; ID.; ID.; ID.; ID.; PRIMARY PURPOSE, ELUCIDATED.— The primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court, considering that (*a*) the precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, because a slight variation in words may mean a great difference in rights; (*b*) there is a substantial hazard of inaccuracy in the human process of making a copy by handwriting or typewriting; and (*c*) as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally. The rule further acts as an insurance against fraud. Verily, if a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat. Lastly, the rule protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.

3. ID.; ID.; ID.; ID.; ID.; APPLIES ONLY WHEN THE TERMS OF A WRITING ARE IN ISSUE.— But the evils of mistransmission of critical facts, fraud, and misleading inferences arise only when the issue relates to the terms of the writing. Hence, the Best Evidence Rule applies only when the *terms of a writing* are in

issue. When the evidence sought to be introduced concerns external facts, such as the existence, execution or delivery of the writing, without reference to its terms, the Best Evidence Rule cannot be invoked. In such a case, secondary evidence may be admitted even without accounting for the original.

4. ID.; ACTIONS; ACTION TO QUIET TITLE; NATURE.— This case involves an action for quieting of title, a common-law remedy for the removal of any cloud or doubt or uncertainty on the title to real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title. In such an action, the competent court is tasked to determine the respective rights of the complainant and other claimants to place things in their proper place and to make the one who has no rights to said immovable respect and not disturb the other. The action is for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property. x x x The action for quieting of title may be based on the fact that a deed is invalid, ineffective, voidable, or unenforceable. The terms of the writing may or may not be material to an action for quieting of title, depending on the ground alleged by the plaintiff.

5. ID.; ID.; ID.; REQUISITES.— For an action to quiet title to prosper, two indispensable requisites must concur, namely: (*a*) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (*b*) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

6. CIVIL LAW; LAND REGISTRATION; THE LAW THEREON DOES NOT REQUIRE THAT ONLY VALID INSTRUMENTS BE REGISTERED, BECAUSE THE PURPOSE OF REGISTRATION IS ONLY TO GIVE NOTICE.— [T]he annotation on TCT No. 84797 of the deed of sale with right to repurchase and the entry in the primary entry book of the Register of Deeds did not themselves establish the existence of the deed. They proved at best that a document purporting to be a deed of sale with right to repurchase had been registered

with the Register of Deeds. Verily, the registration alone of the deed was not conclusive proof of its authenticity or its due execution by the registered owner of the property, which was precisely the issue in this case. The explanation for this is that registration, being a specie of notice, is simply a ministerial act by which an instrument is inscribed in the records of the Register of Deeds and annotated on the dorsal side of the certificate of title covering the land subject of the instrument. It is relevant to mention that the law on land registration does not require that only valid instruments be registered, because the purpose of registration is only to give notice.

APPEARANCES OF COUNSEL

Acosta Law Office for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The Best Evidence Rule applies only when the terms of a written document are the subject of the inquiry. In an action for quieting of title based on the *inexistence* of a deed of sale with right to repurchase that purportedly cast a cloud on the title of a property, therefore, the Best Evidence Rule does not apply, and the defendant is not precluded from presenting evidence other than the original document.

The Case

This appeal seeks the review and reversal of the decision promulgated on August 18, 2005,[1] whereby the Court of Appeals (CA) reversed the judgment rendered on November 5, 1997 by the Regional Trial Court (RTC), Branch 35, in Manila in Civil Case No. 96-78481 entitled *Heirs of Maximo S. Alvarez and Valentina Clave, represented by Rev. Maximo Alvarez,*

[1] *Rollo*, pp. 20-33; penned by Associate Justice Jose C. Reyes, Jr., with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Arturo D. Brion (now a Member of this Court) concurring.

Jr. v. Margarita Prodon and the Register of Deeds of the City of Manila dismissing the respondents' action for quieting of title.[2]

Antecedents

In their complaint for quieting of title and damages against Margarita Prodon,[3] the respondents averred as the plaintiffs that their parents, the late spouses Maximo S. Alvarez, Sr. and Valentina Clave, were the registered owners of that parcel of land covered by Transfer Certificate of Title (TCT) No. 84797 of the Register of Deeds of Manila; that their parents had been in possession of the property during their lifetime; that upon their parents' deaths, they had continued the possession of the property as heirs, paying the real property taxes due thereon; that they could not locate the owner's duplicate copy of TCT No. 84797, but the original copy of TCT No. 84797 on file with the Register of Deeds of Manila was intact; that the original copy contained an entry stating that the property had been sold to defendant Prodon subject to the right of repurchase; and that the entry had been maliciously done by Prodon because the deed of sale with right to repurchase covering the property did not exist. Consequently, they prayed that the entry be cancelled, and that Prodon be adjudged liable for damages.

The entry sought to be cancelled reads:

ENTRY NO. 3816/T-84797 – SALE W/ RIGHT TO REPURCHASE IN FAVOR OF: MARGARITA PRODON, SINGLE, FOR THE SUM OF ₱120,000.00, THE HEREIN REGISTERED OWNER RESERVING FOR HIMSELF THE RIGHTS TO REPURCHASE SAID PROPERTY FOR THE SAME AMOUNT WITHIN THE PERIOD OF SIX MONTH (*sic*) FROM EXECUTION THEREOF. OTHER CONDITION SET FORTH IN (DOC. NO. 321, PAGE 66, BOOK NO. VIII OF LISEO A. RAZON, NOT. PUB. OF MANILA)

DATE OF INSTRUMENT – SEPT. 9, 1975

DATE OF INSCRIPTION – SEPT. 10, 1975,

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[2] *Id*. at 67-72.

[3] *Id*. at 51-56.

AT 3:42 P.M.[4]

In her answer,[5] Prodon claimed that the late Maximo Alvarez, Sr. had executed on September 9, 1975 the deed of sale with right to repurchase; that the deed had been registered with the Register of Deeds and duly annotated on the title; that the late Maximo Alvarez, Sr. had been granted six months from September 9, 1975 within which to repurchase the property; and that she had then become the absolute owner of the property due to its non-repurchase within the given 6-month period.

During trial, the custodian of the records of the property attested that the copy of the deed of sale with right to repurchase could not be found in the files of the Register of Deeds of Manila.

On November 5, 1997, the RTC rendered judgment,[6] finding untenable the plaintiffs' contention that the deed of sale with right to repurchase did not exist. It opined that although the deed itself could not be presented as evidence in court, its contents could nevertheless be proved by secondary evidence in accordance with Section 5, Rule 130 of the *Rules of Court*, upon proof of its execution or existence and of the cause of its unavailability being without bad faith. It found that the defendant had established the execution and existence of the deed, to wit:

> In the case under consideration, the execution and existence of the disputed deed of sale with right to repurchase accomplished by the late Maximo Alvarez in favor of defendant Margarita Prodon has been adequately established by reliable and trustworthy evidences (sic). Defendant Prodon swore that on September 9, 1975 she purchased the land covered by TCT No. 84747 (Exhibit 1) from its registered owners Maximo S. Alvarez, Sr. and Valentina Clave (TSN, Aug. 1, 1997, pp. 5-7); that the deed of sale with right to repurchase was drawn and prepared by Notary Public Eliseo Razon (*Ibid*., p. 9); and

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[4] *Id*. at 66.

[5] *Id*. at 57-60.

[6] *Id*. at 67-72.

that on September 10, 1975, she registered the document in the Register of Deeds of Manila (*Ibid*., pp. 18-19).

The testimony of Margarita Prodon has been confirmed by the Notarial Register of Notary Public Eliseo Razon dated September 10, 1975 (Exhibit 2), and by the Primary Entry Book of the Register of Deeds of Manila (Exhibit 4).

Page 66 of Exhibit 2 discloses, among others, the following entries, to wit: "No. 321; Nature of Instrument: Deed of Sale with Right to Repurchase; Name of Persons: Maximo S. Alvarez and Valentina Alvarez (ack.); Date and Month: 9 Sept."(Exhibit 2-a).

Exhibit 4, on the other hand, also reveals the following data, to wit: 'Number of Entry: 3816; Month, Day and Year: Sept. 10, 1975; Hour and Minute: 3:42 p.m.; Nature of Contract: Sale with Right to Repurchase; Executed by: Maximo S. Alvarez; In favor: Margarita Prodon; Date of Document: 9-9-75; Contract value: 120,000.' (Exhibit 4-a). Under these premises the Court entertains no doubt about the execution and existence of the controverted deed of sale with right to repurchase.[7]

The RTC rejected the plaintiffs' submission that the late Maximo Alvarez, Sr. could not have executed the deed of sale with right to repurchase because of illness and poor eyesight from cataract. It held that there was no proof that the illness had rendered him bedridden and immobile; and that his poor eyesight could be corrected by wearing lenses.

The RTC concluded that the original copy of the deed of sale with right to repurchase had been lost, and that earnest efforts had been exerted to produce it before the court. It believed Jose Camilon's testimony that he had handed the original to one Atty. Anacleto Lacanilao, but that he could not anymore retrieve such original from Atty. Lacanilao because the latter had meanwhile suffered from a heart ailment and had been recuperating.

Ruling of the CA

On appeal, the respondents assigned the following errors, namely:

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

A.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE DUE EXECUTION AND EXISTENCE OF THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE HAS BEEN DULY PROVED BY THE DEFENDANT.

B.

THE TRIAL COURT GRAVELY ERRED IN ADMITTING THE PIECES OF EVIDENCE PRESENTED BY THE DEFENDANTS AS PROOFS OF THE DUE EXECUTION AND EXISTENCE OF THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE.

C.

THE TRIAL COURT SERIOUSLY ERRED IN FINDING THAT THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE HAS BEEN LOST OR OTHERWISE COULD NOT BE PRODUCED IN COURT WITHOUT THE FAULT OF THE DEFENDANT.

D.

THE TRIAL COURT GRAVELY ERRED IN REJECTING THE PLAINTIFFS' CLAIM THAT THEIR FATHER COULD NOT HAVE EXECUTED THE QUESTIONED DOCUMENT AT THE TIME OF ITS ALLEGED EXECUTION.[8]

On August 18, 2005, the CA promulgated its assailed decision, reversing the RTC, and ruling as follows:

The case of the *Department of Education Culture and Sports (DECS) v. Del Rosario* in GR No. 146586 (January 26, 2005) is instructive in resolving this issue. The said case held:

> "Secondary evidence of the contents of a document refers to evidence other than the original document itself. A party may introduce secondary evidence of the contents of a written instrument not only when the original is lost or destroyed, but also when it cannot be produced in court, provided there is no bad faith on the part of the offeror. However, a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory

[8] CA *Rollo,* pp. 23-24.

> explanation for non-production of the original instrument. The correct order of proof is as follows: *existence, execution, loss, contents,* although the court in its discretion may change this order if necessary."

It is clear, therefore, that before secondary evidence as to the contents of a document may be admitted in evidence, the existence of [the] document must first be proved, likewise, its execution and its subsequent loss.

In the present case, the trial court found all three (3) prerequisites ha[ve] been established by Margarita Prodon. This Court, however, after going through the records of the case, believes otherwise. The Court finds that the following circumstances put doubt on the very existence of the alleged deed of sale. Evidence on record showed that Maximo Alvarez was hospitalized between August 23, 1975 to September 3, 1975 (Exhibit "K"). It was also established by said Exhibit "L" that Maximo Alvarez suffered from paralysis of half of his body and blindness due to cataract. It should further be noted that barely 6 days later, on September 15, 1975, Maximo Alvarez was again hospitalized for the last time because he died on October of 1975 without having left the hospital. This lends credence to plaintiffs-appellants' assertion that their father, Maximo Alvarez, was not physically able to personally execute the deed of sale and puts to serious doubt [on] Jose Camilion's testimony that Maximo Alvarez, with his wife, went to his residence on September 5, 1975 to sell the property and that again they met on September 9, 1975 to sign the alleged deed of sale (Exhibits "A" and "1"). The Court also notes that from the sale in 1975 to 1996 when the case was finally filed, defendant-appellee never tried to recover possession of the property nor had she shown that she ever paid Real Property Tax thereon. Additionally, the Transfer Certificate of Title had not been transferred in the name of the alleged present owner. These actions put to doubt the validity of the claim of ownership because their actions are contrary to that expected of legitimate owners of property.

Moreover, granting, *in arguendo*, that the deed of sale did exist, the fact of its loss had not been duly established. In *De Vera, et al. v. Sps. Aguilar* (218 SCRA 602 [1993]), the Supreme Court held that after proof of the execution of the Deed it must also be established that the said document had been lost or destroyed, thus:

> "After the due execution of the document has been established, it must next be proved that said document has been

lost or destroyed. The destruction of the instrument may be proved by any person knowing the fact. The loss may be shown by any person who knew the fact of its loss, or by anyone who had made, in the judgment of the court, a sufficient examination in the place or places where the document or papers of similar character are usually kept by the person in whose custody the document lost was, and has been unable to find it; or who has made any other investigation which is sufficient to satisfy the court that the instrument is indeed lost.

However, all duplicates or counterparts must be accounted for before using copies. For, since all the duplicates or multiplicates are parts of the writing itself to be proved, no excuse for non-production of the writing itself can be regarded as established until it appears that all of its parts are unavailable (*i.e.* lost, retained by the opponent or by a third person or the like).

In the case at bar, Atty. Emiliano Ibasco, Jr., notary public who notarized the document testified that the alleged deed of sale has about four or five original copies. Hence, all originals must be accounted for before secondary evidence can be given of any one. This[,] petitioners failed to do. Records show that petitioners merely accounted for three out of four or five original copies." (218 SCRA at 607-608)

In the case at bar, Jose Camilion's testimony showed that a copy was given to Atty. Anacleto Lacanilao but he could not recover said copy. A perusal of the testimony does not convince this Court that Jose Camilion had exerted sufficient effort to recover said copy. x x x

x x x x x x x x x

The foregoing testimony does not convince this Court that Jose Camilion had exerted sufficient effort to obtain the copy which he said was with Atty. Lacanilao. It should be noted that he never claimed that Atty. Lacanilao was already too sick to even try looking for the copy he had. But even assuming this is to be so, Jose Camilion did not testify that Atty. Lacanilao had no one in his office to help him find said copy. In fine, this Court believes that the trial court erred in admitting the secondary evidence because Margarita Prodon failed to prove the loss or destruction of the deed.

In fine, the Court finds that the secondary evidence should not have been admitted because Margarita Prodon failed to prove the existence of the original deed of sale and to establish its loss.

x x x x x x x x x

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Manila, Branch 35 in Civil Case No. 96-78481 is hereby **REVERSED** and a new one entered ordering the cancellation of Entry No. 3816/T-84797 inscribed at the back of TCT No. 84797 in order to remove the cloud over plaintiff-appellants' title.

SO ORDERED.[9]

The heirs of Margarita Prodon (who meanwhile died on March 3, 2002) filed an *Omnibus Motion for Substitution of Defendant and for Reconsideration of the Decision*,[10] wherein they alleged that the CA erred:(*a*) in finding that the pre-requisites for the admission of secondary evidence had not been complied with; (*b*) in concluding that the late Maximo Alvarez, Sr. had been physically incapable of personally executing the deed of sale with right to repurchase; and (*c*) in blaming them for not recovering the property, for not paying the realty taxes thereon, and for not transferring the title in their names.

On November 22, 2005, the CA issued its resolution,[11] allowing the substitution of the heirs of Margarita Prodon, and denying their motion for reconsideration for its lack of merit.

Hence, the heirs of Margarita Prodon (petitioners) have appealed to the Court through petition for review on *certiorari*.

Issues

In this appeal, the petitioners submit the following as issues, namely: (*a*) whether the pre-requisites for the admission of secondary evidence had been complied with; (*b*) whether the late Maximo Alvarez, Sr. had been physically incapable of personally executing the deed of sale with right to repurchase;

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[9] *Rollo,* pp. 25-32.

[10] CA *rollo,* pp. 101-108.

[11] *Id.* at 117.

and (*c*) whether Prodon's claim of ownership was already barred by laches.[12]

Ruling

The appeal has no merit.

1.
Best Evidence Rule was not applicable herein

We focus first on an unseemly error on the part of the CA that, albeit a harmless one, requires us to re-examine and rectify in order to carry out our essential responsibility of educating the Bench and the Bar on the admissibility of evidence. An analysis leads us to conclude that the CA and the RTC both misapplied the Best Evidence Rule to this case, and their misapplication diverted the attention from the decisive issue in this action for quieting of title. We shall endeavor to correct the error in order to turn the case to the right track.

Section 3, Rule 130 of the *Rules of Court* embodies the Best Evidence Rule, to wit:

> Section 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
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> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> (b) When the original is in the custody or under control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

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[12] *Rollo*, p. 11.

The Best Evidence Rule stipulates that in proving the terms of a written document the original of the document must be produced in court. The rule excludes any evidence other than the original writing to prove the contents thereof, unless the offeror proves: (*a*) the existence or due execution of the original; (*b*) the loss and destruction of the original, or the reason for its non-production in court; and (*c*) the absence of bad faith on the part of the offeror to which the unavailability of the original can be attributed.[13]

The primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court,[14] considering that (*a*) the precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, because a slight variation in words may mean a great difference in rights; (*b*) there is a substantial hazard of inaccuracy in the human process of making a copy by handwriting or typewriting; and (*c*) as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally.[15] The rule further acts as an insurance against fraud.[16] Verily, if a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat.[17] Lastly, the rule protects against misleading

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[13] *Citibank, N.A. Mastercard v. Teodoro*, G.R. No. 150905, September 23, 2003, 411 SCRA 577, 584-585, citing *De Vera v. Aguilar*, G.R. No. 83377, February 9, 1993, 218 SCRA 602, 606.

[14] Lempert and Saltzburg, *A Modern Approach to Evidence*, (American Casebook Series), Second Edition, 1982, p. 1007.

[15] McCormick on Evidence (Hornbook Series), Third Edition 1984, § 233, p. 707.

[16] Lempert and Saltzburg, *supra*.

[17] Francisco, *Evidence: Rules of Court in the Philippines* (Rules 128-134), Third Edition 1996, p. 56.

inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.[18]

But the evils of mistransmission of critical facts, fraud, and misleading inferences arise only when the issue relates to the terms of the writing. Hence, the Best Evidence Rule applies only when the *terms of a writing* are in issue. When the evidence sought to be introduced concerns external facts, such as the existence, execution or delivery of the writing, without reference to its terms, the Best Evidence Rule cannot be invoked.[19] In such a case, secondary evidence may be admitted even without accounting for the original.

This case involves an action for quieting of title, a common-law remedy for the removal of any cloud or doubt or uncertainty on the title to real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title. In such an action, the competent court is tasked to determine the respective rights of the complainant and other claimants to place things in their proper place and to make the one who has no rights to said immovable respect and not disturb the other. The action is for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property. For an action to quiet title to prosper, two indispensable requisites must concur, namely: (*a*) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (*b*) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[20]

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[18] Lempert and Saltzburg, *supra*.

[19] McCormick on Evidence, *supra*; R. Francisco, *supra*.

[20] *Phil-Ville Development and Housing Corporation v. Bonifacio,* G.R. No. 167391, June 8, 2011, 651 SCRA 327, 341.

The action for quieting of title may be based on the fact that a deed is invalid, ineffective, voidable, or unenforceable. The terms of the writing may or may not be material to an action for quieting of title, depending on the ground alleged by the plaintiff. For instance, when an action for quieting of title is based on the unenforceability of a contract for not complying with the Statute of Frauds, Article 1403 of the *Civil Code* specifically provides that evidence of the agreement cannot be received without the writing, or a secondary evidence of its contents. There is then no doubt that the Best Evidence Rule will come into play.

It is not denied that this action does not involve the terms or contents of the deed of sale with right to repurchase. The principal issue raised by the respondents as the plaintiffs, which Prodon challenged head on, was whether or not the deed of sale with right to repurchase, duly executed by the late Maximo Alvarez, Sr., had really existed. They alleged in the complaint that:

x x x x x x x x x

9. Such entry which could have been maliciously and deliberately done by the defendant Margarita Prodon created cloud and [is] prejudicial to the title of the property subject matter of this case, since while it is apparently valid or effective, but **in truth and in fact it is invalid, ineffective or unenforceable inasmuch that the instrument purporting to be a Deed of Sale with right of repurchase** mentioned in the said entry **does not exist**.[21]

x x x x x x x x x

On her part, Prodon specifically denied the allegation, averring in her answer that "sometime [o]n September 9, 1975, deceased Maximo S. Alvarez lawfully entered into a Contract of Sale with Right to Repurchase, object of which is the titled lot located at Endaya Street, Tondo, Manila, in favor of defendant."[22] In the pre-trial order, the RTC defined the issue to be tried as

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[21] Records, p. 5.

[22] *Id.* at 26.

"[w]hether or not the alleged document mentioned in the said entry is existing, valid or unenforceable,"[23] and did not include the terms of the deed of sale with right to repurchase among the issues.

Apparently, the parties were fully cognizant of the issues as defined, for none of them thereafter ventured to present evidence to establish the terms of the deed of sale with right to repurchase. In the course of the trial, however, a question was propounded to Prodon as to who had signed or executed the deed, and the question was objected to based on the Best Evidence Rule. The RTC then sustained the objection.[24] At that point began the diversion of the focus in the case. The RTC should have outrightly overruled the objection because the fact sought to be established by the requested testimony was the execution of the deed, not its terms.[25] Despite the fact that the terms of the writing were not in issue, the RTC inexplicably applied the Best Evidence Rule to the case and proceeded to determine whether the requisites for the admission of secondary evidence had been complied with, without being clear as to what secondary evidence was sought to be excluded. In the end, the RTC found in its judgment that Prodon had complied with the requisites for the introduction of secondary evidence, and gave full credence to the testimony of Jose Camilon explaining the non-production of the original. On appeal, the CA seconded the RTC's mistake by likewise applying the Best Evidence Rule, except that the CA concluded differently, in that it held that Prodon had not established the existence, execution, and loss of the original document as the pre-requisites for the presentation of secondary evidence. Its application of the Best Evidence Rule naturally led the CA to rule that secondary evidence should not have been admitted, but like the RTC the CA did not state what excluded secondary evidence it was referring to.

Considering that the Best Evidence Rule was not applicable because the terms of the deed of sale with right to repurchase

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[23] *Id.* at 148.

[24] TSN, August 1, 1997, p. 10.

[25] *Id.*

were not the issue, the CA did not have to address and determine whether the existence, execution, and loss, as pre-requisites for the presentation of secondary evidence, had been established by Prodon's evidence. It should have simply addressed and determined whether or not the "existence" and "execution" of the deed *as the facts in issue* had been proved by preponderance of evidence.

Indeed, for Prodon who had the burden to prove the existence and due execution of the deed of sale with right to repurchase, the presentation of evidence other than the original document, like the testimonies of Prodon and Jose Camilon, the Notarial Register of Notary Eliseo Razon, and the Primary Entry Book of the Register of Deeds, would have sufficed even without first proving the loss or unavailability of the original of the deed.

2.
Prodon did not preponderantly establish the existence and due execution of the deed of sale with right to repurchase

The foregoing notwithstanding, good trial tactics still required Prodon to establish and explain the loss of the original of the deed of sale with right to repurchase to establish the genuineness and due execution of the deed.[26] This was because the deed, although a collateral document, was the foundation of her defense in this action for quieting of title.[27]Her inability to produce the

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[26] Lempert and Saltzburg, *supra*, at 1007, to wit:

> The best evidence rule does not require that a writing be produced when its existence rather than its contents is at issue. If, for example, the question arises whether a particular report was written and filed, a witness could testify that the report was made without accounting for the original. Of course, if it were important to one party to show that the report existed, good trial tactics usually would require the party to produce the report or account for its absence.

[27] See *Lee v. People*, G.R. No. 159288, October 19, 2004, 440 SCRA 662 ("xxx It has been held that where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved. xxx If the document is one in which other persons are also interested, and which has been placed in the hands of a custodian

original logically gave rise to the need for her to prove its existence and due execution by other means that could only be secondary under the rules on evidence. Towards that end, however, it was not required to subject the proof of the loss of the original to the same strict standard to which it would be subjected had the loss or unavailability been a precondition for presenting secondary evidence to prove the terms of a writing.

A review of the records reveals that Prodon did not adduce proof sufficient to show the loss or explain the unavailability of the original as to justify the presentation of secondary evidence. Camilon, one of her witnesses, testified that he had given the original to her lawyer, Atty. Anacleto Lacanilao, but that he (Camilon) could not anymore retrieve the original because Atty. Lacanilao had been recuperating from his heart ailment. Such evidence without showing the inability to locate the original from among Atty. Lacanilao's belongings by himself or by any of his assistants or representatives was inadequate. Moreover, a duplicate original could have been secured from Notary Public Razon, but no effort was shown to have been exerted in that direction.

In contrast, the records contained ample *indicia* of the improbability of the existence of the deed. Camilon claimed that the late Maximo Alvarez, Sr. had twice gone to his residence in Meycauayan, Bulacan, the first on September 5, 1975, to negotiate the sale of the property in question, and the second on September 9, 1975, to execute the deed of sale with right to repurchase, *viz*:

> Q Do you also know the deceased plaintiff in this case, Maximo Alvarez, Sr. and his wife Valentina Clave, Mr. Witness?

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for safekeeping, the custodian must be required to make a search and the fruitlessness of such search must be shown, before secondary evidence can be admitted. The certificate of the custody of the document is incompetent to prove the loss or destruction thereof. Such fact must be proved by some person who has knowledge of such loss.")

A Yes, sir.

Q Under what circumstance were you able to know the deceased plaintiff Maximo Alvarez, Sr. and his wife?

A When they went to our house, sir.

Q When was this specifically?

A Sometime the first week of September or about September 5, 1975, sir.

Q What was the purpose of the spouses Maximo and Valentina in meeting you on that date?

A. They were selling a piece of land, sir.

x x x x x x x x x

Q At the time when the spouses Maximo Alvarez, Sr. and Valentina Clave approached you to sell their piece of land located at Endaya, Tondo, Manila, what document, if any, did they show you?

A The title of the land, sir.

x x x x x x x x x

Q You said that on the first week of September or September 5, 1975 spouses Maximo and Valentina approached you at the time, what did you tell the spouses, if any?

A I asked them to come back telling them that I was going to look for a buyer, sir.

x x x x x x x x x

Q You said that you told the spouse[s] Alvarez to just come back later and that you will look for a buyer, what happened next, if any?

A I went to see my aunt Margarita Prodon, sir.

Q What did you tell your aunt Margarita Prodon?

A I convinced her to buy the lot.

ATTY. REAL

Q What was the reply of Margarita Prodon, if any?

A She agreed, provided that she should meet the spouses, sir.

Q After Margarita Prodon told you that[,] what happened next, if any?

A I waited for the spouses Alvarez to bring them to my aunt, sir.

Q Were you able to finally bring the spouses before Margarita Prodon?

A Valentina Clave returned to our house and asked me if they can now sell the piece of land, sir.

Q What did you tell Valentina Clave?

A We went to the house of my aunt so she can meet her personally, sir.

Q And did the meeting occur?

WITNESS

A Yes, sir.

ATTY. REAL

Q What happened at the meeting?

A I told Valentina Clave in front of the aunt of my wife that they, the spouses, wanted to sell the land, sir.

Q What was the reply of your aunt Margarita Prodon at the time?

A That Valentina Clave should come back with her husband because she was going to buy the lot, sir.[28]

The foregoing testimony could not be credible for the purpose of proving the due execution of the deed of sale with right to repurchase for three reasons.

The first is that the respondents preponderantly established that the late Maximo Alvarez, Sr. had been in and out of the hospital around the time that the deed of sale with right to repurchase had been supposedly executed on September 9,

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[28] TSN, August 14, 1997, pp. 54-59.

1975. The records manifested that he had been admitted to the Veterans Memorial Hospital in Quezon City on several occasions, and had then been diagnosed with the serious ailments or conditions, as follows:

Period of confinement	Diagnosis
March 31 – May 19, 1975	· Prostatitis, chronic · Arteriosclerotic heart disease · Atrial fibrillation · Congestive heart failure · CFC III[29]
June 2- June 6, 1975	· Chest pains (Atrial Flutter) · Painful urination (Chronic prostatitis)[30]
August 23-September 3, 1975	· Arteriosclerotic heart disease · Congestive heart failure, mild · Atrial fibrillation . Cardiac functional capacity III-B[31]
September 15-October 2, 1975	· Arteriosclerotic heart disease · Atrial fibrillation · Congestive heart failure · Pneumonia · Urinary tract infection · Cerebrovascular accident, old · Upper GI bleeding probably secondary to stress ulcers[32]

The medical history showing the number of very serious ailments the late Maximo Alvarez, Sr. had been suffering from rendered it highly improbable for him to travel from Manila all the way to Meycauayan, Bulacan, where Prodon and Camilon were then residing in order only to negotiate and consummate the sale of the property. This high improbability was fully confirmed by his son, Maximo, Jr., who attested that his father had been seriously ill, and had been in and out of the hospital

[29] Records, p. 182.

[30] *Id.* at 184.

[31] *Id.* at 186.

[32] *Id.* at 188.

in 1975.[33] The medical records revealed, too, that on September 12, 1975, or three days prior to his final admission to the hospital, the late Maximo Alvarez, Sr. had suffered from "[h]igh grade fever, accompanied by chills, vomiting and cough productive of whitish sticky sputum"; had been observed to be "conscious" but "weak" and "bedridden" with his heart having "faint" sounds, irregular rhythm, but no murmurs; and his left upper extremity and left lower extremity had suffered 90% motor loss.[34] Truly, Prodon's allegation that the deed of sale with right to repurchase had been executed on September 9, 1975 could not command belief.

The second is that the annotation on TCT No. 84797 of the deed of sale with right to repurchase and the entry in the primary entry book of the Register of Deeds did not themselves establish the existence of the deed. They proved at best that a document purporting to be a deed of sale with right to repurchase had been registered with the Register of Deeds. Verily, the registration alone of the deed was not conclusive proof of its authenticity or its due execution by the registered owner of the property, which was precisely the issue in this case. The explanation for this is that registration, being a specie of notice, is simply a ministerial act by which an instrument is inscribed in the records of the Register of Deeds and annotated on the dorsal side of the certificate of title covering the land subject of the instrument.[35] It is relevant to mention that the law on land registration does not require that only valid instruments be registered, because the purpose of registration is only to give notice.[36]

By the same token, the entry in the notarial register of Notary Public Razon could only be proof that a deed of sale with right to repurchase had been notarized by him, but did not establish the due execution of the deed.

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[33] TSN, June 6, 1997, p. 11.

[34] Records, p. 188.

[35] *Autocorp Group v. Court of Appeals*, G.R. No. 157553, September 8, 2004, 437 SCRA 678, 688.

[36] *Id*.

The third is that the respondents' remaining in the peaceful possession of the property was further convincing evidence demonstrating that the late Maximo Alvarez, Sr. did not execute the deed of sale with right to repurchase. Otherwise, Prodon would have herself asserted and exercised her right to take over the property, legally and physically speaking, upon the expiration in 1976 of the repurchase period stipulated under the deed, including transferring the TCT in her name and paying the real property taxes due on the property. Her inaction was an index of the falsity of her claim against the respondents.

In view of the foregoing circumstances, we concur with the CA that the respondents preponderantly proved that the deed of sale with right to repurchase executed by the late Maximo Alvarez, Sr. did not exist in fact.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 18, 2005 by the Court of Appeals in C.A.-G.R. CV No. 58624 entitled *Heirs of Maximo S. Alvarez and Valentina Clave, represented by Rev. Maximo Alvarez, Jr. v. Margarita Prodon and the Register of Deeds of the City of Manila*; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J. Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 182571. September 2, 2013]

LIGAYA ESGUERRA, LOWELL ESGUERRA and LIESELL ESGUERRA, *petitioners, vs.* **HOLCIM PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON CERTIFICATION OF NON-FORUM SHOPPING; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— The general rule is that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board. Absent the said board resolution, a petition may not be given due course. In *Bank of the Philippine Islands v. Court of Appeals*, the Court held that the application of the rules must be the general rule, and the suspension or even mere relaxation of its application, is the exception. This Court may go beyond the strict application of the rules only on exceptional cases when there is truly substantial compliance with the rule. x x x HOLCIM attached all the necessary documents for the filing of a petition for *certiorari* before the CA. Indeed, there was no complete failure to attach a Certificate of Non-Forum Shopping. In fact, there was such a certificate. While the board resolution may not have been attached, HOLCIM complied just the same when it attached the Secretary's Certificate dated July 17, 2006, thus proving that O'Callaghan had the authority from the board of directors to appoint the counsel to represent them in Civil Case No. 725-M-89. The Court recognizes the compliance made by HOLCIM in good faith since after the petitioners pointed out the said defect, HOLCIM submitted the Secretary's Certificate dated July 17, 2006, confirming the earlier Secretary's Certificate dated June 9, 2006. For the Court, the ruling in

General Milling Corporation v. NLRC is applicable where the Court rendered a decision in favor of the petitioner despite its failure to attach the Certification of Non-Forum Shopping. The Court held that there was substantial compliance when it eventually submitted the required documents. Substantial justice dictates that technical and procedural rules must give way because a deviation from the rigid enforcement of the rules will better serve the ends of justice.

2. **ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO CHALLENGE AN ORDER OF EXECUTION.—** [N]o appeal may be taken from an order of execution and a party who challenges such order may file a special civil action for *certiorari* under Rule 65 of the Rules of Court. An order of execution, when issued with grave abuse of discretion amounting to lack or excess of jurisdiction, may be the subject of a petition for *certiorari* under Rule 65.

3. **ID.; ID.; JUDGMENTS; A FINAL JUDGMENT OF THE SUPREME COURT CANNOT BE ALTERED OR MODIFIED, EXCEPT FOR CLERICAL ERRORS, MISPRISIONS OR OMISSIONS.—** At the execution stage, the only thing left for the trial court to do is to implement the final and executory judgment; and the dispositive portion of the decision controls the execution of judgment. The final judgment of this Court cannot be altered or modified, except for clerical errors, misprisions or omissions.

4. **ID.; ID.; EXECUTION OF JUDGMENTS; SECTION 36 AND SECTION 37 OF RULE 39 OF THE RULES OF COURT; MAY BE RESORTED TO ONLY WHEN THE JUDGMENT REMAINS UNSATISFIED, AND THERE IS A NEED FOR THE JUDGMENT OBLIGOR TO APPEAR AND BE EXAMINED CONCERNING HIS PROPERTY AND INCOME FOR THEIR APPLICATION TO THE UNSATISFIED AMOUNT IN THE JUDGMENT.—** [T]he final judgment **does not direct HOLCIM** nor its predecessor Hi-Cement to pay a certain amount to Esguerra and his heirs. What was required from HOLCIM to do was merely to account for the payments it made to de Guzman. Apparently, this was not enforced. It may be deduced from the records that when the petitioners filed the Omnibus Motion dated September 28, 2004, they asked for the examination of de Guzman and Hi-Cement (HOLCIM) under Sections 36 and 37 of Rule 39 of the Rules of Court. This motion was subsequently granted

by the trial court. Sections 36 and 37 of Rule 39 of the Rules of Court are resorted to only when the judgment remains unsatisfied, and there is a need for the judgment obligor to appear and be examined concerning his property and income for their application to the unsatisfied amount in the judgment. In the instant case, the decision in CA-G.R. CV No. 40140 as affirmed by the Court calls on HOLCIM to simply make an accounting of the royalty paid to de Guzman.

5. ID.; ID.; ID.; SECTION 43, RULE 39 OF THE RULES OF COURT; DOES NOT GIVE THE COURT THE AUTHORITY TO ORDER PAYMENT TO THE JUDGMENT OBLIGEE OR TO ORDER THE PERSON WHO DENIES THE INDEBTEDNESS TO PAY THE SAME.— [T]he evidence to be adduced here is in relation to the amount of royalty paid to de Guzman by HOLCIM for marbles extracted from the disputed area of 38,451 sq m beginning March 23, 1990 up to the time HOLCIM ceased to operate in the subject area. In the event that the petitioners' claim is beyond the subject area and period, and HOLCIM denies such indebtedness, the governing rule should be Section 43, Rule 39 of the Rules of Court x x x. Pursuant to this Rule, in the examination of a person, corporation, or other juridical entity who has the property of such judgment obligor or is indebted to him (Rule 39, Section 37), and such person, corporation, or juridical entity denies an indebtedness, the court may only authorize the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt. Nothing in the Rules gives the court the authority to order such person or corporation to pay the judgment obligee and the court exceeds its jurisdiction if it orders the person who denies the indebtedness to pay the same. In *Atilano II v. Asaali*, the Court held that an "[e]xecution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party thereto, did not have his day in court. Due process dictates that a court decision can only bind a party to the litigation and not against innocent third parties."

APPEARANCES OF COUNSEL

People's Law Office for petitioners.
Caguioa & Gatmaytan for respondent.

D E C I S I O N

REYES, *J.*:

The present petition is an offshoot of our final and executory decision promulgated on December 27, 2002 in G.R. No. 120004, entitled "*Iluminada de Guzman v. Court of Appeals and Jorge Esguerra.*"[1] Ligaya Esguerra (Ligaya), Lowell Esguerra (Lowell), and Liesell Esguerra (Liesell) (petitioners) are heirs of Jorge Esguerra (Esguerra) while herein respondent, HOLCIM Philippines, Inc. (HOLCIM) is the successor-in-interest of Iluminada de Guzman (de Guzman).

In the instant petition, the petitioners assail the Decision[2] dated August 31, 2007 and Resolution[3] dated April 14, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 94838 which reversed and set aside the: (a) Order[4] dated December 1, 2005 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 16 granting the petitioners' motion for the issuance of the *alias* writ of execution of the Decision dated December 27, 2002 in G.R. No. 120004, which ordered HOLCIM to pay the amount equivalent to the total volume of limestones extracted from the subject property in the sum of ₱91,872,576.72; (b) Order[5] dated December 20, 2005, which reiterated the issuance of the *alias* writ of execution; and (c) Order[6] dated June 7, 2006, which denied the motion for reconsideration of the above-mentioned orders and the manifestation and motion for ocular inspection filed by HOLCIM. The CA's Resolution dated April

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[1] 442 Phil. 534 (2002).

[2] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Aurora Santiago-Lagman and Normandie B. Pizarro, concurring; *rollo*, pp. 47-66.

[3] *Id.* at 67-69.

[4] *Id.* at 70.

[5] *Id.* at 71.

[6] *Id.* at 72-76.

14, 2008 denied herein petitioners' motion for reconsideration of the CA's Decision dated August 31, 2007.

Antecedent Facts

As a backgrounder and as stated in our Decision dated December 27, 2002 in G.R. No. 120004, therein respondent Esguerra filed on December 12, 1989 with the RTC, Malolos, Bulacan, Branch 16 an action to annul the Free Patent in the name of de Guzman. Esguerra claimed that he was the owner of Lot 3308-B, located at Matiktik, Norzagaray, Bulacan, covered by Transfer Certificate of Title No. T-1685-P (M) of the Registry of Deeds of Bulacan, with an approximate area of 47,000 square meters. Esguerra learned that the said parcel of land was being offered for sale by de Guzman to Hi-Cement Corporation (now named HOLCIM Philippines, Inc.). The former possessor of the land, Felisa Maningas, was issued Free Patent No. 575674 which was subsequently issued in the name of de Guzman over said parcel of land located at Gidgid, Norzagaray, Bulacan with an area of 20.5631 hectares and described in Psu-216349, covered by Original Certificate of Title (OCT) No. P-3876. Esguerra also demanded that the portion of his property, which has been encroached upon and included in de Guzman's Free Patent, be excluded. He later amended his complaint to implead Hi-Cement as a co-defendant since the latter was hauling marble from the subject land. He also prayed that Hi-Cement be ordered to desist from hauling marble, to account for the marble already hauled and to pay him.[7]

The RTC dismissed Esguerra's complaint but on appeal, the CA reversed in the Decision dated February 28, 1995 in CA-G.R. CV No. 40140. The dispositive portion reads as follows:

"WHEREFORE, premises considered, the decision appealed from is REVERSED and SET ASIDE and another judgment is hereby rendered:

"1. Declaring [de Guzman's] OCT No. P-3876 (Exh. B) null and void insofar as the disputed area of 38,641 square meters, which is

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[7] *Supra* note 1, at 537-538.

part of Lot 3308-B, covered by TCT No. 1685-p (Exh. C) in the name of [Esguerra];

"2. Ordering [de Guzman] to cause the segregation, at his expense, of the disputed area of 38,641 square meters from OCT No. P-3876;

"3. Ordering [de Guzman] to surrender her owner's copy of OCT No. P-3876 to the Register of Deeds of Bulacan who is in turn ordered to exclude from said OCT No. P-3876 the disputed area of 38,641 square meters included in [Esguerra's] TCT No. T-1685;

"4. Ordering [de Guzman] to immediately vacate and surrender to [Esguerra] possession of the disputed area of 38,641 square meters;

"5. Ordering defendant-appellee Hi-Cement Corporation to immediately cease and desist from quarrying or extracting marble from the disputed area;

"6. Ordering defendant-appellee Hi-Cement Corporation to make an accounting of the compensation or royalty it has paid to defendant-appellee Iluminada de Guzman for marbles quarried from the disputed area of 38,451 square meters from the time of the filing of the amended complaint on March 23, 1990.

"7. Ordering and sentencing defendant-appellee Iluminada de Guzman to pay and turn over to [Esguerra] all such amounts that she has received from her co-defendant Hi-Cement Corporation as compensation or royalty for marbles extracted or quarried from the disputed area of 38,451 square meters beginning March 23, 1990; and

"8. Ordering defendant-appellee Iluminada de Guzman to pay the costs.

"SO ORDERED."[8]

In our Decision dated December 27, 2002 in G.R. No. 120004, the Court affirmed *in toto* the aforesaid CA's decision. After attaining finality, the case was remanded to the RTC for execution.[9]

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[8] *Id.* at 541-542.

[9] *Rollo,* p. 50.

Thereafter, the heirs of Esguerra, herein petitioners, filed an Omnibus Motion[10] dated September 28, 2004 with the RTC, manifesting that the Court's decision in G.R. No. 120004 has yet to be executed,[11] and thus prayed:

x x x x x x x x x

1. That Sheriff Perlito Dimagiba be directed to submit his Return on the execution of the judgment;

2. That defendant Iluminada de Guzman and Hi-Cement (now Union Cement Corporation Matictic, Sapang Kawayn [sic], Norzagaray, Bulacan) be diverted [sic] to appear before this Honorable Court x x x;

3. That the plaintiffs be granted other legal and equitable reliefs.[12]

On December 1, 2004, the RTC issued an Order[13], to wit:

Acting on the Omnibus Motion filed by the Heirs of Jorge Esguerra, through counsel, Atty. Orlando Lambino, and pursuant to Secs. 36 and 37, Rule 39 of [the] 1997 Rules of Civil Procedure, the Court hereby GRANTS the same

AS PRAYED FOR, x x x Sheriff Perlito Dimagiba is hereby directed to submit his return of a Writ of Execution dated October 28, 2003 within five (5) days from receipt of this Order.

Accordingly, defendant Iluminada de Guzman of Tanza, Malabon, Metro Manila and the Hi-Cement (now Union Cement Corporation, Matictic, Sapang Kawayan, Norzagaray, Bulacan) are hereby ordered to appear before this Court on December 6, 2004 at 8:30 o'clock in the morning to be examined on the dispositive portion of the judgment of the Court of Appeals, affirmed by the Supreme Court.[14]

However, contrary to the Order dated December 1, 2004, de Guzman and HOLCIM were not examined. Rather, the

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[10] *Id.* at 202-205.

[11] *Id.* at 51.

[12] *Id.* at 204.

[13] CA *rollo,* p. 122.

[14] *Id.*

petitioners presented Engineer Louie Balicanta who testified that upon an examination of the topographical maps covering the land of the deceased Esguerra, the estimated volume of limestone hauled or quarried therefrom covering the years 1990 to 2003 was 3,535,020.471 cubic meters. On May 16, 2005, the petitioners filed their Formal Offer of Exhibits.[15]

Later, the petitioners filed a Supplement to the Motion for Execution[16] dated August 16, 2005 and a Motion for *Alias* Writ of Execution[17] dated November 9, 2005. They claimed that the royalties due them amounted to ₱10.00 per metric ton. Thus, for the 9,187,257.67 metric tons[18] of limestone which HOLCIM allegedly acquired, the petitioners should receive a total royalty of ₱91,872,576.72.[19]

On December 1, 2005, the RTC made a finding that the total volume of limestone which HOLCIM allegedly quarried from the subject land amounted to ₱91,872,576.72. It also ordered the issuance of an *Alias* Writ of Execution for the royalties which were purportedly due to the petitioners.[20] The said order states:

> Acting on the motion for *alias* writ of execution filed by the [petitioners], through counsel, to be meritorious, the same is hereby granted, it appearing that the decision subject matter of the writ of execution has not been satisfied by [de Guzman] and Hi-Cement Corporation, and considering, further, that the Total Volume Extracted Materials (LIMESTONE) at Lot #3308-B PSD-102661 (Annex A) was properly proven during the hearing for the examination of judgment debtors showing the claim of Php 91,872,576.72 to be substantiated based on the Monthly Mineral Commodity Price Monitor for January 2005 (Annex B), together with the O.R. for Certification fee (Annex C).

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[15] *Id.* at 123-136; *rollo*, p. 51.

[16] *Id.* at 153-154.

[17] *Id.* at 158-160.

[18] Total volume extracted in metric tones; *id.* at 155.

[19] *Rollo*, pp. 51-52.

[20] *Id.* at 52, 70; CA *rollo*, p. 48.

AS PRAYED FOR, let an *alias* writ of execution be issued for the implementation of the Decision of the Supreme Court in relation to the total volume extracted by Hi-Cement (now HOLCIM) which is now the successor of defendant Iluminada de Guzman.[21]

On December 8, 2005, the petitioners filed an Urgent Motion for Clarification[22] praying that the *alias* writ of execution be clarified for the purpose of directing [de Guzman] and/or Hi-Cement Corporation and/or HOLCIM to pay the petitioners the amount of ₱91,872,576.72.

As prayed for, the RTC issued an Order[23] on December 20, 2005, stating thus:

In view of the Urgent Motion for Clarification filed by the [petitioners], through counsel, and there being no comment/opposition filed by [de Guzman], let an *alias* writ of execution be issued directing [de Guzman] and/or Hi-Cement Corporation and/or HOLCIM to pay the [petitioners] the amount of Php 91,872,576.72 representing their liability for the minerals extracted from the subject property pursuant to the Order of the Court, dated December 01, 2005.[24]

Subsequently, an *alias* writ of execution and notices of garnishment on several banks, garnishing all amounts that may have been deposited or owned by HOLCIM, were issued on December 20, 2005 and December 21, 2005 respectively.[25]

On January 5, 2006, HOLCIM filed a motion for reconsideration.[26] It alleged that it did not owe any amount of royalty to the petitioners for the extracted limestone from the subject land. HOLCIM averred that it had actually entered into an Agreement[27] dated March 23, 1993 (Agreement) with

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[21] *Id.* at 70; CA *rollo,* p. 48.

[22] CA *rollo,* pp. 164-166.

[23] *Rollo,* p. 71.

[24] *Id.*

[25] *Id.* at 52, 207-210.

[26] *Id.* at 211-217.

[27] *Id.* at 218-220.

the petitioners governing their respective rights and obligations in relation to the limestone allegedly extracted from the land in question. HOLCIM further asserted that it had paid advance royalty to the petitioners from year 1993, in an aggregate sum of ₱694,184.22, an amount more than the ₱218,693.10 which the petitioners were entitled under the Agreement.[28]

On January 13, 2006, the petitioners filed its Opposition to [the] Motion for Reconsideration[29] dated January 7, 2006, claiming that the Motion for Reconsideration is barred by the omnibus motion rule because HOLCIM failed to question the petitioners' motion for execution of this Court's decision in G.R. No. 120004. The petitioners also averred that HOLCIM is barred by estoppel to question the execution of the decision based on the Agreement, because said Agreement is in contravention with the trial court's previous orders which required HOLCIM to deposit to the clerk of court the royalties due the deceased Esguerra. The petitioners also argued that the Agreement is a way to evade the trial court's orders and has been procured by taking advantage of the petitioners' financial distress after Esguerra died.[30]

On February 21, 2006, HOLCIM filed a Manifestation and Motion (for Ocular Inspection).[31] It asked the court to conduct an ocular inspection, advancing the argument that HOLCIM did not extract limestone from any portion of the 47,000-sq m property which Esguerra owned; and that the pictures, which the petitioners presented to prove that HOLCIM has been extracting limestone from the subject land until year 2005, were actually photographs of areas outside the contested land.

On June 7, 2006, the RTC denied HOLCIM's motion for reconsideration and motion for ocular inspection. It held that the petitioners proved their entitlement to the royalties totaling to ₱91,872,576.72. The RTC also blamed HOLCIM for not

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[28] *Id.* at 52.

[29] *Id.* at 265-282.

[30] *Id.* at 53.

[31] CA *rollo*, pp. 281-291.

presenting its own witnesses and evidence. It further stated that to grant the motions for reconsideration and ocular inspection is to reopen the case despite the fact that the trial court has no more power to do so since the execution of this Court's decision in G.R. No. 120004 is now a matter of right on the petitioners' part.[32]

On June 13, 2006, HOLCIM filed a Petition for *Certiorari* (with Urgent Applications for Temporary Restraining Order and/or Writ of Preliminary Injunction)[33] with the CA. On June 30, 2006, the petitioners filed their Comment on [the] "Petition for *Certiorari*" and Opposition,[34] to which HOLCIM filed a Reply[35] on July 25, 2006. On August 31, 2007, the CA promulgated the now assailed decision finding merit in HOLCIM's petition.[36] The dispositive portion states:

WHEREFORE, the foregoing considered, the instant petition is hereby **GRANTED** and the assailed Orders **REVERSED** and **SET ASIDE**. No costs.

SO ORDERED.[37]

The motion for reconsideration thereof was denied in the CA's Resolution[38] dated April 14, 2008.

Issues

Thus, the petitioners filed the present petition for review under Rule 45 of the 1997 Rules of Civil Procedure, raising the following assignment of errors:

A. THE [CA] GRAVELY ERRED IN NOT HOLDING THAT [HOLCIM] IS ESTOPPED TO QUESTION THE JURISDICTION OF THE TRIAL

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[32] *Rollo,* pp. 72-76.

[33] *Id.* at 287-328.

[34] *Id.* at 332-368.

[35] *Id.* at 369-399.

[36] *Id.* at 47-66.

[37] *Id.* at 65.

[38] *Id.* at 67-69.

COURT TO CONDUCT A HEARING ON THE EXACT PAYMENT WHICH [HOLCIM] WAS SUPPOSED TO PAY TO THE PETITIONERS;

B. THE [CA] GRAVELY ERRED IN NOT DISMISSING [HOLCIM'S] PETITION FOR *CERTIORARI* ON [THE] GROUND OF LACK OF BOARD RESOLUTION AUTHORIZING THE FILING OF THE PETITION;

C. THE [CA] GRAVELY ERRED IN NOT DISMISSING THE PETITION FOR [*CERTIORARI*], IT BEING NOT THE PROPER REMEDY, BUT AN APPEAL;

D. THE [CA] GRAVELY ERRED IN HOLDING THAT THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN THE EXECUTION OF THE DECISION BY CALLING FOR EVIDENCE TO PROVE THE EXACT AMOUNT WHICH [HOLCIM] HAS TO PAY TO THE PETITIONERS;

E. THE [CA] GRAVELY ERRED IN HOLDING THAT THE ORDERS OF THE TRIAL COURT OF DECEMBER 1, 2005, DECEMBER 20, 2005, AND JUNE 7, 2006 MODIFIED THE DECISION OF THE CA G.R. CV NO. 40140 OF FEBRUARY 28, 1995[.][39]

Our Ruling

The present petition has substantially complied with the requirements.

HOLCIM alleged that the present petition is fatally defective since all of the most important pleadings before the RTC and the CA have not been attached to the present petition. However, a review of the records of the case shows that the petitioners attached to their petition the following: (a) the CA's Decision in CA-G.R. SP No. 94838 dated August 31, 2007;[40] (b) the CA's Resolution in CA-G.R. SP No. 94838 dated April 14, 2008;[41] (c) the RTC's Order in Civil Case No. 725-M-89 dated December 1, 2005;[42] (d) the RTC's Order in Civil Case No.

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

[40] *Id.* at 47-66.

[41] *Id.* at 67-69.

[42] *Id.* at 70.

725-M-89 dated December 20, 2005;[43] (e) the RTC's Order in Civil Case No. 725-M-89 dated June 7, 2006;[44] (f) HOLCIM's Manifestation and Motion (for Ocular Inspection) in Civil Case No. 725-M-89 dated February 21, 2006 and its attachments;[45] (g) the Memorandum of Agreement between Republic Cement Corporation and Spouses Juan and Maria Bernabe dated December 1, 1991;[46] (h) the Price Monitor of the Department of Environment and Natural Resources (DENR) on the price per metric ton of non-metallic mines;[47] and (i) the Special Power of Attorney executed by Ligaya and Liesell appointing Lowell as their attorney-in-fact.[48]

From the foregoing, the Court finds the same substantially compliant with the requirements of Section 4, Rule 45 of the 1997 Rules of Civil Procedure. All of the pertinent documents necessary for the Court to appreciate the circumstances surrounding the case and to resolve the issues at hand were attached. Furthermore, the parties' subsequent comment and reply have sufficiently provided the Court the needed information regarding the proceedings and acts of the trial court during the execution of the final and executory decision of this Court in G.R. No. 120004 which are the matters being questioned. In *Shimizu Philippines Contractors, Inc. v. Magsalin*,[49] the Court proceeded to give due course to the petition when it found the same and its attachments sufficient for the Court to access and resolve the controversy.[50]

On the other hand, the petitioners claim that HOLCIM's petition for *certiorari* in the CA failed to comply with the rules

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[43] *Id.* at 71.

[44] *Id.* at 72-76.

[45] CA *rollo*, pp. 281-293.

[46] *Rollo*, pp. 90-93.

[47] *Id.* at 94-109.

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

[49] G.R. No. 170026, June 20, 2012, 674 SCRA 65.

[50] *Id.* at 73.

on Verification and Certification of Non-Forum Shopping because the latter did not secure and/or attach a certified true copy of a board resolution authorizing any of its officers to file said petition.[51] Thus, the CA should have dismissed outright HOLCIM's petition before it.

The general rule is that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board. Absent the said board resolution, a petition may not be given due course.[52]

In *Bank of the Philippine Islands v. Court of Appeals*,[53] the Court held that the application of the rules must be the general rule, and the suspension or even mere relaxation of its application, is the exception. This Court may go beyond the strict application of the rules only on exceptional cases when there is truly substantial compliance with the rule.[54]

In the case at bar, HOLCIM attached to its Petition for *Certiorari* before the CA a Secretary's Certificate authorizing Mr. Paul M. O'Callaghan (O'Callaghan), its Chief Operating Officer, to nominate, designate and appoint the corporation's authorized representative in court hearings and conferences and the signing of court pleadings.[55] It also attached the Special Power of Attorney dated June 9, 2006, signed by O'Callaghan,

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[51] *Rollo*, pp. 31-33.

[52] *Salenga v. Court of Appeals*, G.R. No. 174941, February 1, 2012, 664 SCRA 635, 656, 662.

[53] G.R. No. 168313, October 6, 2010, 632 SCRA 322.

[54] *Id.* at 332-333, citing *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 580-581.

[55] *Rollo*, p. 331.

appointing Sycip Salazar Hernandez & Gatmaitan and/or any of its lawyers to represent HOLCIM;[56] and consequently, the Verification and Certification of Non-Forum Shopping signed by the authorized representative.[57] To be sure, HOLCIM, in its Reply filed in the CA, attached another Secretary's Certificate, designating and confirming O'Callaghan's power to authorize Sycip Salazar Hernandez & Gatmaitan and/or any of its lawyers to file for and on behalf of HOLCIM, the pertinent civil and/or criminal actions in Civil Case No. 725-M-89 pending before the RTC, including any petition to be filed with the CA and/or the Supreme Court in connection with the Orders dated December 1, 2005, December 20, 2005 and June 7, 2006.[58]

The foregoing convinces the Court that the CA did not err in admitting HOLCIM's petition before it. HOLCIM attached all the necessary documents for the filing of a petition for *certiorari* before the CA. Indeed, there was no complete failure to attach a Certificate of Non-Forum Shopping. In fact, there was such a certificate. While the board resolution may not have been attached, HOLCIM complied just the same when it attached the Secretary's Certificate dated July 17, 2006, thus proving that O'Callaghan had the authority from the board of directors to appoint the counsel to represent them in Civil Case No. 725-M-89. The Court recognizes the compliance made by HOLCIM in good faith since after the petitioners pointed out the said defect, HOLCIM submitted the Secretary's Certificate dated July 17, 2006, confirming the earlier Secretary's Certificate dated June 9, 2006. For the Court, the ruling in *General Milling Corporation v. NLRC*[59] is applicable where the Court rendered a decision in favor of the petitioner despite its failure to attach the Certification of Non-Forum Shopping. The Court held that there was substantial compliance when it eventually submitted the required documents. Substantial justice dictates that technical

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[56] *Id.* at 329.

[57] *Id.* at 328.

[58] *Id.* at 401.

[59] 442 Phil. 425 (2002).

and procedural rules must give way because a deviation from the rigid enforcement of the rules will better serve the ends of justice. The Court ratiocinated:

> The rules of procedure are intended to promote, rather than frustrate, the ends of justice, and while the swift unclogging of court dockets is a laudable objective, it, nevertheless, must not be met at the expense of substantial justice. Technical and procedural rules are intended to help secure, not suppress, the cause of justice and a deviation from the rigid enforcement of the rules may be allowed to attain that prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.[60] (Citation omitted)

HOLCIM's filing in the CA of a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure is proper.

The petitioners also argue that the CA gravely erred when it did not dismiss HOLCIM's petition for *certiorari* on the ground of improper remedy. The petitioners contend that HOLCIM should have filed an appeal because when the RTC allowed the petitioners to adduce evidence to determine the exact amount to be paid by HOLCIM during the execution stage, it was implementing the dispositive portion of the decision of the CA in CA-G.R. CV No. 40140 as affirmed by the Court. As ruled by the trial court, a case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. Accordingly, the court that rendered the judgment maintains a general supervisory control over its process of execution, and this power carries with it the right to determine questions of fact and law, which may be involved in the execution.[61] Thus, for the petitioners, the RTC neither acted in excess of its jurisdiction nor with grave abuse of discretion, which would call for HOLCIM to file a petition for *certiorari*.[62]

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[60] *Id.* at 428.

[61] *Rollo*, p. 35.

[62] *Id.*

The Court disagrees with the petitioners' mental acrobatics. Their arguments are contrary to Section 1(f), Rule 41 of the Rules of Court, which provides:

> Sec. 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:
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> x x x x x x x x x
>
> (f) an order of execution;
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> x x x x x x x x x
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> 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.

The foregoing provision is explicit that no appeal may be taken from an order of execution and a party who challenges such order may file a special civil action for *certiorari* under Rule 65 of the Rules of Court.[63] An order of execution, when issued with grave abuse of discretion amounting to lack or excess of jurisdiction, may be the subject of a petition for *certiorari* under Rule 65.[64] Thus, HOLCIM did not err in filing a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.

HOLCIM is not estopped to question the jurisdiction of the trial court to conduct a hearing and to accept evidence on the exact amount of royalty HOLCIM should pay the petitioners.

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[63] *BPI Employees Union-Metro Manila v. BPI*, G.R. No. 178699, September 21, 2011, 658 SCRA 127, 142; *A & C Minimart Corporation v. Villareal*, 561 Phil. 591, 602 (2007); *Manila International Airport Authority v. Judge Gingoyon*, 513 Phil. 43, 49-50 (2005); *United Coconut Planters Bank v. United Alloy Phils. Corp.*, 490 Phil. 353, 361 (2005).

[64] *United Coconut Planters Bank v. United Alloy Phils. Corp., id.*

The petitioners argue that HOLCIM is estopped from questioning the jurisdiction of the RTC in conducting a hearing on the exact amount of royalty that HOLCIM must pay the petitioners. They allege that: (a) HOLCIM expressed willingness to pay the royalty to whoever would be adjudged the rightful owner of the subject land; (b) HOLCIM and de Guzman did not appear in the hearing nor oppose the Omnibus Motion dated September 28, 2004; (c) HOLCIM did not file any opposition or comment on the petitioners' Formal Offer of Evidence, Supplement to the Motion for Execution and Motion for Alias Writ of Execution; and (d) HOLCIM is now the new owner of de Guzman's property. As such, it has acquired the rights, interests and liabilities of de Guzman. The petitioners insist that HOLCIM must not only account for the royalty it paid de Guzman, but it must also turn over said payments to the petitioners.[65]

HOLCIM counter-argues that when it expressed willingness to pay the royalties to whoever would be declared the rightful owner of the subject land, it simply manifested its good faith in fulfilling its obligations. It adds that the petitioners and HOLCIM entered into an Agreement regarding the amount of royalty it should pay to the landowner; and subsequently, the petitioners voluntarily accepted and retained the amount of ₱694,184.22 paid by HOLCIM. In fact, HOLCIM stresses that the said amount was more than what was stipulated in the Agreement. HOLCIM also asserts that jurisdiction is conferred by law, and not by laches, estoppel or by agreement among the parties and such lack of jurisdiction may be raised at any stage of the proceedings.[66] Furthermore, HOLCIM avers that it is even the DENR panel of arbitrators which has jurisdiction over the case pursuant to Section 77 of the Philippine Mining Act of 1995.[67] Lastly, HOLCIM claims that it eventually acquired de Guzman's property, maintaining that the said property did not

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[65] *Rollo,* pp. 20-23.

[66] *Id.* at 177-179.

[67] *Id.* at 169-170.

overlap with Esguerra's property. Thus, HOLCIM's ownership and quarrying operations on lands outside the disputed area would have no bearing whatsoever on the petitioners' claim for royalties on extractions done within the disputed area. HOLCIM also asseverates that the obligation to turn over any royalty paid to de Guzman is not a real obligation which attaches to the disputed area or to the land itself or which follows the property to whoever might subsequently become its owner; rather, HOLCIM argues that the obligation is purely a personal obligation of de Guzman and thus, not transferable to HOLCIM.

What is clear is that the present case emanates from the petitioners' desire to implement the CA decision in CA-G.R. CV No. 40140 which was affirmed by the Court in the Decision of December 27, 2002 in G.R. No. 120004. At the execution stage, the only thing left for the trial court to do is to implement the final and executory judgment; and the dispositive portion of the decision controls the execution of judgment. The final judgment of this Court cannot be altered or modified, except for clerical errors, misprisions or omissions.[68]

In the instant case, the CA's decision which this Court affirmed in G.R. No. 120004 rendered, among others, the following judgment:

(a) Insofar as then defendant-appellee de Guzman is concerned, the CA declared OCT No. P-3876 in her possession null and void in relation to the disputed area of 38,641 sq m; the same CA's decision subsequently ordered de Guzman –

> [i] to segregate at her expense the disputed area of 38,641 sq m from OCT No. P-3876;
>
> [ii] to surrender her owner's copy of OCT No. P-3876 to the Register of Deeds of Bulacan;
>
> [iii] to immediately vacate and surrender to then plaintiff-appellant Esguerra possession of the disputed area;
>
> [iv] to pay and turn over to plaintiff-appellant Esguerra all the amount she received from her co-defendant Hi-Cement

[68] *Id.* at 64.

Corporation (now HOLCIM) as compensation or royalty for marbles extracted or quarried from the disputed area of 38,451 sq m beginning March 23, 1990; and

[v] to pay the costs.

(b) Insofar as HOLCIM is concerned, the CA's decision ordered HOLCIM –

[i] to immediately cease and desist from quarrying or extracting marble from the disputed area; and

[ii] to make an accounting of the royalty it paid to de Guzman.

Indeed, the final judgment **does not direct HOLCIM** nor its predecessor Hi-Cement to pay a certain amount to Esguerra and his heirs. What was required from HOLCIM to do was merely to account for the payments it made to de Guzman. Apparently, this was not enforced. It may be deduced from the records that when the petitioners filed the Omnibus Motion dated September 28, 2004, they asked for the examination of de Guzman and Hi-Cement (HOLCIM) under Sections 36 and 37 of Rule 39 of the Rules of Court. This motion was subsequently granted by the trial court.

Sections 36[69] and 37[70] of Rule 39 of the Rules of Court are resorted to only when the judgment remains unsatisfied, and

[69] Sec. 36. *Examination of judgment obligor when judgment unsatisfied.* — When the return of a writ of execution issued against the property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found.

[70] Sec. 37. *Examination of obligor of judgment obligor*.— When the return of a writ of execution against the property of a judgment obligor

there is a need for the judgment obligor to appear and be examined concerning his property and income for their application to the unsatisfied amount in the judgment. In the instant case, the decision in CA-G.R. CV No. 40140 as affirmed by the Court calls on HOLCIM to simply make an accounting of the royalty paid to de Guzman. Unfortunately, the trial court, instead of facilitating the accounting of payments made by HOLCIM to de Guzman, proceeded to adduce evidence on the amount of limestone extracted from the disputed area and imposed the monetary liability on HOLCIM.

It is rather unfortunate that HOLCIM did not register a whimper upon petitioners' presentation of evidence. Notwithstanding, it cannot be denied that the trial court committed grave abuse of discretion in issuing the questioned orders without giving HOLCIM the chance to be heard. Indeed, when the decision has been rendered unenforceable on account of the undetermined amount to be awarded, it was incumbent upon the trial court to receive evidence from both parties to determine the exact amount due to the petitioners.[71] Since HOLCIM was not given an opportunity to rebut the petitioners' evidence, considering that the former's Manifestation and Motion for Ocular Inspection was denied, justice will be better served if the trial court determines first the existence of documents relative to HOLCIM's payments made to de Guzman, and if the same is not done, to receive further evidence, this time, from both parties.

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shows that the judgment remains unsatisfied, in whole or in part, and upon proof to the satisfaction of the court which issued the writ, that a person, corporation, or other juridical entity has property of such judgment obligor or is indebted to him, the court may, by an order, require such person, corporation, or other juridical entity, or any officer or member thereof, to appear before the court or a commissioner appointed by it, at a time and place within the province or city where such debtor resides or is found, and be examined concerning the same. The service of the order shall bind all credits due the judgment obligor and all money and property of the judgment obligor in the possession or in the control of such person, corporation, or juridical entity from the time of service; and the court may also require notice of such proceedings to be given to any party to the action in such manner as it may deem proper.

[71] *Heirs of Dialdas v. CA*, 412 Phil. 491, 505 (2001).

It must be emphasized, however, that the evidence to be adduced here is in relation to the amount of royalty paid to de Guzman by HOLCIM for marbles extracted from the disputed area of 38,451 sq m beginning March 23, 1990 up to the time HOLCIM ceased to operate in the subject area. In the event that the petitioners' claim is beyond the subject area and period, and HOLCIM denies such indebtedness, the governing rule should be Section 43, Rule 39 of the Rules of Court, to wit:

> **SEC. 43.** *Proceedings when indebtedness denied or another person claims the property.*— **If it appears that a person or corporation, alleged to have property of the judgment obligor or to be indebted to him, claims an interest in the property adverse to him or denies the debt, the court may authorize, by an order made to that effect, the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt**, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such order may be modified or vacated at any time by the court which issued it, or by the court in which the action is brought, upon such terms as may be just. (Emphasis ours)

Pursuant to this Rule, in the examination of a person, corporation, or other juridical entity who has the property of such judgment obligor or is indebted to him (Rule 39, Section 37), and such person, corporation, or juridical entity denies an indebtedness, the court may only authorize the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt. Nothing in the Rules gives the court the authority to order such person or corporation to pay the judgment obligee and the court exceeds its jurisdiction if it orders the person who denies the indebtedness to pay the same. In *Atilano II v. Asaali*,[72] the Court held that an "[e]xecution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party thereto, did not have his day in court. Due process dictates

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[72] G.R. No. 174982, September 10, 2012, 680 SCRA 345.

that a court decision can only bind a party to the litigation and not against innocent third parties."[73]

Finally, the Court does not agree with petitioners' argument that the person of de Guzman is "now merged in the person of HOLCIM or that HOLCIM has assumed her personal liability or the judgment rendered against her."[74] Nothing in the records shows that HOLCIM admitted of assuming all the liabilities of de Guzman prior to the sale of the subject property. HOLCIM, however, expresses its willingness to pay royalty only to the rightful owner of the disputed area. Thus, in the event that the amount paid by HOLCIM to de Guzman has been proven, de Guzman is ordered to turn over the payment to the petitioners.[75] If the petitioners insist that HOLCIM owed them more than what it paid to de Guzman, the petitioners cannot invoke the CA's decision which was affirmed by the Court in G.R. No. 120004 to ask for additional royalty. As earlier discussed, this must be addressed in a separate action for the purpose. All told, the Court finds no reversible error with the decision of the CA in nullifying the orders of the RTC for having been issued in excess of its jurisdiction.

WHEREFORE, the Decision dated August 31, 2007 and the Resolution dated April 14, 2008 of the Court of Appeals in CA-G.R. SP No. 94838 are hereby **AFFIRMED.**

SO ORDERED.

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

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[73] *Id.* at 351, citing *Panotes v. City Townhouse Development, Corp.*, 541 Phil. 260, 267 (2007) and *Maricalum Mining Corporation v. Hon. Brion*, 517 Phil. 309, 323 (2006).

[74] *Rollo,* p. 192.

[75] *Supra* note 8.

SECOND DIVISION

[G.R. No. 189822. September 2, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOJIE SUANSING,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE OF A WOMAN WHO IS A MENTAL RETARDATE CONSTITUTES RAPE, WITHOUT REQUIRING PROOF THAT THE ACCUSED USED FORCE AND INTIMIDATION IN COMMITTING THE ACT.— "[F]or the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, (2) through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented." From these requisites, it can thus be deduced that rape is committed the moment the offender has sexual intercourse with a person suffering from mental retardation. "[C]arnal knowledge of a woman who is a mental retardate is rape. A mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. For this reason, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape[,] without requiring proof that the accused used force and intimidation in committing the act." Only the facts of sexual congress between the accused and the victim and the latter's mental retardation need to be proved.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE REGIONAL TRIAL COURT'S ASSESSMENT THEREOF GENERALLY DESERVES GREAT RESPECT ON APPEAL.— [T]he RTC's assessment of the credibility of witnesses deserves great respect in the absence of any attendant grave abuse of discretion since it had the advantage of actually examining the real and testimonial evidence, including the conduct of the witnesses, and is in the best position to rule on the matter. This rule finds greater application when the RTC's findings are sustained by the CA, as in this case.

3. CRIMINAL LAW; RAPE; NOT NEGATED BY THE ABSENCE OF FRESH LACERATIONS.— "[T]he absence of fresh lacerations does not negate sexual intercourse. In fact, rupture of the hymen is not essential as the mere introduction of the male organ in the *labia majora* of the victim's genitalia consummates the crime." In other words, "[w]hat is required for a consummated crime of rape x x x is the mere touching of the labia by the penis."

4. ID.; QUALIFIED RAPE; COMMITTED WHEN THE OFFENDER HAS KNOWLEDGE OF THE MENTAL DISABILITY OF THE VICTIM DURING THE COMMISSION OF RAPE AND SUCH KNOWLEDGE IS ALLEGED IN THE INFORMATION.— [K]nowledge of the offender of the mental disability of the victim during the commission of the crime of rape qualifies and makes it punishable by death. However, such knowledge by the rapist should be alleged in the Information since "a crime can only be qualified by circumstances pleaded in the indictment." x x x [A]ppellant's knowledge of the mental disability of "AAA" at the time of the commission of the crime of rape was properly alleged in the Amended Information. "Knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape qualifies the crime and makes it punishable by death x x x." "When rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death." "Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests." Intellectual or mental disability "is a term synonymous with and is now preferred over the older term, mental retardation."

5. ID.; ID.; PENALTY.— Paragraph 10 of Article 266-B of the RPC expressly provides that the penalty of death shall be imposed "when the offender knew of the mental disability x x x of the offended party at the time of the commission of the crime." The supreme penalty of death should have been imposed on the appellant due to the special qualifying circumstance of knowledge at the time of the rape that "AAA" was mentally disabled. However, the enactment of RA 9346 prohibited the imposition of the death penalty. In lieu thereof, the penalty of *reclusion perpetua* is imposed in accordance with Section 2

of RA 9346. In addition, as provided under Section 3 thereof, appellant shall not be eligible for parole.

6. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— Pursuant to prevailing jurisprudence, the civil indemnity for the victim shall be ₱75,000.00 if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. Moral damages must also be awarded in rape cases without need of proof other than the fact of rape since it is assumed that the victim suffered moral injuries entitling her to such an award. However, the CA's award of ₱50,000.00 must be increased to ₱75,000.00 to conform to existing case law. Exemplary damages are likewise called for, by way of public example and to protect the young from sexual abuse. We therefore order appellant to pay "AAA" exemplary damages in the amount of ₱25,000.00. In addition, we order appellant to pay interest at the rate of 6% *per annum* on all damages awarded from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Carnal knowledge of a woman suffering from mental retardation is rape since she is incapable of giving consent to a sexual act. Under these circumstances, all that needs to be proved for a successful prosecution are the facts of sexual congress between the rapist and his victim, and the latter's mental retardation.[1]

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[1] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363, 376.

Factual Antecedents

For review is the July 17, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00439-MIN that affirmed with modification the April 14, 2004 Decision[3] of the Regional Trial Court (RTC), Branch 33, Davao City, in Criminal Case No. 49,196-2002, finding appellant Jojie Suansing (appellant) guilty beyond reasonable doubt of the crime of rape against "AAA,"[4] as described in the Amended Information,[5] the relevant portions of which read as follows:

> That sometime in the first week of April 2001, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, willfully, unlawfully and feloniously had carnal knowledge of one "AAA," attended by the qualifying circumstance that the victim has a mental disability. The accused knew of such mental disability at the time of the commission of the crime. The sexual assault done by the accused was against the will of "AAA."
>
> Contrary to law.[6]

Appellant pleaded not guilty. After the pre-trial conference, trial ensued.

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[2] CA *rollo*, pp. 110-128; penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Edgardo A. Camello and Michael P. Elbinias.

[3] Records, pp. 212-224; penned by Judge Wenceslao E. Ibabao.

[4] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 538-539.

[5] Records, p. 25.

[6] *Id.* Underscoring in the original.

Version of the Prosecution

The prosecution presented as its witnesses "AAA"; her aunt and guardian, "EEE"; her friend, "FFF"; doctor of gynecology, Mary Grace Solano, M.D. (Dr. Solano); doctor of psychiatry, Sally Jane Kwong-Garcia, M.D. (Dr. Kwong-Garcia); and psychologist Evangeline Castro (Castro). The RTC allowed "AAA" to testify after evaluating her ability to comprehend and answer questions. The RTC also permitted the prosecution and the defense to propound leading questions to her.[7] Based on their testimonies,[8] the following facts emerged:

"AAA" was born on July 6, 1975. She used to live in Tangub City with her grandparents because her mother suffered from and later died of tuberculosis. When "AAA" was 15 years old, she became a mother to a baby boy who was born on September 29, 1990. Nobody admitted responsibility for her pregnancy. To receive better guidance and supervision, "AAA" was transferred to the residence of "EEE" who raised her as a daughter.

Sometime before April 8, 2001, "GGG" requested "FFF" to get from appellant's boarding house an electric fan and a transformer. "FFF" together with her brother and "AAA" went to the boarding house of appellant. After giving the requested items, appellant ordered "FFF" and her brother to leave "AAA" behind.

"FFF" brought the items to "GGG" who, upon learning that "AAA" was still with appellant, requested "FFF" to return to appellant's boarding house to fetch "AAA." Upon arriving at the boarding house, "FFF" noticed that the door was closed. She called out to "AAA" to go home to avoid being scolded by "EEE." "AAA" opened the door and came out fixing her short pants. "FFF" then asked "AAA" if anything happened.

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[7] TSN, August 18, 2003, pp. 145-151.

[8] TSN, February 10, 2003, pp. 1-17; TSN, July 24, 2003, pp. 1-47; TSN, August 6, 2003, pp. 1-25; TSN, August 7, 2003, pp. 1-24; TSN, August 18, 2003, pp. 1-68; TSN, September 24, 2003, pp. 1-35.

"AAA" replied that after "FFF" and her brother left the boarding house, appellant pulled her inside the room, removed her shoes and panty, told her to lie down on the floor, and inserted his penis into her vagina without her consent. "AAA" requested "FFF" not to tell anyone that she was raped by appellant.

On August 3, 2001, "EEE" learned about the rape and confronted "AAA." "EEE" then reported the incident to police authorities.

The genital examination of "AAA" on August 6, 2001 revealed old hymenal lacerations. Her psychiatric evaluation also disclosed that she was suffering from mild retardation with the mental age of a 9 to 12-year old child. Although with impaired adaptive skills, the RTC found "AAA" qualified to testify. The psychological examination of "AAA" established her mental retardation to be in a mild form and her intelligence quotient (IQ) of 53 though below the average IQ score of 71 was "within the defective level of a Normal Intelligence Scale."

Version of the Defense

In his testimony,[9] appellant denied raping "AAA." He claimed that he used to live with "AAA" and her relatives and was considered a member of their family. He treated "AAA" as his niece and knew about her mental retardation. He later rented a room near the residence of "AAA." He admitted that sometime in the first week of April 2001, his sister "GGG," who was living nearby, asked "AAA," "FFF," the latter's brother and another girl to go to his boarding house to get an electric fan, a bread toaster, and a wall décor. "AAA," "FFF" and the other girl went inside his room while "FFF's" brother waited outside. After getting the items, "FFF" and the other girl left while "AAA" stayed behind. After a few minutes, "FFF" and the other girl returned to fetch "AAA." He belied the statement of "FFF" that "AAA" was fixing her short pants when she came out of his room.

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[9] TSN, November 28, 2003, pp. 1-48.

Appellant claimed that the relatives of "AAA" filed the instant case against him because his sister, "GGG," no longer gives them financial support.

Ruling of the Regional Trial Court

In its April 14, 2004 Decision, the RTC found convincing evidence that "AAA" is a mental retardate; that in spite of her mental inadequacy, her testimony was credible as shown from her "intelligent and coherent answers to questions propounded to her by the prosecution, the defense and the Court";[10] that appellant was aware that "AAA" is a mental retardate; that appellant raped "AAA"; that "AAA" or "FFF" was not ill-motivated to falsely accuse appellant of such crime; and, that proof of force or intimidation was unnecessary as a mental retardate is not capable of giving consent to a sexual act.

However, the RTC also ruled that since "AAA's" mental retardation was not specifically alleged in the Amended Information, it cannot be considered as a qualifying circumstance that would warrant the imposition of the death penalty. The RTC stated that the "mental disability" of "AAA" at the time of the rape relates to a broad description of several mental ailments and that the Amended Information failed to specify what constitutes "mental disability." Thus, the RTC disposed as follows:

> WHEREFORE, the prosecution having established the guilt of the accused beyond reasonable doubt of the crime of simple rape, the accused JOJIE SUANSING is hereby sentenced to suffer the penalty of ***reclusion perpetua***, with all the accessory penalties provided by law, to indemnify the offended party in the sum of Php50,000.00 as moral damages.
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> He shall be committed forthwith to the national penitentiary.
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> Costs *de oficio*.
>
> SO ORDERED.[11]

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[10] Records, p. 219.

[11] *Id.* at 223. Emphasis in the original.

Ruling of the Court of Appeals

Appellant filed a Notice of Appeal[12] with this Court. However, pursuant to our ruling in *People v. Mateo*,[13] the case was remanded to the CA for appropriate action and disposition.[14]

In his brief, appellant imputed upon the court *a quo* the lone error that it –

X X X GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[15]

Appellant argued that the prosecution failed to discharge its burden of proving his guilt beyond reasonable doubt; that the medical findings do not substantiate the allegation that "AAA" was raped; that the elements of force, violence and intimidation were not proved; that he was falsely accused of the crime charged; that "AAA's" aunt, "EEE," was angry at him even before they reported the alleged rape to police officers; that even if nobody raped her, "AAA" would say the opposite just to please "EEE."

The People, through the Office of the Solicitor General (OSG), asserted in its brief[16] that the RTC's Decision should be affirmed in all respects since the arguments of appellant failed to persuade; that a medical examination is not an indispensable element in the prosecution of rape and an accused may be convicted even on the sole basis of the victim's credible testimony; that force and intimidation do not have to be proved since "AAA" suffers from mental retardation; and that appellant's denial cannot prevail over the positive identification of "AAA." It thus invoked the well-established rule that the findings of the RTC on the issue

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[12] *Id.* at 225.

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

[14] CA *rollo*, pp. 46-47.

[15] *Id.* at 53.

[16] *Id.* at 86-107.

of credibility of witnesses and their testimonies are entitled to great respect and are given the highest consideration on appeal.

In its Decision, the CA affirmed the findings of the RTC with respect to the assessment of the testimony of "AAA." It also affirmed the RTC's ruling not to consider the mental retardation of "AAA" as a qualifying circumstance that would result in the imposition of the death penalty since it was not specifically alleged in the Amended Information. However, the CA modified the awards for civil indemnity and moral damages to conform to prevailing jurisprudence. Thus, the dispositive portion of the CA's Decision reads as follows:

> **WHEREFORE**, the Decision of the Regional Trial Court, Branch 33, Davao City, dated April 22, 2004 in Criminal Case No. 49,196-2002 is ***AFFIRMED with MODIFICATION***. Accused-appellant **JOJIE SUANSING** is ordered to pay the private complainant the sums of Php50,000.00 as civil indemnity and Php50,000.00 as moral damages plus costs.
>
> **SO ORDERED**.[17]

Appellant filed a Notice of Appeal[18] praying for his exoneration.

On February 3, 2010, the parties were directed to file their supplemental briefs[19] but both the OSG and appellant opted to adopt their respective briefs submitted before the CA as their appeal briefs.

Our Ruling

The appeal is unmeritorious.

Article 266-A, paragraph 1 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353, states that:

> Art. 226-A. *Rape, When and How Committed*. – Rape is committed –
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

[17] *Id.* at 127. Emphases in the original.

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

[19] *Rollo*, p. 31.

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious,

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

"[F]or the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, (2) through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented."[20] From these requisites, it can thus be deduced that rape is committed the moment the offender has sexual intercourse with a person suffering from mental retardation. "[C]arnal knowledge of a woman who is a mental retardate is rape. A mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. For this reason, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape[,] without requiring proof that the accused used force and intimidation in committing the act."[21] Only the facts of sexual congress between the accused and the victim and the latter's mental retardation need to be proved.[22]

In this case, the evidence presented by the prosecution established beyond reasonable doubt the sexual congress between appellant and "AAA" and the latter's mental retardation. "AAA" positively identified appellant as her rapist.[23] She also described the manner by which appellant perpetrated the crime, *viz*:

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[20] *People v. Tablang*, G.R. No. 174859, October 30, 2009, 604 SCRA 757, 766.

[21] *People v. Paler*, G.R. No. 186411, July 5, 2010, 623 SCRA 469, 476.

[22] *People v. Tablang*, *supra*.

[23] TSN, August 18, 2003, p. 48.

ATTY. GASPAR:
Q: What happened when you stayed behind?
A: He removed my shorts and panty.

Q: So what happened after removing your shorts and panty?
A: [We] had a (sic) sexual intercourse.

COURT:
Q: What did he do to you?
A: (No answer)

ATTY. GASPAR:
We manifest Your Honor that the witness is crying.

ATTY. CAGATIN:
We would like to manifest for the record, your Honor that in spite of several questions of what [Suansing did] to her[,] no answer was given.

COURT:
Alright.

Q: Could you answer the question?
A: [We] had sexual intercourse.

ATTY. GASPAR:
Q: Where did that happen?
A: At the boarding house.

Q: What part of the boarding house?
A: I could not recall.

Q: What was your position, were you lying when he had sexual intercourse with you?
A: He asked me to lie down.

COURT:
Q: Did the penis enter your vagina?
A: (The witness is gesturing in the affirmative.)

ATTY. CAGATIN:
The gesture of the witness could not be made a point of reference. Nothing has been shown by the witness that it has been for the affirmative.

COURT:
Alright, you answer.

A: He entered his penis.

Q: And you enjoyed it?
A: No.

COURT:
Alright.

Q: And you consented [to] the sexual intercourse?
A: No.

Q: Why did you allow yourself to have sexual intercourse with Jojie Suansing?
A: Because he pulled me towards the room.[24]

Both the RTC and the CA also found that "AAA's" mental retardation was satisfactorily established by the prosecution. Dr. Kwong-Garcia, a psychiatrist at the Davao Medical Center, testified that the results of the IQ test conducted on "AAA" revealed that she is a mental retardate with a mental age of between 9-12 years. These findings are contained in a Medical Certificate dated December 11, 2002.[25] These findings were corroborated by the Psychological Assessment Report[26] of Castro, a psychologist at the Davao Medical Center, whose examination showed that the intellectual capacity of "AAA" is between 9-12 years old. These pieces of evidence prove beyond doubt that "AAA" is a mental retardate. Notably, the defense did not even impugn "AAA's" mental retardation. On the contrary, records show that even appellant himself conceded that "AAA" is a mental retardate. We therefore agree with the RTC's ruling, as affirmed by the CA, that "AAA'" is mentally retarded.

A mentally retarded victim cannot fabricate her charges.

The RTC and the CA did not err in giving credence to the testimony of "AAA." Records show that "AAA" cried when she recalled on the witness stand her ordeal at the hands of

[24] *Id.* at 42-45.

[25] Records, p. 45.

[26] Exhibit "H", Index of Exhibits, p. 10.

the appellant. "[T]he crying of a victim during her testimony is evidence of the credibility of the rape charge with the verity borne out of human nature and experience."[27]

There is also nothing from "AAA's" testimony that would arouse suspicion. Considering the mental retardation of "AAA," we find it highly improbable that she would fabricate the rape charge against appellant. It is likewise unlikely that she was instructed into accusing appellant given her limited intellect. Due to her mental condition, only a very traumatic experience would leave a lasting impression on her so that she would be able to recall it when asked.[28] Thus, in *People v. Balatazo*,[29] we held that:

> Given the low IQ of the victim, it is impossible to believe that she could have fabricated her charges against appellant. She definitely lacked the gift of articulation and inventiveness. Even with intense coaching, assuming this happened as appellant insists that the victim's mother merely coached her on what to say in court, on the witness stand where she was alone, it would eventually show with her testimony falling into irretrievable pieces. But, this did not happen. During her testimony, she proceeded, though with much difficulty, to describe the sexual assault in such a detailed manner. Certainly, the victim's testimony deserves utmost credit.[30]

Mental retardation does not lessen her credibility.

The mental deficiency of "AAA" does not diminish the reliability of her testimony. It has been our consistent ruling that the RTC's assessment of the credibility of witnesses deserves great respect in the absence of any attendant grave abuse of discretion since it had the advantage of actually examining the real and testimonial evidence, including the conduct of the

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[27] *People v. Bayrante*, G.R. No. 188978, June 13, 2012, 672 SCRA 446, 464.

[28] *People v. Tablang*, *supra* note 20 at 770.

[29] 466 Phil. 18 (2004).

[30] *Id.* at 30-31. Citations omitted.

witnesses, and is in the best position to rule on the matter. This rule finds greater application when the RTC's findings are sustained by the CA, as in this case. Here, we do not find any reason to depart from the RTC's assessment of the testimony of "AAA."[31]

Further, "AAA" was able to make known her perception, communicate her ordeal, in spite of some difficulty, and identify appellant as her rapist. Even a mental retardate qualifies as a competent witness if she can perceive, and can make known her perception to others.[32]

Absence of fresh lacerations does not negate sexual intercourse.

Concededly, the physical examination conducted on "AAA" revealed old hymenal lacerations. However, "[t]he absence of fresh lacerations does not negate sexual intercourse. In fact, rupture of the hymen is not essential as the mere introduction of the male organ in the *labia majora* of the victim's genitalia consummates the crime."[33] In other words, "[w]hat is required for a consummated crime of rape x x x is the mere touching of the labia by the penis."[34] In this case, "AAA" went beyond this minimum requirement as she testified that appellant's penis entered her vagina.[35]

All told, we are not persuaded by appellant's denial, which is inherently weak and cannot prevail over the positive identification by "AAA" of him as the perpetrator of the crime. "[A]ppellant's mere denial cannot overcome the victim's positive declaration that she had been raped and the appellant was her rapist."[36]

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[31] *People v. Tablang*, *supra* note 20 at 771.

[32] *Id.*

[33] *Id.* at 772.

[34] *Id.*

[35] *Id.* at 772-773.

[36] *Id.* at 773.

Knowledge of the offender of the mental disability of the victim during the rape qualifies and makes it punishable by death.

Paragraph 10, Article 266-B of the RPC, as amended, provides:

ART. 266-B. *Penalties*. x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x x x x x x

10. **When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.** [Emphasis supplied]

Thus, knowledge of the offender of the mental disability of the victim during the commission of the crime of rape qualifies and makes it punishable by death. However, such knowledge by the rapist should be alleged in the Information since "a crime can only be qualified by circumstances pleaded in the indictment."[37]

In this case, the Amended Information specifically provides:

That sometime in the first week of April 2001, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, willfully, unlawfully and feloniously had carnal knowledge of one "AAA," **attended by the qualifying circumstance that the victim has a mental disability. The accused knew of such mental disability at the time of the commission of the crime.** The sexual assault done by the accused was against the will of "AAA."

Contrary to law.[38]

Clearly, appellant's knowledge of the mental disability of "AAA" at the time of the commission of the crime of rape was properly

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[37] *People v. Dela Paz*, *supra* note 1 at 383.

[38] *Records*, p. 25. Emphasis supplied.

alleged in the Amended Information. "Knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape qualifies the crime and makes it punishable by death x x x."[39] "When rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death."[40] "Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests."[41] Intellectual or mental disability "is a term synonymous with and is now preferred over the older term, mental retardation."[42]

As found by the RTC and affirmed by the CA, the prosecution proved beyond reasonable doubt that appellant was aware of the mental retardation of "AAA." Appellant testified that he knew "AAA" and that he even used to reside with her and her relatives. He was treated as a member of their family. In fact, he regarded "AAA" as his niece. His boarding house was also a few minutes away from the residence of "AAA." He also admitted that "AAA" was known to be mentally retarded in their community. The low intellect of "AAA" was easily noticeable to the RTC from the answers she gave to the questions propounded to her in the course of her testimony. We also stress that from the filing of this case until its appeal, appellant did not assail "AAA's" mental disability and even admitted knowledge of her intellectual inadequacy.

Thus, appellant's knowledge of "AAA's" mental disability at the time of the commission of the crime qualifies the crime of rape. Appellant is therefore guilty of the crime of qualified rape.

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[39] *People v. Magabo*, 402 Phil. 977, 988 (2001).

[40] *People v. Maceda*, 405 Phil. 698, 724-725 (2001).

[41] *People v. Bayrante*, *supra* note 27 at 456, citing *People v. Dalandas*, 442 Phil. 688, 695 (2002).

[42] Mental disability definition, www.UpToDate.com. Last visited August 29, 2013.

Proper Penalty

Paragraph 10 of Article 266-B of the RPC expressly provides that the penalty of death shall be imposed "when the offender knew of the mental disability x x x of the offended party at the time of the commission of the crime." The supreme penalty of death should have been imposed on the appellant due to the special qualifying circumstance of knowledge at the time of the rape that "AAA" was mentally disabled.

However, the enactment of RA 9346[43] prohibited the imposition of the death penalty. In lieu thereof, the penalty of *reclusion perpetua* is imposed in accordance with Section 2 of RA 9346. In addition, as provided under Section 3 thereof, appellant shall not be eligible for parole.

Damages

Pursuant to prevailing jurisprudence, the civil indemnity for the victim shall be ₱75,000.00 if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty.[44]

Moral damages must also be awarded in rape cases without need of proof other than the fact of rape since it is assumed that the victim suffered moral injuries entitling her to such an award. However, the CA's award of ₱50,000.00 must be increased to ₱75,000.00 to conform to existing case law.[45] Exemplary damages are likewise called for, by way of public example and to protect the young from sexual abuse.[46] We therefore order appellant to pay "AAA" exemplary damages in the amount of ₱25,000.00.[47] In addition, we order appellant to pay interest at the rate of 6% *per annum* on all damages

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[43] AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY. Approved June 24, 2006.

[44] *People v. Dela Paz, supra* note 1 at 385-386.

[45] *Id.*

[46] *Id.*

[47] *Id.* at 386-387.

awarded from the date of the finality of this judgment until fully paid.[48]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00439-MIN dated July 17, 2009 is **AFFIRMED with MODIFICATIONS**. Appellant Jojie Suansing is hereby found guilty beyond reasonable doubt of the crime of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. The amounts of civil indemnity and moral damages awarded to "AAA" are increased to ₱75,000.00 each. Appellant Jojie Suansing is also ordered to pay "AAA" exemplary damages in the amount of ₱25,000.00. All damages awarded shall earn interest at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 194948. September 2, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FREDDY SALONGA *y* AFIADO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS.— It has been consistently ruled that the elements needed to be proven to

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[48] *People v. Caoile*, G.R. No. 203041, June 5, 2013.

successfully prosecute a case of illegal sale of drugs are: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply put, the prosecution must establish that the illegal sale of the dangerous drugs actually took place together with the presentation in court of the *corpus delicti* or the dangerous drugs seized in evidence. Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from the accused.

2. ID.; ID.; CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; A METHOD OF AUTHENTICATING EVIDENCE WHICH REQUIRES THAT THE ADMISSION OF AN EXHIBIT BE PRECEDED BY EVIDENCE SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER IN QUESTION IS WHAT THE PROPONENT CLAIMS IT TO BE.— The Court has adopted the chain of custody rule, a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. "It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same."

3. ID.; ID.; ID.; ID.; MARKING OF THE PROHIBITED ITEMS MUST ALWAYS BE DONE IN THE PRESENCE OF THE ACCUSED.— [It] is not clear from the evidence that the marking, which was done in the police station, was made in the presence of the accused or his representative. Although we have previously ruled that the marking upon "immediate" confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team, the same must always be done in the presence of the accused or his representative. Thus, there is already a gap in determining

whether the specimens that entered into the chain were actually the ones examined and offered in evidence. "Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contrabands are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, planting, or contamination of evidence."

4. ID.; ID.; ID.; ID.; THE FAILURE OF THE POLICE OFFICER TO IDENTIFY THE SEIZED DRUGS IN OPEN COURT CREATES A GAP IN THE LINK.— [W]e find conflicting testimony and glaring inconsistencies that would cast doubt on the integrity of the handling of the seized drugs. The material inconsistency of who actually received the specimens in the Crime Laboratory creates a cloud of doubt as to whether the integrity and evidentiary value of the seized items were preserved. x x x The marked discrepancy between the testimony of P/S Insp. Forro and the documentary evidence, which shows that a certain PSI Cariño received the specimens, was not explained by the prosecution. This material and glaring inconsistency creates doubt as to the preservation of the seized items. Moreover, although PO2 Suarez testified that he was the one who marked the specimens with his own initials, he did not identify the seized items in open court to prove that the ones he marked were the same specimens brought to the laboratory for testing and eventually presented in open court. Neither did PO3 Santos, the one who delivered the request and the specimens to the laboratory, identify in open court that the specimens presented are the same specimens he delivered to the laboratory for testing. While P/S Insp. Forro testified that the specimens she received for testing were the same ones presented in court, this Court cannot accurately determine whether the tested specimens were the same items seized from the accused and marked by PO2 Suarez. The failure of the police officers to identify the seized drugs in open court created another gap in the link. Thus, the identity of the *corpus delicti* was not proven.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT BY ITSELF OVERCOME THE PRESUMPTION OF INNOCENCE NOR CONSTITUTE PROOF BEYOND REASONABLE DOUBT.— [T]he presumption of regularity in the performance of official duty cannot be invoked by the prosecution where the procedure was tainted with material lapses. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up which was testified to by a third party witness. The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof 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

SERENO, *C.J.*:

Before this Court is an appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03754 affirming *in toto* the Decision[2] in Criminal Case Nos. 03-336 and 03-337. The Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) Decision found Freddy Salonga *y* Afiado guilty of violating Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-11; dated 3 June 2010 penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Ramon R. Garcia and Elihu A. Ybañez.

[2] CA *rollo*, pp. 32-33; dated 29 November 2008 penned by Presiding Judge Dennis Patrick Z. Perez.

THE FACTS

The accused was charged under two separate Informations[3] docketed as Criminal Case Nos. 03-336 and 03-337 for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 (illegal sale and possession of dangerous drugs, respectively).

Version of the Prosecution

Police Officer (PO) 3 Gabriel Santos (PO3 Santos) testified that confidential information was obtained that the accused was selling illegal drugs at his residence in *Barangay* Libis, Wawa, Binangonan, Rizal. Consequently, a buy-bust operation was conducted on 7 October 2003, whereupon the accused was arrested for selling methamphetamine hydrochloride or *shabu*.[4]

PO2 Bernardo T. Suarez (PO2 Suarez), who acted as poseur-buyer, went to the house of the accused accompanied by a police "asset." The asset told the accused that they were going to buy drugs, and upon agreement, PO2 Suarez gave accused two (2) marked ₱100 bills. In return, the accused gave PO2 Suarez a deck of *shabu*. PO2 Suarez then lit a cigarette, which was the agreed signal that the transaction was completed. Thereafter, the accused was arrested by the team.[5]

The police officers, who introduced themselves as members of the CIDG, informed the accused of the reason of his arrest, after which accused was frisked and three (3) more sachets of *shabu* were seized from him. Thereafter, they proceeded to the police station, where the sachets of *shabu* were marked and later brought to the Philippine National Police (PNP) Crime Laboratory.[6]

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[3] Records (Crim. Case No. 03-336, p. 1; Records (Crim. Case No. 03-337), p. 1.

[4] TSN, 26 April 2006, pp. 5-14.

[5] Joint Sworn Affidavit, records (Criminal Case No. 03-337), pp. 4-5.

[6] *Id.* at 5.

PO2 Suarez testified that he was the one who marked the sachets with his own initials and who prepared the letter-request for laboratory examination of the specimens.[7] The seized sachets were then delivered to Eastern Police District Crime Laboratory for examination.[8] Police Senior Inspector Annalee R. Forro (P/S Insp. Forro), PNP Forensic Chemical Officer, admitted in her testimony that she personally received the drug specimens[9] which tested positive for methamphetamine hydrochloride.[10]

Version of the Defense

The defense presented the accused and Virginia Agbulos (Agbulos) as their witnesses.

Accused testified that at around 5 o'clock in the afternoon of 7 October 2003, while he was in front of his elder brother's house with Larry Ocaya and a certain Apple,[11] two persons arrived looking for his brother Ernie Salonga (Ernie).[12] The accused was held by the shirt by one named Suarez and was forced to point to the house of his elder brother.[13] Upon reaching the house of Ernie, they were informed that Ernie was not there. Thereafter, the police officers arrested the accused.[14]

To corroborate the testimony of the accused, Agbulos testified that she was with the buy-bust operation team together with Myleen Cerda, who was a police asset, and two police officers. The team was initially looking for Ernie, and it was to her surprise that accused was arrested when Ernie was not found. The

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[7] TSN, 31 January 2007, p. 6.

[8] *Supra* note 3, at 5.

[9] TSN, 6 May 2005, p. 7.

[10] Physical Science Report No. D-1908-03E, records (Criminal Case No. 03-337), p. 7.

[11] TSN, 10 April 2008, p. 10.

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

[13] *Id.* at 6.

[14] *Id.*

accused was then brought to and detained at the CIDG at Karangalan, Cainta, Rizal.[15]

After the parties stipulated that the testimony of the proposed witness Larry Ocaya was corroborative of the statements given by the accused, the defense dispensed with his testimony.[16]

Upon arraignment, the accused pleaded not guilty to both charges.[17]

THE RTC RULING

After trial on the merits, the RTC rendered a Decision[18] finding the accused guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of R.A. 9165. The trial court ruled that *corpus delicti* was presented in the form of *shabu* samples and the chemistry report. The testimony of prosecution witness PO2 Suarez was found by the trial court as having presented a clear picture detailing the transaction. The testimonies of the police officers were given credence in consideration of the presumption of regularity in the performance of their duties. On the other hand, the denials of the accused were found to be negative, weak, and self-serving. The RTC likewise observed that apart from her incredible testimony, witness Agbulos' demeanour in court of being quick to answer, though questions were not yet finished, indicated coaching, which added to her lack of credibility. Indubitably, the accused was caught *in flagrante delicto* of selling *shabu* which led to a warrantless arrest and search which yielded the possession of more illegal drugs.

THE CA RULING

On appeal, the CA affirmed *in toto* the Decision of the RTC and dismissed the appeal.[19] The appellate court ruled that the

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[15] TSN, 27 August 2008, pp. 4-15.

[16] Order, records (Criminal Case No. 03-336), p. 148.

[17] Order, *id.* at 17.

[18] *Id.* at 157-158.

[19] *Rollo*, p. 11, CA Decision.

prosecution was able to sufficiently bear out the statutory elements of the crime. It held that in the absence of proof of any odious intent on the part of the police operatives to falsely impute a serious crime against the accused, the court will not allow the testimonies of the prosecution to be overcome by a self-serving claim of frame-up.[20] Factual findings of the trial court are accorded respect and great weight, unless there is a misapprehension of facts.[21]

With respect to the question on chain of custody, the appellate court found that the drugs confiscated from the accused were properly accounted for and forthrightly submitted to the Crime Laboratory. The CA further ruled that nothing invited the suspicion that the integrity and evidentiary value of the seized articles were jeopardized.[22]

THE ISSUE

Whether or not the RTC and the CA erred in finding that the evidence of the prosecution was sufficient to convict the accused of the alleged sale and possession of methamphetamine hydrochloride, in violation of Sections 5 and 11, respectively, of R.A. 9165.

THE RULING OF THE COURT

The accused maintains that there was no clear and convincing evidence warranting his conviction, as the prosecution failed to establish the actual exchange of the alleged *shabu* and the buy-bust money. It was not clearly shown how the buy-bust operation transpired.[23]

The accused further argues that the prosecution failed to prove that the subject items allegedly confiscated from him were the same ones submitted to the forensic chemist for

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[20] *Id.* at 7.

[21] *Id.* at 8.

[22] *Id.* at 9.

[23] Supplemental Brief of the accused, *id.* at 29.

examination;[24] thus, they were not able to establish the unbroken chain of custody of the illegal drugs.[25]

After a careful scrutiny of the records, the Court finds the appeal to be impressed with merit.

It has been consistently ruled that the elements needed to be proven to successfully prosecute a case of illegal sale of drugs are: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[26]

Simply put, the prosecution must establish that the illegal sale of the dangerous drugs actually took place together with the presentation in court of the *corpus delicti* or the dangerous drugs seized in evidence.[27] Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from the accused.[28]

The Court has adopted the chain of custody rule, a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. "It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition

[24] *Id.* at 30.

[25] *Id.* at 32.

[26] *People v. Tiu*, 469 Phil. 163, 173 (2004); *Chan v. Secretary of Justice*, G.R. No. 147065, 14 March 2008, 548 SCRA 337.

[27] *People v. Berdadero*, G.R. No. 179710, 29 June 2010, 622 SCRA 196, 202.

[28] *People v. Robles*, G.R. No. 177220, 24 April 2009, 586 SCRA 647.

of the item and no opportunity for someone not in the chain to have possession of the same."[29]

Contrary to the claim of accused, the prosecution was able to clearly recount how the buy-bust operation was conducted. However, the Court finds that the chain of custody was broken in view of several infirmities in the procedure and the evidence presented.

Section 21 of R.A. 9165 delineates the mandatory procedural safeguards in buy-bust operations, which reads:

> **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; xxx.

In *People v. Salonga*,[30] we held that it is essential for the prosecution to prove that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as an exhibit. This Court, however, finds reasonable doubt on the evidence presented to prove an unbroken chain of custody.

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[29] *Malillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632-633.

[30] G.R. No. 186390, 2 October 2009, 602 SCRA 783.

First, it is not clear from the evidence that the marking, which was done in the police station, was made in the presence of the accused or his representative. Although we have previously ruled that the marking upon "immediate" confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team,[31] the same must always be done in the presence of the accused or his representative. Thus, there is already a gap in determining whether the specimens that entered into the chain were actually the ones examined and offered in evidence.

"Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contrabands are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, planting, or contamination of evidence."[32]

Second, the prosecution failed to duly accomplish the Certificate of Inventory and to take photos of the seized items pursuant to the above-stated provision. There is nothing in the records that would show at least an attempt to comply with this procedural safeguard; neither was there any justifiable reason propounded for failing to do so.

Third, we find conflicting testimony and glaring inconsistencies that would cast doubt on the integrity of the handling of the seized drugs. The material inconsistency of who actually received the specimens in the Crime Laboratory creates a cloud of doubt

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[31] *Imson v. People*, G.R. No. 193003, 13 July 2011, 653 SCRA 826.

[32] *People v. Coreche*, G.R. No. 182528, 14 August 2009, 596 SCRA 350, 357-358.

as to whether the integrity and evidentiary value of the seized items were preserved.

PO3 Santos testified on direct examination:

> Q What did you do with the 3 plastic sachets containing white crystalline substance recovered from the accused?
> A We brought them to the office and we made some markings on the specimens and they were brought to the PNP Crime Laboratory.[33]

To corroborate the same, P/S Insp. Forro, the Forensic Chemical Officer, testified as follows:

> Q Who brought those specimens to your office?
> A It was a certain PO2 Santos.
>
> Q Who received the specimens?
> A **I received it personally**.[34] (Emphasis supplied)

However, a perusal of the Request for Laboratory Examination presented by the prosecution shows:

> EPD CRIME LABORATORY
> SAINT FRANCIS ST. MANDALUYONG CITY
> CONTROL NR. 3392-03
> CASE NR: D-1908-03
> TIME & DATE REC'VD: 1315H 08 OCT '03
> RECORDED BY: PO3 KAYAT
> **RECEIVED BY: PSI CARIÑO**
> D/by: PO3 SANTOS[35] (Emphasis supplied)

The marked discrepancy between the testimony of P/S Insp. Forro and the documentary evidence, which shows that a certain PSI Cariño received the specimens, was not explained by the prosecution. This material and glaring inconsistency creates doubt as to the preservation of the seized items.

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[33] TSN, 26 April 2006, p. 13.

[34] TSN, 6 May 2005, p. 7.

[35] Exhibit "B", records (Criminal Case No. 03-336), p. 61.

Moreover, although PO2 Suarez testified that he was the one who marked the specimens with his own initials,[36] he did not identify the seized items in open court to prove that the ones he marked were the same specimens brought to the laboratory for testing and eventually presented in open court. Neither did PO3 Santos, the one who delivered the request and the specimens to the laboratory, identify in open court that the specimens presented are the same specimens he delivered to the laboratory for testing.

While P/S Insp. Forro testified that the specimens she received for testing were the same ones presented in court,[37] this Court cannot accurately determine whether the tested specimens were the same items seized from the accused and marked by PO2 Suarez. The failure of the police officers to identify the seized drugs in open court created another gap in the link. Thus, the identity of the *corpus delicti* was not proven.

The gaps in the chain of custody creates a reasonable doubt as to whether the specimens seized from the accused were the same specimens brought to the laboratory and eventually offered in court as evidence. Without adequate proof of the *corpus delicti*, the conviction cannot stand.

In *People v. De Guzman*,[38] this Court ruled:

> Accordingly, the failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a person charged with a crime, but moral certainty is required as to every proposition of proof requisite to constitute

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[36] TSN, 31 January 2007, p. 6.

[37] TSN, 6 May 2005, p. 6.

[38] G.R. No. 186498, 26 March 2010, 616 SCRA 652.

the offense. A conviction cannot be sustained if there is a persistent doubt on the identity of the drug.[39]

Finally, the presumption of regularity in the performance of official duty cannot be invoked by the prosecution where the procedure was tainted with material lapses. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up which was testified to by a third party witness.[40] The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.[41]

The inconsistency in the evidence and the weak presentation of the prosecution leaves a gaping hole in the chain of custody, which creates a reasonable doubt on the guilt of the accused. In view of the prosecution's failure to adduce justifiable grounds on their procedural lapses and the unexplained conflicting inconsistencies in the evidence presented, we are constrained to reverse the finding of the court *a quo*.

As held in *People v. Umipang*,[42] "x x x, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution – especially when the pieces of evidence were derived from a buy-bust operation – redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."

WHEREFORE, the appealed CA Decision dated 3 June 2010 in CA-G.R. CR-H.C. No. 03754 affirming the RTC Decision

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[39] *Id.* at 668.

[40] *People v. Umipang*, G.R. No. 190321, 25 April 2012, 671 SCRA 324.

[41] See *Valdez v. People*, 563 Phil. 934 (2007).

[42] *Supra* note 35, at 356.

in Crim. Case Nos. 03-336 and 03-337 dated 29 November 2008 is **SET ASIDE**. Accused **Freddy Salonga *y* Afiado** is hereby **ACQUITTED** of the charges on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** the accused from custody, unless he is detained for some other lawful cause.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Mendoza,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 198174. September 2, 2013]

ALPHA INSURANCE AND SURETY CO., *petitioner, vs.* **ARSENIA SONIA CASTOR,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE LAW; CONTRACT OF INSURANCE; EXCLUSIONS; TERMS USED SPECIFYING THE EXCLUDED CLASSES IN AN INSURANCE CONTRACT ARE TO BE GIVEN THEIR MEANING AS UNDERSTOOD IN COMMON SPEECH.— Ruling in favor of respondent, the RTC of Quezon City scrupulously elaborated that theft perpetrated by the driver of the insured is not an exception to the coverage from the insurance policy, since Section III thereof did not qualify as to who would commit the theft. x x x [C]ontracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous,

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* Designated additional member in lieu of Associate Justice Bienvenido L. Reyes who penned the CA Decision per raffle dated 26 September 2011.

they must be taken and understood in their plain, ordinary and popular sense. Accordingly, in interpreting the exclusions in an insurance contract, the terms used specifying the excluded classes therein are to be given their meaning as understood in common speech.

2. ID.; ID.; ID.; ID.; ID.; THE WORDS "LOSS" AND "DAMAGE," DISTINGUISHED.— Adverse to petitioner's claim, the words "loss" and "damage" mean different things in common ordinary usage. The word "loss" refers to the act or fact of losing, or failure to keep possession, while the word "damage" means deterioration or injury to property. Therefore, petitioner cannot exclude the loss of respondent's vehicle under the insurance policy under paragraph 4 of "Exceptions to Section III," since the same refers only to "malicious damage," or more specifically, "injury" to the motor vehicle caused by a person under the insured's service. Paragraph 4 clearly does not contemplate "loss of property," as what happened in the instant case. Further, the CA aptly ruled that "malicious damage," as provided for in the subject policy as one of the exceptions from coverage, is the damage that is the direct result from the deliberate or willful act of the insured, members of his family, and any person in the insured's service, whose clear plan or purpose was to cause damage to the insured vehicle for purposes of defrauding the insurer x x x.

3. ID.; ID.; ID.; ID.; LIMITATIONS ON LIABILITY SHOULD BE CONSTRUED IN SUCH A WAY AS TO PRECLUDE THE INSURER FROM NON-COMPLIANCE WITH HIS OBLIGATION.— [A] contract of insurance is a contract of adhesion. So, when the terms of the insurance contract contain limitations on liability, courts should construe them in such a way as to preclude the insurer from non-compliance with his obligation.

APPEARANCES OF COUNSEL

Rea Remo & Associates for petitioner.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated May 31, 2011 and Resolution[2] dated August 10, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93027.

The facts follow.

On February 21, 2007, respondent entered into a contract of insurance, Motor Car Policy No. MAND/CV-00186, with petitioner, involving her motor vehicle, a Toyota Revo DLX DSL. The contract of insurance obligates the petitioner to pay the respondent the amount of Six Hundred Thirty Thousand Pesos (₱630,000.00) in case of loss or damage to said vehicle during the period covered, which is from February 26, 2007 to February 26, 2008.

On April 16, 2007, at about 9:00 a.m., respondent instructed her driver, Jose Joel Salazar Lanuza (*Lanuza*), to bring the above-described vehicle to a nearby auto-shop for a tune-up. However, Lanuza no longer returned the motor vehicle to respondent and despite diligent efforts to locate the same, said efforts proved futile. Resultantly, respondent promptly reported the incident to the police and concomitantly notified petitioner of the said loss and demanded payment of the insurance proceeds in the total sum of ₱630,000.00.

In a letter dated July 5, 2007, petitioner denied the insurance claim of respondent, stating among others, thus:

> Upon verification of the documents submitted, particularly the Police Report and your Affidavit, which states that the culprit, who stole the Insure[d] unit, is employed with you. We would like to invite

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Rosalinda Asuncion-Vicente and Edwin D. Sorongon, concurring; *rollo*, pp. 16-32.

[2] *Id.* at 33-35.

you on the provision of the Policy under Exceptions to Section-III, which we quote:

1.) The Company shall not be liable for:

xxx x x x xxx

(4) Any malicious damage caused by the Insured, any member of his family or by "A PERSON IN THE INSURED'S SERVICE."

In view [of] the foregoing, we regret that we cannot act favorably on your claim.

In letters dated July 12, 2007 and August 3, 2007, respondent reiterated her claim and argued that the exception refers to damage of the motor vehicle and not to its loss. However, petitioner's denial of respondent's insured claim remains firm.

Accordingly, respondent filed a Complaint for Sum of Money with Damages against petitioner before the Regional Trial Court (*RTC*) of Quezon City on September 10, 2007.

In a Decision dated December 19, 2008, the RTC of Quezon City ruled in favor of respondent in this wise:

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

1. To pay plaintiff the amount of ₱466,000.00 plus legal interest of 6% per annum from the time of demand up to the time the amount is fully settled;

2. To pay attorney's fees in the sum of ₱65,000.00; and

3. To pay the costs of suit.

All other claims not granted are hereby denied for lack of legal and factual basis.[3]

Aggrieved, petitioner filed an appeal with the CA.

On May 31, 2011, the CA rendered a Decision affirming *in toto* the RTC of Quezon City's decision. The *fallo* reads:

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[3] *Id.* at 41.

WHEREFORE, in view of all the foregoing, the appeal is **DENIED**. Accordingly, the Decision, dated December 19, 2008, of Branch 215 of the Regional Trial Court of Quezon City, in Civil Case No. Q-07-61099, is hereby **AFFIRMED** *in toto*.

SO ORDERED.[4]

Petitioner filed a Motion for Reconsideration against said decision, but the same was denied in a Resolution dated August 10, 2011.

Hence, the present petition wherein petitioner raises the following grounds for the allowance of its petition:

1. WITH DUE RESPECT TO THE HONORABLE COURT OF APPEALS, IT ERRED AND GROSSLY OR GRAVELY ABUSED ITS DISCRETION WHEN IT ADJUDGED IN FAVOR OF THE PRIVATE RESPONDENT AND AGAINST THE PETITIONER AND RULED THAT EXCEPTION DOES NOT COVER LOSS BUT ONLY DAMAGE BECAUSE THE TERMS OF THE INSURANCE POLICY ARE [AMBIGUOUS] EQUIVOCAL OR UNCERTAIN, SUCH THAT THE PARTIES THEMSELVES DISAGREE ABOUT THE MEANING OF PARTICULAR PROVISIONS, THE POLICY WILL BE CONSTRUED BY THE COURTS LIBERALLY IN FAVOR OF THE ASSURED AND STRICTLY AGAINST THE INSURER.

2. WITH DUE RESPECT TO THE HONORABLE COURT OF APPEALS, IT ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT [AFFIRMED] *IN TOTO* THE JUDGMENT OF THE TRIAL COURT.[5]

Simply, the core issue boils down to whether or not the loss of respondent's vehicle is excluded under the insurance policy.

We rule in the negative.

Significant portions of Section III of the Insurance Policy states:

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[4] *Id.* at 31. (Emphasis in the original)

[5] *Id.* at 9.

SECTION III – LOSS OR DAMAGE

The Company will, subject to the Limits of Liability, indemnify the Insured against loss of or damage to the Schedule Vehicle and its accessories and spare parts whilst thereon:

(a) by accidental collision or overturning, or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear;

(b) by fire, external explosion, self-ignition or lightning or burglary, housebreaking or **theft**;

(c) by malicious act;

(d) whilst in transit (including the processes of loading and unloading) incidental to such transit by road, rail, inland waterway, lift or elevator.

x x x x x x x x x

EXCEPTIONS TO SECTION III

The Company shall not be liable to pay for:

1. Loss or Damage in respect of any claim or series of claims arising out of one event, the first amount of each and every loss for each and every vehicle insured by this Policy, such amount being equal to one percent (1.00%) of the Insured's estimate of Fair Market Value as shown in the Policy Schedule with a minimum deductible amount of Php3,000.00;

2. Consequential loss, depreciation, wear and tear, mechanical or electrical breakdowns, failures or breakages;

3. Damage to tires, unless the Schedule Vehicle is damaged at the same time;

4. **Any malicious damage** caused by the Insured, any member of his family or **by a person in the Insured's service.**[6]

In denying respondent's claim, petitioner takes exception by arguing that the word "damage," under paragraph 4 of "Exceptions to Section III," means loss due to injury or harm to person, property or reputation, and should be construed to cover malicious

[6] *Id.* at 42-43. (Emphasis ours)

"loss" as in "theft." Thus, it asserts that the loss of respondent's vehicle as a result of it being stolen by the latter's driver is excluded from the policy.

We do not agree.

Ruling in favor of respondent, the RTC of Quezon City scrupulously elaborated that theft perpetrated by the driver of the insured is not an exception to the coverage from the insurance policy, since Section III thereof did not qualify as to who would commit the theft. Thus:

> Theft perpetrated by a driver of the insured is not an exception to the coverage from the insurance policy subject of this case. This is evident from the very provision of Section III – "Loss or Damage." The insurance company, subject to the limits of liability, is obligated to indemnify the insured against theft. Said provision does not qualify as to who would commit the theft. Thus, even if the same is committed by the driver of the insured, there being no categorical declaration of exception, the same must be covered. As correctly pointed out by the plaintiff, *"(A)n insurance contract should be interpreted as to carry out the purpose for which the parties entered into the contract which is to insure against risks of loss or damage to the goods. Such interpretation should result from the natural and reasonable meaning of language in the policy. Where restrictive provisions are open to two interpretations, that which is most favorable to the insured is adopted."* The defendant would argue that if the person employed by the insured would commit the theft and the insurer would be held liable, then this would result to an absurd situation where the insurer would also be held liable if the insured would commit the theft. This argument is certainly flawed. Of course, if the theft would be committed by the insured himself, the same would be an exception to the coverage since in that case there would be fraud on the part of the insured or breach of material warranty under Section 69 of the Insurance Code.[7]

Moreover, contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood

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[7] *Id.* at 40. (Italics in the original)

in their plain, ordinary and popular sense.[8] Accordingly, in interpreting the exclusions in an insurance contract, the terms used specifying the excluded classes therein are to be given their meaning as understood in common speech.[9]

Adverse to petitioner's claim, the words "loss" and "damage" mean different things in common ordinary usage. The word "loss" refers to the act or fact of losing, or failure to keep possession, while the word "damage" means deterioration or injury to property.

Therefore, petitioner cannot exclude the loss of respondent's vehicle under the insurance policy under paragraph 4 of "Exceptions to Section III," since the same refers only to "malicious damage," or more specifically, "injury" to the motor vehicle caused by a person under the insured's service. Paragraph 4 clearly does not contemplate "loss of property," as what happened in the instant case.

Further, the CA aptly ruled that "malicious damage," as provided for in the subject policy as one of the exceptions from coverage, is the damage that is the direct result from the deliberate or willful act of the insured, members of his family, and any person in the insured's service, whose clear plan or purpose was to cause damage to the insured vehicle for purposes of defrauding the insurer, *viz*.:

> This interpretation by the Court is bolstered by the observation that the subject policy appears to clearly delineate between the terms "loss" and "damage" by using both terms throughout the said policy.
> x x x
> x x x x x x x x x
> If the intention of the defendant-appellant was to include the term "loss" within the term "damage" then logic dictates that it should have used the term "damage" alone in the entire policy or otherwise

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[8] *New Life Enterprises v. Court of Appeals*, G.R. No. 94071, March 31, 1992, 207 SCRA 669, 676.

[9] *Fortune Insurance and Surety Co., Inc. v. Court of Appeals*, 314 Phil. 184, 196 (1995).

included a clear definition of the said term as part of the provisions of the said insurance contract. Which is why the Court finds it puzzling that in the said policy's provision detailing the exceptions to the policy's coverage in Section III thereof, which is one of the crucial parts in the insurance contract, the insurer, after liberally using the words "loss" and "damage" in the entire policy, suddenly went specific by using the word "damage" only in the policy's exception regarding "malicious damage." Now, the defendant-appellant would like this Court to believe that it really intended the word "damage" in the term "malicious damage" to include the theft of the insured vehicle.

The Court does not find the particular contention to be well taken.

True, it is a basic rule in the interpretation of contracts that the terms of a contract are to be construed according to the sense and meaning of the terms which the parties thereto have used. In the case of property insurance policies, the evident intention of the contracting parties, *i.e.*, the insurer and the assured, determine the import of the various terms and provisions embodied in the policy. However, **when the terms of the insurance policy are ambiguous, equivocal or uncertain, such that the parties themselves disagree about the meaning of particular provisions, the policy will be construed by the courts liberally in favor of the assured and strictly against the insurer**.[10]

Lastly, a contract of insurance is a contract of adhesion. So, when the terms of the insurance contract contain limitations on liability, courts should construe them in such a way as to preclude the insurer from non-compliance with his obligation. Thus, in *Eternal Gardens Memorial Park Corporation v. Philippine American Life Insurance Company*,[11] this Court ruled –

It must be remembered that an insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the latter's interest. Thus, in *Malayan Insurance Corporation v. Court of Appeals*, this Court held that:

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[10] *Id.* at 25-29. (Emphasis and underscoring in the original; citation omitted)

[11] G.R. No. 166245, April 9, 2008, 551 SCRA 1.

> Indemnity and liability insurance policies are construed in accordance with the general rule of resolving any ambiguity therein in favor of the insured, where the contract or policy is prepared by the insurer. **A contract of insurance, being a contract of adhesion, *par excellence*, any ambiguity therein should be resolved against the insurer**; in other words, it should be construed liberally in favor of the insured and strictly against the insurer. Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from non-compliance with its obligations.

In the more recent case of *Philamcare Health Systems, Inc. v. Court of Appeals*, we reiterated the above ruling, stating that:

> When the terms of insurance contract contain limitations on liability, courts should construe them in such a way as to preclude the insurer from non-compliance with his obligation. Being a contract of adhesion, the terms of an insurance contract are to be construed strictly against the party which prepared the contract, the insurer. By reason of the exclusive control of the insurance company over the terms and phraseology of the insurance contract, ambiguity must be strictly interpreted against the insurer and liberally in favor of the insured, especially to avoid forfeiture.[12]

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. Accordingly, the Decision dated May 31, 2011 and Resolution dated August 10, 2011 of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

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

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[12] *Eternal Gardens Memorial Park Corporation v. Philippine American Life Insurance Company, supra,* at 13. (Citation omitted)

EN BANC

[G.R. No. 179987. September 3, 2013]

HEIRS OF MARIO MALABANAN, (Represented by Sally A. Malabanan), *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CLASSIFICATION OF PROPERTY; IMMOVABLE PROPERTY; LANDS MAY BE CLASSIFIED AS EITHER OF PUBLIC DOMINION OR OF PRIVATE OWNERSHIP.— Land, which is an immovable property, may be classified as either of public dominion or of private ownership. Land is considered of public dominion if it either: (*a*) is intended for public use; or (*b*) belongs to the State, without being for public use, and is intended for some public service or for the development of the national wealth. Land belonging to the State that is not of such character, or although of such character but no longer intended for public use or for public service forms part of the patrimonial property of the State. Land that is other than part of the patrimonial property of the State, provinces, cities and municipalities is of private ownership if it belongs to a private individual.

2. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE ; PROVIDES THAT ALL LANDS OF THE PUBLIC DOMAIN BELONG TO THE STATE.— Pursuant to the Regalian Doctrine (*Jura Regalia*), a legal concept first introduced into the country from the West by Spain through the Laws of the Indies and the *Royal Cedulas*, all lands of the public domain belong to the State. This means that the State is the source of any asserted right to ownership of land, and is charged with the conservation of such patrimony. All lands not appearing to be clearly under private ownership are presumed to belong to the State. Also, public lands remain part of the inalienable land of the public domain unless the State is shown to have reclassified or alienated them to private persons.

3. ID.; ID.; LANDS OF THE PUBLIC DOMAIN; ONLY AGRICULTURAL LANDS OF THE PUBLIC DOMAIN MAY BE ALIENATED.— Whether or not land of the public domain is alienable and disposable primarily rests on the classification of public lands made under the Constitution. Under the 1935 Constitution, lands of the public domain were classified into three, namely, agricultural, timber and mineral. Section 10, Article XIV of the 1973 Constitution classified lands of the public domain into seven, specifically, agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing land, with the reservation that the law might provide other classifications. The 1987 Constitution adopted the classification under the 1935 Constitution into agricultural, forest or timber, and mineral, but added national parks. Agricultural lands may be further classified by law according to the uses to which they may be devoted. The identification of lands according to their legal classification is done exclusively by and through a positive act of the Executive Department. Based on the foregoing, the Constitution places a limit on the type of public land that may be alienated. Under Section 2, Article XII of the 1987 Constitution, only agricultural lands of the public domain may be alienated; all other natural resources may not be.

4. ID.; ID.; ALIENABLE AND DISPOSABLE LANDS OF THE STATE; CATEGORIES.— Alienable and disposable lands of the State fall into two categories, to wit: (*a*) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the *Civil Code*, without limitation; and (*b*) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural. Consequently, lands classified as forest or timber, mineral, or national parks are not susceptible of alienation or disposition unless they are reclassified as agricultural. A positive act of the Government is necessary to enable such reclassification, and the exclusive prerogative to classify public lands under existing laws is vested in the Executive Department, not in the courts. If, however, public land will be classified as neither agricultural, forest or timber, mineral or national park, or when public land is no longer intended for public service or for the development of the national wealth, thereby effectively removing the land from the ambit of public dominion, a declaration of such conversion must be made in the form of a law duly

enacted by Congress or by a Presidential proclamation in cases where the President is duly authorized by law to that effect. Thus, until the Executive Department exercises its prerogative to classify or reclassify lands, or until Congress or the President declares that the State no longer intends the land to be used for public service or for the development of national wealth, the Regalian Doctrine is applicable.

5. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES; SECTION 48(b) OF THE LAW ONLY COVERS LANDS CLASSIFIED AS ALIENABLE AND DISPOSABLE AGRICULTURAL LANDS OF THE PUBLIC DOMAIN.— Section 11 of the *Public Land Act* (CA No. 141) provides the manner by which alienable and disposable lands of the public domain, *i.e.*, agricultural lands, can be disposed of, to wit: "Section 11. Public lands suitable for agricultural purposes **can be disposed of only as follows, and not otherwise**: x x x (4) By confirmation of imperfect or incomplete titles; (a) By judicial legalization x x x." The core of the controversy herein lies in the proper interpretation of Section 11(4), in relation to Section 48(b) of the *Public Land Act*, which expressly requires possession by a Filipino citizen of the land since June 12, 1945, or earlier x x x. Note that Section 48(b) of the Public Land Act used the words "*lands of the public domain*" or "*alienable and disposable lands of the public domain*" to clearly signify that lands otherwise classified, *i.e.*, mineral, forest or timber, or national parks, and lands of patrimonial or private ownership, are outside the coverage of the *Public Land Act*. What the law does not include, it excludes. The use of the descriptive phrase "*alienable and disposable*" further limits the coverage of Section 48(b) to only the agricultural lands of the public domain as set forth in Article XII, Section 2 of the 1987 Constitution. Bearing in mind such limitations under the *Public Land Act*, the applicant must satisfy the following requirements in order for his application to come under Section 14(1) of the *Property Registration Decree*, to wit: "1. The applicant, by himself or through his predecessor-in-interest, has been in possession and occupation of the property subject of the application; 2. The possession and occupation must be open, continuous, exclusive, and notorious; 3. The possession and occupation must be under a *bona fide* claim of acquisition of ownership; 4. The possession and occupation must have

taken place since June 12, 1945, or earlier; and 5. The property subject of the application must be an agricultural land of the public domain." Taking into consideration that the Executive Department is vested with the authority to classify lands of the public domain, Section 48(b) of the *Public Land Act*, in relation to Section 14(1) of the *Property Registration Decree*, presupposes that the land subject of the application for registration must have been already classified as agricultural land of the public domain in order for the provision to apply. Thus, absent proof that the land is already classified as agricultural land of the public domain, the Regalian Doctrine applies, and overcomes the presumption that the land is alienable and disposable as laid down in Section 48(b) of the *Public Land Act*. However, emphasis is placed on the requirement that the classification required by Section 48(b) of the *Public Land Act* is classification or reclassification of a public land as agricultural.

6. ID.; ID.; ID.; ID.; THE CHARACTER OF THE PROPERTY SUBJECT OF THE APPLICATION AS ALIENABLE AND DISPOSABLE AGRICULTURAL LAND OF THE PUBLIC DOMAIN DETERMINES ITS ELIGIBILITY FOR LAND REGISTRATION, NOT THE OWNERSHIP OR TITLE OVER IT.— [A]n examination of Section 48(b) of the *Public Land Act* indicates that Congress prescribed no requirement that the land subject of the registration should have been classified as agricultural since June 12, 1945, or earlier. As such, the applicant's imperfect or incomplete title is derived only from possession and occupation since June 12, 1945, or earlier. This means that the character of the property subject of the application as alienable and disposable agricultural land of the public domain determines its eligibility for land registration, not the ownership or title over it. Alienable public land held by a possessor, either personally or through his predecessors-in-interest, openly, continuously and exclusively during the prescribed statutory period is converted to private property by the mere lapse or completion of the period. In fact, by virtue of this doctrine, corporations may now acquire lands of the public domain for as long as the lands were already converted to private ownership, by operation of law, as a result of satisfying the requisite period of possession prescribed by the *Public Land Act*. x x x To be clear, then, the requirement that the land should have been classified as alienable and disposable agricultural land at the time of the application for registration

is necessary only to dispute the presumption that the land is inalienable.

7. ID.; ID.; ID.; THE IMPERFECT OR INCOMPLETE TITLE BEING CONFIRMED UNDER SECTION 48(b) OF THE LAW IS TITLE THAT IS ACQUIRED BY REASON OF THE APPLICANT'S POSSESSION AND OCCUPATION OF THE ALIENABLE AND DISPOSABLE AGRICULTURAL LAND OF THE PUBLIC DOMAIN.— The declaration that land is alienable and disposable also serves to determine the point at which prescription may run against the State. The imperfect or incomplete title being confirmed under Section 48(b) of the *Public Land Act* is title that is acquired by reason of the applicant's possession and occupation of the alienable and disposable agricultural land of the public domain. Where all the necessary requirements for a grant by the Government are complied with through actual physical, open, continuous, exclusive and public possession of an alienable and disposable land of the public domain, the possessor is deemed to have acquired by operation of law not only a right to a grant, but a grant by the Government, because it is not necessary that a certificate of title be issued in order that such a grant be sanctioned by the courts.

8. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; PUBLIC LAND OR LANDS OF THE PUBLIC DOMAIN; RULES FOR DISPOSITION.— [W]e now observe the following rules relative to the disposition of public land or lands of the public domain, namely: (1) As a general rule and pursuant to the Regalian Doctrine, all lands of the public domain belong to the State and are inalienable. Lands that are not clearly under private ownership are also presumed to belong to the State and, therefore, may not be alienated or disposed; (2) The following are excepted from the general rule, to wit: (*a*) Agricultural lands of the public domain are rendered alienable and disposable through any of the exclusive modes enumerated under Section 11 of the *Public Land Act*. If the mode is judicial confirmation of imperfect title under Section 48(b) of the *Public Land Act*, the agricultural land subject of the application needs only to be classified as alienable and disposable as of the time of the application, provided the applicant's possession and occupation of the land dated back to June 12, 1945, or earlier. Thereby, a conclusive presumption that the applicant has performed all the conditions essential to a government grant

arises, and the applicant becomes the owner of the land by virtue of an imperfect or incomplete title. By legal fiction, the land has already ceased to be part of the public domain and has become private property. (*b*) Lands of the public domain subsequently classified or declared as no longer intended for public use or for the development of national wealth are removed from the sphere of public dominion and are considered converted into patrimonial lands or lands of private ownership that may be alienated or disposed through any of the modes of acquiring ownership under the *Civil Code*. If the mode of acquisition is prescription, whether ordinary or extraordinary, proof that the land has been already converted to private ownership prior to the requisite acquisitive prescriptive period is a condition *sine qua non* in observance of the law (Article 1113, *Civil Code*) that property of the State not patrimonial in character shall not be the object of prescription.

BRION, *J., separate opinion*:

1. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES; COVERS AGRICULTURAL LANDS ALREADY CLASSIFIED AS DISPOSABLE AND ALIENABLE.— The Constitution classifies public lands into agricultural, mineral, timber lands and national parks. Of these, only agricultural lands can be alienated. Without the requisite classification, there can be no basis to determine which lands of the public domain are alienable and which are not. Hence, ***classification is a constitutionally-required step whose importance should be given full legal recognition and effect.*** Otherwise stated, ***without classification*** into disposable agricultural land, the land ***continues to form part of the mass of the public domain*** that, not being agricultural, must be mineral, timber land or national parks that are completely inalienable and, as such, cannot be possessed with legal effects. To recognize possession prior to any classification is to do violence to the Regalian Doctrine; the ***ownership and control*** that the Regalian Doctrine embodies will be ***less than full*** if the possession – that should be with the State as owner, but is also elsewhere without any solid legal basis – can anyway be recognized. **Note in this regard that the terms of the PLA do not find full application until a classification into alienable**

and disposable agricultural land of the public domain is made. In this situation, possession cannot be claimed under Section 48(b) of the PLA. Likewise, no imperfect title can be confirmed over lands not yet classified as disposable or alienable because, in the absence of such classification, ***the land remains unclassified public land that fully belongs to the State***. This is fully supported by Sections 6, 7, 8, 9, and 10 of the PLA. If the land is either mineral, timber or national parks that cannot be alienated, it defies legal logic to recognize that possession of these unclassified lands can produce legal effects. Parenthetically, PD No. 705 or the Revised Forestry Code states that "**Those [lands of public domain] still to be classified under the present system shall continue to remain as part of the public forest."** It further declares that *public forest* covers "**the mass of lands of the public domain which has not been the subject of the present system of classification** for the determination of which lands are needed for forest purposes and which are not." Thus, PD No. 705 confirms that all lands of the public domain that remain unclassified are considered as forest land. As forest land, these lands of the public domain cannot be alienated until they have been reclassified as agricultural lands. For purposes of the present case, these terms confirm the position that re/classification is essential at the time possession is acquired under Section 48(b) of the PLA. From these perspectives, the legal linkage between (1) the classification of public land as alienable and disposable and (2) effective possession that can ripen into a claim under Section 48(b) of the PLA can readily be appreciated.

2. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; INCORPORATED IN ALL THE CONSTITUTIONS OF THE PHILIPPINES AND THE STATUTES GOVERNING PRIVATE INDIVIDUALS' LAND ACQUISITION AND REGISTRATION.— The Regalian Doctrine was incorporated in all the Constitutions of the Philippines (1935, 1973 and 1987) and the statutes governing private individuals' land acquisition and registration. In his Separate Opinion in *Cruz v. Sec. of Environment and Natural Resources,* former Chief Justice Reynato S. Puno made a brief yet informative historical discussion on how the Regalian Doctrine was incorporated in our legal system, especially in all our past and present organic laws. His historical disquisition was quoted in *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos* and

the consolidated cases of *The Secretary of the DENR et al. v. Yap and Sacay et al. v. The Secretary of the DENR*, which were also quoted in Justice Lucas P. Bersamin's Separate Opinion in his very brief discussion on how the doctrine was carried over from our Spanish and American colonization up until our present legal system. x x x [A]t this point in our legal history, there can be no question that the Regalian Doctrine remains in the pure form interpreted by this Court; it has resiliently endured throughout our colonial history, was continually confirmed in all our organic laws, and is presently embodied in Section 2, Article XII of our present Constitution. Short of a constitutional amendment duly ratified by the people, the views and conclusions of this Court on the Regalian Doctrine should not and cannot be changed.

3. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; POSSESSION; A CLAIMED POSSESSION OF A LAND OF THE PUBLIC DOMAIN PRIOR TO ITS DECLARATION OF ALIENABILITY CANNOT HAVE LEGAL EFFECTS.— Possession is essentially a civil law term that can best be understood in terms of the Civil Code in the absence of any specific definition in the PLA, other than in terms of time of possession. Article 530 of the Civil Code provides that *"[o]nly things and rights which are susceptible of being appropriated may be the object of possession."* Prior to the declaration of alienability, a land of the public domain cannot be appropriated; hence, any claimed possession cannot have legal effects. In fact, whether an application for registration is filed before or after the declaration of alienability becomes immaterial if, in one as in the other, no effective possession can be recognized prior to and within the proper period for the declaration of alienability.

4. ID.; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES; THE ALIENABILITY AND POSSESSION OF THE LAND APPLIED FOR SHOULD BE COUNTED FROM JUNE 12, 1945.— [The June 12, 1945] cut-off date was painstakingly set by law and its full import appears from PD No. 1073 that amended Section 48(b) of the PLA. While the resulting Section 48(b) of the PLA did not expressly state what PD No. 1073 introduced in terms of exact wording, PD No. 1073 itself, as formulated, shows the intent to count the alienability from June

12, 1945. x x x [I]t has been claimed that June 12, 1945 refers only to the required possession and not to the declaration of alienability of the land applied for. The terms of PD No. 1073, however, are plain and clear even from the grammatical perspective alone. The term "since June 12, 1945" is unmistakably separated by a comma from the conditions of both alienability and possession, thus, plainly showing that it refers to both alienability and possession. This construction – showing the direct, continuous and seamless linking of the alienable and disposable lands of the public domain to June 12, 1945 under the wording of the Decree – is clear and should be respected, particularly if read with the substantive provisions on ownership of lands of the public domain and the limitations that the law imposes on possession.

5. POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; NOT ALLOWED UNDER THE PRINCIPLE OF SEPARATION OF POWERS TO GIVE A LAW AN INTERPRETATION THAT IS NOT THERE IN ORDER TO AVOID A PERCEIVED ABSURDITY; CASE AT BAR.— If the Court believes that a law already has absurd effects because of the passage of time, its role under the principle of separation of powers is not to give the law an interpretation that is not there in order to avoid the perceived absurdity. If the Court does, it thereby intrudes into the realm of policy — a role delegated by the Constitution to the Legislature. If only for this reason, the Court should avoid expanding — through the present *ponencia* and its cited cases — the plain meaning of Section 48(b) of the PLA, as amended by PD No. 1073. x x x In the Philippines, a civil law country where the Constitution is very clear on the separation of powers and the assignment of constitutional duties, I believe that this Court should be very careful in delineating the line between the ***constitutionally-allowed*** interpretation and the ***prohibited*** judicial legislation, given the powers that the 1987 Constitution has entrusted to this Court. As a Court, we are given more powers than the U.S. Supreme Court; under Section 1, Article VIII of the 1987 Constitution, we are supposed to act, ***as a matter of duty,*** on any grave abuse of discretion that occurs anywhere in government. While broad, this power should nevertheless be exercised with due respect for the separation of powers doctrine that underlies our Constitution.

6. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CONSIDERED THE SUBSTANTIVE LAW ON THE GRANT AND DISPOSITION OF ALIENABLE LANDS OF THE PUBLIC DOMAIN AND IT PREVAILS OVER THE PROPERTY REGISTRATION DECREE IN TERMS OF SUBSTANTIVE CONTENT.— [T]he PLA is the substantive law on the grant and disposition of alienable lands of the public domain. The PRD, on the other hand, sets out the manner of bringing registrable lands, among them alienable public lands, within the coverage of the Torrens system. In this situation, in terms of substantive content, the PLA should prevail. x x x. **Section 14(1) of the PRD** is practically a reiteration of Section 48(b) of the PLA, with the difference that they govern two different aspects of confirmation of imperfect title relating to alienable lands of the public domain. The PLA has its own substantive focus, while Section 14(1) of the PRD, bearing on the same matter, defines what title may be registered. For this reason, the discussions of Section 48(b) apply with equal force, *mutatis mutandis*, to Section 14(1) of the PRD.

7. ID.; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SECTION 14(1) AND SECTION 14(2) THEREOF, DISTINGUISHED.— Section 14(2) of the PRD is another matter. By its express terms, the prescription that it speaks of applies only to private lands. Thus, on plain reading, Section 14(2) should not apply to alienable and disposable lands of the public domain that Section 14(1) covers. This is the significant difference between Sections 14(1) and 14(2). The former – Section 14(1) – is relevant when the ownership of an alienable and disposable land of the public domain vests in the occupant or possessor under the terms of Section 48(b) of the PLA, even without the registration of a confirmed title since the land *ipso jure* becomes a private land. Section 14(2), on the other hand, applies to situations when ownership of private lands vests on the basis of prescription. The prescription that Section 14(2) of the PRD speaks of finds no application to alienable lands of the public domain – specifically, to Section 48(b) of the PLA since this provision, as revised by PD No. 1073 in January 1977, ***simply requires possession and occupation since June 12, 1945 or earlier, regardless of the period the property was occupied*** (although when PD No. 1073 was enacted in 1977, the property would have been possessed for at least 32 years by the claimant if

his possession commenced exactly on June 12, 1945, or longer if possession took place earlier).

8. ID.; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES; 30-YEAR PERIOD OF POSSESSION; EXPLAINED.— [M]y original April 29, 2009 Opinion stated that the cut-off date of June 12, 1945 appeared to be devoid of legal significance as far as the PLA was concerned. This statement notwithstanding, it should be appreciated that ***prior to PD No. 1073***, Section 48(b) of the PLA ***required a 30-year period of possession***. This 30-year period was a requirement imposed under **RA No. 1942 in June 1957** x x x. When PD No. 1073 was enacted in 1977, it was recognized that a claimant who had possessed the property for at least 30 years (in compliance with RA No. 1942) might not be entitled to confirmation of title under PD No. 1073 because his possession commenced only after June 12, 1945. This possibility constituted a violation of his vested rights that should be avoided. To resolve this dilemma, the Court, in *Abejaron v. Nabasa*, opined that where an application has satisfied the requirements of Section 48(b) of the PLA, as amended by RA No. 1942 (prior to the effectivity of PD No. 1073), the applicant is entitled to perfect his or her title even if possession and occupation do not date back to June 12, 1945. What this leads up to is that possession of land "for the required statutory period" becomes significant only when the claim of title is based on the amendment introduced by RA No. 1942. **The 30-year period introduced by RA No. 1942 "did not refer or call into application the Civil Code provisions on prescription."** In fact, in *The Director of Lands v. IAC* and the opinion of Justice Claudio Teehankee in *Manila Electric Co. v. Judge Castro-Bartolome, etc., et al.*, cited by the *ponencia*, both pertained to the RA No. 1942 amendment; it was in this sense that both rulings stated that mere lapse or completion of the required period converts alienable land to private property. In sum, if the claimant is asserting his vested right under the RA No. 1942 amendment, then it would be correct to declare that the lapse of the required statutory period converts alienable land to private property *ipso jure*. Otherwise, if the claimant is asserting a right under the PD No. 1073 amendment, then he needs to prove possession of alienable public land as of June 12, 1945 or earlier. Although a claimant may have possessed the property for 30 years or more, if his possession commenced

after January 24, 1947 (the adjusted date based on *Abejaron*), the property would not be converted into private property by the mere lapse of time.

9. ID.; LAND REGISTRATION; THE ACT OF REGISTRATION MERELY CONFIRMS THAT TITLE ALREADY EXISTS IN FAVOR OF THE APPLICANT.— The act of registration merely confirms that title already exists in favor of the applicant. To require classification of the property only on application for registration point would imply that during the process of acquisition of title (specifically, during the period of possession prior to the application for registration), the property might not have been alienable for being unclassified land (or a forest land under PD No. 705) of the public domain. This claim totally contravenes the constitutional rule that only agricultural lands of the public domain may be alienated.

10. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CLASSIFICATION OF PROPERTY; DISPOSABLE LAND OF PUBLIC DOMAIN; CANNOT DIRECTLY BE EQUATED WITH PATRIMONIAL PROPERTY.— Whether, as in the present case, land of the public domain can be granted and registered on the basis of extraordinary prescription (*i.e.*, possession by the applicant and his predecessors-in-interest for a period of at least 30 years), ***the obvious answer*** is that the application can only effectively be allowed upon compliance with the PLA's terms. Classification as agricultural land must first take place to remove the land from its status as a land of the public domain and a declaration of alienability must likewise be made to render the land available or susceptible to alienation; the required possession, of course, has to follow and only upon completion does the land pass to "private" hands. Whether land classified as "agricultural" and declared "alienable and disposable" can already be considered "patrimonial" property does not yield to an easy answer as these concepts involve different classification systems x x x. To be sure, the classification and declaration of a public land as alienable public agricultural land do not transfer the land into private hands nor divest it of the character of being State property that can only be acquired pursuant to the terms of the PLA. Separate from this requirement, a property – although already declared alienable and disposable – may conceivably still be held by the State or by any of its political subdivisions or agencies for ***public use*** or ***public service***

under the terms of the Civil Code. In this latter case, the property cannot be considered patrimonial that is subject to acquisitive prescription. Based on these considerations, the two concepts of "disposable land of the public domain" and "patrimonial property" cannot directly be equated with one another. The requirements for their acquisition, however, must both be satisfied before they can pass to private hands.

11. ID.; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); BASIS FOR REGISTRATION OF PATRIMONIAL PROPERTY, EXPLAINED.— [T]he Civil Code provisions must yield when considered in relation with the PLA and its requirements. In other words, *when the property involved is a land of the public domain*, the consideration that it is not for public use or for public service, or its patrimonial character, initially becomes immaterial; any grant or alienation must first comply with the mandates of the Constitution on lands of the public domain and with the requirements of the PLA as a priority requirement. Thus, if the question is whether such land, considered patrimonial solely under the terms of Article 422 of the Civil Code, can be acquired through prescription, the prior questions of whether the land is already alienable under the terms of the Constitution and the PLA and whether these terms have been complied with must first be answered. If the response is negative, then any characterization under Article 422 of the Civil Code is immaterial; only upon compliance with the terms of the Constitution and the PLA can Article 422 of the Civil Code be given full force. If the land is already alienable, Article 422 of the Civil Code, when invoked, can only be complied with on the showing that the property is no longer intended for public use or public service. For all these reasons, alienable and disposable agricultural land cannot be registered under Section 14(2) of the PRD solely because it is already alienable and disposable. The alienability must be coupled with the required declaration under Article 422 of the Civil Code if the land is claimed to be patrimonial and possession under Section 14(2) of the PRD is invoked as basis for registration.

12. ID.; ID.; ID.; SECTION 14(2) THEREOF ONLY BECOMES AVAILABLE TO A POSSESSOR OF LAND ALREADY HELD TO BE IN PRIVATE OWNERSHIP AND ONLY AFTER SUCH POSSESSOR COMPLIES WITH THE REQUISITE TERMS OF

ORDINARY OR EXTRAORDINARY PRESCRIPTION.— Section 14(2) of the PRD will apply only after the land is deemed to be "private" or has passed through one of the modes of grant and acquisition under the PLA, and after the requisite time of possession has passed, counted from the time the land is deemed or recognized to be private. In short, Section 14(2) of the PRD only becomes available ***to a possessor*** of land already held or deemed to be in private ownership and only after such possessor complies with the requisite terms of ordinary or extraordinary prescription. In considering compliance with the required possession, possession prior to the declaration of alienability cannot of course be recognized or given legal effect x x x.

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

1. POLITICAL LAW; 1987 CONSTITUTION; PROVIDES FOR PROVISIONS THAT SHOULD BE CONSIDERED IN DETERMINING WHETHER THE PRESUMPTION WOULD BE THAT THE LAND IS PART OF THE PUBLIC DOMAIN OR NOT OF THE PUBLIC DOMAIN.— I do not agree that all lands not appearing to be clearly within private ownership are presumed to belong to the State or that lands remain part of the public domain if the State does not reclassify or alienate it to a private person. These presumptions are expressions of the Regalian Doctrine. Our present Constitution does not contain the term, "regalian doctrine." What we have is Article XII, Section 2 x x x. There is no suggestion in this section that the presumption in absolutely all cases is that all lands are public. Clearly, the provision mentions only that "all lands of the public domain" are "owned by the state." This is not the only provision that should be considered in determining whether the presumption would be that the land is part of the "public domain" or "not of the public domain." Article III, Section 1 of the Constitution x x x protects all types of property. It does not limit its provisions to property that is already covered by a form of paper title. Verily, there could be land, considered as property, where ownership has vested as a result of either possession or prescription, but still, as yet, undocumented.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); THE TITLING PROCEDURE DOES NOT VEST OR CREATE

TITLE.— [T]he titling procedures under Property Registration Decree do not vest or create title. The Property Registration Decree simply recognizes and documents ownership and provides for the consequences of issuing paper titles.

3. ID.; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES; TIME IMMEMORIAL POSSESSION, CONSTRUED.— "[T]ime immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land." This is an interpretation in *Cariño v. Insular Government* of the earlier version of Article III, Section 1 in the McKinley's Instructions. The case clarified that the Spanish sovereign's concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
The Solicitor General for respondent.

RESOLUTION

BERSAMIN, *J.*:

For our consideration and resolution are the motions for reconsideration of the parties who both assail the decision promulgated on April 29, 2009, whereby we upheld the ruling of the Court of Appeals (CA) denying the application of the petitioners for the registration of a parcel of land situated in *Barangay* Tibig, Silang, Cavite on the ground that they had not established by sufficient evidence their right to the registration in accordance with either Section 14(1) or Section 14(2) of Presidential Decree No. 1529 (*Property Registration Decree*).

Antecedents

The property subject of the application for registration is a parcel of land situated in Barangay Tibig, Silang Cavite, more

particularly identified as Lot 9864-A, Cad-452-D, with an area of 71,324-square meters. On February 20, 1998, applicant Mario Malabanan, who had purchased the property from Eduardo Velazco, filed an application for land registration covering the property in the Regional Trial Court (RTC) in Tagaytay City, Cavite, claiming that the property formed part of the alienable and disposable land of the public domain, and that he and his predecessors-in-interest had been in open, continuous, uninterrupted, public and adverse possession and occupation of the land for more than 30 years, thereby entitling him to the judicial confirmation of his title.[1]

To prove that the property was an alienable and disposable land of the public domain, Malabanan presented during trial a certification dated June 11, 2001 issued by the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR), which reads:

> This is to certify that the parcel of land designated as Lot No. 9864 Cad 452-D, Silang Cadastre as surveyed for Mr. Virgilio Velasco located at *Barangay* Tibig, Silang, Cavite containing an area of 249,734 sq. meters as shown and described on the Plan Ap-04-00952 is verified to be within the Alienable or Disposable land per Land Classification Map No. 3013 established under Project No. 20-A and approved as such under FAO 4-1656 on March 15, 1982.[2]

After trial, on December 3, 2002, the RTC rendered judgment granting Malabanan's application for land registration, disposing thusly:

> WHEREFORE, this Court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as Property Registration Law, the lands described in Plan Csd-04-0173123-D, Lot 9864-A and containing an area of Seventy One Thousand Three Hundred Twenty Four (71,324) Square Meters, as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced

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[1] *Rollo,* pp. 16-17.

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

in the name of MARIO MALABANAN, who is of legal age, Filipino, widower, and with residence at Munting Ilog, Silang, Cavite.

Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.

SO ORDERED.[3]

The Office of the Solicitor General (OSG) appealed the judgment to the CA, arguing that Malabanan had failed to prove that the property belonged to the alienable and disposable land of the public domain, and that the RTC erred in finding that he had been in possession of the property in the manner and for the length of time required by law for confirmation of imperfect title.

On February 23, 2007, the CA promulgated its decision reversing the RTC and dismissing the application for registration of Malabanan. Citing the ruling in *Republic v. Herbieto* (*Herbieto*),[4] the CA declared that under Section 14(1) of the *Property Registration Decree*, any period of possession prior to the classification of the land as alienable and disposable was inconsequential and should be excluded from the computation of the period of possession. Noting that the CENRO-DENR certification stated that the property had been declared alienable and disposable only on March 15, 1982, Velazco's possession prior to March 15, 1982 could not be tacked for purposes of computing Malabanan's period of possession.

Due to Malabanan's intervening demise during the appeal in the CA, his heirs elevated the CA's decision of February 23, 2007 to this Court through a petition for review on *certiorari*.

The petitioners assert that the ruling in *Republic v. Court of Appeals and Corazon Naguit*[5] (*Naguit*) remains the controlling doctrine especially if the property involved is agricultural land. In this regard, *Naguit* ruled that any possession

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[3] *Id.* at 87.

[4] G.R. No. 156117, May 26, 2005, 459 SCRA 183.

[5] G.R. No. 144057, January 17, 2005, 448 SCRA 442.

of agricultural land prior to its declaration as alienable and disposable could be counted in the reckoning of the period of possession to perfect title under the *Public Land Act* (Commonwealth Act No. 141) and the *Property Registration Decree*. They point out that the ruling in *Herbieto*, to the effect that the declaration of the land subject of the application for registration as alienable and disposable should also date back to June 12, 1945 or earlier, was a mere *obiter dictum* considering that the land registration proceedings therein were in fact found and declared void *ab initio* for lack of publication of the notice of initial hearing.

The petitioners also rely on the ruling in *Republic v. T.A.N. Properties, Inc.*[6] to support their argument that the property had been *ipso jure* converted into private property by reason of the open, continuous, exclusive and notorious possession by their predecessors-in-interest of an alienable land of the public domain for more than 30 years. According to them, what was essential was that the property had been "converted" into private property through prescription at the time of the application without regard to whether the property sought to be registered was previously classified as agricultural land of the public domain.

As earlier stated, we denied the petition for review on *certiorari* because Malabanan failed to establish by sufficient evidence possession and occupation of the property on his part and on the part of his predecessors-in interest since June 12, 1945, or earlier.

Petitioners' Motion for Reconsideration

In their motion for reconsideration, the petitioners submit that the mere classification of the land as alienable or disposable should be deemed sufficient to convert it into patrimonial property of the State. Relying on the rulings in *Spouses De Ocampo v. Arlos*,[7] *Menguito v. Republic*[8] and *Republic v. T.A.N.*

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[6] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

[7] G.R. No. 135527, October 19, 2000, 343 SCRA 716.

[8] G.R. No. 134308, December 14, 2000, 348 SCRA 128.

Properties, Inc.,[9] they argue that the reclassification of the land as alienable or disposable opened it to acquisitive prescription under the *Civil Code*; that Malabanan had purchased the property from Eduardo Velazco believing in good faith that Velazco and his predecessors-in-interest had been the real owners of the land with the right to validly transmit title and ownership thereof; that consequently, the ten-year period prescribed by Article 1134 of the *Civil Code*, in relation to Section 14(2) of the *Property Registration Decree*, applied in their favor; and that when Malabanan filed the application for registration on February 20, 1998, he had already been in possession of the land for almost 16 years reckoned from 1982, the time when the land was declared alienable and disposable by the State.

The Republic's Motion for Partial Reconsideration

The Republic seeks the partial reconsideration in order to obtain a clarification with reference to the application of the rulings in *Naguit* and *Herbieto*.

Chiefly citing the dissents, the Republic contends that the decision has enlarged, by implication, the interpretation of Section 14(1) of the *Property Registration Decree* through judicial legislation. It reiterates its view that an applicant is entitled to registration only when the land subject of the application had been declared alienable and disposable since June 12, 1945 or earlier.

Ruling

We deny the motions for reconsideration.

In reviewing the assailed decision, we consider to be imperative to discuss the different classifications of land in relation to the existing applicable land registration laws of the Philippines.

Classifications of land according to ownership

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[9] *Supra* note 6.

Land, which is an immovable property,[10] may be classified as either of public dominion or of private ownership.[11] Land is considered of public dominion if it either: (*a*) is intended for public use; or (*b*) belongs to the State, without being for public use, and is intended for some public service or for the development of the national wealth.[12] Land belonging to the State that is not of such character, or although of such character but no longer intended for public use or for public service forms part of the patrimonial property of the State.[13] Land that is other than part of the patrimonial property of the State, provinces, cities and municipalities is of private ownership if it belongs to a private individual.

Pursuant to the Regalian Doctrine (*Jura Regalia*), a legal concept first introduced into the country from the West by Spain through the Laws of the Indies and the *Royal Cedulas*,[14] all lands of the public domain belong to the State.[15] This means that the State is the source of any asserted right to ownership of land, and is charged with the conservation of such patrimony.[16] All lands not appearing to be clearly under private ownership are presumed to belong to the State. Also, public lands remain part of the inalienable land of the public domain unless the State is shown to have reclassified or alienated them to private persons.[17]

Classifications of public lands according to alienability

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[10] Article 415(1), *Civil Code*.

[11] Article 419, *Civil Code*.

[12] Article 420, *Civil Code*.

[13] Article 421, *Civil Code*.

[14] *Cruz v. Secretary of Environment and Natural Resources*, G.R. No. 135385, December 6, 2000, 347 SCRA 128, 165.

[15] Section 2, Art. XII, 1987 Constitution.

[16] *Republic v. Intermediate Appellate Court*, No. 71285, November 5, 1987, 155 SCRA 412, 419.

[17] *Republic v. Lao*, G.R. No. 150413, July 1, 2003, 405 SCRA 291, 298.

Whether or not land of the public domain is alienable and disposable primarily rests on the classification of public lands made under the Constitution. Under the 1935 Constitution,[18] lands of the public domain were classified into three, namely, agricultural, timber and mineral.[19] Section 10, Article XIV of the 1973 Constitution classified lands of the public domain into seven, specifically, agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing land, with the reservation that the law might provide other classifications. The 1987 Constitution adopted the classification under the 1935 Constitution into agricultural, forest or timber, and mineral, but added national parks.[20] Agricultural lands may be further classified by law according to the uses to which they may be devoted.[21] The identification of lands according to their legal classification is done exclusively by and through a positive act of the Executive Department.[22]

Based on the foregoing, the Constitution places a limit on the type of public land that may be alienated. Under Section 2, Article XII of the 1987 Constitution, only agricultural lands

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[18] 1935 Constitution, Art. XIII, Sec. 1.

[19] *Krivenko v. Register of Deeds of Manila,* 79 Phil. 461, 468 (1947).

[20] Section 3 of Article XII, 1987 Constitution states:

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

[21] *Id*.

[22] *See* Bernas, *The 1987 Constitution,* 2009 Ed., pp. 1188-1189.

of the public domain may be alienated; all other natural resources may not be.

Alienable and disposable lands of the State fall into two categories, to wit: (*a*) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the *Civil Code*,[23] without limitation; and (*b*) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural. Consequently, lands classified as forest or timber, mineral, or national parks are not susceptible of alienation or disposition unless they are reclassified as agricultural.[24] A positive act of the Government is necessary to enable such reclassification,[25] and the exclusive prerogative to classify public lands under existing laws is vested in the Executive Department, not in the courts.[26] If, however, public land will be classified as neither agricultural, forest or timber, mineral or national park, or when public land is no longer intended for public service or for the development of the national wealth, thereby effectively removing the land from the ambit of public dominion, a declaration of such conversion must be made in the form of a law duly enacted by Congress or by a Presidential proclamation in cases where the President is duly authorized by law to that effect.[27] Thus, until the Executive Department exercises its prerogative to classify or reclassify lands, or until Congress or the President declares that the State no longer intends the land to be used for public

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[23] Article 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively. (345a)

[24] *Director of Forestry v. Villareal*, G.R. No. L-32266, February 27, 1989, 170 SCRA 598, 608-609.

[25] *Heirs of Jose Amunategui v. Director of Forestry*, G.R. No. L-27873, November 29, 1983, 126 SCRA 69, 75.

[26] *Director of Lands v. Court of Appeals*, G.R. No. 58867, June 22, 1984, 129 SCRA 689, 692.

[27] *Republic v. Court of Appeals*, G.R. No. 127060, November 19, 2002, 392 SCRA 190, 201.

service or for the development of national wealth, the Regalian Doctrine is applicable.

Disposition of alienable public lands

Section 11 of the *Public Land Act* (CA No. 141) provides the manner by which alienable and disposable lands of the public domain, *i.e.*, agricultural lands, can be disposed of, to wit:

> Section 11. Public lands suitable for agricultural purposes **can be disposed of only as follows, and not otherwise**:
>
> (1) For homestead settlement;
>
> (2) By sale;
>
> (3) By lease; and
>
> (4) By confirmation of imperfect or incomplete titles;
>
> [a] By judicial legalization; or
>
> [b] By administrative legalization (free patent).

The core of the controversy herein lies in the proper interpretation of Section 11(4), in relation to Section 48(b) of the *Public Land Act*, which expressly requires possession by a Filipino citizen of the land since June 12, 1945, or earlier, *viz*:

> Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:
>
> xxx xxx xxx
>
> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the applications for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have

performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Bold emphasis supplied)

Note that Section 48(b) of the Public Land Act used the words "*lands of the public domain*" or "*alienable and disposable lands of the public domain*" to clearly signify that lands otherwise classified, *i.e.*, mineral, forest or timber, or national parks, and lands of patrimonial or private ownership, are outside the coverage of the *Public Land Act*. What the law does not include, it excludes. The use of the descriptive phrase "*alienable and disposable*" further limits the coverage of Section 48(b) to only the agricultural lands of the public domain as set forth in Article XII, Section 2 of the 1987 Constitution. Bearing in mind such limitations under the *Public Land Act*, the applicant must satisfy the following requirements in order for his application to come under Section 14(1) of the *Property Registration Decree*,[28] to wit:

1. The applicant, by himself or through his predecessor-in-interest, has been in possession and occupation of the property subject of the application;
2. The possession and occupation must be open, continuous, exclusive, and notorious;
3. The possession and occupation must be under a *bona fide* claim of acquisition of ownership;
4. The possession and occupation must have taken place since June 12, 1945, or earlier; and
5. The property subject of the application must be an agricultural land of the public domain**.**

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[28] Section 14. *Who may apply*. – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

x x x x x x x x x

Taking into consideration that the Executive Department is vested with the authority to classify lands of the public domain, Section 48(b) of the *Public Land Act*, in relation to Section 14(1) of the *Property Registration Decree*, presupposes that the land subject of the application for registration must have been already classified as agricultural land of the public domain in order for the provision to apply. Thus, absent proof that the land is already classified as agricultural land of the public domain, the Regalian Doctrine applies, and overcomes the presumption that the land is alienable and disposable as laid down in Section 48(b) of the *Public Land Act*. However, emphasis is placed on the requirement that the classification required by Section 48(b) of the *Public Land Act* is classification or reclassification of a public land as agricultural.

The dissent stresses that the classification or reclassification of the land as alienable and disposable agricultural land should likewise have been made on June 12, 1945 or earlier, because any possession of the land prior to such classification or reclassification produced no legal effects. It observes that the fixed date of June 12, 1945 could not be minimized or glossed over by mere judicial interpretation or by judicial social policy concerns, and insisted that the full legislative intent be respected.

We find, however, that the choice of June 12, 1945 as the reckoning point of the requisite possession and occupation was the sole prerogative of Congress, the determination of which should best be left to the wisdom of the lawmakers. Except that said date qualified the period of possession and occupation, no other legislative intent appears to be associated with the fixing of the date of June 12, 1945. Accordingly, the Court should interpret only the plain and literal meaning of the law as written by the legislators.

Moreover, an examination of Section 48(b) of the *Public Land Act* indicates that Congress prescribed no requirement that the land subject of the registration should have been classified as agricultural since June 12, 1945, or earlier. As such, the applicant's imperfect or incomplete title is derived only from possession and occupation since June 12, 1945, or

earlier. This means that the character of the property subject of the application as alienable and disposable agricultural land of the public domain determines its eligibility for land registration, not the ownership or title over it. Alienable public land held by a possessor, either personally or through his predecessors-in-interest, openly, continuously and exclusively during the prescribed statutory period is converted to private property by the mere lapse or completion of the period.[29] In fact, by virtue of this doctrine, corporations may now acquire lands of the public domain for as long as the lands were already converted to private ownership, by operation of law, as a result of satisfying the requisite period of possession prescribed by the *Public Land Act*.[30] It is for this reason that the property subject of the application of Malabanan need not be classified as alienable and disposable agricultural land of the public domain for the entire duration of the requisite period of possession.

To be clear, then, the requirement that the land should have been classified as alienable and disposable agricultural land at the time of the application for registration is necessary only to dispute the presumption that the land is inalienable.

The declaration that land is alienable and disposable also serves to determine the point at which prescription may run against the State. The imperfect or incomplete title being confirmed under Section 48(b) of the *Public Land Act* is title that is acquired by reason of the applicant's possession and occupation of the alienable and disposable agricultural land of the public domain. Where all the necessary requirements for a grant by the Government are complied with through actual physical, open, continuous, exclusive and public possession of an alienable and disposable land of the public domain, the possessor is deemed to have acquired by operation of law not only a right

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[29] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73002, December 29, 1986, 146 SCRA 509, 518. See also the dissenting opinion of Justice Teehankee in *Manila Electric Company v. Judge Castro-Bartolome*, G.R. No. L-49623, June 29, 1982, 114 SCRA 799, 813.

[30] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73002, December 29, 1986, 146 SCRA 509, 521.

to a grant, but a grant by the Government, because it is not necessary that a certificate of title be issued in order that such a grant be sanctioned by the courts.[31]

If one follows the dissent, the clear objective of the *Public Land Act* to adjudicate and quiet titles to unregistered lands in favor of qualified Filipino citizens by reason of their occupation and cultivation thereof for the number of years prescribed by law[32] will be defeated. Indeed, we should always bear in mind that such objective still prevails, as a fairly recent legislative development bears out, when Congress enacted legislation (Republic Act No. 10023)[33] in order to liberalize stringent requirements and procedures in the adjudication of alienable public land to qualified applicants, particularly residential lands, subject to area limitations.[34]

On the other hand, if a public land is classified as no longer intended for public use or for the development of national wealth

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[31] *Susi v. Razon and Director of Lands,* 48 Phil. 424, 428 (1925); *Santos v. Court of Appeals,* G.R. No. 90380, September 13, 1990, 189 SCRA 550, 560; *Cruz v. Navarro,* G.R. No. L-27644, November 29, 1973, 54 SCRA 109, 115.

[32] x x x WHEREAS, it has always been the policy of the State to hasten the settlement, adjudication and quieting of titles to unregistered lands including alienable and disposable lands of the public domain in favor of qualified Filipino citizens who have acquired inchoate, imperfect and incomplete titles thereto by reason of their open, continuous, exclusive and notorious occupation and cultivation thereof under *bona fide* claim of acquisition of ownership for a number of years prescribed by law; x x x (Presidential Decree 1073)

[33] *An Act Authorizing the Issuance of Free Patents to Residential Lands* (Approved on March 9, 2010).

[34] Republic Act No. 10023 reduces the period of eligibility for titling from 30 years to 10 years of untitled public alienable and disposable lands which have been zoned as residential; and enables the applicant to apply with the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources having jurisdiction over the parcel subject of the application, provided the land subject of the application should not exceed 200 square meters if it is in a highly urbanized city, 500 meters in other cities, 750 meters in first-class and second-class municipalities, and 1,000 meters in third-class municipalities.

by declaration of Congress or the President, thereby converting such land into patrimonial or private land of the State, the applicable provision concerning disposition and registration is no longer Section 48(b) of the *Public Land Act* but the *Civil Code*, in conjunction with Section 14(2) of the *Property Registration Decree*.[35] As such, prescription can now run against the State.

To sum up, we now observe the following rules relative to the disposition of public land or lands of the public domain, namely:

(1) As a general rule and pursuant to the Regalian Doctrine, all lands of the public domain belong to the State and are inalienable. Lands that are not clearly under private ownership are also presumed to belong to the State and, therefore, may not be alienated or disposed;

(2) The following are excepted from the general rule, to wit:

(a) Agricultural lands of the public domain are rendered alienable and disposable through any of the exclusive modes enumerated under Section 11 of the *Public Land Act*. If the mode is judicial confirmation of imperfect title under Section 48(b) of the *Public Land Act*, the agricultural land subject of the application needs only to be classified as alienable and disposable as of the time of the application, provided the applicant's possession and occupation of the land dated back to June 12, 1945, or earlier. Thereby, a conclusive presumption that the applicant has performed all the conditions essential to a government grant arises,[36] and the applicant becomes the owner

[35] Section 14. *Who may apply*. – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

x x x x x x x x x

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

[36] *Republic v. Intermediate Appellate Court*, G.R. No. 75042, November 29, 1988, 168 SCRA 165, 174.

of the land by virtue of an imperfect or incomplete title. By legal fiction, the land has already ceased to be part of the public domain and has become private property.[37]

(b) Lands of the public domain subsequently classified or declared as no longer intended for public use or for the development of national wealth are removed from the sphere of public dominion and are considered converted into patrimonial lands or lands of private ownership that may be alienated or disposed through any of the modes of acquiring ownership under the *Civil Code*. If the mode of acquisition is prescription, whether ordinary or extraordinary, proof that the land has been already converted to private ownership prior to the requisite acquisitive prescriptive period is a condition *sine qua non* in observance of the law (Article 1113, *Civil Code*) that property of the State not patrimonial in character shall not be the object of prescription.

To reiterate, then, the petitioners failed to present sufficient evidence to establish that they and their predecessors-in-interest had been in possession of the land since June 12, 1945. Without satisfying the requisite character and period of possession – possession and occupation that is open, continuous, exclusive, and notorious since June 12, 1945, or earlier – the land cannot be considered *ipso jure* converted to private property even upon the subsequent declaration of it as alienable and disposable. Prescription never began to run against the State, such that the land has remained ineligible for registration under Section 14(1) of the *Property Registration Decree*. Likewise, the land continues to be ineligible for land registration under Section 14(2) of the *Property Registration Decree* unless Congress enacts a law or the President issues a proclamation declaring the land as no longer intended for public service or for the development of the national wealth.

[37] Dissenting opinion of Justice Teehankee in *Manila Electric Company v. Castro-Bartolome, supra*, note 29.

WHEREFORE, the Court **DENIES** the petitioners' Motion for Reconsideration and the respondent's Partial Motion for Reconsideration for their lack of merit.

SO ORDERED.

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

Leonardo-de Castro, J., submitted her vote joining the separate opinion of *J. Brion.*

Brion, J., in the result: see separate opinion.

Leonen, J., see separate concurring and dissenting opinion.

Velasco, Jr., J., no part due to relationship to a party.

SEPARATE OPINION

BRION, *J.*:

Prefatory Statement

This Separate Opinion maintains my view that, ***on the merits***, the petition should be denied, as the petitioners, Heirs of Mario Malabanan, failed to establish that they and their predecessors-in-interest have a right to the property applied for through either ordinary or extraordinary prescription. ***I share this view with the majority***; hence, the Court is ***unanimous in the result*** in resolving the issue presented to us for our resolution.

As lawyers and Court watchers know, "unanimity in the result" carries a technical meaning and implication in the lawyers' world; the term denotes that differing views exist within the Court to support the conclusion they commonly reached. The differences may be in the modality of reaching the unanimous result, or there may just be differences in views on matters discussed within the majority opinion. A little of both exists in arriving at the Court's present result, although the latter type of disagreement predominates.

This Separate Opinion is submitted to state for the record my own (and of those agreeing with me) view on the question of *how Section 48(b) of the Public Land Act and Section 14(1) and (2) of the PRD should operate, particularly in relation with one another, with the Constitution and with the Civil Code provisions on property and prescription.*

A critical point I make relates to what I call the majority's "absurdity argument" that played a major part in our actual deliberations. The argument, to me, points to insufficiencies in our laws that the Court wishes to rectify in its perennial quest "to do justice." I firmly believe though that any insufficiency there may be – particularly one that relates to the continuing wisdom of the law – is for the Legislature, not for this Court, to correct in light of our separate and mutually exclusive roles under the Constitution. The Court may be all-powerful within its own sphere, but the rule of law, specifically, the supremacy of the Constitution, dictates that we recognize our own limitations and that we desist when a problem already relates to the wisdom of the law before us. All we can do is point out the insufficiency, if any, for possible legislative or executive action. It is largely in this sense that I believe our differing views on the grant and disposition of lands of the public domain should be written and given the widest circulation.

I wrap up this Prefatory Statement with a cautionary note on how the discussions in this Resolution should be read and appreciated. Many of the divergent views expressed, both the majority's and mine, are not completely necessary for the resolution of the direct issues submitted to us; thus, they are, under the given facts of the case and the presented and resolved issues, mostly ***obiter dicta.*** On my part, I nevertheless present them for the reason I have given above, and as helpful aid for the law practitioners and the law students venturing into the complex topic of public land grants, acquisitions, and ownership.

Preliminary Considerations

As a preliminary matter, I submit that:

1. **the hierarchy of applicable laws must be given full application in considering lands of the public domain**. Foremost in the hierarchy is the Philippine Constitution (particularly its Article XII), followed by the applicable special laws — Commonwealth Act No. 141 or the Public Land Act (*PLA*) and Presidential Decree (*PD*) No. 1529 or the Property Registration Decree (*PRD*). The Civil Code and other general laws apply suppletorily and to the extent called for by the primary laws; and

2. the *ponencia's* ruling that the ***classification of public lands*** as alienable and disposable ***does not need to date back to June 12, 1945*** or earlier is ***incorrect*** because:

a. under the Constitution's Regalian Doctrine,[1] ***classification is a required step*** whose full import should be given full effect and recognition. The legal recognition of *possession prior to classification* runs counter to, and effectively weakens, the Regalian Doctrine;

b. the terms of the PLA ***only find full application from the time a land of the public domain is classified as agricultural and declared alienable and disposable***. Thus, the possession required under Section 48(b) of this law cannot be recognized prior to the required classification and declaration;

c. under the Civil Code, "[o]nly things and rights which are susceptible of being appropriated may be the object of possession."[2] ***Prior to the classification of a public land as alienable and disposable, a land of the public domain cannot be appropriated,*** hence, any claimed possession prior to classification cannot have legal effects;

d. there are ***other modes*** of acquiring alienable and disposable lands of the public domain under the PLA. This legal reality renders the *ponencia's* absurdity argument misplaced; and

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[1] CONSTITUTION, Article XII, Section 2.

[2] CIVIL CODE, Article 530.

e. the alleged absurdity of the law addresses the ***wisdom of the law and is a matter for the Legislature***, not for this Court, to address.

In these lights, I submit that ***all previous contrary rulings*** (particularly, *Republic of the Phils. v. Court of Appeals [Naguit]*[3]) should – *in the proper case* – be abandoned and rejected for being based on legally-flawed premises and as *aberrations in land registration jurisprudence*.

I. THE LAWS AFFECTING PUBLIC LANDS

I likewise submit the following short overview as an aide memoire in understanding our basic public land laws.

A. The Overall Scheme at a Glance

1. *The Philippine Constitution*

The Philippine Constitution is the fountainhead of the laws and rules relating to lands of the public domain in the Philippines. It starts with the postulate that ***all lands of the public domain – classified into agricultural, forests or timber, mineral lands and national parks – are owned by the State***.[4] This principle states the **Regalian Doctrine**, and classifies land ***according to its nature and alienability***.

By way of **exception** to the Regalian Doctrine, the Constitution also expressly states that "[w]ith the exception of agricultural lands [which may be further classified by law according to the uses to which they may be devoted],[5] all other natural resources shall not be alienated."[6] ***Alienable lands of the public domain shall be limited to agricultural lands***.[7]

2. *The Public Land Act*

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[3] 489 Phil. 405 (2005).

[4] CONSTITUTION, Article XII, Sections 2 and 3.

[5] CONSTITUTION, Article XII, Section 3.

[6] CONSTITUTION, Article XII, Section 2.

[7] CONSTITUTION, Article XII, Section 3.

How and to what extent agricultural lands of the public domain may be alienated and may pass into private or non-State hands are determined under the **PLA, *which governs the classification, grant, and disposition of alienable and disposable lands of the public domain and, other than the Constitution, is the country's primary substantive law on the matter***.

As a rule, alienation and disposition of lands of the public domain are exercises in determining:

a. ***whether a public land is or has been classified as agricultural*** (in order to take the land out of the mass of lands of the public domain that, by the terms of the Constitution, is inalienable);

b. ***once classified as agricultural, whether it has been declared by the State to be alienable and disposable.*** To reiterate, even agricultural lands, prior to their declaration as alienable, are part of the inalienable lands of the public domain; and

c. ***whether the terms of classification, alienation or disposition have been complied with***. In a **confirmation of imperfect title**, there must be possession since June 12, 1945 or earlier, in an open, continuous, exclusive and notorious manner, by the applicant himself or by his predecessor-in-interest, of public agricultural land that since that time has been declared alienable and disposable, as clearly provided under PD No. 1073.

The Civil Code provides that "*[o]nly things and rights which are susceptible of being appropriated may be the object of possession.*"[8] Prior to the classification of a public land as alienable and disposable, a land of the public domain cannot be appropriated, hence, any claimed possession cannot have legal effects;

d. ***upon compliance with the required period and character of possession of alienable public agricultural land, the possessor acquires ownership,*** thus converting the land to one of private ownership and entitling the applicant-possessor to confirmation of title under Section 48(b) of the PLA and registration under Section 14(1) of the PRD.

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[8] CIVIL CODE, Article 530.

3. ***Classification under the Civil Code***

Separately from the classification according to the nature of land under the Constitution, *another system of classification of property* is provided under the **Civil Code.**

The ***Civil Code classifies property*** (as a *general term, compared to land* which is only a species of property, labeled under the Civil Code as immovable property[9]) ***in relation with the person to whom it belongs***.[10]

Property under the Civil Code may belong to the **public dominion** (or property pertaining to the State for *public use, for public service or for the development of the national wealth*)[11] or it may be of **private ownership** (which classification includes **patrimonial property** or property held ***in private ownership*** by the State).[12] Significantly, the Civil Code expressly provides that "*[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.*"[13]

What is otherwise a simple classification from the point of view of the person owning it, assumes a measure of complexity ***when the property is land of the public domain***, as the Constitution, in unequivocal terms, requires classification and declarations on the ***means and manner of granting, alienating, disposing, and acquiring*** lands of the public domain that all originally belong to the State under the Regalian Doctrine.

In a reconciled consideration of the ***Constitution and the Civil Code classifications***, made necessary because they have their respective independent focuses and purposes, certain realities will have to be recognized or deduced:

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[9] CIVIL CODE, Article 414.

[10] CIVIL CODE, Article 419.

[11] CIVIL CODE, Article 420; Arturo Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume II – Property (1992 ed.), p. 30.

[12] CIVIL CODE, Articles 421 and 422.

[13] CIVIL CODE, Article 422.

First. As a ***first principle***, in case of any conflict, the terms of the Constitution prevail. No *ifs* and *buts* can be admitted with respect to this recognition, as the Constitution is supreme over any other law or legal instrument in the land.

Second. A necessary ***corollary*** to the first principle is that all ***substantive considerations*** of land ownership, alienation, or disposition must always take into account the constitutional requirements.

Third. The classification and the requirements under the Constitution and under the Civil Code may ***overlap*** without any resulting violation of the Constitution.

A piece of land may fall under both classifications (*i.e.*, under the constitutional classification *based on the legal nature of the land and alienability*, and under the civil law classification *based on the ownership of the land*). This can best be appreciated in the discussion below, under the topic ***"The PLA, the Civil Code and Prescription."***[14]

4. *Prescription under the Civil Code*

Prescription is essentially a ***civil law term*** and is a mode of acquiring ownership provided under the Civil Code,[15] but is not mentioned as one of the modes of acquiring ownership of alienable public lands of the public domain under the PLA.[16]

A point of distinction that should be noted is that the PLA, under its Section 48(b), provides for a system that allows ***possession since June 12, 1945 or earlier*** to ripen into ownership. *The PLA, however, does not refer to this mode as acquisitive prescription but* ***as basis for confirmation of title****, and requires a specified period of possession of alienable agricultural land, not the periods for ordinary or extraordinary prescription required under the Civil Code.* Ownership that vests ***under Section 48(b) of the PLA*** can be registered under ***Section 14(1) of the PRD.***

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[14] See: discussion below at p. 17 hereof.

[15] See Civil Code, Articles 712 and 1106.

[16] PLA, Section 11.

The PRD, under its Section 14(2), recognizes that registration of title can take place as soon as ownership over private land has vested due to prescription – "[t]hose who have acquired ownership of private lands by prescription under the provisions of existing laws." Thus, prescription was introduced into the PRD land registration scheme but not into the special law governing the grant and alienation of lands of the public domain, *i.e.*, the PLA.

An important provision that should not be missed in considering prescription is **Article 1108** of the Civil Code, which states that ***prescription does not run against the State and its subdivisions***. **Article 1113** of the Civil Code is a companion provision stating that "*[a]ll things which are within the commerce of men are susceptible of prescription, unless otherwise provided.* ***Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription***."

The above-cited rules express civil law concepts, but their results are effectively replicated in the scheme governing lands of the public domain since these lands, by constitutional fiat, cannot be alienated and are thus outside the commerce of man, except under the rigid terms of the Constitution and the PLA. For example, confirmation of imperfect title – the possession-based rule under the PLA – can only take place with respect to agricultural lands already declared alienable and possessed for the required period (since June 12, 1945 or earlier).

5. *The PRD*

The PRD was issued in 1978 to update the ***Land Registration Act*** (Act No. 496) and ***relates solely to the registration of property***. The law does not provide the means for acquiring title to land; it refers solely to the means or procedure of registering and rendering indefeasible title already acquired.

The PRD mainly governs the registration of lands and places them under the Torrens System. ***It does not, by itself, create***

title nor vest one. It simply confirms a title already created and already vested, rendering it forever indefeasible.[17]

In a side by side comparison, the ***PLA is the substantive law*** that classifies and provides for the disposition of alienable lands of the public domain. On the other hand, the ***PRD refers to the manner of bringing registerable title to lands, among them, alienable public lands, within the coverage of the Torrens system***; in terms of substantive content, the PLA must prevail.[18] ***On this consideration, only land of the public domain that has passed into private ownership under the terms of the PLA can be registered under the PRD.***

II. THE CASE AND THE ANTECEDENT FACTS

The Case.

Before the Court are the ***motions*** separately filed by the petitioners and by the respondent Republic of the Philippines, both of them seeking ***reconsideration*** of the Court's **Decision dated April 29, 2009** which denied the petitioners' petition for review on *certiorari* under Rule 45 of the Rules of Court.

The Underlying Facts

The present case traces its roots to the land registration case instituted by the petitioners' predecessor, Mario Malabanan (*Malabanan*). On February 20, 1998, Malabanan filed an

[17] Oswaldo D. Agcaoili, *Property Registration Decree and Related Laws* (2006 ed.), pp. 14-15.

[18] Substantive law is that which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action, that part of the law which courts are established to administer, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion (*Primicias v. Ocampo, etc., et al.*, 93 Phil. 446). It is the nature and the purpose of the law which determine whether it is substantive or procedural, and not its place in the statute, or its inclusion in a code (Florenz D. Regalado, *Remedial Law Compendium*, Volume I [Ninth Revised Edition], p. 19). Note that Section 51 of the PLA refers to the Land Registration Act (the predecessor law of the PRD) on how the Torrens title may be obtained when an alienable land of public domain is acquired through the substantive right recognized under Section 48 of the PLA.

application for the registration of a 71,324-square meter land, located in *Barangay* Tibig, Silang, Cavite, with the Regional Trial Court (*RTC*) of Cavite – Tagaytay City, Branch 18.[19] Malabanan alleged that he purchased the property from Eduardo Velazco. The property was originally part of a 22-hectare land owned by Lino Velazco (*Velazco*), who was succeeded by his four sons, among them, Eduardo Velazco.[20]

Apart from his ***purchase of the property***, Malabanan anchored his registration petition on his and his predecessors-in-interest's ***open, notorious, continuous, adverse and peaceful possession of the land for more than 30 years.*** Malabanan claimed that the land is an alienable and disposable land of the public domain, presenting as proof the Certification dated June 11, 2001 of the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources. The Certification stated that the land was "verified to be within the Alienable or Disposable land per Land Classification Map No. 3013 established under Project No. 20-A and **approved** as such under FAO 4-1656 **on March 15, 1982**."[21]

The Issue Before the Court.

In their motion for reconsideration, the petitioners submit that the mere classification of the land as alienable or disposable should be deemed sufficient to convert it into patrimonial property of the State. Relying on the rulings in *Spouses de Ocampo v. Arlos*,[22] *Menguito v. Republic*,[23] and *Republic v. T.A.N. Properties, Inc.*,[24] they argue that the reclassification of the land as alienable or disposable opened it to acquisitive prescription

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[19] See *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987, April 29, 2009, 587 SCRA 172, 181.

[20] *Ibid.*

[21] *Id.* at 182; emphases and underscores ours.

[22] 397 Phil. 799 (2000).

[23] 401 Phil. 274 (2000).

[24] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

under the Civil Code; that Malabanan had purchased the property from Velazco, believing in good faith that Velazco and his predecessors-in-interest had been the real owners of the land, with the right to validly transmit title and ownership thereof; that consequently, the 10-year period prescribed by Article 1134 of the Civil Code, in relation with Section 14(2) of the PRD, applied in their favor; and that when Malabanan filed his application for registration on February 20, 1998, he had already been in possession of the land for almost 16 years, reckoned from 1982, the time when the land was declared inalienable and disposable by the State.

The respondent seeks the partial reconsideration in order to seek clarification with reference to the application of the rulings in *Naguit* and *Republic of the Phils. v. Herbieto*.[25] It reiterates its view that an applicant is entitled to registration only when the land subject of the application had been declared alienable and disposable since June 12, 1945.

As presented in the petition and the subsequent motion for reconsideration, ***the direct issue before the Court is whether there had been acquisition of title, based on ordinary or extraordinary prescription, over a land of the public domain declared alienable as of March 15, 1982***. The issue was ***not*** about *confirmation of an imperfect title* where possession started on or before June 12, 1945 since possession had not been proven to have dated back to or before that date.

The Antecedents and the Ruling under Review

On December 3, 2002, the RTC rendered judgment favoring Malabanan, approving his application for registration of the land "under the operation of Act 141, Act 496 and/or PD 1529."[26]

The respondent, represented by the Office of the Solicitor General (*OSG*), appealed the RTC decision with the Court of Appeals (*CA*). The OSG contended that Malabanan failed to prove: (1) that the property belonged to the alienable and

[25] 498 Phil. 227 (2005).

[26] *Id.* at 5.

disposable land of the public domain, and (2) that he had not been in possession of the property in the manner and for the length of time required by law for confirmation of imperfect title. During the pendency of the appeal before the CA, Malabanan died and was substituted by the petitioners.

In its decision dated February 23, 2007, the CA reversed the RTC decision and dismissed Malabanan's application for registration. Applying the Court's ruling in *Herbieto*, the CA held that "under Section 14(1) of the Property Registration Decree any period of possession prior to the classification of the lots as alienable and disposable was inconsequential and should be excluded from the computation of the period of possession."[27] Since the land was classified as alienable and disposable only on March 15, 1982, any possession prior to this date cannot be considered.

The petitioners assailed the CA decision before this Court through a petition for review on *certiorari.* On April 29, 2009, the Court denied the petition. The Court's majority (through Justice Dante Tinga) summarized its ruling as follows:

(1) In connection with Section 14(1) of the PRD, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.

(a) Since **Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession**, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the time frame imposed by Section 47 of the Public Land Act.

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[27] See *Heirs of Mario Malabanan v. Republic*, *supra* note 19, at 183.

(b) The right to register granted under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.

(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And **only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.**

(a) Patrimonial property is private property of the government. The person acquires ownership of patrimonial property by prescription under the Civil Code is entitled to secure registration thereof under Section 14(2) of the Property Registration Decree.

(b) There are two kinds of prescription by which patrimonial property may be acquired, one ordinary and other extraordinary. Under ordinary acquisitive prescription, a person acquires ownership of a patrimonial property through possession for at least ten (10) years, in good faith and with just title. Under extraordinary acquisitive prescription, a person's uninterrupted adverse possession of patrimonial property for at least thirty (30) years, regardless of good faith or just title, ripens into ownership.[28]

Based on this ruling, the majority denied the petition, but established the above rules which embody ***principles contrary to Section 48(b) of the PLA and which are not fully in accord with the concept of prescription under Section 14(2) of the PRD***, in relation with the Civil Code provisions on property and prescription.

In its ruling on the present motions for reconsideration, the *ponencia* essentially affirms the above ruling, rendering this Separate Opinion and its conclusions necessary.

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[28] *Id*. at 210-211; italics supplied, emphases ours, citation omitted.

III. DISCUSSION OF THE PRESENTED ISSUES

A. Section 48(b) of the PLA: Confirmation of Imperfect Title

Section 48(b) of the PLA is the core provision on the **confirmation of imperfect title** and must be read with its related provision in order to fully be appreciated.

Section 7 of the PLA delegates to the President the authority to administer and dispose of alienable public lands. **Section 8** sets out the public lands open to disposition or concession, and the requirement that they should be officially delimited and classified and, when practicable, surveyed. **Section 11**, a very significant provision, states that —

> Section 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:
>
> (1) For homestead settlement
> (2) By sale
> (3) By lease
> (4) ***By confirmation of imperfect or incomplete title:***
> (a) ***By judicial legalization***
> (b) By administrative legalization (free patent). [emphases ours]

Finally, **Section 48** of the PLA, on ***confirmation of imperfect title***, embodies a grant of title to the qualified occupant or possessor of an alienable public land, under the following terms:

> Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
>
> (a) Those who prior to the transfer of sovereignty from Spain to the x x x United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have[,] with or without

default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof. [emphasis ours]

Subsection (a) has now been deleted, while subsection (b) has been amended by PD No. 1073 as follows:

Section 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a [bona fide] claim of acquisition of ownership, since June 12, 1945.

Based on these provisions and a narrow reading of the "since June 12, 1945" timeline, the *ponencia* now rules that *the declaration that the land is agricultural and alienable can be made at the time of application for registration and need not be from June 12, 1945 or earlier*.[29] This conclusion follows the ruling in *Naguit* (likewise penned by Justice Tinga) that

[29] *Ponencia,* pp. 11-12.

additionally argued that reckoning the declarations from June 12, 1945 leads to absurdity.

For the reasons outlined below, I cannot agree with these positions and with the *Naguit* ruling on which it is based:

First. The constitutional and statutory reasons. The Constitution classifies public lands into agricultural, mineral, timber lands and national parks. Of these, only agricultural lands can be alienated.[30] Without the requisite classification, there can be no basis to determine which lands of the public domain are alienable and which are not. Hence, ***classification is a constitutionally-required step whose importance should be given full legal recognition and effect.***

Otherwise stated, ***without classification*** into disposable agricultural land, the land ***continues to form part of the mass of the public domain*** that, not being agricultural, must be mineral, timber land or national parks that are completely inalienable and, as such, cannot be possessed with legal effects. To recognize possession prior to any classification is to do violence to the Regalian Doctrine; the ***ownership and control*** that the Regalian Doctrine embodies will be ***less than full*** if the possession – that should be with the State as owner, but is also elsewhere without any solid legal basis – can anyway be recognized.

Note in this regard that the terms of the PLA do not find full application until a classification into alienable and disposable agricultural land of the public domain is made. In this situation, possession cannot be claimed under Section 48(b) of the PLA.

Likewise, no imperfect title can be confirmed over lands not yet classified as disposable or alienable because, in the absence of such classification, ***the land remains unclassified public land that fully belongs to the State***. This is fully supported by Sections 6, 7, 8, 9, and 10 of the PLA.[31] If the land is either

[30] CONSTITUTION, Article XII, Section 3.

[31] Section 6. The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into -

mineral, timber or national parks that cannot be alienated, it defies legal logic to recognize that possession of these unclassified lands can produce legal effects.

(a) Alienable or disposable;

(b) Timber, and

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

Section 7. For the purposes of the administration and disposition of alienable or disposable public lands, the President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time declare what lands are open to disposition or concession under this Act.

Section 8. Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so. However, the President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the National Assembly.

Section 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural

(b) Residential commercial industrial or for similar productive purposes

(c) Educational, charitable, or other similar purposes

(d) Reservations for town sites and for public and quasi-public uses.

The President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another.

Section 10. The words "alienation," "disposition," or "concession" as used in this Act, shall mean any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands.

Parenthetically, PD No. 705 or the Revised Forestry Code states that "**Those [lands of public domain] still to be classified under the present system shall continue to remain as part of the public forest."**[32] It further declares that *public forest* covers "**the mass of lands of the public domain which has not been the subject of the present system of classification** for the determination of which lands are needed for forest purposes and which are not."[33]

Thus, PD No. 705 confirms that all lands of the public domain that remain unclassified are considered as forest land.[34] As forest land, these lands of the public domain cannot be alienated until they have been reclassified as agricultural lands. For purposes of the present case, these terms confirm the position that re/classification is essential at the time possession is acquired under Section 48(b) of the PLA.

From these perspectives, the legal linkage between (1) the classification of public land as alienable and disposable and (2) effective possession that can ripen into a claim under Section 48(b) of the PLA can readily be appreciated.

The Leonen Opinion

Incidentally, Justice Marvic F. Leonen opines in his Concurring and Dissenting Opinion that the Regalian Doctrine was not incorporated in our Constitution and that "there could be land, considered as property, where ownership has vested as a result of either possession or prescription but still, as yet undocumented."[35]

I will respond to this observation that, although relating to the nature of the land applied for (land of the public domain)

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[32] PD No. 705, Section 13.

[33] PD No. 705, Section 3(a).

[34] *Secretary of the Department of Environment and Natural Resources v. Yap*, G.R. Nos. 167707 and 173775, October 8, 2008, 568 SCRA 164, 200.

[35] Concurring and Dissenting Opinion of Justice Marvic Mario Victor F. Leonen, p. 2.

and to the Regalian Doctrine, still raises aspects of these matters that are not exactly material to the direct issues presented in the present case. I respond to correct for the record and at the earliest opportunity what I consider to be an erroneous view.

The Regalian Doctrine was incorporated in all the Constitutions of the Philippines (1935, 1973 and 1987) and the statutes governing private individuals' land acquisition and registration. In his Separate Opinion in *Cruz v. Sec. of Environment and Natural Resources*,[36] former Chief Justice Reynato S. Puno made a brief yet informative historical discussion on how the Regalian Doctrine was incorporated in our legal system, especially in all our past and present organic laws. His historical disquisition was quoted in *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*[37] and the consolidated cases of *The Secretary of the DENR et al. v. Yap and Sacay et al. v. The Secretary of the DENR*,[38] which were also quoted in Justice Lucas P. Bersamin's Separate Opinion in his very brief discussion on how the doctrine was carried over from our Spanish and American colonization up until our present legal system.

Insofar as our organic laws are concerned, *La Bugal-B'laan* confirms that:

> one of the fixed and dominating objectives of the 1935 Constitutional Convention [was the nationalization and conservation of the natural resources of the country.]
>
> > There was an overwhelming sentiment in the Convention in favor of the principle of state ownership of natural resources and the adoption of the Regalian doctrine. State ownership of natural resources was seen as a necessary starting point to secure recognition of the state's power to control their disposition, exploitation, development, or utilization. The delegates [to] the Constitutional Convention very well knew that the concept of State ownership of land and natural resources was introduced by the Spaniards, however, they were not certain

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[36] 400 Phil. 904 (2000).

[37] 465 Phil. 860 (2004).

[38] *Supra* note 34.

> whether it was continued and applied by the Americans. To remove all doubts, the Convention approved the provision in the Constitution affirming the Regalian doctrine.
>
> x x x x x x x x x
>
> On January 17, 1973, then President Ferdinand E. Marcos proclaimed the ratification of a new Constitution. Article XIV on the National Economy and Patrimony contained provisions similar to the 1935 Constitution with regard to Filipino participation in the nation's natural resources. Section, 8, Article XIV thereof[.]
>
> x x x x x x x x x
>
> The 1987 Constitution retained the Regalian doctrine. The first sentence of Section 2, Article XII states: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State."[39]

In these lights, I believe that, at this point in our legal history, there can be no question that the Regalian Doctrine remains in the pure form interpreted by this Court; it has resiliently endured throughout our colonial history, was continually confirmed in all our organic laws, and is presently embodied in Section 2, Article XII of our present Constitution. Short of a constitutional amendment duly ratified by the people, the views and conclusions of this Court on the Regalian Doctrine should not and cannot be changed.

Second. The Civil Code reason. Possession is essentially a civil law term that can best be understood in terms of the Civil Code in the absence of any specific definition in the PLA, other than in terms of time of possession.[40]

Article 530 of the Civil Code provides that *"[o]nly things and rights which are susceptible of being appropriated may be the object of possession."* Prior to the declaration of

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[39] *Supra* note 37, at 903-919; citations omitted.

[40] CIVIL CODE, Article 18.

alienability, a land of the public domain cannot be appropriated; hence, any claimed possession cannot have legal effects. In fact, whether an application for registration is filed before or after the declaration of alienability becomes immaterial if, in one as in the other, no effective possession can be recognized prior to and within the proper period for the declaration of alienability.

To express this position in the form of a direct question: ***How can possession before the declaration of alienability be effective when the land then belonged to the State against whom prescription does not run?***

Third. Statutory construction and the cut-off date — June 12, 1945. The *ponencia* concludes – based on its statutory construction reasoning and reading of Section 48(b) of the PLA – that the June 12, 1945 cut-off is only required for purposes of possession and that it suffices if the land has been classified as alienable agricultural land at the time of application for registration.[41]

This cut-off date was painstakingly set by law and its full import appears from PD No. 1073 that amended Section 48(b) of the PLA. While the resulting Section 48(b) of the PLA did not expressly state what PD No. 1073 introduced in terms of exact wording, PD No. 1073 itself, as formulated, shows the intent to count the alienability from June 12, 1945. To quote the exact terms of PD No. 1073:

> Section 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to **alienable and disposable lands of the public domain** which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a [bona fide] claim of acquisition of ownership, **since June 12, 1945**. [emphases and underscores ours]

In reading this provision, it has been claimed that June 12, 1945 refers only to the required possession and not to the

[41] *Ponencia*, p. 11.

declaration of alienability of the land applied for. The terms of PD No. 1073, however, are plain and clear even from the grammatical perspective alone. The term "since June 12, 1945" is unmistakably separated by a comma from the conditions of both alienability and possession, thus, plainly showing that it refers to both alienability and possession. This construction – showing the direct, continuous and seamless linking of the alienable and disposable lands of the public domain to June 12, 1945 under the wording of the Decree – is clear and should be respected, particularly if read with the substantive provisions on ownership of lands of the public domain and the limitations that the law imposes on possession.

***Fourth*. Other modes of acquisition of lands under the PLA**. The cited *Naguit's* absurdity argument that the *ponencia* effectively adopted is more apparent than real, since the use of June 12, 1945 as cut-off date for the declaration of alienability will not render the grant of alienable public lands out of reach.

The acquisition of ownership and title may still be obtained by other modes under the PLA. Among other laws, **Republic Act (*RA*) No. 6940** allowed the use of free patents.[42] It was approved on March 28, 1990; hence, counting 30 years backwards, possession since April 1960 or thereabouts qualified a possessor to apply for a free patent.[43] Additionally, the other administrative modes provided under Section 11 of the PLA are still open, particularly, homestead settlement, sales and lease.

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[42] Section 1. Paragraph 1, Section 44, Chapter VII of Commonwealth Act No. 141, as amended, is hereby amended to read as follows:

"Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, **for at least thirty (30) years prior to the effectivity of this amendatory Act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition**, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares."

[43] Under RA No. 9176, applications for free patents may be made up to December 31, 2020.

Incidentally, the *ponencia* mentions RA No. 10023, entitled *"An Act Authorizing the Issuance of* ***Free Patents to Residential Lands,"*** in its discussions.[44] This statute, however, has no relevance to the present case because its terms apply to alienable and disposable lands of the public domain (necessarily agricultural lands under the Constitution) that have been reclassified as **residential** under Section 9(b) of the PLA.[45]

Fifth. Addressing the wisdom — or the absurdity — of the law. This Court acts beyond the limits of the constitutionally-

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[44] *Ponencia*, p. 10.

[45] Section 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural

(b) Residential commercial industrial or for similar productive purposes

(c) Educational, charitable, or other similar purposes

(d) Reservations for town sites and for public and quasi-public uses. [emphasis ours]

Note that the classification and concession of residential lands are governed by Title III of the PLA; Title II refers to agricultural lands.

The *ponente* mentioned RA No. 10023 in support of his opinion on the government's policy of adjudicating and quieting titles to unregistered lands (p. 13). He claims that the grant of public lands should be liberalized to support this policy (citing the Whereas clause of PD No. 1073, which states: "it has always been the policy of the State to hasten settlement, adjudication and quieting of title of titles to unregistered lands); thus, his interpretation that classification of the land as agricultural may be made only at the time of registration and not when possession commenced.

To be entitled to a grant under RA No. 10023, the law states:

"…the applicant thereof has, either by himself or through his predecessor-in-interest, actually resided on and continuously possessed and occupied, under a bona fide claim of acquisition of ownership, the [residential] land applied for at least ten (10) years and has complied with the requirements prescribed in Section 1 hereof…"

Notably, this requirements are not new as they are similar (except for the period) to those required under Section 48(b) of the PLA on judicial confirmation of imperfect title.

mandated separation of powers in giving Section 48(b) of the PLA, as amended by PD No. 1073, an interpretation beyond its plain wording. ***Even this Court cannot read into the law an intent that is not there even if the purpose is to avoid an absurd situation***.

If the Court believes that a law already has absurd effects because of the passage of time, its role under the principle of separation of powers is not to give the law an interpretation that is not there in order to avoid the perceived absurdity. If the Court does, it thereby intrudes into the realm of policy — a role delegated by the Constitution to the Legislature. If only for this reason, the Court should avoid expanding — through the present *ponencia* and its cited cases — the plain meaning of Section 48(b) of the PLA, as amended by PD No. 1073.

In the United States where the governing constitutional rule is likewise the separation of powers between the Legislative and the Judiciary, Justice Antonin Scalia (in the book *Reading Law* co-authored with Bryan A. Garner) made the pithy observation that:

> To the extent that people give this view any credence, the notion that judges may (even should) improvise on constitutional and statutory text enfeebles the democratic polity. As Justice John Marshall Harlan warned in the 1960s, an invitation to judicial lawmaking results inevitably in "a lessening, on the one hand, of judicial independence and, on the other, of legislative responsibility, thus polluting the bloodstream of our system of government." Why these alarming outcomes? First, when judges fashion law rather than fairly derive it from governing texts, they subject themselves to intensified political pressures – in the appointment process, in their retention, and in the arguments made to them. Second, every time a court constitutionalizes a new sliver of law – as by finding a "new constitutional right" to do this, that, or the other – that sliver becomes thenceforth untouchable by the political branches. In the American system, a legislature has no power to abridge a right that has been authoritatively held to be part of the Constitution – even if that newfound right does not appear in the text. Over the past 50 years especially, we have seen the judiciary incrementally take control of

larger and larger swaths of territory that ought to be settled legislatively.

It used to be said that judges do not "make" law – they simply apply it. In the 20th century, the legal realists convinced everyone that judges do indeed make law. To the extent that this was true, it was knowledge that the wise already possessed and the foolish could not be trusted with. It was true, that is, that judges did not really "find" the common law but invented it over time. Yet this notion has been stretched into a belief that judges "make" law through judicial interpretation of democratically enacted statutes. Consider the following statement by John P. Dawson, intended to apply to statutory law:

> It seems to us inescapable that judges should have a part in creating law – creating it as they apply it. In deciding the multifarious disputes that are brought before them, we believe that judges in any legal system invariably adapt legal doctrines to new situations and thus give them new content.

Now it is true that in a system such as ours, in which judicial decisions have a stare decisis effect, a court's application of a statute to a "new situation" can be said to establish *the law applicable to that situation* – that is, to pronounce definitively whether and how the statute applies to that situation. But establishing this retail application of the statute is probably not what Dawson meant by "creating law," "adapt[ing] legal doctrines," and "giv[ing] them new content." Yet beyond that retail application, good judges dealing with statutes do *not* make law. They do not "give new content" to the statute, but merely apply the content that has been there all along, awaiting application to myriad factual scenarios. To say that they "make law" without this necessary qualification is to invite the taffy-like stretching of words – or the ignoring of words altogether.[46]

In the Philippines, a civil law country where the Constitution is very clear on the separation of powers and the assignment of constitutional duties, I believe that this Court should be very careful in delineating the line between the ***constitutionally-allowed*** interpretation and the ***prohibited*** judicial legislation, given the powers that the 1987 Constitution has entrusted to this Court. As a Court, we are given more powers than the U.S. Supreme Court; under Section 1, Article VIII of the 1987

[46] At pp. 4-6; citations omitted.

Constitution, we are supposed to act, ***as a matter of duty,*** on any grave abuse of discretion that occurs anywhere in government. While broad, this power should nevertheless be exercised with due respect for the separation of powers doctrine that underlies our Constitution.

B. Registration under Section 14(1) and (2) of the PRD

Complementing the substance that the PLA provides are the provisions of the PRD that set out the registration of the title that has accrued under the PLA. **Section 14 of the PRD** provides:

> SEC. 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) ***Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier***.
>
> (2) ***Those who have acquired ownership of private lands by prescription under the provisions of existing laws***.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law. [emphasis and italics ours]

As mentioned earlier, the PLA is the substantive law on the grant and disposition of alienable lands of the public domain. The PRD, on the other hand, sets out the manner of bringing registrable lands, among them alienable public lands, within the coverage of the Torrens system. In this situation, in terms of substantive content, the PLA should prevail.

1. **Section 14(1) of the PRD** is practically a reiteration of Section 48(b) of the PLA, with the difference that they govern two different aspects of confirmation of imperfect title relating

to alienable lands of the public domain. The PLA has its own substantive focus, while Section 14(1) of the PRD, bearing on the same matter, defines what title may be registered. For this reason, the discussions of Section 48(b) apply with equal force, *mutatis mutandis*, to Section 14(1) of the PRD.

2. **Section 14(2) of the PRD is another matter. By its express terms, the prescription that it speaks of applies only to private lands**. Thus, on plain reading, Section 14(2) should not apply to alienable and disposable lands of the public domain that Section 14(1) covers. This is the significant difference between Sections 14(1) and 14(2). The former – Section 14(1) – is relevant when the ownership of an alienable and disposable land of the public domain vests in the occupant or possessor under the terms of Section 48(b) of the PLA, even without the registration of a confirmed title since the land *ipso jure* becomes a private land. Section 14(2), on the other hand, applies to situations when ownership of private lands vests on the basis of prescription.

The prescription that Section 14(2) of the PRD speaks of finds no application to alienable lands of the public domain – specifically, to Section 48(b) of the PLA since this provision, as revised by PD No. 1073 in January 1977, ***simply requires possession and occupation since June 12, 1945 or earlier, regardless of the period the property was occupied*** (although when PD No. 1073 was enacted in 1977, the property would have been possessed for at least 32 years by the claimant if his possession commenced exactly on June 12, 1945, or longer if possession took place earlier).

Parenthetically, my original April 29, 2009 Opinion stated that the cut-off date of June 12, 1945 appeared to be devoid of legal significance as far as the PLA was concerned. This statement notwithstanding, it should be appreciated that ***prior to PD No. 1073***, Section 48(b) of the PLA ***required a 30-year period of possession***. This 30-year period was a requirement imposed under **RA No. 1942 in June 1957**, under the following provision:

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession

and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, **for at least thirty years** immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*[.]

When PD No. 1073 was enacted in 1977, it was recognized that a claimant who had possessed the property for at least 30 years (in compliance with RA No. 1942) might not be entitled to confirmation of title under PD No. 1073 because his possession commenced only after June 12, 1945. This possibility constituted a violation of his vested rights that should be avoided. To resolve this dilemma, the Court, in *Abejaron v. Nabasa*,[47] opined that where an application has satisfied the requirements of Section 48(b) of the PLA, as amended by RA No. 1942 (prior to the effectivity of PD No. 1073), the applicant is entitled to perfect his or her title even if possession and occupation do not date back to June 12, 1945.

What this leads up to is that possession of land "for the required statutory period" becomes significant only when the claim of title is based on the amendment introduced by RA No. 1942. **The 30-year period introduced by RA No. 1942 "did not refer or call into application the Civil Code provisions on prescription."**[48] In fact, in *The Director of Lands v. IAC*[49] and the opinion of Justice Claudio Teehankee in *Manila Electric Co. v. Judge Castro-Bartolome, etc., et al.*,[50] cited by the *ponencia*,[51] both pertained to the RA No. 1942 amendment; it was in this sense that both rulings stated that mere lapse or completion of the required period converts alienable land to private property.

In sum, if the claimant is asserting his vested right under the RA No. 1942 amendment, then it would be correct to declare that the lapse of the required statutory period converts alienable

[47] 411 Phil. 552, 569-570 (2001).

[48] *Heirs of Mario Malabanan v. Republic*, *supra* note 19, at 201.

[49] 230 Phil. 590 (1986).

[50] 200 Phil. 284 (1982).

[51] *Ponencia*, p. 12.

land to private property *ipso jure*. Otherwise, if the claimant is asserting a right under the PD No. 1073 amendment, then he needs to prove possession of alienable public land as of June 12, 1945 or earlier. Although a claimant may have possessed the property for 30 years or more, if his possession commenced ***after January 24, 1947*** (the adjusted date based on *Abejaron*), the property would not be converted into private property by the mere lapse of time.

3. As a last point, the *ponencia* effectively claims[52] that the classification of property as agricultural land is only *necessary at the time of application for registration of title*.

This is completely erroneous. The act of registration merely confirms that title already exists in favor of the applicant. To require classification of the property only on application for registration point would imply that during the process of acquisition of title (specifically, during the period of possession prior to the application for registration), the property might not have been alienable for being unclassified land (or a forest land under PD No. 705) of the public domain. This claim totally contravenes the constitutional rule that only agricultural lands of the public domain may be alienated.

To translate all these arguments to the facts of the present case, the land applied for was not classified as alienable on or before June 12, 1945 and was indisputably only classified as alienable only on March 15, 1982. Under these facts, the *ponencia* still asserts that following the *Naguit* ruling, possession of the non-classified land during the material period would still comply with Section 48(b) of the PLA, provided that there is already a classification at the time of application for registration.

This claim involves ***essential contradiction in terms*** as only a land that can already be registered under Section 48(b) of the PLA can be registered under Section 14(1) of the PRD. Additionally, the *ponencia*, in effect, confirmed that possession prior to declaration of alienability can ripen into private ownership

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[52] *Id*. at 10.

of a land that, under the Constitution, the PLA, and even the Civil Code, is not legally allowed.

The *ponencia's* position all the more becomes legally preposterous if PD No. 705 is considered. To recall, this Decree states that all lands of the public domain that remain unclassified are considered forest lands that cannot be alienated until they have been reclassified as agricultural lands and declared alienable.[53] Applying this law to the facts of the present case, the land applied for, prior to March 15, 1982, must have still been forest land that, under the Constitution, cannot be alienated.

The deeper hole that the *ponencia* digs for itself in recognizing possession prior to declaration of alienability becomes apparent when it now cites *Naguit* as its authority. ***Unnoticed perhaps by the ponencia***, ***Naguit*** itself explicitly noted PD No. 705 and expressly and unabashedly pronounced that "*[a] different rule obtains for forest lands, such as those which form part of a reservation for provincial park purposes the possession of which cannot ripen into ownership. It is elementary in the law governing natural resources that forestland cannot be owned by private persons. As held in Palomo v. Court of Appeals,* ***forest land is not registrable and possession thereof, no matter how lengthy, cannot convert it into private property, unless such lands are reclassified and considered disposable and alienable***."[54]

How the *ponencia* would square this *Naguit* statement with the realities of PD No. 705 and its present ruling would be an interesting exercise to watch. It would, to say the least, be in a very confused position as it previously confirmed in *Naguit* the very same basic precept of law that it now debunks in its present ruling, citing the same *Naguit* ruling.

C. The PLA, the Civil Code and Prescription

In reading all the provisions of Book II of the Civil Code on the classification of property based on the person to whom it belongs, it should not be overlooked that these provisions refer

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[53] *Id.* at 6.

[54] *Supra* note 3, at 415-416; citations omitted, italics and emphasis ours.

to ***properties in general, i.e., to both movable and immovable properties***.[55] Thus, the Civil Code provisions on property ***do not refer to land alone***, much less do they refer solely to alienable and disposable lands of the public domain. For this latter specie of property, the PLA is the special governing law and, under the Civil Code itself, *the Civil Code provisions shall apply only in case of deficiency*.[56]

Whether, as in the present case, land of the public domain can be granted and registered on the basis of extraordinary prescription (*i.e.*, possession by the applicant and his predecessors-in-interest for a period of at least 30 years), ***the obvious answer*** is that the application can only effectively be allowed upon compliance with the PLA's terms. Classification as agricultural land must first take place to remove the land from its status as a land of the public domain and a declaration of alienability must likewise be made to render the land available or susceptible to alienation; the required possession, of course, has to follow and only upon completion does the land pass to "private" hands.

Whether land classified as "agricultural" and declared "alienable and disposable" can already be considered "patrimonial" property does not yield to an easy answer as these concepts involve different classification systems as discussed above. To be sure, the classification and declaration of a public land as alienable public agricultural land do not transfer the land into private hands nor divest it of the character of being State property that can only be acquired pursuant to the terms of the PLA. Separate from this requirement, a property – although already declared alienable and disposable – may conceivably still be held by the State or by any of its political subdivisions or agencies for ***public use*** or ***public service*** under the terms of the Civil Code. In this latter case, the property cannot be considered patrimonial that is subject to acquisitive prescription.

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[55] CIVIL CODE, Article 419, in relation to Article 414.

[56] CIVIL CODE, Article 18, which states that "In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code."

Based on these considerations, the two concepts of "disposable land of the public domain" and "patrimonial property" cannot directly be equated with one another. The requirements for their acquisition, however, must both be satisfied before they can pass to private hands.

An inevitable related question is the manner of enforcing Article 422 of the Civil Code that *"[p]roperty of the public dominion, when no longer intended for public use or public service, shall form part of the patrimonial property of the State,"* in light of the implication that patrimonial property may be acquired through prescription under Article 1113 of the Civil Code ("*Property of the State or any of its subdivision not patrimonial in character shall not be the object of prescription*"). ***This position, incidentally, is what the original decision in this case claims***.

A first simple answer is that the Civil Code provisions must yield when considered in relation with the PLA and its requirements. In other words, *when the property involved is a land of the public domain*, the consideration that it is not for public use or for public service, or its patrimonial character, initially becomes immaterial; any grant or alienation must first comply with the mandates of the Constitution on lands of the public domain and with the requirements of the PLA as a priority requirement.

Thus, if the question is whether such land, considered patrimonial solely under the terms of Article 422 of the Civil Code, can be acquired through prescription, the prior questions of whether the land is already alienable under the terms of the Constitution and the PLA and whether these terms have been complied with must first be answered. If the response is negative, then any characterization under Article 422 of the Civil Code is immaterial; only upon compliance with the terms of the Constitution and the PLA can Article 422 of the Civil Code be given full force. If the land is already alienable, Article 422 of the Civil Code, when invoked, can only be complied with on the showing that the property is no longer intended for public use or public service.

For all these reasons, alienable and disposable agricultural land cannot be registered under Section 14(2) of the PRD solely because it is already alienable and disposable. The alienability must be coupled with the required declaration under Article 422 of the Civil Code if the land is claimed to be patrimonial and possession under Section 14(2) of the PRD is invoked as basis for registration.

As an incidental matter, note that this PRD provision is no longer necessary for the applicant who has complied with the required possession under Section 48(b) of the PLA (*i.e.*, that there had been possession since June 12, 1945); he or she does not need to invoke Section 14(2) of the PRD as registration is available under Section 14(1) of the PRD. On the other hand, if the required period for possession under Section 48(b) of the PLA (or Section 14[1] of the PRD) did not take place, then the applicant's recourse would still be under the PLA through its other available modes (because a land of the public domain is involved), but not under its Section 48(b).

Section 14(2) of the PRD will apply only after the land is deemed to be "private" or has passed through one of the modes of grant and acquisition under the PLA, and after the requisite time of possession has passed, counted from the time the land is deemed or recognized to be private. In short, Section 14(2) of the PRD only becomes available ***to a possessor*** of land already held or deemed to be in private ownership and only after such possessor complies with the requisite terms of ordinary or extraordinary prescription. In considering compliance with the required possession, possession prior to the declaration of alienability cannot of course be recognized or given legal effect, as already extensively discussed above.

To go back and directly answer now the issue that the petitioners directly pose in this case, no extraordinary prescription can be recognized in their favor as their effective possession could have started only after March 15, 1982. Based on the reasons and conclusions in the above discussion, they have not complied with the legal requirements, either from the point of view of the PLA or the Civil Code. Hence, the denial of their petition must hold.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur with the denial of the Motions for Reconsideration.

I concur with the original Decision penned by Justice Dante Tinga promulgated on April 29, 2009. I also concur with the Resolution of Justice Lucas Bersamin with respect to the Motions for Reconsideration, but disagree with the statements made implying the alleged overarching legal principle called the "regalian doctrine."

Mario Malabanan filed an application for registration of a parcel of land designated as Lot 9864-A in Silang, Cavite based on a claim that he purchased the land from Eduardo Velazco. He also claimed that Eduardo Velazco and his predecessors-in-interest had been in open, notorious, and continuous adverse and peaceful possession of the land for more than thirty (30) years.[1]

The application was raffled to the Regional Trial Court of Cavite-Tagaytay City, Branch 18.[2] Malabanan's witness, Aristedes Velazco, testified that Lot 9864-A was originally part of a 22-hectare property owned by his great-grandfather.[3] His uncle, Eduardo Velazco, who was Malabanan's predecessor-in-interest, inherited the lot.[4]

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[1] *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987, April 29, 2009, 587 SCRA 172, 180-181; *See also* note 5 of original Decision (We noted the appellate court's observation: "More importantly, Malabanan failed to prove his ownership over Lot 9864-A. In his application for land registration, Malabanan alleged that he purchased the subject lot from Virgilio Velazco. x x x As aptly observed by the Republic, no copy of the deed of sale covering Lot 9864-A, executed either by Virgilio or Eduardo Velazco, in favor of Malabanan was marked and offered in evidence. x x x [The deed of sale marked as Exhibit "I"] was a photocopy of the deed of sale executed by Virgilio Velazco in favor of Leila Benitez and Benjamin Reyes. x x x Thus, Malabanan has not proved that Virgilio or Eduardo Velazco was his predecessor-in-interest.").

[2] *Id.* at 181.

[3] *Id*.

[4] *Id*.

Malabanan also presented a document issued by the Community Environment and Natural Resources Office of the Department of Natural Resources (CENRO-DENR) on June 11, 2001. The document certified that the subject land had already been classified as alienable and disposable since March 15, 1982.[5]

The Solicitor General, through Assistant Provincial Prosecutor Jose Velazco, Jr., affirmed the truth of Aristedes Velazco's testimony.[6] Malabanan's application was not challenged.[7]

The RTC granted Malabanan's application on December 2, 2002.

The Republic appealed the Decision to the Court of Appeals. It argued that Malabanan failed to prove that the subject land had already been classified as alienable and disposable. The Republic insisted that Malabanan did not meet the required manner and length of possession for confirmation of imperfect title under the law.[8]

The Court of Appeals reversed the Decision of the RTC. The CA held that under Section 14(1) of Presidential Decree No. 1529 or the Property Registration Decree, possession before the classification of land as alienable and disposable should be excluded from the computation of the period of possession.[9] Therefore, possession before March 15, 1982 should not be considered in the computation of the period of possession. This is also in accordance with the ruling in *Republic v. Herbieto.*[10]

Malabanan's heirs (petitioners) appealed the Decision of the CA.[11] Relying on *Republic v. Naguit,*[12] petitioners argued that

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[5] *Id.* at 182.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 183.

[9] *Id.*

[10] *Id.* at 184; *Republic v. Herbieto,* G.R. No. 156177, May 26, 2005, 459 SCRA 183.

[11] *Id.* at 184. (Malabanan died before the CA released its Decision.)

[12] *Republic v. Naguit,* G.R. No. 144507, January 17, 2005, 448 SCRA 442.

the period of possession required for perfecting titles may be reckoned prior to the declaration that the land was alienable and disposable.[13] Open, continuous, exclusive, and notorious possession of an alienable land of public domain for more than 30 years *ipso jure* converts it into private property.[14] Previous classification is immaterial so long as the property had already been converted to private property at the time of the application.[15]

We dismissed the Petition because there was no clear evidence to establish petitioners' or their predecessors-in-interest's possession since June 12, 1945.[16] Moreover, while there was evidence that the land had already been declared alienable and disposable since 1982, there was no evidence that the subject land had been declared as no longer intended for public use or service.[17]

Both petitioners and respondent ask for the reconsideration of Our Decision on April 29, 2009.

I agree that Malabanan was not able to prove that he or his predecessors-in-interest were in open, continuous, exclusive, and notorious possession of the subject land since June 12, 1945. We already noted in the original Decision that Malabanan offered no deed of sale covering the subject lot, executed by any of the alleged predecessors-in-interest in his favor.[18] He only marked a photocopy of a deed of sale executed by Virgilio Velazco in favor of Leila Benitez and Benjamin Reyes.[19]

On that note alone, no title can be issued in favor of Malabanan or petitioners.

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[13] *Supra* note 1, at 184.

[14] *Id*. at 186.

[15] *Id*.

[16] *Id*. at 211.

[17] *Id*.

[18] *Supra* note 1.

[19] *Id*.

However, I do not agree that all lands not appearing to be clearly within private ownership are presumed to belong to the State[20] or that lands remain part of the public domain if the State does not reclassify or alienate it to a private person.[21] These presumptions are expressions of the Regalian Doctrine.

Our present Constitution does not contain the term, "regalian doctrine." What we have is Article XII, Section 2, which provides:

> Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated x x x.

There is no suggestion in this section that the presumption in absolutely all cases is that all lands are public. Clearly, the provision mentions only that "all lands of the public domain" are "owned by the state."

This is not the only provision that should be considered in determining whether the presumption would be that the land is part of the "public domain" or "not of the public domain."

Article III, Section 1 of the Constitution provides:

> Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

This section protects all types of property. It does not limit its provisions to property that is already covered by a form of paper title. Verily, there could be land, considered as property, where ownership has vested as a result of either possession or prescription, but still, as yet, undocumented. The original majority's opinion in this case presents some examples.

In my view, We have properly stated the interpretation of Section 48 (b) of Commonwealth Act No. 141 or the Public

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[20] Decision, p. 5.

[21] *Id*.

Land Act as amended[22] in relation to Section 14(1) and 14(2) of Presidential Decree No. 1529 or the Property Registration Decree. Our *ratio decidendi*, therefore, should only be limited to the facts as presented in this case. We also properly implied that the titling procedures under Property Registration Decree do not vest or create title. The Property Registration Decree simply recognizes and documents ownership and provides for the consequences of issuing paper titles.

We have also recognized that "time immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land."[23] This is an interpretation in *Cariño v. Insular Government*[24] of the earlier version of Article III, Section 1 in the McKinley's Instructions.[25] The case clarified that the Spanish sovereign's concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines.

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[22] Prior to Commonwealth Act No. 141, Act 926 (1903) provided for a chapter on "Unperfected Title and Spanish Grants and Concessions." Act No. 2874 then amended and compiled the laws relative to lands of the public domain. This Act was later amended by Acts No. 3164, 3219, 3346, and 3517. Commonwealth Act No. 141 or what is now the Public Land Act was promulgated on November 7, 1936. Section 48 (b) was later on amended by Republic Act No. 1942 (1957) and then later by Pres. Dec. 1073 (1977). The effects of the later two amendments were sufficiently discussed in the original majority opinion.

[23] *Cariño v. Insular Government,* 202 U.S. 449, 460 (1909).

[24] *Id*. (Cariño was an inhabitant of Benguet Province in the Philippines. He applied for the registration of his land, which he and his ancestors held as owners, without having been issued any document of title by the Spanish Crown. The Court of First Instance dismissed the application on grounds of law. The decision was affirmed by the U.S. Supreme Court. The case was brought back to the U.S. Supreme Court by writ of error.)

[25] President's Policy in the Philippines: His Instructions to the Members of the Second Commission (April 7, 1900). ("Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules: That no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation x x x.")

Thus, in *Cariño*:

> It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown… It is true also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. *But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*
>
> *Whatever may have been the technical position of Spain, it does not follow that, in view of the United States, [plaintiff who held the land as owner] had lost all rights and was a mere trespasser when the present government seized the land. The argument to that effect seems to amount to a denial of native titles throughout an important part of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.*
>
> No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, c. 1369, § 12, 32 Stat. 691, all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof."[26] (Emphasis supplied)

And with respect to time immemorial possession, *Cariño* mentions:

> The [Organic Act of July 1, 1902] made a bill of rights, embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that
>
> 'no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.'

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[26] *Supra* note 23, at 457-459.

§ 5. In the light of the declaration that we have quoted from § 12, it is hard to believe that the United States was ready to declare in the next breath that x x x it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association — one of the profoundest factors in human thought — regarded as their own.

x x x

It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.[27]

Cariño is often misinterpreted to cover only lands for those considered today as part of indigenous cultural communities. However, nothing in its provisions limits it to that kind of application. We could also easily see that the progression of various provisions on completion of imperfect titles in earlier laws were efforts to assist in the recognition of these rights. In my view, these statutory attempts should never be interpreted as efforts to limit what has already been substantially recognized through constitutional interpretation.

There are also other provisions in our Constitution which protect the unique rights of indigenous peoples.[28] This is in addition to our pronouncements interpreting "property" in the due process clause through *Cariño*.

It is time that we put our invocations of the "regalian doctrine" in its proper perspective. This will later on, in the proper case, translate into practical consequences that do justice to our people and our history.

Thus, I vote to deny the Motions for Reconsideration.

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[27] *Supra* note 23, at 459-460.

[28] CONSTITUTION, Art. XII, Sec. 5; Art. II, Sec. 22; Art. XIII, Sec. 6.

FIRST DIVISION

[A.C. No. 9149. September 4, 2013]

JULIAN PENILLA, *complainant, vs.* **ATTY. QUINTIN P. ALCID, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; DISBARMENT/SUSPENSION.— A lawyer may be disbarred or suspended for any violation of his oath, a patent disregard of his duties, or an odious deportment unbecoming an attorney. A lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his entrance to the Bar but are likewise essential demands for his continued membership therein.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY TO SERVE THE CLIENT WITH COMPETENCE AND DILIGENCE; VIOLATED IN CASE AT BAR.— Complainant correctly alleged that respondent violated his oath under Canon 18 (of the Code of Professional Responsibility) to "serve his client with competence and diligence" when respondent filed a criminal case for *estafa* when the facts of the case would have warranted the filing of a civil case for breach of contract. To be sure, after the complaint for *estafa* was dismissed, respondent committed another similar blunder by filing a civil case for specific performance and damages before the RTC. The complaint, having an alternative prayer for the payment of damages, should have been filed with the Municipal Trial Court which has jurisdiction over complainant's claim which amounts to only ₱36,000. x x x The errors committed by respondent with respect to the nature of the remedy adopted in the criminal complaint and the forum selected in the civil complaint were so basic and could have been easily averted had he been more diligent and circumspect in his role as counsel for complainant. What aggravates respondent's offense is the fact that his previous mistake in filing the *estafa* case did not motivate him to be more conscientious, diligent and vigilant in handling the case of complainant. The civil case he subsequently filed for complainant was dismissed due to what later turned out to be a basic jurisdictional error. That is not all. After the criminal

and civil cases were dismissed, respondent was plainly negligent and did not apprise complainant of the status and progress of both cases he filed for the latter. He paid no attention and showed no importance to complainant's cause despite repeated follow-ups. Clearly, respondent is not only guilty of incompetence in handling the cases. His lack of professionalism in dealing with complainant is also gross and inexcusable. In what may seem to be a helpless attempt to solve his predicament, complainant even had to resort to consulting a program in a radio station to recover his money from respondent, or at the very least, get his attention.

3. ID.; ID.; ID.; DUTY NOT TO NEGLECT ENTRUSTED LEGAL MATTER AND DUTY TO APPRISE CLIENT OF IMPORTANT MATTERS RELATIVE TO THE CASE.— Rule 18.03 of the Code of Professional Responsibility enjoins a lawyer not to 'neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.' He must constantly keep in mind that his actions or omissions or nonfeasance would be binding upon his client. He is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause." Similarly, under Rule 18.04, a lawyer has the duty to apprise his client of the status and developments of the case and all other information relevant thereto. He must be consistently mindful of his obligation to respond promptly should there be queries or requests for information from the client.

4. ID.; ID.; ID.; RULE THAT A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM, ELUCIDATED.— Canon 17 of the Code states that "[a] lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such

honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice.

5. ID.; ID.; ID.; VIOLATIONS CONSTITUTING GROSS MISCONDUCT ESTABLISHED IN CASE AT BAR, WARRANTS SUSPENSION UNDER SEC. 27, RULE 138 OF THE RULES OF COURT.— [I]n administrative cases for disbarment or suspension against lawyers, it is the complainant who has the burden to prove by preponderance of evidence the allegations in the complaint. In the instant case, complainant was only able to prove respondent's violation of Canons 17 and 18, and Rules 18.03 and 18.04 of the Code of Professional Responsibility, and the Lawyer's Oath. x x x [w]e find the same to constitute gross misconduct for which he may be suspended under Section 27, Rule 138 of the Rules of Court.

APPEARANCES OF COUNSEL

Antonio C. Ferrer for complainant.
Ronald G. Asong for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is an administrative complaint[1] filed against respondent Atty. Quintin P. Alcid, Jr. for violation of the Lawyer's Oath and the Code of Professional Responsibility, and for gross misconduct in the performance of his duty as a lawyer.

The antecedent facts follow:

Complainant Julian Penilla entered into an agreement with Spouses Rey and Evelyn Garin (the spouses) for the repair of his Volkswagen automobile. Despite full payment, the spouses defaulted in their obligation. Thus, complainant decided to file

[1] *Rollo*, pp. 2-7. Docketed as CBD Case No. 05-1630.

a case for breach of contract against the spouses where he engaged the services of respondent as counsel.

Respondent sent a demand letter to the spouses and asked for the refund of complainant's payment. When the spouses failed to return the payment, respondent advised complainant that he would file a criminal case for *estafa* against said spouses. Respondent charged ₱30,000 as attorney's fees and ₱10,000 as filing fees. Complainant turned over the relevant documents to respondent and paid the fees in tranches. Respondent then filed the complaint for *estafa* before Asst. City Prosecutor Jose C. Fortuno of the Office of the City Prosecutor of Quezon City. Respondent attended the hearing with complainant but the spouses did not appear. After the hearing, complainant paid another ₱1,000 to respondent as appearance fee. Henceforth, complainant and respondent have conflicting narrations of the subsequent events and transactions that transpired.

Complainant alleges that when the case was submitted for resolution, respondent told him that they have to give a bottle of Carlos Primero I to Asst. City Prosecutor Fortuno to expedite a favorable resolution of the case. Complainant claims that despite initial reservations, he later acceded to respondent's suggestion, bought a bottle of Carlos Primero I for ₱950 and delivered it to respondent's office.

Asst. City Prosecutor Fortuno later issued a resolution dismissing the *estafa* case against the spouses. Respondent allegedly told complainant that a motion for reconsideration was "needed to have [the resolution] reversed."[2] Respondent then prepared the motion and promised complainant that he would fix the problem. On February 18, 2002, the motion was denied for lack of merit. Respondent then told complainant that he could not do anything about the adverse decision and presented the option of filing a civil case for specific performance against the spouses for the refund of the money plus damages. Complainant paid an additional ₱10,000 to respondent which he asked for the payment of filing fees. After complainant

[2] *Id.* at 4.

signed the complaint, he was told by respondent to await further notice as to the status of the case. Complainant claims that respondent never gave him any update thereafter.

Complainant asserts having made numerous and unsuccessful attempts to follow-up the status of the case and meet with respondent at his office. He admits, however, that in one instance he was able to talk to respondent who told him that the case was not progressing because the spouses could not be located. In the same meeting, respondent asked complainant to determine the whereabouts of the spouses. Complainant returned to respondent's office on January 24, 2005, but because respondent was not around, complainant left with respondent's secretary a letter regarding the possible location of the spouses.

Complainant claims not hearing from respondent again despite his several letters conveying his disappointment and requesting for the return of the money and the documents in respondent's possession. Complainant then sought the assistance of the radio program "Ito ang Batas with Atty. Aga" to solve his predicament. Following the advice he gathered, complainant went to the Office of the Clerk of Court of the Caloocan City Metropolitan Trial Court and Regional Trial Court (RTC). Complainant learned that a civil case for Specific Performance and Damages was filed on June 6, 2002[3] but was dismissed on June 13, 2002. He also found out that the filing fee was only ₱2,440 and not ₱10,000 as earlier stated by respondent. Atty. Aga of the same radio program also sent respondent a letter calling his attention to complainant's problem. The letter, like all of complainant's previous letters, was unheeded.

On January 9, 2006, complainant filed before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) the instant administrative case praying that respondent be found guilty of gross misconduct for violating the Lawyer's Oath and the Code of Professional Responsibility, and for appropriate administrative sanctions to be imposed.

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[3] *Id.* at 18-21. Filed before the RTC, Branch 131, Caloocan City, and docketed as Civil Case No. C-20115.

Respondent harps a different tale.

In an Answer[4] filed on January 30, 2006, respondent prayed that the case be dismissed for lack of merit. He denied charging complainant ₱10,000 as filing fees for the *estafa* case and claimed that he charged and received only ₱2,000. He also countered that the payment of ₱30,000 made by the complainant was his acceptance fee for both the *estafa* case and civil case. Respondent likewise denied the following other allegations of complainant: that he assured the success of the case before the prosecutor; that he asked complainant to give a bottle of Carlos Primero I to the prosecutor; that he promised to fix the case; and that he charged ₱10,000, as he only charged ₱5,000, as filing fee for the civil case.

Respondent explained that it was not a matter of indifference on his part when he failed to inform petitioner of the status of the case. In fact, he was willing to return the money and the documents of complainant. What allegedly prevented him from communicating with complainant was the fact that complainant would go to his office during days and times that he would be attending his daily court hearings.

The IBP-CBD called for a mandatory conference on April 28, 2006. Only complainant and his counsel attended.[5] The conference was reset and terminated on June 9, 2006. The parties were directed to file their verified position papers within 15 days,[6] to which complainant and respondent complied.[7]

On July 18, 2006, respondent filed a Reply[8] praying for the dismissal of the case for lack of factual and legal bases. He stated that he had performed his duties as complainant's counsel when he filed the criminal case before the Office of the City Prosecutor of Quezon City and the civil case before the RTC

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

[5] *Id.* at 35.

[6] *Id.* at 77.

[7] *Id.* at 37-44, 53-57.

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

of Caloocan City. He averred that he should not be blamed for the dismissal of both cases as his job was to ensure that justice is served and not to win the case. It was unethical for him to guarantee the success of the case and resort to unethical means to win such case for the client. He continued to deny that he asked complainant to give the prosecutor a bottle of Carlos Primero I and that the filing fees he collected totalled ₱20,000. Respondent argued that it is incredulous that the total sum of all the fees that he had allegedly collected exceeded ₱30,000 – the amount being claimed by complainant from the spouses.

In its Report and Recommendation[9] dated September 12, 2008, the IBP-CBD recommended the suspension of respondent from the practice of law for six months "for negligence within the meaning of Canon 18 and transgression of Rule 18.04 of the Code of Professional Responsibility," *viz*:

> In the case under consideration, there are certain matters which keep sticking out like a sore thumb rendering them difficult to escape notice.
>
> One is the filing of a criminal complaint for estafa arising out of a violation of the contract for repair of the Volks Wagon (*sic*) car. It is basic that when an act or omission emanates from a contract, oral or written, the consequent result is a breach of the contract, hence, properly actionable in a civil suit for damages. As correctly pointed out by the Investigating Prosecutor, the liability of the respondent is purely civil in nature because the complaint arose from a contract of services and the respondent (spouses Garin) failed to perform their contractual obligation under the contract.
>
> xxx x x x xxx
>
> Another one is the filing of a civil complaint for specific performance and damages (after the dismissal of the criminal complaint for estafa) in the Regional Trial Court of Caloocan City where the actual damages claimed is ₱36,000.00.
>
> It is also basic that the civil complaint for ₱36,000.00 should have been filed with the MTC [which] has jurisdiction over the same. One of the "firsts" that a lawyer ascertains in filing an action is the proper

[9] *Id.* at 143-151.

forum or court with whom the suit or action shall be filed. In June 2002 when the civil complaint was filed in court, the jurisdiction of the MTC has already expanded such that the jurisdictional amount of the RTC is already ₱400,000.00.

x x x x x x x x x

Another thing is the various follow-ups made by respondent's client as evidenced by the letters marked as Exhibits "D", "E", "F", "G" and "H" which were all received by complainant's secretary, except for Exhibit "H" which was received by Atty. Asong, not to mention Exhibit "M" which was sent by "Atty. Aga." These efforts of the complainant were not reciprocated by the respondent with good faith. Respondent chose to ignore them and reasoned out that he is willing to meet with the complainant and return the money and documents received by reason of the legal engagement, but omitted to communicate with him for the purpose of fixing the time and place for the meeting. This failure suggests a clear disregard of the client's demand which was done in bad faith on the part of respondent.[10]

On December 11, 2008, the IBP Board of Governors issued Resolution No. XVIII-2008-646, adopting and approving the recommendation of the IBP-CBD. The Resolution[11] reads:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Canon 18 and Rule 18.04 of the Code of Professional Responsibility for his negligence, Atty. Quintin P. Alcid, Jr. is hereby **SUSPENDED** from the practice of law for six (6) months.

On April 24, 2009, respondent sought reconsideration[12] and asked that the penalty of suspension be reduced to warning or reprimand. After three days, or on April 27, 2009, respondent filed a "Motion to Admit Amended 'Motion for Reconsideration'

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[10] *Id.* at 147-149.

[11] *Id.* at 142, 165. Signed by National Secretary Tomas N. Prado.

[12] *Id.* at 152-155.

Upon Leave of Office."[13] Respondent asserted that the failure to inform complainant of the status of the cases should not be attributed to him alone. He stressed that complainant had always been informed that he only had time to meet with his clients in the afternoon at his office in Quezon City. Despite such notice, complainant kept going to his office in Tandang Sora. He admitted that though he committed lapses which would amount to negligence in violation of Canon 18 and Rule 18.04, they were done unknowingly and without malice or bad faith. He also stressed that this was his first infraction.

In its Resolution No. XIX-2011-473 dated June 26, 2011, the IBP Board of Governors denied respondent's Motion for Reconsideration for lack of merit.[14] On August 15, 2011, respondent filed a second Motion for Reconsideration[15] which was no longer acted upon due to the transmittal of the records of the case to this Court by the IBP on August 16, 2011.[16]

On September 14, 2011, the Court issued a Resolution[17] and noted the aforementioned Notices of Resolution dated December 11, 2008 and June 26, 2011. On December 14, 2011, it issued another Resolution[18] noting the Indorsement dated August 16, 2011 of Director Alicia A. Risos-Vidal and respondent's second Motion for Reconsideration dated August 15, 2011.

We sustain the findings of the IBP that respondent committed professional negligence under Canon 18 and Rule 18.04 of the Code of Professional Responsibility, with a modification that we also find respondent guilty of violating Canon 17 and Rule 18.03 of the Code and the Lawyer's Oath.

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[13] *Id.* at 156-160.

[14] *Id.* at 164.

[15] *Id.* at 178-182.

[16] *Id.* at 177. Signed by Director for Bar Discipline Alicia A. Risos-Vidal.

[17] *Id.* at 175-176.

[18] *Id.* at 185.

A lawyer may be disbarred or suspended for any violation of his oath, a patent disregard of his duties, or an odious deportment unbecoming an attorney. A lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his entrance to the Bar but are likewise essential demands for his continued membership therein.[19]

The Complaint before the IBP-CBD charged respondent with violation of his oath and the following provisions under the Code of Professional Responsibility:

a) Canon 15 – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client;

b) Rule 15.[06, Canon 15] – A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body;

c) Rule 16.01[, Canon 16] – A lawyer shall account for all money or property collected or received for or from his client;

d) Canon 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him;

e) Canon 18 – A lawyer shall serve his client with competence and diligence;

f) Rule 18.03[, Canon 18] – A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable; and

g) Rule 18.04[, Canon 18] – A lawyer shall keep his client informed of the status of his case and shall respond within a reasonable time to the client's request for information.[20]

A review of the proceedings and the evidence in the case at bar shows that respondent violated Canon 18 and Rules 18.03 and 18.04 of the Code of Professional Responsibility. Complainant correctly alleged that respondent violated his oath under Canon

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[19] *Gonzaga v. Atty. Villanueva, Jr.*, 478 Phil. 859, 869 (2004), citing *Tucay v. Atty. Tucay*, 376 Phil. 336, 340 (1999).

[20] *Rollo*, p. 2.

18 to "serve his client with competence and diligence" when respondent filed a criminal case for *estafa* when the facts of the case would have warranted the filing of a civil case for breach of contract. To be sure, after the complaint for *estafa* was dismissed, respondent committed another similar blunder by filing a civil case for specific performance and damages before the RTC. The complaint, having an alternative prayer for the payment of damages, should have been filed with the Municipal Trial Court which has jurisdiction over complainant's claim which amounts to only ₱36,000. As correctly stated in the Report and Recommendation of the IBP-CBD:

> Batas Pambansa Blg. 129[,] as amended by R.A. No. 7691 which took effect on April 15, 1994[,] vests in the MTCs of Metro Manila exclusive original jurisdiction of civil cases where the amount of demand does not exceed ₱200,000.00 exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs (Sec. 33), and after five (5) years from the effectivity of the Act, the same shall be adjusted to ₱400,000.00 (Sec. 34).[21]

The errors committed by respondent with respect to the nature of the remedy adopted in the criminal complaint and the forum selected in the civil complaint were so basic and could have been easily averted had he been more diligent and circumspect in his role as counsel for complainant. What aggravates respondent's offense is the fact that his previous mistake in filing the *estafa* case did not motivate him to be more conscientious, diligent and vigilant in handling the case of complainant. The civil case he subsequently filed for complainant was dismissed due to what later turned out to be a basic jurisdictional error.

That is not all. After the criminal and civil cases were dismissed, respondent was plainly negligent and did not apprise complainant of the status and progress of both cases he filed for the latter. He paid no attention and showed no importance to complainant's cause despite repeated follow-ups. Clearly, respondent is not only guilty of incompetence in handling the cases. His lack of professionalism in dealing with complainant

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[21] *Id.* at 171.

is also gross and inexcusable. In what may seem to be a helpless attempt to solve his predicament, complainant even had to resort to consulting a program in a radio station to recover his money from respondent, or at the very least, get his attention.

Respondent's negligence under Rules 18.03 and 18.04 is also beyond contention. A client pays his lawyer hard-earned money as professional fees. In return, "[e]very case a lawyer accepts deserves his full attention, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. Rule 18.03 of the Code of Professional Responsibility enjoins a lawyer not to 'neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.' He must constantly keep in mind that his actions or omissions or nonfeasance would be binding upon his client. He is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause."[22] Similarly, under Rule 18.04, a lawyer has the duty to apprise his client of the status and developments of the case and all other information relevant thereto. He must be consistently mindful of his obligation to respond promptly should there be queries or requests for information from the client.

In the case at bar, respondent explained that he failed to update complainant of the status of the cases he filed because their time did not always coincide. The excuse proffered by respondent is too lame and flimsy to be given credit. Respondent himself admitted that he had notice that complainant had visited his office many times. Yet, despite the efforts exerted and the vigilance exhibited by complainant, respondent neglected and failed to fulfill his obligation under Rules 18.03 and 18.04 to keep his client informed of the status of his case and to respond within a reasonable time to the client's request for information.

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[22] Agpalo, Ruben E., *LEGAL AND JUDICIAL ETHICS*, Seventh Edition (2002), p. 209, citing *Santiago v. Fojas*, Adm. Case No. 4103, September 7, 1995, 248 SCRA 69, 75-76 & *Torres v. Orden*, A.C. No. 4646, April 6, 2000, 330 SCRA 1, 5.

Finally, respondent also violated Canon 17 of the Code which states that "[a] lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice. Respondent has defied and failed to perform such duty and his omission is tantamount to a desecration of the Lawyer's Oath.

All said, in administrative cases for disbarment or suspension against lawyers, it is the complainant who has the burden to prove by preponderance of evidence[23] the allegations in the complaint. In the instant case, complainant was only able to prove respondent's violation of Canons 17 and 18, and Rules 18.03 and 18.04 of the Code of Professional Responsibility, and the Lawyer's Oath. Complainant failed to substantiate his claim that respondent violated Canon 15 and Rule 15.06 of the Code of Professional Responsibility when respondent allegedly instructed him to give a bottle of Carlos Primero I to Asst. City Prosecutor Fortuno in order to get a favorable decision. Similarly, complainant was not able to present evidence that respondent indeed violated Rule 16.01 of Canon 16 by allegedly collecting money from him in excess of the required filing fees.

As to respondent's proven acts and omissions which violate Canons 17 and 18 and Rules 18.03 and 18.04 of the Code of

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[23] *Rudecon Management Corporation v. Atty. Camacho*, 480 Phil. 652, 660 (2004), citing *Office of the Court Administrator v. Judge Sardido*, 449 Phil. 619, 629 (2003) and *Berbano v. Atty. Barcelona*, 457 Phil. 331, 341 (2003).

Professional Responsibility, and the Lawyer's Oath, we find the same to constitute gross misconduct for which he may be suspended under Section 27, Rule 138 of the Rules of Court, *viz*:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor*. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority to do so. x x x.

WHEREFORE, the Resolution of the IBP Board of Governors adopting and approving the Decision of the Investigating Commissioner is hereby **AFFIRMED** with a **MODIFICATION** that respondent Atty. Quintin P. Alcid, Jr. is hereby found **GUILTY** of gross misconduct for violating Canons 17 and 18, and Rules 18.03 and 18.04 of the Code of Professional Responsibility, as well as the Lawyer's Oath. This Court hereby imposes upon respondent the penalty of **SUSPENSION** from the practice of law for a period of **SIX (6) MONTHS** to commence immediately upon receipt of this Decision. Respondent is further **ADMONISHED** to be more circumspect and diligent in handling the cases of his clients, and **STERNLY WARNED** that a commission of the same or similar acts in the future shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Court Administrator to be disseminated to all courts throughout the country, to the Office of the Bar Confidant to be appended to Atty. Quintin P. Alcid, Jr.'s personal records, and to the Integrated Bar of the Philippines for its information and guidance.

SO ORDERED.

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

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[*] Designated additional member per Special Order No. 1529 dated August 29, 2013.

FIRST DIVISION

[G.R. No. 157943. September 4, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILBERT REYES WAGAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; SWINDLING UNDER ART. 315, 2(d); THE ACT OF POSTDATING OR ISSUING A CHECK IN PAYMENT OF AN OBLIGATION MUST BE THE EFFICIENT CAUSE OF THE DEFRAUDATION; ELUCIDATED.— In order to constitute *estafa* under [Article 315, paragraph 2(*d*) of the *Revised Penal Code*, as amended], the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation. This means that the offender must be able to obtain money or property from the offended party by reason of the issuance of the check, whether dated or postdated. In other words, the Prosecution must show that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the offender. The essential elements of the crime charged are that: (*a*) a check is postdated or issued in payment of an obligation contracted at the time the check is issued; (*b*) lack or insufficiency of funds to cover the check; and (*c*) damage to the payee thereof. It is the criminal fraud or deceit in the issuance of a check that is punishable, not the non-payment of a debt. *Prima facie* evidence of deceit exists by law upon proof that the drawer of the check failed to deposit the amount necessary to cover his check within three days from receipt of the notice of dishonor. x x x [Further,] in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt.

2. ID.; ID.; ID.; ID.; NOT SUFFICIENTLY ESTABLISHED BY THE MERE ISSUANCE OF WORTHLESS CHECK PAYABLE TO CASH.— [T]he check delivered to (complainant) Ligaray was made payable to cash. Under the *Negotiable Instruments Law*, this type of check was payable to the bearer and could be

negotiated by mere delivery without the need of an indorsement. This rendered it highly probable that Wagas had issued the check not to Ligaray, but to somebody else like Cañada, his brother-in-law, who then negotiated it to Ligaray. Relevantly, Ligaray *confirmed* that he did not himself see or meet Wagas at the time of the transaction and thereafter, and expressly stated that the person who signed for and received the stocks of rice was Cañada. It bears stressing that the accused, to be guilty of *estafa* as charged, must have used the check in order to defraud the complainant. What the law punishes is the fraud or deceit, not the mere issuance of the worthless check. Wagas could not be held guilty of *estafa* simply because he had issued the check used to defraud Ligaray. The proof of guilt must still clearly show that it had been Wagas as the drawer who had defrauded Ligaray by means of the check.

3. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; RE TELEPHONE CONVERSATIONS; ELABORATED.— Ligaray's declaration that it was Wagas who had transacted with him over the telephone was not reliable because he did not explain how he determined that the person with whom he had the telephone conversation was really Wagas whom he had not yet met or known before then. We deem it essential for purposes of reliability and trustworthiness that a telephone conversation like that one Ligaray supposedly had with the buyer of rice to be first authenticated before it could be received in evidence. Among others, the person with whom the witness conversed by telephone should be first satisfactorily identified by voice recognition or any other means. Without the authentication, incriminating another person just by adverting to the telephone conversation with him would be all too easy. In this respect, an identification based on familiarity with the voice of the caller, or because of clearly recognizable peculiarities of the caller would have sufficed. The identity of the caller could also be established by the caller's self-identification, coupled with additional evidence, like the context and timing of the telephone call, the contents of the statement challenged, internal patterns, and other distinctive characteristics, and disclosure of knowledge of facts known peculiarly to the caller. Verily, it is only fair that the caller be reliably identified first before a telephone communication is accorded probative weight. The identity of the caller may be established by direct or

circumstantial evidence. x x x The letter of Wagas did not competently establish that he was the person who had conversed with Ligaray by telephone to place the order for the rice. The letter was admitted exclusively as the State's rebuttal evidence to controvert or impeach the denial of Wagas of entering into any transaction with Ligaray on the rice; hence, it could be considered and appreciated only for that purpose. Under the law of evidence, the court shall consider evidence solely for the purpose for which it is offered, not for any other purpose. Fairness to the adverse party demands such exclusivity. Moreover, the high plausibility of the explanation of Wagas that he had signed the letter only because his sister and her husband had pleaded with him to do so could not be taken for granted.

4. ID.; CRIMINAL PROCEDURE; PRESUMPTION OF INNOCENCE; PREVAILS IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT AS TO THE IDENTITY OF THE ACCUSED IN A CRIME.— It is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet *ei incumbit probation, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove, and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of a crime, and (2) the actuality of the commission of the offense with the participation of the accused. All these facts must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. That the defense the accused puts up may be weak is inconsequential if, in the first place, the State has failed to discharge the *onus* of his identity and culpability. The presumption of innocence dictates that it is for the Prosecution to demonstrate the guilt and not for the accused to establish innocence. Indeed, the accused, being presumed innocent, carries no burden of proof on his or her shoulders. For this reason, the first duty of the Prosecution is not to prove the crime but to prove the identity of the criminal. For even if the commission of the crime can be established, without competent proof of the identity of the accused beyond reasonable doubt,

there can be no conviction. x x x Thus, considering that the circumstances of the identification of Wagas as the person who transacted on the rice did not preclude a reasonable possibility of mistake, the proof of guilt did not measure up to the standard of proof beyond reasonable doubt demanded in criminal cases. Perforce, the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, and he is entitled to an acquittal, even though his innocence may be doubted.

5. CRIMINAL LAW; ESTAFA; ACCUSED THOUGH ACQUITTED MAY STILL BE HELD CIVILLY LIABLE WHERE PREPONDERANCE OF ESTABLISHED FACTS SO WARRANTS.— [A]n accused, though acquitted of *estafa,* may still be held civilly liable where the preponderance of the established facts so warrants. Wagas as the admitted drawer of the check was legally liable to pay the amount of it to Ligaray, a holder in due course. Consequently, we pronounce and hold him fully liable to pay the amount of the dishonored check, plus legal interest of 6% *per annum* from the finality of this decision.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
George Bragat for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

The Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. In order to overcome the presumption of innocence, the Prosecution is required to adduce against him nothing less than proof beyond reasonable doubt. Such proof is not only in relation to the elements of the offense, but also in relation to the identity of the offender. If the Prosecution fails to discharge its heavy burden, then it

is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him.

The Case

Gilbert R. Wagas appeals his conviction for *estafa* under the decision rendered on July 11, 2002 by the Regional Trial Court, Branch 58, in Cebu City (RTC), meting on him the indeterminate penalty of 12 years of *prision mayor*, as minimum, to 30 years of *reclusion perpetua*, as maximum.

Antecedents

Wagas was charged with *estafa* under the information that reads:

> That on or about the 30th day of April, 1997, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, with intent to gain and by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, to wit: knowing that he did not have sufficient funds deposited with the Bank of Philippine Islands, and without informing Alberto Ligaray of that circumstance, with intent to defraud the latter, did then and there issue Bank of the Philippine Islands Check No. 0011003, dated May 08, 1997 in the amount of ₱200,000.00, which check was issued in payment of an obligation, but which check when presented for encashment with the bank, was dishonored for the reason "drawn against insufficient funds" and inspite of notice and several demands made upon said accused to make good said check or replace the same with cash, he had failed and refused and up to the present time still fails and refuses to do so, to the damage and prejudice of Alberto Ligaray in the amount aforestated.
>
> CONTRARY TO LAW.[1]

After Wagas entered a plea of *not guilty*,[2] the pre-trial was held, during which the Defense admitted that the check alleged

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[1] Records, pp. 1-2.

[2] *Id.* at 32.

in the information had been dishonored due to insufficient funds.[3] On its part, the Prosecution made no admission.[4]

At the trial, the Prosecution presented complainant Alberto Ligaray as its lone witness. Ligaray testified that on April 30, 1997, Wagas placed an order for 200 bags of rice over the telephone; that he and his wife would not agree at first to the proposed payment of the order by postdated check, but because of Wagas' assurance that he would not disappoint them and that he had the means to pay them because he had a lending business and money in the bank, they relented and accepted the order; that he released the goods to Wagas on April 30, 1997 and at the same time received Bank of the Philippine Islands (BPI) Check No. 0011003 for ₱200,000.00 payable to cash and postdated May 8, 1997; that he later deposited the check with Solid Bank, his depository bank, but the check was dishonored due to insufficiency of funds;[5] that he called Wagas about the matter, and the latter told him that he would pay upon his return to Cebu; and that despite repeated demands, Wagas did not pay him.[6]

On cross-examination, Ligaray admitted that he did not personally meet Wagas because they transacted through telephone only; that he released the 200 bags of rice directly to Robert Cañada, the brother-in-law of Wagas, who signed the delivery receipt upon receiving the rice.[7]

After Ligaray testified, the Prosecution formally offered the following: (*a*) BPI Check No. 0011003 in the amount of ₱200,000.00 payable to "*cash*"; (*b*) the return slip dated May 13, 1997 issued by Solid Bank; (*c*) Ligaray's affidavit; and (*d*)

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[3] *Id.* at 41-42.

[4] *Id.* at 42-43.

[5] TSN, May 4, 2000.

[6] TSN, May 25, 2000.

[7] *Id.*

the delivery receipt signed by Cañada. After the RTC admitted the exhibits, the Prosecution then rested its case.[8]

In his defense, Wagas himself testified. He admitted having issued BPI Check No. 0011003 to Cañada, his brother-in-law, not to Ligaray. He denied having any telephone conversation or any dealings with Ligaray. He explained that the check was intended as payment for a portion of Cañada's property that he wanted to buy, but when the sale did not push through, he did not anymore fund the check.[9]

On cross-examination, the Prosecution confronted Wagas with a letter dated July 3, 1997 apparently signed by him and addressed to Ligaray's counsel, wherein he admitted owing Ligaray ₱200,000.00 for goods received, to wit:

> This is to acknowledge receipt of your letter dated June 23, 1997 which is self-explanatory. It is worthy also to discuss with you the environmental facts of the case for your consideration, to wit:
>
> 1. It is true that I obtained goods from your client worth ₱200,000.00 and I promised to settle the same last May 10, 1997, but to no avail. On this point, let me inform you that I sold my real property to a buyer in Manila, and promised to pay the consideration on the same date as I promised with your client. Unfortunately, said buyer likewise failed to make good with such obligation. Hence, I failed to fulfill my promise resultant thereof. (sic)
> 2. Again, I made another promise to settle said obligation on or before June 15, 1997, but still to no avail attributable to the same reason as aforementioned. (sic)
> 3. To arrest this problem, we decided to source some funds using the subject property as collateral. This other means is resorted to for the purpose of settling the herein obligation. And as to its status, said funds will be rele[a]sed within thirty (30) days from today.

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[8] Records, pp. 59-60.

[9] TSN, October 5, 2000.

In view of the foregoing, it is my sincere request and promise to settle said obligation on or before August 15, 1997.

Lastly, I would like to manifest that it is not my intention to shy away from any financial obligation.

x x x x x x x x x

Respectfully yours,

(SGD.)
GILBERT R. WAGAS[10]

Wagas admitted the letter, but insisted that it was Cañada who had transacted with Ligaray, and that he had signed the letter only because his sister and her husband (Cañada) had begged him to assume the responsibility.[11] On redirect examination, Wagas declared that Cañada, a seafarer, was then out of the country; that he signed the letter only to accommodate the pleas of his sister and Cañada, and to avoid jeopardizing Cañada's application for overseas employment.[12] The Prosecution subsequently offered and the RTC admitted the letter as rebuttal evidence.[13]

Decision of the RTC

As stated, the RTC convicted Wagas of *estafa* on July 11, 2002, *viz*:

WHEREFORE, premises considered, the Court finds the accused GUILTY beyond reasonable doubt as charged and he is hereby sentenced as follows:

1. To suffer an indeterminate penalty of from twelve (12) years of *pris[i]on mayor*, as minimum, to thirty (30) years of *reclusion perpetua* as maximum;

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[10] Records, p. 92.

[11] TSN, August 20, 2001, pp. 2-5.

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

[13] Records, p. 113.

2. To indemnify the complainant, Albert Ligaray in the sum of ₱200,000.00;

3. To pay said complainant the sum of ₱30,000.00 by way of attorney's fees; and

4. the costs of suit.

SO ORDERED.[14]

The RTC held that the Prosecution had proved beyond reasonable doubt all the elements constituting the crime of *estafa*, namely: (*a*) that Wagas issued the postdated check as payment for an obligation contracted at the time the check was issued; (*b*) that he failed to deposit an amount sufficient to cover the check despite having been informed that the check had been dishonored; and (*c*) that Ligaray released the goods upon receipt of the postdated check and upon Wagas' assurance that the check would be funded on its date.

Wagas filed a motion for new trial and/or reconsideration,[15] arguing that the Prosecution did not establish that it was he who had transacted with Ligaray and who had negotiated the check to the latter; that the records showed that Ligaray did not meet him at any time; and that Ligaray's testimony on their alleged telephone conversation was not reliable because it was not shown that Ligaray had been familiar with his voice. Wagas also sought the reopening of the case based on newly discovered evidence, specifically: (*a*) the testimony of Cañada who could not testify during the trial because he was then out of the country, and (*b*) Ligaray's testimony given against Wagas in another criminal case for violation of *Batas Pambansa Blg*. 22.

On October 21, 2002, the RTC denied the motion for new trial and/or reconsideration, opining that the evidence Wagas desired to present at a new trial did not qualify as newly discovered, and that there was no compelling ground to reverse its decision.[16]

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[14] *Rollo*, p. 26.

[15] Records, pp. 149-163.

[16] *Id.* at 243-244.

Wagas appealed directly to this Court by notice of appeal.[17]

Prior to the elevation of the records to the Court, Wagas filed a petition for admission to bail pending appeal. The RTC granted the petition and fixed Wagas' bond at ₱40,000.00.[18] Wagas then posted bail for his provisional liberty pending appeal.[19]

The resolution of this appeal was delayed by incidents bearing on the grant of Wagas' application for bail. On November 17, 2003, the Court required the RTC Judge to explain why Wagas was out on bail.[20] On January 15, 2004, the RTC Judge submitted to the Court a so-called *manifestation and compliance* which the Court referred to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.[21] On July 5, 2005, the Court, upon the OCA's recommendation, directed the filing of an administrative complaint for simple ignorance of the law against the RTC Judge.[22] On September 12, 2006, the Court directed the OCA to comply with its July 5, 2005 directive, and to cause the filing of the administrative complaint against the RTC Judge. The Court also directed Wagas to explain why his bail should not be cancelled for having been erroneously granted.[23] Finally, in its memorandum dated September 27, 2006, the OCA manifested to the Court that it had meanwhile filed the administrative complaint against the RTC Judge.[24]

Issues

In this appeal, Wagas insists that he and Ligaray were neither friends nor personally known to one other; that it was highly

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[17] *Id.* at 246.

[18] *Id.* at 269-270.

[19] *Id.* at 272.

[20] *Rollo,* p. 36.

[21] *Id.* at 149.

[22] *Id.* at 157.

[23] *Id.* at 163-170.

[24] *Id.* at 171.

incredible that Ligaray, a businessman, would have entered into a transaction with him involving a huge amount of money only over the telephone; that on the contrary, the evidence pointed to Cañada as the person with whom Ligaray had transacted, considering that the delivery receipt, which had been signed by Cañada, indicated that the goods had been "Ordered by ROBERT CAÑADA," that the goods had been received by Cañada in good order and condition, and that there was no showing that Cañada had been acting on behalf of Wagas; that he had issued the check to Cañada upon a different transaction; that Cañada had negotiated the check to Ligaray; and that the element of deceit had not been established because it had not been proved with certainty that it was him who had transacted with Ligaray over the telephone.

The circumstances beg the question: did the Prosecution establish beyond reasonable doubt the existence of all the elements of the crime of *estafa* as charged, as well as the identity of the perpetrator of the crime?

Ruling

The appeal is meritorious.

Article 315, paragraph 2(*d*) of the *Revised Penal Code*, as amended, provides:

> Article 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> x x x x x x x x x
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from

the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

In order to constitute *estafa* under this statutory provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation. This means that the offender must be able to obtain money or property from the offended party by reason of the issuance of the check, whether dated or postdated. In other words, the Prosecution must show that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the offender.[25]

The essential elements of the crime charged are that: (*a*) a check is postdated or issued in payment of an obligation contracted at the time the check is issued; (*b*) lack or insufficiency of funds to cover the check; and (*c*) damage to the payee thereof.[26] It is the criminal fraud or deceit in the issuance of a check that is punishable, not the non-payment of a debt.[27] *Prima facie* evidence of deceit exists by law upon proof that the drawer of the check failed to deposit the amount necessary to cover his check within three days from receipt of the notice of dishonor.

The Prosecution established that Ligaray had released the goods to Cañada because of the postdated check the latter had given to him; and that the check was dishonored when presented for payment because of the insufficiency of funds.

In every criminal prosecution, however, the identity of the offender, like the crime itself, must be established by proof

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[25] *Timbal v. Court of Appeals*, G.R. No. 136487, December 14, 2001, 372 SCRA 358, 362-363.

[26] *Dy v. People*, G.R. No. 158312, November 14, 2008, 571 SCRA 59, 70.

[27] *Recuerdo v. People*, G.R. No. 168217, June 27, 2006, 493 SCRA 517, 532.

beyond reasonable doubt.[28] In that regard, the Prosecution did not establish beyond reasonable doubt that it was Wagas who had defrauded Ligaray by issuing the check.

Firstly, Ligaray expressly admitted that he did not personally meet the person with whom he was transacting over the telephone, thus:

Q: On April 30, 1997, do you remember having a transaction with the accused in this case?

A: Yes, sir. He purchased two hundred bags of rice from me.

Q: How did this purchase of rice transaction started? (sic)

A: **He talked with me over the phone and told me that he would like to purchase two hundred bags of rice and he will just issue a check**.[29]

Even after the dishonor of the check, Ligaray did not personally see and meet whoever he had dealt with and to whom he had made the demand for payment, and that he had talked with him only over the telephone, to wit:

Q: After the check was (sic) bounced, what did you do next?

A: I made a demand on them.

Q: **How did you make a demand?**

A: **I called him over the phone.**

Q: **Who is that "him" that you are referring to?**

A: **Gilbert Wagas.**[30]

Secondly, the check delivered to Ligaray was made payable to cash. Under the *Negotiable Instruments Law*, this type of check was payable to the bearer and could be negotiated by

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[28] *People v. Caliso,* G.R. No. 183830, October 19, 2011, 659 SCRA 666, 675; *People v. Pineda,* G.R. No. 141644, May 27, 2004, 429 SCRA 478; *Tuason v. Court of Appeals*, G.R. Nos. 113779-80, February 23, 1995, 241 SCRA 695.

[29] TSN, May 4, 2000, lines 54-57.

[30] TSN, May 25, 2000, p. 4.

mere delivery without the need of an indorsement.[31] This rendered it highly probable that Wagas had issued the check not to Ligaray, but to somebody else like Cañada, his brother-in-law, who then negotiated it to Ligaray. Relevantly, Ligaray *confirmed* that he did not himself see or meet Wagas at the time of the transaction and thereafter, and expressly stated that the person who signed for and received the stocks of rice was Cañada.

It bears stressing that the accused, to be guilty of *estafa* as charged, must have used the check in order to defraud the complainant. What the law punishes is the fraud or deceit, not the mere issuance of the worthless check. Wagas could not be held guilty of *estafa* simply because he had issued the check used to defraud Ligaray. The proof of guilt must still clearly show that it had been Wagas as the drawer who had defrauded Ligaray by means of the check.

Thirdly, Ligaray admitted that it was Cañada who received the rice from him and who delivered the check to him. Considering that the records are bereft of any showing that Cañada was then acting on behalf of Wagas, the RTC had no factual and legal bases to conclude and find that Cañada had been acting for Wagas. This lack of factual and legal bases

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[31] Section 9 and Section 30 of the Negotiable Instruments Law provide as follows:

Section 9. *When payable to bearer*. - The instrument is payable to bearer:

(a) When it is expressed to be so payable; or

(b) When it is payable to a person named therein or bearer; or

(c) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(d) When the name of the payee does not purport to be the name of any person; or

(e) When the only or last indorsement is an indorsement in blank.

Section 30. *What constitutes negotiation*. - An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder and completed by delivery.

for the RTC to infer so obtained despite Wagas being Cañada's brother-in-law.

Finally, Ligaray's declaration that it was Wagas who had transacted with him over the telephone was not reliable because he did not explain how he determined that the person with whom he had the telephone conversation was really Wagas whom he had not yet met or known before then. We deem it essential for purposes of reliability and trustworthiness that a telephone conversation like that one Ligaray supposedly had with the buyer of rice to be first authenticated before it could be received in evidence. Among others, the person with whom the witness conversed by telephone should be first satisfactorily identified by voice recognition or any other means.[32] Without the authentication, incriminating another person just by adverting to the telephone conversation with him would be all too easy. In this respect, an identification based on familiarity with the voice of the caller, or because of clearly recognizable peculiarities of the caller would have sufficed.[33] The identity of the caller could also be established by the caller's self-identification, coupled with additional evidence, like the context and timing of the telephone call, the contents of the statement challenged, internal patterns, and other distinctive characteristics, and disclosure of knowledge of facts known peculiarly to the caller.[34]

Verily, it is only fair that the caller be reliably identified first before a telephone communication is accorded probative weight. The identity of the caller may be established by direct or circumstantial evidence. According to one ruling of the Kansas Supreme Court:

> Communications by telephone are admissible in evidence where they are relevant to the fact or facts in issue, and admissibility is governed by the same rules of evidence concerning face-to-face conversations except the party against whom the conversations are

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[32] *Sandoval II v. House of Representatives Electoral Tribunal,* G.R. No. 149380, July 3, 2002, 383 SCRA 770, 784.

[33] 29A Am Jur 2d Evidence § 1403.

[34] *United States v. Orozco-Santillan,* 903 F.2d 1262 (9th Cir. Cal. 1990).

sought to be used must ordinarily be identified. It is not necessary that the witness be able, at the time of the conversation, to identify the person with whom the conversation was had, provided subsequent identification is proved by direct or circumstantial evidence somewhere in the development of the case. **The mere statement of his identity by the party calling is not in itself sufficient proof of such identity, in the absence of corroborating circumstances so as to render the conversation admissible. However, circumstances preceding or following the conversation may serve to sufficiently identify the caller. The completeness of the identification goes to the weight of the evidence rather than its admissibility, and the responsibility lies in the first instance with the district court to determine within its sound discretion whether the threshold of admissibility has been met.**[35] (Bold emphasis supplied)

Yet, the Prosecution did not tender any plausible explanation or offer any proof to definitely establish that it had been Wagas whom Ligaray had conversed with on the telephone. The Prosecution did not show through Ligaray during the trial as to how he had determined that his caller was Wagas. All that the Prosecution sought to elicit from him was whether he had known and why he had known Wagas, and he answered as follows:

Q: Do you know the accused in this case?

A: Yes, sir.

Q: If he is present inside the courtroom […]

A: No, sir. He is not around.

Q: Why do you know him?

A: I know him as a resident of Compostela because he is an ex-mayor of Compostela.[36]

During cross-examination, Ligaray was allowed another opportunity to show how he had determined that his caller was Wagas, but he still failed to provide a satisfactory showing, to wit:

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[35] *State v. Williamson*, 210 Kan. 501 (Kan 1972).

[36] TSN, May 4, 2000, lines 41-47 (emphasis supplied).

Q: Mr. Witness, you mentioned that you and the accused entered into [a] transaction of rice selling, particularly with these 200 sacks of rice subject of this case, through telephone conversation?

A: Yes, sir.

Q: **But you cannot really ascertain that it was the accused whom you are talking with?**

A: **I know it was him because I know him**.

Q: **Am I right to say [that] that was the first time that you had a transaction with the accused through telephone conversation, and as a consequence of that alleged conversation with the accused through telephone he issued a check in your favor?**

A: **No. Before that call I had a talk[ ] with the accused.**

Q: **But still through the telephone?**

A: **Yes, sir.**

Q: **There was no instant (sic) that the accused went to see you personally regarding the 200 bags rice transaction?**

A: **No. It was through telephone only.**

Q: **In fact[,] you did not cause the delivery of these 200 bags of rice through the accused himself?**

A: **Yes. It was through Robert.**

Q: **So, after that phone call[,] you deliver[ed] th[ose] 200 sacks of rice through somebody other than the accused?**

A: **Yes, sir**.[37]

Ligaray's statement that he could tell that it was Wagas who had ordered the rice because he "know[s]" him was still vague and unreliable for not assuring the certainty of the identification, and should not support a finding of Ligaray's familiarity with Wagas as the caller by his voice. It was evident from Ligaray's answers that Wagas was not even an acquaintance of Ligaray's prior to the transaction. Thus, the RTC's conclusion

[37] TSN, May 25, 2000, pp. 7-8.

that Ligaray had transacted with Wagas had no factual basis. Without that factual basis, the RTC was speculating on a matter as decisive as the identification of the buyer to be Wagas.

The letter of Wagas did not competently establish that he was the person who had conversed with Ligaray by telephone to place the order for the rice. The letter was admitted exclusively as the State's rebuttal evidence to controvert or impeach the denial of Wagas of entering into any transaction with Ligaray on the rice; hence, it could be considered and appreciated only for that purpose. Under the law of evidence, the court shall consider evidence solely for the purpose for which it is offered,[38] not for any other purpose.[39] Fairness to the adverse party demands such exclusivity. Moreover, the high plausibility of the explanation of Wagas that he had signed the letter only because his sister and her husband had pleaded with him to do so could not be taken for granted.

It is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet *ei incumbit probation, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove,[40] and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of a crime, and (2) the actuality of the commission of the offense with the participation of the accused. All these facts must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. That the defense

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[38] *Ragudo v. Fabella Estate Tenants Association, Inc.*, G.R. No. 146823, August 9, 2005, 466 SCRA 136, 148; *People v. Lapay*, G.R. No. 123072, October 14, 1998, 298 SCRA 62, 79.

[39] *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 126619, December 20, 2006, 511 SCRA 335, 357.

[40] *People v. Subingsubing*, G.R. Nos. 104942-43, November 25, 1993, 228 SCRA 168, 174.

the accused puts up may be weak is inconsequential if, in the first place, the State has failed to discharge the *onus* of his identity and culpability. The presumption of innocence dictates that it is for the Prosecution to demonstrate the guilt and not for the accused to establish innocence.[41] Indeed, the accused, being presumed innocent, carries no burden of proof on his or her shoulders. For this reason, the first duty of the Prosecution is not to prove the crime but to prove the identity of the criminal. For even if the commission of the crime can be established, without competent proof of the identity of the accused beyond reasonable doubt, there can be no conviction.[42]

There is no question that an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.[43] Thus, considering that the circumstances of the identification of Wagas as the person who transacted on the rice did not preclude a reasonable possibility of mistake, the proof of guilt did not measure up to the standard of proof beyond reasonable doubt demanded in criminal cases. Perforce, the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, and he is entitled to an acquittal,[44] even though his innocence may be doubted.[45]

Nevertheless, an accused, though acquitted of *estafa*, may still be held civilly liable where the preponderance of the

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[41] *People v. Arapok*, G.R. No. 134974, December 8, 2000, 347 SCRA 479, 498.

[42] *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578, 592.

[43] *Natividad v. Court of Appeals*, G.R. No. L-40233, June 25, 1980, 98 SCRA 335, 346, citing *People v. Beltran*, G.R. No. L-31860, November 29, 1974, 61 SCRA 246, 250; *People v. Manambit*, G.R. Nos. 72744-45, April 18, 1997, 271 SCRA 344, 377, citing *People v. Maongco*, G.R. Nos. 108963-65, March 1, 1994, 230 SCRA 562, 575.

[44] *Natividad v. Court of Appeals*, G.R. No. L-40233, June 25, 1980, 98 SCRA 335, 346.

[45] *Pecho v. People*, G.R. No. 111399, September 27, 1996, 262 SCRA 518, 533; *United States v. Gutierrez*, 4 Phil. 493 (1905); *People v. Sadie*,

established facts so warrants.[46] Wagas as the admitted drawer of the check was legally liable to pay the amount of it to Ligaray, a holder in due course.[47] Consequently, we pronounce and hold him fully liable to pay the amount of the dishonored check, plus legal interest of 6% *per annum* from the finality of this decision.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision rendered on July 11, 2002 by the Regional Trial Court, Branch 58, in Cebu City; and **ACQUITS** Gilbert R. Wagas of the crime of *estafa* on the ground of reasonable doubt, but **ORDERS** him to pay Alberto Ligaray the amount of ₱200,000.00 as actual damages, plus interest of 6% *per annum* from the finality of this decision.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Villarama, Jr., Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

G.R. No. 66907, April 14, 1987, 149 SCRA 240, 244; *Perez v. Sandiganbayan,* G.R. Nos. 76203-04, December 6, 1989, 180 SCRA 9, 13.

[46] *People v. Reyes,* G.R. No. 154159, March 31, 2005, 454 SCRA 635, 651; *Eusebio-Calderon v. People,* G.R. No. 158495, October 21, 2004, 441 SCRA 137, 147; *Serona v. Court of Appeals,* G.R. No. 130423, November 18, 2002, 392 SCRA 35, 45; *Sapiera v. Court of Appeals,* G.R. No. 128927, September 14, 1999, 314 SCRA 370, 378.

[47] Section 61 of the *Negotiable Instruments Law* provides:

Section 61. *Liability of Drawer*.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that, on due presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonoured and the necessary proceedings on dishonour be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

[*] Vice Associate Justice Teresita J. Leonardo-de Castro, who is on official trip for the Court to attend the Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice, in Bangkok, Thailand, per Special Order No. 1529 dated August 29, 2013.

FIRST DIVISION

[G.R. No. 166836. September 4, 2013]

SAN MIGUEL PROPERTIES, INC., *petitioner, vs.* **SEC. HERNANDO B. PEREZ, ALBERT C. AGUIRRE, TEODORO B. ARCENAS, JR., MAXY S. ABAD, JAMES G. BARBERS, STEPHEN N. SARINO, ENRIQUE N. ZALAMEA, JR., MARIANO M. MARTIN, ORLANDO O. SAMSON, CATHERINE R. AGUIRRE, and ANTONIO V. AGCAOILI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; SUSPENSION BY REASON OF PREJUDICIAL QUESTION; ELUCIDATED.— A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in the criminal case, and the cognizance of which pertains to another tribunal. It is determinative of the criminal case, but the jurisdiction to try and resolve it is lodged in another court or tribunal. It is based on a fact distinct and separate from the crime but is so intimately connected with the crime that it determines the guilt or innocence of the accused. The rationale behind the principle of prejudicial question is to avoid conflicting decisions. The essential elements of a prejudicial question are provided in Section 7, Rule 111 of the *Rules of Court*, to wit: (*a*) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (*b*) the resolution of such issue determines whether or not the criminal action may proceed.

2. ID.; CIVIL PROCEDURE; OBLIGATIONS AND CONTRACTS; ACTION FOR SPECIFIC PERFORMANCE; REQUIRES PRIOR BREACH OF CONTRACT; ELUCIDATED.— An action for specific performance is the remedy to demand the exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon by a party bound to fulfill it. Evidently, before the remedy of specific

performance is availed of, there must first be a breach of the contract. The remedy has its roots in Article 1191 of the *Civil Code*, which reads: Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. **The injured party may choose between the fulfillment and the rescission of the obligation**, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. x x x Accordingly, the injured party may choose between specific performance or rescission with damages. As presently worded, Article 1191 speaks of the remedy of rescission in reciprocal obligations within the context of Article 1124 of the former *Civil Code* which used the term *resolution*. The remedy of resolution applied only to reciprocal obligations, such that a party's breach of the contract equated to a tacit resolutory condition that entitled the injured party to rescission. The present article, as in the former one, contemplates alternative remedies for the injured party who is granted the option to pursue, as principal actions, either the rescission or the specific performance of the obligation, with payment of damages in either case.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PD NO. 957 REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS; ON THE SUSPENSION AND REVOCATION OF REGISTRATION AND LICENSE OF REAL ESTATE SUBDIVISION BUSINESS.— Presidential Decree No. 957 is a law that regulates the sale of subdivision lots and condominiums in view of the increasing number of incidents wherein "real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly" the basic requirements and amenities, as well as of reports of alarming magnitude of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances. Presidential Decree No. 957 authorizes the suspension and revocation of the registration and license of the real estate subdivision owners, developers, operators, and/or sellers in certain instances, as well as provides the procedure to be observed in such instances; it prescribes administrative fines and other penalties in case of violation of, or non-compliance with its provisions.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; SUSPENSION BY REASON OF PREJUDICIAL QUESTION; CASE AT BAR.— [T]he action for specific performance in the HLURB would determine whether or not San Miguel Properties was legally entitled to demand the delivery of the remaining 20 TCTs, while the criminal action would decide whether or not BF Homes' directors and officers were criminally liable for withholding the 20 TCTs. The resolution of the former must obviously precede that of the latter, for should the HLURB hold San Miguel Properties to be not entitled to the delivery of the 20 TCTs because Atty. Orendain did not have the authority to represent BF Homes in the sale due to his receivership having been terminated by the SEC, the basis for the criminal liability for the violation of Section 25 of Presidential Decree No. 957 would evaporate, thereby negating the need to proceed with the criminal case. Worthy to note at this juncture is that a prejudicial question need not conclusively resolve the guilt or innocence of the accused. It is enough for the prejudicial question to simply test the sufficiency of the allegations in the information in order to sustain the further prosecution of the criminal case. A party who raises a prejudicial question is deemed to have hypothetically admitted that all the essential elements of the crime have been adequately alleged in the information, considering that the Prosecution has not yet presented a single piece of evidence on the indictment or may not have rested its case. A challenge to the allegations in the information on the ground of prejudicial question is in effect a question on the merits of the criminal charge through a non-criminal suit. [Further,] the rule on prejudicial question makes no distinction as to who is allowed to raise the defense. *Ubi lex non distinguit nec nos distinguere debemos.* When the law makes no distinction, we ought not to distinguish.

5. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION; IN CONFORMITY THEREWITH, THE *ACTION FOR SPECIFIC PERFORMANCE* IN CASE AT BAR WAS BROUGHT TO THE HLURB TO RESOLVE TECHNICAL MATTERS OR INTRICATE QUESTIONS OF FACT.— That the action for specific performance was an administrative case pending in the HLURB, instead of in a court of law, was of no consequence at all. The action for specific performance, although civil in nature, could be brought only in the HLURB. This situation conforms to the *doctrine of*

primary jurisdiction. There has been of late a proliferation of administrative agencies, mostly regulatory in function. It is in favor of these agencies that the *doctrine of primary jurisdiction* is frequently invoked, not to defeat the resort to the judicial adjudication of controversies but to rely on the expertise, specialized skills, and knowledge of such agencies in their resolution. The Court has observed that one thrust of the proliferation is that the interpretation of contracts and the determination of private rights under contracts are no longer a uniquely judicial function exercisable only by the regular courts. The doctrine of *primary jurisdiction* has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are at the same time within the jurisdiction of the courts. A case that requires for its determination the expertise, specialized skills, and knowledge of some administrative board or commission because it involves technical matters or intricate questions of fact, relief must first be obtained in an appropriate administrative proceeding before a remedy will be supplied by the courts although the matter comes within the jurisdiction of the courts. The application of the doctrine does not call for the dismissal of the case in the court but only for its suspension until after the matters within the competence of the administrative body are threshed out and determined. To accord with the *doctrine of primary jurisdiction*, the courts cannot and will not determine a controversy involving a question within the competence of an administrative tribunal, the controversy having been so placed within the special competence of the administrative tribunal under a regulatory scheme. In that instance, the judicial process is suspended pending referral to the administrative body for its view on the matter in dispute. Consequently, if the courts cannot resolve a question that is within the legal competence of an administrative body prior to the resolution of that question by the latter, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered, suspension or dismissal of the action is proper.

6. REMEDIAL LAW; CONSTRUCTION; THE FACT THAT AN ACT/OMISSION IS *MALUM PROHIBITUM* WILL NOT

PRECLUDE REASONABLE INTERPRETATION OF THE PROCEDURAL LAW, IF THE LITERAL APPLICATION IS UNJUST OR ABSURD.— The mere fact that an act or omission was *malum prohibitum* did not do away with the initiative inherent in every court to avoid an absurd result by means of rendering a reasonable interpretation and application of the procedural law. Indeed, the procedural law must always be given a reasonable construction to preclude absurdity in its application. Hence, a literal application of the principle governing prejudicial questions is to be eschewed if such application would produce unjust and absurd results or unreasonable consequences.

APPEARANCES OF COUNSEL

Madrid Danao & Associates for petitioner.
Carmelo M. Mendoza for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The pendency of an administrative case for specific performance brought by the buyer of residential subdivision lots in the Housing and Land Use Regulatory Board (HLURB) to compel the seller to deliver the transfer certificates of title (TCTs) of the fully paid lots is properly considered a ground to suspend a criminal prosecution for violation of Section 25 of Presidential Decree No. 957[1] on the ground of a prejudicial question. The administrative determination is a logical antecedent of the resolution of the criminal charges based on non-delivery of the TCTs.

Antecedents

Petitioner San Miguel Properties Inc. (San Miguel Properties), a domestic corporation engaged in the real estate business, purchased in 1992, 1993 and April 1993 from B.F. Homes,

[1] Entitled *Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violation Thereof* (July 12, 1976).

Inc. (BF Homes), then represented by Atty. Florencio B. Orendain (Orendain) as its duly authorized rehabilitation receiver appointed by the Securities and Exchange Commission (SEC),[2] 130 residential lots situated in its subdivision BF Homes Parañaque, containing a total area of 44,345 square meters for the aggregate price of ₱106,248,000.00. The transactions were embodied in three separate deeds of sale.[3] The TCTs covering the lots bought under the first and second deeds were fully delivered to San Miguel Properties, but 20 TCTs covering 20 of the 41 parcels of land with a total area of 15,565 square meters purchased under the third deed of sale, executed in April 1993 and for which San Miguel Properties paid the full price of ₱39,122,627.00, were not delivered to San Miguel Properties.

On its part, BF Homes claimed that it withheld the delivery of the 20 TCTs for parcels of land purchased under the third deed of sale because Atty. Orendain had ceased to be its rehabilitation receiver at the time of the transactions after being meanwhile replaced as receiver by FBO Network Management, Inc. on May 17, 1989 pursuant to an order from the SEC.[4]

BF Homes refused to deliver the 20 TCTs despite demands. Thus, on August 15, 2000, San Miguel Properties filed a complaint-affidavit in the Office of the City Prosecutor of Las Piñas City (OCP Las Piñas) charging respondent directors and officers of BF Homes with non-delivery of titles in violation of Section 25, in relation to Section 39, both of Presidential Decree No. 957 (I.S. No. 00-2256).[5]

At the same time, San Miguel Properties sued BF Homes for specific performance in the HLURB (HLURB Case No. REM-082400-11183),[6] praying to compel BF Homes to release the 20 TCTs in its favor.

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[2] *Rollo,* p. 442.

[3] *Id.* at 137-172.

[4] *Id.* at 61.

[5] *Id.* at 123.

[6] *Id.* at 420-428.

In their joint counter-affidavit submitted in I.S. No. 00-2256,[7] respondent directors and officers of BF Homes refuted San Miguel Properties' assertions by contending that: (*a*) San Miguel Properties' claim was not legally demandable because Atty. Orendain did not have the authority to sell the 130 lots in 1992 and 1993 due to his having been replaced as BF Homes' rehabilitation receiver by the SEC on May 17, 1989; (*b*) the deeds of sale conveying the lots were irregular for being undated and unnotarized; (*c*) the claim should have been brought to the SEC because BF Homes was under receivership; (*d*) in receivership cases, it was essential to suspend all claims against a distressed corporation in order to enable the receiver to effectively exercise its powers free from judicial and extra-judicial interference that could unduly hinder the rescue of the distressed company; and (*e)* the lots involved were under *custodia legis* in view of the pending receivership proceedings, necessarily stripping the OCP Las Piñas of the jurisdiction to proceed in the action.

On October 10, 2000, San Miguel Properties filed a motion to suspend proceedings in the OCP Las Piñas,[8] citing the pendency of BF Homes' receivership case in the SEC. In its comment/ opposition, BF Homes opposed the motion to suspend. In the meantime, however, the SEC terminated BF Homes' receivership on September 12, 2000, prompting San Miguel Properties to file on October 27, 2000 a reply to BF Homes' comment/opposition coupled with a motion to withdraw the sought suspension of proceedings due to the intervening termination of the receivership.[9]

On October 23, 2000, the OCP Las Piñas rendered its resolution,[10] dismissing San Miguel Properties' criminal complaint for violation of Presidential Decree No. 957 on the ground that no action could be filed by or against a receiver without leave

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[7] *Id.* at 178-181.

[8] *Id.* at 215-217.

[9] *Id.* at 253.

[10] *Id.* at 247-250.

from the SEC that had appointed him; that the implementation of the provisions of Presidential Decree No. 957 exclusively pertained under the jurisdiction of the HLURB; that there existed a prejudicial question necessitating the suspension of the criminal action until after the issue on the liability of the distressed BF Homes was first determined by the SEC *en banc* or by the HLURB; and that no prior resort to administrative jurisdiction had been made; that there appeared to be no probable cause to indict respondents for not being the actual signatories in the three deeds of sale.

On February 20, 2001, the OCP Las Piñas denied San Miguel Properties' motion for reconsideration filed on November 28, 2000, holding that BF Homes' directors and officers could not be held liable for the non-delivery of the TCTs under Presidential Decree No. 957 without a definite ruling on the legality of Atty. Orendain's actions; and that the criminal liability would attach only after BF Homes did not comply with a directive of the HLURB directing it to deliver the titles.[11]

San Miguel Properties appealed the resolutions of the OCP Las Piñas to the Department of Justice (DOJ), but the DOJ Secretary denied the appeal on October 15, 2001, holding:

> After a careful review of the evidence on record, we find no cogent reason to disturb the ruling of the City Prosecutor of Las Piñas City. Established jurisprudence supports the position taken by the City Prosecutor concerned.
>
> There is no dispute that aside from the instant complaint for violation of PD 957, there is still pending with the Housing and Land Use Regulatory Board (HLURB, for short) a complaint for specific performance where the HLURB is called upon to inquire into, and rule on, the validity of the sales transactions involving the lots in question and entered into by Atty. Orendain for and in behalf of BF Homes.
>
> As early as in the case of *Solid Homes, Inc. vs. Payawal*, 177 SCRA 72, the Supreme Court had ruled that the HLURB has exclusive jurisdiction over cases involving real estate business and practices

[11] *Id.* at 272-273.

under PD 957. This is reiterated in the subsequent cases of *Union Bank of the Philippines versus HLURB*, G.R. [No.] 953364, June 29, 1992 and *C.T. Torres Enterprises vs. Hilionada*, 191 SCRA 286.

The said ruling simply means that unless and until the HLURB rules on the validity of the transactions involving the lands in question with specific reference to the capacity of Atty. Orendain to bind BF Homes in the said transactions, there is as yet no basis to charge criminally respondents for non-delivery of the subject land titles. In other words, complainant cannot invoke the penal provision of PD 957 until such time that the HLURB shall have ruled and decided on the validity of the transactions involving the lots in question.

WHEREFORE, the appeal is hereby **DENIED**.

SO ORDERED.[12] (Emphasis supplied)

The DOJ eventually denied San Miguel Properties' motion for reconsideration.[13]

Ruling of the CA

Undaunted, San Miguel Properties elevated the DOJ's resolutions to the CA on *certiorari* and *mandamus* (C.A.-G.R. SP No. 73008), contending that respondent DOJ Secretary had acted with grave abuse in denying their appeal and in refusing to charge the directors and officers of BF Homes with the violation of Presidential Decree No. 957. San Miguel Properties submitted the issue of whether or not HLURB Case No. REM-082400-11183 presented a prejudicial question that called for the suspension of the criminal action for violation of Presidential Decree No. 957.

In its assailed decision promulgated on February 24, 2004 in C.A.-G.R. SP No. 73008,[14] the CA dismissed San Miguel Properties' petition, holding and ruling as follows:

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[12] *Id.* at 95-96.

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

[14] *Id.* at 13-21; penned by Associate Justice Rebecca De Guia-Salvador, with the concurrence of Associate Justice Romeo A. Brawner (later Presiding Justice/retired/deceased) and Associate Justice Jose C. Reyes, Jr.

From the foregoing, the conclusion that may be drawn is that the rule on prejudicial question generally applies to civil and criminal actions only.

However, an exception to this rule is provided in ***Quiambao vs. Osorio*** cited by the respondents. In this case, an issue in an administrative case was considered a prejudicial question to the resolution of a civil case which, consequently, warranted the suspension of the latter until after termination of the administrative proceedings.

Quiambao vs. Osorio is not the only instance when the Supreme Court relaxed the application of the rule on prejudicial question.

In ***Tamin vs. CA*** involving two (2) civil actions, the Highest Court similarly applied the rule on prejudicial question when it directed petitioner therein to put up a bond for just compensation should the demolition of private respondents' building proved to be illegal as a result of a pending cadastral suit in another tribunal.

City of Pasig vs. COMELEC is yet another exception where a civil action involving a boundary dispute was considered a prejudicial question which must be resolved prior to an administrative proceeding for the holding of a plebiscite on the affected areas.

In fact, in ***Vidad vs. RTC of Negros Oriental, Br. 42***, it was ruled that in the interest of good order, courts can suspend action in one case pending determination of another case closely interrelated or interlinked with it.

It thus appears that public respondent did not act with grave abuse of discretion x x x when he applied the rule on prejudicial question to the instant proceedings considering that the issue on the validity of the sale transactions x x x by x x x Orendain in behalf of BF Homes, Inc., is closely intertwined with the purported criminal culpability of private respondents, as officers/directors of BF Homes, Inc., arising from their failure to deliver the titles of the parcels of land included in the questioned conveyance.

All told, to sustain the petitioner's theory that the result of the HLURB proceedings is not determinative of the criminal liability of private respondents under PD 957 would be to espouse an absurdity. If we were to assume that the HLURB finds BFHI under no obligation to delve the subject titles, it would be highly irregular and contrary to the ends of justice to pursue a criminal case against private

respondents for the non-delivery of certificates of title which they are not under any legal obligation to turn over in the first place. (Bold emphasis supplied)

On a final note, absent grave abuse of discretion on the part of the prosecutorial arm of the government as represented by herein public respondent, courts will not interfere with the discretion of a public prosecutor in prosecuting or dismissing a complaint filed before him. A public prosecutor, by the nature of his office, is under no compulsion to file a criminal information where no clear legal justification has been shown, and no sufficient evidence of guilt nor *prima facie* case has been established by the complaining party.

WHEREFORE, premises considered, the instant Petition for *Certiorari* and *Mandamus* is hereby **DENIED.** The Resolutions dated 15 October 2001 and 12 July 2002 of the Department of Justice are **AFFIRMED.**

SO ORDERED. [15]

The CA denied San Miguel Properties' motion for reconsideration on January 18, 2005.[16]

Issues

Aggrieved, San Miguel Properties is now on appeal, raising the following for consideration and resolution, to wit:

THE COURT OF APPEALS COMMITTED GRAVE, SERIOUS AND REVERSIBLE ERRORS WHEN IT DISMISSED PETITIONER'S *CERTIORARI* AND *MANDAMUS* PETITION TO ORDER AND DIRECT RESPONDENT SECRETARY TO INDICT RESPONDENTS FOR VIOLATION OF SECTION 25, PD. 957 IN THAT:

1. THE OBLIGATION OF PRIVATE RESPONDENTS TO DELIVER TO PETITIONER THE TITLES TO 20 FULLY-PAID LOTS IS MANDATED BY SECTION 25, PD 957. IN FACT, THE OFFICE OF THE PRESIDENT HAD DULY CONFIRMED THE SAME PER ITS DECISION DATED 27 JANUARY 2005 IN O.P. CASE NO. 03-E-203, ENTITLED "*SMPI V. BF HOMES, INC.*".

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[15] *Id.* at 19-20.

[16] *Id.* at 23-25.

2. *A FORTIORI*, PRIVATE RESPONDENTS' FAILURE AND/OR REFUSAL TO DELIVER TO PETITIONER THE SUBJECT TITLES CONSTITUTES CRIMINAL OFFENSE PER SECTIONS 25 AND 39, PD 957 FOR WHICH IT IS THE MINISTERIAL DUTY OF RESPONDENT SECRETARY TO INDICT PRIVATE RESPONDENTS THEREFOR.

3. IN ANY EVENT, THE HLURB CASE DOES NOT PRESENT A "PREJUDICIAL QUESTION" TO THE SUBJECT CRIMINAL CASE SINCE THE FORMER INVOLVES AN ISSUE SEPARATE AND DISTINCT FROM THE ISSUE INVOLVED IN THE LATTER. CONSEQUENTLY, THE HLURB CASE HAS NO CORRELATION, TIE NOR LINKAGE TO THE PRESENT CRIMINAL CASE WHICH CAN PROCEED INDEPENDENTLY THEREOF.

4. IN FACT, THE CRIMINAL CULPABILITY OF PRIVATE RESPONDENTS EMANATE FROM THEIR MALA PROHIBITA NON-DELIVERY OF THE TITLES TO TWENTY (20) FULLY-PAID PARCELS OF LAND TO PETITIONER, AND NOT FROM THEIR NON-COMPLIANCE WITH THE HLURB'S RULING IN THE ADMINISTRATIVE CASE.

5. NONETHELESS, BY DECREEING THAT PETITIONER'S CRIMINAL COMPLAINT IS PREMATURE, BOTH THE COURT OF APPEALS AND RESPONDENT SECRETARY HAD IMPLIEDLY ADMITTED THE EXISTENCE OF SUFFICIENT PROBABLE CAUSE AGAINST PRIVATE RESPONDENTS FOR THE CRIME CHARGED.[17]

It is relevant at this juncture to mention the outcome of the action for specific performance and damages that San Miguel Properties instituted in the HLURB simultaneously with its filing of the complaint for violation of Presidential Decree No. 957. On January 25, 2002, the HLURB Arbiter ruled that the HLURB was inclined to suspend the proceedings until the SEC resolved the issue of Atty. Orendain's authority to enter into the transactions in BF Homes' behalf, because the final resolution by the SEC was a logical antecedent to the determination of

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

the issue involved in the complaint before the HLURB. Upon appeal, the HLURB Board of Commissioners (HLURB Board), citing the doctrine of primary jurisdiction, affirmed the HLURB Arbiter's decision, holding that although no prejudicial question could arise, strictly speaking, if one case was civil and the other administrative, it nonetheless opted to suspend its action on the cases pending the final outcome of the administrative proceeding in the interest of good order.[18]

Not content with the outcome, San Miguel Properties appealed to the Office of the President (OP), arguing that the HLURB erred in suspending the proceedings. On January 27, 2004, the OP reversed the HLURB Board's ruling, holding thusly:

> The basic complaint in this case is one for specific performance under Section 25 of the Presidential Decree (PD) 957 – "The Subdivision and Condominium Buyers' Protective."
>
> As early as August 1987, the Supreme Court already recognized the authority of the HLURB, as successor agency of the National Housing Authority (NHA), to regulate, pursuant to PD 957, in relation to PD 1344, the real estate trade, with exclusive original jurisdiction to hear and decide cases "involving specific performance of contractual and statutory obligation filed by buyers of subdivision lots … against the owner, developer, dealer, broker or salesman," the HLURB, in the exercise of its adjudicatory powers and functions, "must interpret and apply contracts, determine the rights of the parties under these contracts and award[s] damages whenever appropriate."
>
> Given its clear statutory mandate, the HLURB's decision to await for some forum to decide – if ever one is forthcoming – the issue on the authority of Orendain to dispose of subject lots before it peremptorily resolves the basic complaint is unwarranted, the issues thereon having been joined and the respective position papers and the evidence of the parties having been submitted. To us, it behooved the HLURB to adjudicate, with the usual dispatch, the right and obligation of the parties in line with its own appreciation of the obtaining facts and applicable law. To borrow from *Mabubha Textile Mills Corporation vs. Ongpin*, it does not have to rely on the finding of others to discharge this adjudicatory functions.[19]

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[18] *Id.* at 608.

[19] *Id.* at 609-610.

After its motion for reconsideration was denied, BF Homes appealed to the CA (C.A.-G.R. SP No. 83631), raising as issues: (*a*) whether or not the HLURB had the jurisdiction to decide with finality the question of Atty. Orendain's authority to enter into the transaction with San Miguel Properties in BF Homes' behalf, and rule on the rights and obligations of the parties to the contract; and (*b*) whether or not the HLURB properly suspended the proceedings until the SEC resolved with finality the matter regarding such authority of Atty. Orendain.

The CA promulgated its decision in C.A.-G.R. SP No. 83631,[20] decreeing that the HLURB, not the SEC, had jurisdiction over San Miguel Properties' complaint. It affirmed the OP's decision and ordered the remand of the case to the HLURB for further proceedings on the ground that the case involved matters within the HLURB's competence and expertise pursuant to the doctrine of primary jurisdiction, *viz*:

> [T]he High Court has consistently ruled that the NHA or the HLURB has jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations.
>
> Hence, the HLURB should take jurisdiction over respondent's complaint because it pertains to matters within the HLURB's competence and expertise. The proceedings before the HLURB should not be suspended.
>
> While We sustain the Office of the President, the case must be remanded to the HLURB. This is in recognition of the doctrine of primary jurisdiction. The fairest and most equitable course to take under the circumstances is to remand the case to the HLURB for the proper presentation of evidence.[21]

Did the Secretary of Justice commit grave abuse of discretion in upholding the dismissal of San Miguel Properties' criminal complaint for violation of Presidential Decree No. 957 for lack of probable cause and for reason of a prejudicial question?

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[20] *Id.* at 504-523.

[21] *Id.* at 522.

The question boils down to whether the HLURB administrative case brought to compel the delivery of the TCTs could be a reason to suspend the proceedings on the criminal complaint for the violation of Section 25 of Presidential Decree No. 957 on the ground of a prejudicial question.

Ruling of the Court

The petition has no merit.

1.
Action for specific performance, even if pending in the HLURB, an administrative agency, raises a prejudicial question

BF Homes' posture that the administrative case for specific performance in the HLURB posed a prejudicial question that must first be determined before the criminal case for violation of Section 25 of Presidential Decree No. 957 could be resolved is correct.

A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in the criminal case, and the cognizance of which pertains to another tribunal. It is determinative of the criminal case, but the jurisdiction to try and resolve it is lodged in another court or tribunal. It is based on a fact distinct and separate from the crime but is so intimately connected with the crime that it determines the guilt or innocence of the accused.[22] The rationale behind the principle of prejudicial question is to avoid conflicting decisions.[23] The essential elements of a prejudicial question are provided in Section 7, Rule 111 of the *Rules of Court*, to wit: (*a*) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (*b*) the resolution of such issue determines whether or not the criminal action may proceed.

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[22] *People v. Consing, Jr.*, G.R. No. 148193, January 16, 2003, 395 SCRA 366, 369.

[23] *Beltran v. People*, G.R. No. 137567, June 20, 2000, 334 SCRA 106, 110.

The concept of a prejudicial question involves a civil action and a criminal case. Yet, contrary to San Miguel Properties' submission that there could be no prejudicial question to speak of because no civil action where the prejudicial question arose was pending, the action for specific performance in the HLURB raises a prejudicial question that sufficed to suspend the proceedings determining the charge for the criminal violation of Section 25[24] of Presidential Decree No. 957. This is true simply because the action for specific performance was an action civil in nature but could not be instituted elsewhere except in the HLURB, whose jurisdiction over the action was exclusive and original.[25]

The determination of whether the proceedings ought to be suspended because of a prejudicial question rested on whether the facts and issues raised in the pleadings in the specific

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[24] Section 25. Issuance of Title. – The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

[25] Under Presidential Decree No. 1344 (entitled *Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957*), the National Housing Authority, the predecessor of the HLURB, was vested with original jurisdiction, as follows:

Section 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

(a) Unsound real estate business practices;

(b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

(c) **Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman**. (Emphasis supplied)

performance case were so related with the issues raised in the criminal complaint for the violation of Presidential Decree No. 957, such that the resolution of the issues in the former would be determinative of the question of guilt in the criminal case. An examination of the nature of the two cases involved is thus necessary.

An action for specific performance is the remedy to demand the exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon by a party bound to fulfill it.[26] Evidently, before the remedy of specific performance is availed of, there must first be a breach of the contract.[27] The remedy has its roots in Article 1191 of the *Civil Code*, which reads:

> Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> **The injured party may choose between the fulfillment and the rescission of the obligation**, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. x x x (Emphasis supplied)

Accordingly, the injured party may choose between specific performance or rescission with damages. As presently worded, Article 1191 speaks of the remedy of rescission in reciprocal obligations within the context of Article 1124 of the former *Civil Code* which used the term *resolution*. The remedy of resolution applied only to reciprocal obligations, such that a party's breach of the contract equated to a tacit resolutory condition that entitled the injured party to rescission. The present article, as in the former one, contemplates alternative remedies for the injured party who is granted the option to pursue, as principal actions, either the rescission or the specific performance of the obligation, with payment of damages in either case.[28]

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[26] *Black's Law Dictionary.*

[27] *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, G.R. No. 163075, January 23, 2006, 479 SCRA 462, 469.

[28] *Congregation of the Religious of the Virgin Mary v. Orola*, G.R. No. 169790, April 30, 2008, 553 SCRA 578, 585.

On the other hand, Presidential Decree No. 957 is a law that regulates the sale of subdivision lots and condominiums in view of the increasing number of incidents wherein "real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly" the basic requirements and amenities, as well as of reports of alarming magnitude of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators,[29] such as failure to deliver titles to the buyers or titles free from liens and encumbrances. Presidential Decree No. 957 authorizes the suspension and revocation of the registration and license of the real estate subdivision owners, developers, operators, and/or sellers in certain instances, as well as provides the procedure to be observed in such instances; it prescribes administrative fines and other penalties in case of violation of, or non-compliance with its provisions.

Conformably with the foregoing, the action for specific performance in the HLURB would determine whether or not San Miguel Properties was legally entitled to demand the delivery of the remaining 20 TCTs, while the criminal action would decide whether or not BF Homes' directors and officers were criminally liable for withholding the 20 TCTs. The resolution of the former must obviously precede that of the latter, for should the HLURB hold San Miguel Properties to be not entitled to the delivery of the 20 TCTs because Atty. Orendain did not have the authority to represent BF Homes in the sale due to his receivership having been terminated by the SEC, the basis for the criminal liability for the violation of Section 25 of Presidential Decree No. 957 would evaporate, thereby negating the need to proceed with the criminal case.

Worthy to note at this juncture is that a prejudicial question need not conclusively resolve the guilt or innocence of the accused. It is enough for the prejudicial question to simply test the sufficiency of the allegations in the information in order to sustain

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[29] *Co Chien v. Sta. Lucia Realty & Development Inc.*, G.R. No. 162090, January 31, 2007, 513 SCRA 570, 577-578.

the further prosecution of the criminal case. A party who raises a prejudicial question is deemed to have hypothetically admitted that all the essential elements of the crime have been adequately alleged in the information, considering that the Prosecution has not yet presented a single piece of evidence on the indictment or may not have rested its case. A challenge to the allegations in the information on the ground of prejudicial question is in effect a question on the merits of the criminal charge through a non-criminal suit.[30]

2.
Doctrine of primary jurisdiction is applicable

That the action for specific performance was an administrative case pending in the HLURB, instead of in a court of law, was of no consequence at all. As earlier mentioned, the action for specific performance, although civil in nature, could be brought only in the HLURB. This situation conforms to the *doctrine of primary jurisdiction*. There has been of late a proliferation of administrative agencies, mostly regulatory in function. It is in favor of these agencies that the *doctrine of primary jurisdiction* is frequently invoked, not to defeat the resort to the judicial adjudication of controversies but to rely on the expertise, specialized skills, and knowledge of such agencies in their resolution. The Court has observed that one thrust of the proliferation is that the interpretation of contracts and the determination of private rights under contracts are no longer a uniquely judicial function exercisable only by the regular courts.[31]

The doctrine of *primary jurisdiction* has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are at the same time within the jurisdiction of the courts. A case that requires for its determination the expertise, specialized skills, and

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[30] *Marbella-Bobis v. Bobis*. G.R. No. 138509, July 31, 2000, 336 SCRA 747, 752.

[31] *Antipolo Realty Corporation v. National Housing Authority*, G.R. No. 50444, August 31, 1987, 153 SCRA 399, 407.

knowledge of some administrative board or commission because it involves technical matters or intricate questions of fact, relief must first be obtained in an appropriate administrative proceeding before a remedy will be supplied by the courts although the matter comes within the jurisdiction of the courts. The application of the doctrine does not call for the dismissal of the case in the court but only for its suspension until after the matters within the competence of the administrative body are threshed out and determined.[32]

To accord with the *doctrine of primary jurisdiction,* the courts cannot and will not determine a controversy involving a question within the competence of an administrative tribunal, the controversy having been so placed within the special competence of the administrative tribunal under a regulatory scheme. In that instance, the judicial process is suspended pending referral to the administrative body for its view on the matter in dispute. Consequently, if the courts cannot resolve a question that is within the legal competence of an administrative body prior to the resolution of that question by the latter, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered, suspension or dismissal of the action is proper.[33]

3.

Other submissions of petitioner are unwarranted

It is not tenable for San Miguel Properties to argue that the character of a violation of Section 25 of Presidential Decree

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[32] *Industrial Enterprises, Inc. v. Court of Appeals*, G.R. No. 88550, April 18, 1990, 184 SCRA 426, 431-432.

[33] *Provident Tree Farms, Inc. v. Batario, Jr.*, G.R. No. 92285, March 28, 1994, 231 SCRA 463, 469-470; *Saavedra, Jr. v. Department of Justice,* G.R. No. 93173, September 15, 1993, 226 SCRA 438, 442-443; *Presidential Commission on Good Government v. Peña,* G.R. No. 77663, April 12, 1988, 159 SCRA 556, 567-568; *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.*, 94 Phil. 932, 941 (1954).

No. 957 as *malum prohibitum*, by which criminal liability attached to BF Homes' directors and officers by the mere failure to deliver the TCTs, already rendered the suspension unsustainable.[34] The mere fact that an act or omission was *malum prohibitum* did not do away with the initiative inherent in every court to avoid an absurd result by means of rendering a reasonable interpretation and application of the procedural law. Indeed, the procedural law must always be given a reasonable construction to preclude absurdity in its application.[35] Hence, a literal application of the principle governing prejudicial questions is to be eschewed if such application would produce unjust and absurd results or unreasonable consequences.

San Miguel Properties further submits that respondents could not validly raise the prejudicial question as a reason to suspend the criminal proceedings because respondents had not themselves initiated either the action for specific performance or the criminal action. It contends that the defense of a prejudicial question arising from the filing of a related case could only be raised by the party who filed or initiated said related case.

The submission is unfounded. The rule on prejudicial question makes no distinction as to who is allowed to raise the defense. *Ubi lex non distinguit nec nos distinguere debemos.* When the law makes no distinction, we ought not to distinguish.[36]

WHEREFORE, the Court **AFFIRMS** the decision promulgated on February 24, 2004 by the Court of Appeals in CA-G.R. SP NO. 73008; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

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[34] *Rollo*, p. 49.

[35] *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002, 385 SCRA 306, 316.

[36] *Yu v. Tatad*, G.R. No. 170979, February 9, 2011, 642 SCRA 421, 428.

Sereno, C.J., Villarama, Jr., Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 170388. September 4, 2013]

COLEGIO DEL SANTISIMO ROSARIO and SR. ZENAIDA S. MOFADA, OP, *petitioners, vs.* **EMMANUEL ROJO,**[*] *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; TEACHING PERSONNEL ON PROBATION; PROBATIONARY PERIOD; APPLICABLE RULE AND ACCEPTED PRACTICE THEREON, ELUCIDATED.— In *Mercado v. AMA Computer College-Parañaque City, Inc.*, we had occasion to rule that cases dealing with employment on probationary status of teaching personnel are not governed solely by the Labor Code as the law is *supplemented*, with respect to the period of probation, by special rules found in the Manual of Regulations for Private Schools (the Manual). With regard to the *probationary period*, Section 92 of the 1992 Manual provides: Section 92. *Probationary Period.* – **Subject in all instances to compliance with the Department and school requirements**, **the probationary period for academic personnel**

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[*] Vice Associate Justice Teresita J. Leonardo-de Castro, who is on official trip for the Court to attend the Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice, in Bangkok, Thailand, Per Special Order No. 1529 dated August 29, 2013.

[*] National Labor Relations Commission was deleted as party-respondent pursuant to Section 4, Rule 45 of the Rules of Court.

shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis. x x x In *Magis Young Achievers' Learning Center v. Manalo*, we noted that: **The common practice is for the employer and the teacher to enter into a contract, effective for one school year.** At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment. **At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation.** Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract. It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status. However, this scheme "of fixed-term contract is a system that operates during the probationary period and for this reason is subject to Article 281 of the Labor Code," which provides: x x x The services of an employee who has been engaged on a probationary basis may be terminated ***for a just cause*** **or when he fails to qualify as a regular employee in accordance with** ***reasonable standards made known by the employer to the employee at the time of his engagement***. An employee who is allowed to work after a probationary period shall be considered a regular employee.

2. ID.; ID.; ID.; THAT FULL-TIME TEACHERS WHO HAVE SATISFACTORILY COMPLETED THEIR PROBATIONARY PERIOD SHALL BE CONSIDERED REGULAR OR

PERMANENT; DISCUSSED.— That teachers on probationary employment also enjoy the protection afforded by Article 281 of the Labor Code is supported by Section 93 of the 1992 Manual which provides: Sec. 93. *Regular or Permanent Status.* - Those who have served the probationary period shall be made regular or permanent. **Full-time teachers who have *satisfactorily* completed their probationary period shall be considered regular or permanent**. The above provision clearly provides that full-time teachers become regular or permanent employees once they have *satisfactorily* completed the probationary period of three school years. The use of the term *satisfactorily* necessarily connotes the requirement for schools to set reasonable standards to be followed by teachers on probationary employment. For how else can one determine if probationary teachers have satisfactorily completed the probationary period if standards therefor are not provided? As such, "no vested right to a permanent appointment shall accrue until the employee has completed the prerequisite three-year period necessary for the acquisition of a permanent status. [However, it must be emphasized that] mere rendition of service for three consecutive years does not automatically ripen into a permanent appointment. It is also necessary that the employee be a full-time teacher, and that the services he rendered are satisfactory."

3. ID.; ID.; ID.; IN A SITUATION WHERE THE PROBATIONARY STATUS OVERLAPS WITH A FIXED-TERM CONTRACT *NOT SPECIFICALLY USED FOR THE FIXED TERM IT OFFERS*, ELUCIDATED; CASE AT BAR.— [In Mercado] this Court has definitively pronounced that "in a situation where the probationary status overlaps with a fixed-term contract ***not*** *specifically used for the fixed term it offers*, Article 281 should assume primacy and the fixed-period character of the contract must give way." An example given of a fixed-term contract *specifically used for the fixed term it offers* is a replacement teacher or a reliever contracted for a period of one year to *temporarily* take the place of a permanent teacher who is on leave. The expiration of the reliever's fixed-term contract does not have probationary status implications as he or she was never employed on probationary basis. This is because his or her employment is for a specific purpose with particular focus on the term. There exists an intent to end his or her employment with the school upon expiration of this term. However, **for teachers on probationary employment**, in which case a fixed

term contract is ***not*** *specifically used for the fixed term it offers,* **it is incumbent upon the school to have not only set reasonable standards to be followed by said teachers in determining qualification for regular employment, the same must have also been communicated to the teachers at the start of the probationary period, or at the very least, at the start of the period when they were to be applied.** These terms, *in addition to those expressly provided by the Labor Code*, would serve as the just cause for the termination of the probationary contract. The specific details of this finding of just cause must be communicated to the affected teachers as a matter of due process. Corollarily, **should the teachers not have been apprised of such reasonable standards at the time specified above, they shall be deemed regular employees.**

4. ID.; ID.; PROBATIONARY EMPLOYMENT; PROBATIONARY EMPLOYEE MUST BE INFORMED OF THE QUALIFYING STANDARDS FOR REGULAR EMPLOYMENT.— In *Tamson's Enterprises, Inc. v. Court of Appeals*, we held that "[t]he law is clear that in all cases of probationary employment, the employer shall [convey] to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

5. ID.; ID.; ID.; TERMINATION; REQUIRES WRITTEN NOTICE WITHIN A REASONABLE TIME FROM THE EFFECTIVE DATE OF TERMINATION.— Even assuming that respondent failed to meet the standards set forth by CSR and made known to the former at the time he was engaged as a teacher on probationary status, still, the termination was flawed for failure to give the required notice to respondent. This is because Book VI, Rule I, Section 2 of the IRR of the Labor Code provides: x x x **If the termination is brought about** by the completion of a contract or phase thereof, or **by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination.** x x x As a matter of due process, teachers on probationary employment, just like all probationary employees, have the right to know whether they have met the standards against which their performance was evaluated. Should they fail, they also have the right to know the reasons therefor. It

should be pointed out that absent any showing of unsatisfactory performance on the part of respondent, it can be presumed that his performance was satisfactory.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioners.
Antonio B. Nate for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the August 31, 2005 Decision[2] and the November 10, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 85188, which affirmed the July 31, 2003 Decision[4] of the National Labor Relations Commission (NLRC). Said NLRC Decision affirmed with modification the October 7, 2002 Decision[5] of the Labor Arbiter (LA) which, in turn, granted respondent Emmanuel Rojo's (respondent) Complaint[6] for illegal dismissal.

Factual Antecedents

Petitioner Colegio del Santisimo Rosario (CSR) hired respondent as a high school teacher on probationary basis for the school years 1992-1993, 1993-1994[7] and 1994-1995.[8]

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[1] *Rollo*, pp. 3-26.

[2] CA *rollo*, pp. 310-319; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Ruben T. Reyes and Josefina Guevara-Salonga.

[3] *Id.* at 334.

[4] *Id.* at 22-32; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[5] *Id.* at 34-38; penned by Labor Arbiter Fructuoso T. Aurellano.

[6] *Id.* at 51.

[7] See Teacher's Contract, *id.* at 45.

[8] *Id.* at 46.

On April 5, 1995, CSR, through petitioner Sr. Zenaida S. Mofada, OP (Mofada), decided not to renew respondent's services.[9]

Thus, on July 13, 1995, respondent filed a Complaint[10] for illegal dismissal. He alleged that since he had served three consecutive school years which is the maximum number of terms allowed for probationary employment, he should be extended permanent employment. Citing paragraph 75 of the 1970 Manual of Regulations for Private Schools (1970 Manual), respondent asserted that "full- time teachers who have rendered three (3) consecutive years of satisfactory services shall be considered permanent."[11]

On the other hand, petitioners argued that respondent knew that his Teacher's Contract for school year 1994-1995 with CSR would expire on March 31, 1995.[12] Accordingly, respondent was not dismissed but his probationary contract merely expired and was not renewed.[13] Petitioners also claimed that the "three years" mentioned in paragraph 75 of the 1970 Manual refer to "36 months," not three school years.[14] And since respondent served for only three school years of 10 months each or 30 months, then he had not yet served the "three years" or 36 months mentioned in paragraph 75 of the 1970 Manual.[15]

Ruling of the Labor Arbiter

The LA ruled that "three school years" means three years of 10 months, not 12 months.[16] Considering that respondent had already served for three consecutive school years, then he

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[9] *Id.* at 55.

[10] *Id.* at 51.

[11] *Id.* at 55.

[12] *Id.* at 82.

[13] *Id.*

[14] *Id.* at 81.

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

[16] *Id.* at 37.

has already attained regular employment status. Thus, the non-renewal of his contract for school year 1995-1996 constitutes illegal dismissal.[17]

The LA also found petitioners guilty of bad faith when they treated respondent's termination merely as the expiration of the third employment contract and when they insisted that the school board actually deliberated on the non-renewal of respondent's employment without submitting admissible proof of his alleged regular performance evaluation.[18]

The dispositive portion of the LA's Decision[19] reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the [petitioners]:
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> 1. To pay [respondent] the total amount of ₱39,252.00 corresponding to his severance compensation and 13th month pay, moral and exemplary damages.
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> 2. To pay 10% of the total amount due to [respondent] as attorney's fees.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[20]

Ruling of the National Labor Relations Commission

On appeal, the NLRC affirmed the LA's Decision with modification. It held that after serving three school years, respondent had attained the status of regular employment[21] especially because CSR did not make known to respondent the reasonable standards he should meet.[22] The NLRC also agreed with the LA that respondent's termination was done in

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[17] *Id.* at 37.

[18] *Id.* at 38.

[19] *Id.* at 34-38.

[20] *Id.* at 38.

[21] *Id.* at 28.

[22] *Id.* at 30.

bad faith. It held that respondent is entitled to reinstatement, if viable; or separation pay, if reinstatement was no longer feasible, and backwages, *viz*:

> WHEREFORE, premises considered, the appealed Decision is hereby, AFFIRMED with MODIFICATION only insofar as the award of separation pay is concerned. Since [respondent] had been illegally dismissed, [petitioner] Colegio Del Santisimo Rosario is hereby ordered to reinstate him to his former position without loss of seniority rights with full backwages until he is actually reinstated. However, if reinstatement is no longer feasible, the respondent shall pay separation pay, in [addition] to the payment of his full backwages.
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> The Computation Division is hereby directed to compute [respondent's] full backwages to be attached and to form part of this Decision.
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> The rest of the appealed Decision stands.
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> SO ORDERED.[23]

Petitioners moved for reconsideration which the NLRC denied in its April 28, 2004 Resolution[24] for lack of merit.

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari*[25] before the CA alleging grave abuse of discretion on the part of the NLRC in finding that respondent had attained the status of a regular employee and was illegally dismissed from employment.

In a Decision[26] dated August 31, 2005, the CA denied the Petition for lack of merit. Citing *Cagayan Capitol College v. National Labor Relations Commission*,[27] it held that respondent

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

[24] *Id.* at 20-21.

[25] *Id.* at 2-19.

[26] *Id.* at 310-314.

[27] G.R. Nos. 90010-11, September 14, 1990, 189 SCRA 658, 664, citing *University of Santo Tomas v. National Labor Relations Commission*, 261 Phil. 483, 489 (1990).

has satisfied all the requirements necessary to acquire permanent employment and security of tenure *viz*:

1. The teacher is a full-time teacher;
2. The teacher must have rendered three (3) consecutive years of service; and
3. Such service must be satisfactory.[28]

According to the CA, respondent has attained the status of a regular employee after he was employed for three consecutive school years as a full-time teacher and had served CSR satisfactorily. Aside from being a high school teacher, he was also the Prefect of Discipline, a task entailing much responsibility. The only reason given by Mofada for not renewing respondent's contract was the alleged expiration of the contract, not any unsatisfactory service. Also, there was no showing that CSR set performance standards for the employment of respondent, which could be the basis of his satisfactory or unsatisfactory performance. Hence, there being no reasonable standards made known to him at the time of his engagement, respondent was deemed a regular employee and was, thus, declared illegally dismissed when his contract was not renewed.

Petitioners moved for reconsideration. However, the CA denied the motion for lack of merit in its November 10, 2005 Resolution.[29]

Hence, the instant Petition. Incidentally, on May 23, 2007, we issued a Resolution[30] directing the parties to maintain the status *quo* pending the resolution of the present Petition.

Issue

WHETHER THE COURT OF APPEALS [AS WELL AS THE NATIONAL LABOR RELATIONS COMMISSION] COMMITTED GRIEVOUS AND REVERSIBLE ERROR WHEN IT RULED THAT A

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[28] CA *rollo*, p. 315.

[29] *Id.* at 334.

[30] *Rollo*, pp. 200-201.

BASIC EDUCATION (ELEMENTARY) TEACHER HIRED FOR THREE (3) CONSECUTIVE SCHOOL YEARS AS A PROBATIONARY EMPLOYEE *AUTOMATICALLY* AND/OR *BY LAW* BECOMES A PERMANENT EMPLOYEE UPON COMPLETION OF HIS THIRD YEAR OF PROBATION NOTWITHSTANDING [A] THE PRONOUNCEMENT OF THIS HONORABLE COURT IN *COLEGIO SAN AGUSTIN V. NLRC*, 201 SCRA 398 [1991] THAT A PROBATIONARY TEACHER ACQUIRES PERMANENT STATUS "ONLY WHEN HE IS ALLOWED TO WORK AFTER THE PROBATIONARY PERIOD" AND [B] DOLE-DECS-CHED-TESDA ORDER NO. 01, S. 1996 WHICH PROVIDE THAT TEACHERS WHO HAVE SERVED THE PROBATIONARY PERIOD "SHALL BE MADE REGULAR OR PERMANENT IF ALLOWED TO WORK AFTER SUCH PROBATIONARY PERIOD."[31]

Petitioners maintain that upon the expiration of the probationary period, both the school and the respondent were free to renew the contract or let it lapse. Petitioners insist that a teacher hired for three consecutive years as a probationary employee does not automatically become a regular employee upon completion of his third year of probation. It is the positive act of the school – the hiring of the teacher who has just completed three consecutive years of employment on probation for the next school year – that makes the teacher a regular employee of the school.

Our Ruling

We deny the Petition.

In *Mercado v. AMA Computer College-Parañaque City, Inc.*,[32] we had occasion to rule that cases dealing with employment on probationary status of teaching personnel are not governed solely by the Labor Code as the law is *supplemented,* with respect to the period of probation, by special rules found in the Manual of Regulations for Private Schools (the Manual). With regard to the *probationary period*, Section 92 of the 1992 Manual[33] provides:

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[31] *Id.* at 224-225.

[32] G.R. No. 183572, April 13, 2010, 618 SCRA 218, 233-234.

[33] As in the case of *Mercado*, the 1992 Manual of Regulations is the

Section 92. *Probationary Period.* – **Subject in all instances to compliance with the Department and school requirements**, **the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels**, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis. (Emphasis supplied)

In this case, petitioners' teachers who were on probationary employment were made to enter into a contract effective for one school year. Thereafter, it may be renewed for another school year, and the probationary employment continues. At the end of the second fixed period of probationary employment, the contract may again be renewed for the last time.

Such employment for fixed terms during the teachers' probationary period is an accepted practice in the teaching profession. In *Magis Young Achievers' Learning Center v. Manalo*,[34] we noted that:

The common practice is for the employer and the teacher to enter into a contract, effective for one school year. At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment. **At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee,**

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applicable Manual in the present case as it embodied the pertinent rules at the time of the parties' dispute. At present, the Manual of Regulations for Private Higher Education of 2008 has been in place and applies to all private higher educational institutions; while the 2010 Revised Manual of Regulations for Private Schools in Basic Education covers all private educational institutions in basic education.

[34] G.R. No. 178835, February 13, 2009, 579 SCRA 421, 435-436.

primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract. It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status. (Emphases supplied)

However, this scheme "of fixed-term contract is a system that operates during the probationary period and for this reason is subject to Article 281 of the Labor Code,"[35] which provides:

x x x The services of an employee who has been engaged on a probationary basis may be terminated ***for a just cause*** **or when he fails to qualify as a regular employee in accordance with *reasonable standards made known by the employer to the employee at the time of his engagement*.** An employee who is allowed to work after a probationary period shall be considered a regular employee. [Emphasis supplied]

In *Mercado*, we held that "[u]nless this reconciliation is made, the requirements of [Article 281] on probationary status would be fully negated as the school may freely choose not to renew contracts simply because their terms have expired."[36] This will have an unsettling effect in the equilibrium *vis-a-vis* the relations between labor and management that the Constitution and Labor Code have worked hard to establish.

That teachers on probationary employment also enjoy the protection afforded by Article 281 of the Labor Code is supported by Section 93 of the 1992 Manual which provides:

Sec. 93. *Regular or Permanent Status.* - Those who have served the probationary period shall be made regular or permanent. **Full-time teachers who have *satisfactorily* completed their probationary period shall be considered regular or permanent**. (Emphasis supplied)

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[35] *Mercado v. AMA Computer College-Parañaque City, Inc.*, *supra* note 32 at 243.

[36] *Id.* at 243.

The above provision clearly provides that full-time teachers become regular or permanent employees once they have *satisfactorily* completed the probationary period of three school years.[37] The use of the term *satisfactorily* necessarily connotes the requirement for schools to set reasonable standards to be followed by teachers on probationary employment. For how else can one determine if probationary teachers have satisfactorily completed the probationary period if standards therefor are not provided?

As such, "no vested right to a permanent appointment shall accrue until the employee has completed the prerequisite three-year period necessary for the acquisition of a permanent status. [However, it must be emphasized that] mere rendition of service for three consecutive years does not automatically ripen into a permanent appointment. It is also necessary that the employee be a full-time teacher, and that the services he rendered are satisfactory."[38]

In *Mercado*, this Court, speaking through *J*. Brion, held that:

The provision on employment on probationary status under the Labor Code is a primary example of the fine balancing of interests

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[37] *Magis Young Achievers' Learning Center v. Manalo, supra* note 34 at 435.

A similar requirement is also found in DOLE-DECS-CHED-TESDA Order No. 01, s. 1996, entitled "*Guidelines on Status of Employment of Teachers and of Academic Personnel in Private Educational Institutions*."

Contrary to petitioners' assertions that said guidelines support their claim that teachers who have served the probationary period shall be made regular or permanent *only* if allowed to work after such probationary period, a perusal thereof would reveal that:

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2. Subject in all instances to compliance with the concerned agency and school requirements, the probationary period for teaching or academic personnel shall not be more than three (3) consecutive school years of *satisfactory* service for those in the elementary and secondary levels, x x x.

[38] *Magis Young Achievers' Learning Center v. Manalo, supra* note 34 at 435, citing *Fr. Escudero, O.P. v. Office of the President of the Philippines*, 254 Phil. 789, 797 (1989). See also *Lacuesta v. Ateneo de Manila University*, 513 Phil. 329, 336 (2005).

between labor and management that the Code has institutionalized pursuant to the underlying intent of the Constitution.

On the one hand, employment on probationary status affords management the chance to fully scrutinize the true worth of hired personnel before the full force of the security of tenure guarantee of the Constitution comes into play. Based on the standards set at the start of the probationary period, management is given the widest opportunity during the probationary period to reject hirees who fail to meet *its own adopted but reasonable standards*. These standards, together with *the just and authorized causes for termination of employment [which] the Labor Code expressly provides*, are the grounds available to terminate the employment of a teacher on probationary status. x x x

Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, *and to be judged on the basis of these standards*, aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these standards should be made known to the teachers on probationary status at the start of their probationary period, or at the very least under the circumstances of the present case, at the start of the semester or the trimester during which the probationary standards are to be applied. *Of critical importance in invoking a failure to meet the probationary standards, is that the school should show – **as a matter of due process** – how these standards have been applied.* This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.

When fixed-term employment is brought into play under the above probationary period rules, the situation – as in the present case – may at first blush look muddled as fixed-term employment is in itself a valid employment mode under Philippine law and jurisprudence. The conflict, however, is more apparent than real when the respective nature of fixed-term employment and of employment on probationary status are closely examined.

The fixed-term character of employment essentially refers ***to the period*** agreed upon between the employer and the employee; employment exists only for the duration of the term and ends on its own when the term expires. In a sense, employment on probationary status also refers to a period because of the technical meaning "*probation*" carries in Philippine labor law – a maximum period of six months, or in the academe, a period of three years for those engaged in teaching jobs. Their similarity ends there, however, because of the overriding meaning that being "*on probation*" connotes, *i.e.*, a process of testing and observing the character or abilities of a person who is new to a role or job.

Understood in the above sense, the *essentially protective character of probationary status for management* can readily be appreciated. But this same protective character gives rise to the countervailing but equally protective rule that the probationary period can only last for a specific maximum period and under reasonable, well-laid and properly communicated standards. Otherwise stated, within the period of the probation, any employer move *based on the probationary standards* and affecting the continuity of the employment must strictly conform to the probationary rules.

x x x **If we pierce the veil, so to speak, of the parties' so-called fixed-term employment contracts, what undeniably comes out at the core is a fixed-term contract conveniently used by the school to define and regulate its relations with its teachers *during their probationary period*.**[39] (Emphasis supplied; italics in the original)

In the same case, this Court has definitively pronounced that "in a situation where the probationary status overlaps with a fixed-term contract ***not*** *specifically used for the fixed term it offers*, Article 281 should assume primacy and the fixed-period character of the contract must give way."[40]

An example given of a fixed-term contract *specifically used for the fixed term it offers* is a replacement teacher or a reliever contracted for a period of one year to *temporarily* take the place of a permanent teacher who is on leave. The expiration

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[39] *Mercado v. AMA Computer College-Parañaque City, Inc.*, *supra* note 32 at 238-243.

[40] *Id.* at 243. Emphasis supplied; italics in the original.

of the reliever's fixed-term contract does not have probationary status implications as he or she was never employed on probationary basis. This is because his or her employment is for a specific purpose with particular focus on the term. There exists an intent to end his or her employment with the school upon expiration of this term.[41]

However, **for teachers on probationary employment**, in which case a fixed term contract is ***not*** *specifically used for the fixed term it offers*, **it is incumbent upon the school to have not only set reasonable standards to be followed by said teachers in determining qualification for regular employment, the same must have also been communicated to the teachers at the start of the probationary period, or at the very least, at the start of the period when they were to be applied.** These terms, *in addition to those expressly provided by the Labor Code*, would serve as the just cause for the termination of the probationary contract. The specific details of this finding of just cause must be communicated to the affected teachers as a matter of due process.[42] Corollarily, **should the teachers not have been apprised of such reasonable standards at the time specified above, they shall be deemed regular employees.**

In *Tamson's Enterprises, Inc. v. Court of Appeals*,[43] we held that "[t]he law is clear that in all cases of probationary

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[41] *Id.* at 243-244.

[42] *Id.* at 244.

[43] G.R. No. 192881, November 16, 2011, 660 SCRA 374, 388, citing *Hacienda Primera Development Corporation v. Villegas*, G.R. No. 186243, April 11, 2011, 647 SCRA 536, 543.

See Book VI, Rule I, Section 6 of the Implementing Rules and Regulations (IRR) of the Labor Code, which provides:

Probationary employment. – There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x x x x x x

employment, the employer shall [convey] to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

In this case, glaringly absent from petitioners' evidence are the reasonable standards that respondent was expected to meet that could have served as proper guidelines for purposes of evaluating his performance. Nowhere in the Teacher's Contract[44] could such standards be found.[45] Neither was it mentioned that the same were ever conveyed to respondent.

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just or authorized cause, when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. **Where no standards are made known to the employee at that time, he shall be deemed a regular employee. (**Emphasis supplied)

[44] CA *rollo*, p. 46.

[45] The absence of such standards prompted this Court to further examine the provisions of the Teacher's Contract entered into between the parties. It is surprising to note that a perusal thereof would show that the contract itself does not even indicate respondent's employment status as probationary in nature. From the looks of it, the Teacher's Contract seems to apply to all teachers, probationary or otherwise, employed by petitioner CSR. This can be reasonably concluded from the list of just causes for termination of contract provided for in the second (also the last) page of the contract, *which does not include non-passing of reasonable standards set by the school* and which reads:

Termination of the Contract:

The following are just causes for the terminat[ion of] this contract by either the employer or employee.

1. By the employer:

a. The closing or cessation of the school or x x x considerable decrease in enrollment.

b. Serious misconduct or willful disobedience by the employee of the orders of his [employer or] representative in connection with his work.

Even assuming that respondent failed to meet the standards set forth by CSR and made known to the former at the time he was engaged as a teacher on probationary status, still, the termination was flawed for failure to give the required notice to respondent.[46] This is because Book VI, Rule I, Section 2 of the IRR of the Labor Code provides:

> Section 2. *Security of Tenure*. – (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.
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> (b) The foregoing shall also apply in cases of probationary employment; *provided, however*, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.
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> x x x x x x x x x
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> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
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> x x x x x x x x x

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c. Gross and habitual neglect of duty or gross inefficiency and incompetence of the employee.

d. Fraud or willful breach by the employee of the trust reposed in him by his employer or representative.

e. Gross violation of [the] rules and regulations of the school[;] or commission of a crime involving moral turpitude and such offenses committed by the employees[;] immorality[;] drunkenness[;] assaulting a teacher or any other school authority or his agent or student[;] instigating, leading or participating in school strikes[; and/or] forging or tampering with the official school records and forms.

f. Grave emotional disturbance on the part of the employee which [in] the judgment of employer or his representative could bring damage to the students and the school, in general.

x x x x x x x x x

[46] *Tamson's Enterprises, Inc. v. Court of Appeals*, *supra* note 43 at 388-389.

If the termination is brought about by the completion of a contract or phase thereof, or **by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination.** (Emphasis supplied)

Curiously, despite the absence of standards, Mofada mentioned the existence of alleged performance evaluations[47] in respondent's case. We are, however, in a quandary as to what could have been the basis of such evaluation, as no evidence were adduced to show the reasonable standards with which respondent's performance was to be assessed or that he was informed thereof. Notably too, none of the supposed performance evaluations were presented. These flaws violated respondent's right to due process. As such, his dismissal is, for all intents and purposes, illegal.

As a matter of due process, teachers on probationary employment, just like all probationary employees, have the right to know whether they have met the standards against which their performance was evaluated. Should they fail, they also have the right to know the reasons therefor.

It should be pointed out that absent any showing of unsatisfactory performance on the part of respondent, it can be presumed that his performance was satisfactory, especially taking into consideration the fact that even while he was still more than a year into his probationary employment, he was already designated Prefect of Discipline. In such capacity, he was able to uncover the existence of a drug syndicate within the school and lessen the incidence of drug use therein. Yet despite respondent's substantial contribution to the school, petitioners chose to disregard the same and instead terminated his services; while most of those who were involved in drug activities within the school were punished with a slap on the wrist as they were merely made to write letters promising that the incident will not happen again.[48]

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[47] TSN, July 15, 1996, p. 82; CA *rollo*, p. 221.

[48] *Id.* at 18; *id.* at 157.

Mofada would also have us believe that respondent chose to resign as he feared for his life, thus, the school's decision not to renew his contract. However, no resignation letter was presented. Besides, this is contrary to respondent's act of immediately filing the instant case against petitioners.

WHEREFORE, the Petition is hereby **DENIED**. The August 31, 2005 Decision and the November 10, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 85188 are **AFFIRMED**. The status *quo* order of this Court is **LIFTED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182371. September 4, 2013]

HEIRS OF MELENCIO YU and TALINANAP MATUALAGA (namely: LEONORA, EDUARDO, VIRGILIO, VILMA, IMELDA, CYNTHIA, and NANCY, all surnamed YU), represented by LEONORA, VIRGILIO and VILMA, *petitioners, vs.* **HONORABLE COURT OF APPEALS, SPECIAL TWENTY-FIRST DIVISION (TWENTY-SECOND DIVISION); ROSEMARIE D. ANACANDIZON (in her capacity as Division Clerk of Court); MARION C. MIRABUENO (in her capacity as OIC-Clerk of Court of the Regional Trial Court, General Santos City), and HEIRS OF CONCEPCION NON ANDRES (namely: SERGIO, JR., SOFRONIO and GRACELDA, all surnamed ANDRES), represented by GRACELDA N. ANDRES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIREMENT OF PRIOR FILING OF A MOTION FOR RECONSIDERATION.— The rule is well settled that a motion for reconsideration before the respondent court is an indispensable condition to the filing of a special civil action for *certiorari* before the Supreme Court. Nonetheless, this rule admits of exceptions. x x x

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; POSTING A BOND IS A CONDITION *SINE QUA NON* FOR THE ISSUANCE OF A CORRESPONDING WRIT; ELABORATED.— [A]n Order granting a preliminary injunctions, whether mandatory or prohibitory, does not automatically entitle the applicant-movant to an immediate enforcement. Posting of a bond is a condition *sine qua non* for the issuance of a corresponding writ. In fact, under the Rules, the party filing a bond is mandated to serve a copy thereof to the other party, who may oppose the sufficiency of the bond or the qualifications of its surety or sureties. This is clearly expressed in Section 7, Rule 58 of the Rules.

3. ID.; ID.; ID.; ELUCIDATED.— A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. To justify the issuance of a writ of preliminary mandatory injunctions, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise since, to be protected by injunction , the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law. x x x Thus, a preliminary mandatory injunction should only be granted "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right

against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

4. ID.; ID.; ID.; RULE THAT A WRIT OF PRELIMINARY MANDATORY INJUNCTION CANNOT BE USED TO OUST A PARTY FROM HIS POSSESSION OF A PROPERTY AND TO PUT IN HIS PLACE ANOTHER PARTY WHOSE RIGHT HAS NOT BEEN CLEARLY ESTABLISHED; CASE AT BAR.— [A] writ of preliminary mandatory injunction cannot be used to oust a party from his possession of a property and to put in his place another party whose right has not been clearly established. Respondent CA should have exercised more prudence, considering that the arguments raised by petitioners in their Comment deserve more credit than private respondents' bare allegations. x x x As well, the issue of prior possession by private respondents are very much contested by petitioners. Private respondents argued that they are the actual possessors – open, continuous, and adverse possession in the concept of an owner – and not squatters, of the subject lot for over 50 years and that petitioners and their predecessors-in-interest have never been in possession of the contested lot. Yet such allegation is factual in nature. Therefore, prior to the issuance of the challenged Order and writ, respondent CA should have fully ascertained whether there is truth to private respondents' representation that they have improvements or structures on the subject lot which would suffer from the intended demolition. Finally, granting that there is strong evidence to prove private respondents' ownership and possession of the disputed lot, still, they are not entitled to the grant of preliminary mandatory injunction. As the damages alleged by them can be quantified, it cannot be considered as "grave and irreparable injury" as understood in law. x x x Thus, in case of doubt, respondent CA should have denied private respondents' prayer as it appeared that although they *may* be entitled to the injunction, they could still be fully compensated for the damages they *may* suffer by simply requiring petitioners to file a bond to answer for all damages that *may* be suffered by such denial.

APPEARANCES OF COUNSEL

Camilo Carino Dionio, Jr. for petitioners.
Gracelda N. Andres for respondents.

D E C I S I O N

PERALTA, *J.*:

This petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure seeks to set aside the Order[1] and Writ of Preliminary Mandatory Injunction,[2] both dated April 3, 2008, issued by the Court of Appeals (CA) in CA-G.R. SP No. 02084-MIN, which granted to private respondents the possession *pendente lite* of Lot No. 2, Psu-135740[3]-Amd, situated in Sogod, Barangay Apopong,[4] General Santos City, South Cotabato.

The pertinent facts are as follows:

On May 24, 1972, the spouses Melencio Yu and Talinanap Matualaga filed Civil Case No. 1291 against John Z. Sycip (who died during the pendency of the case and was substituted by his heirs, namely: Natividad D. Sycip, Jose Sycip, John Sycip, Jr., Alfonso Sycip II, and Rose Marie Natividad D. Sycip) for the declaration of nullity of documents and recovery of possession of real property with a prayer for a writ of preliminary mandatory injunction (WPMI) and damages. The subject matter of the case was Lot No. 2, Psu-135740-Amd, the same lot being contested herein. The trial court initially dismissed the case on the ground of prescription, but the CA set aside the order of dismissal and remanded the case for further proceedings. After trial, wherein the court adopted the oral and documentary

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Rodrigo F. Lim, Jr. and Elihu A. Ybañez, concurring; *rollo*, pp. 23-25.

[2] *Rollo*, pp. 26-27.

[3] Also referred to as Psu-134740 in some documents (See *rollo*, pp. 189-191).

[4] Also referred to as *Brgy.* Makar, as per Original Certificate of Title No. (V-14496)(P-523) (See *rollo*, p. 243).

evidence presented in Civil Case No. 969,[5] the Court of First Instance (CFI) of South Cotabato, Branch 1, rendered its Decision on April 22, 1981, the decretal portion of which states:

> ACCORDINGLY, judgment is hereby rendered declaring plaintiff Melencio Yu, Filipino, of legal age, married to Talinanap Matualaga (Mora) and residing in Dadiangas, Buayan, Cotabato, now General Santos City, as the registered and absolute owner of the land in question, entitled to its possession; ordering the defendants to deliver to him the property in question, including the Owner's Copy of Original Certificate of Title No. (V-14496) (P-2331) P-523, and to pay to the plaintiffs the sum of One Thousand Five Hundred (₱1,500.00) Pesos as attorney's fees.
>
> With costs against the defendants.
>
> SO ORDERED.[6]

Eventually, the case was elevated to the Supreme Court, which, in *Heirs of John Z. Sycip v. Court of Appeals*,[7] sustained the CA decision affirming the trial court's judgment. The Court's ruling is now final and executory.

During the pendency of Civil Case No. 1291, squatters entered the subject lot. Consequently, when a writ of execution and an order of demolition were issued by the trial court, a group of squatters known as Yard Urban Homeowners Association, Inc. (YUHAI) filed a complaint for injunction with damages and prayer for writ of preliminary injunction (WPI) or temporary restraining order (TRO). It was docketed as Civil Case No. 4647 and raffled before the General Santos City Regional Trial Court (RTC), Branch 22. In time, the trial court ruled in favor

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[5] A complaint for the Declaration of Nullity of Document and Recovery of Possession of Real Property with a prayer for a Writ of Preliminary Mandatory Injunction and Damages, with Lot No. 4 Psu 135740-Amd as the subject matter, which was adjacent to Lot No. 2, Psu-135740-Amd. (See *Heirs of John Z. Sycip v. Court of Appeals*, G.R. No. 76487, November 9, 1990, 191 SCRA 262, 266).

[6] *Rollo*, p. 286.

[7] *Supra* note 5.

of petitioners. The CA affirmed the decision on August 28, 1998 in CA-G.R. CV No. 54003.[8]

Thereafter, the General Santos City RTC Br. 23, then hearing both Civil Case Nos. 1291 and 4647, granted petitioners' motion to implement the writ of demolition and, subsequently, denied the opposition/motion for reconsideration thereto.[9] On August 22, 2001, a Special Order of Demolition was issued by Presiding Judge Jose S. Majaducon to enforce the judgment in both cases, directing the Provincial Sheriff of General Santos City or any of his deputies, thus:

> NOW THEREFORE, we command you to demolish the improvements erected by the defendants HEIRS OF JOHN Z. SYCIP (namely: NATIVIDAD D. SYCIP, JOSE SYCIP, JOHN SYCIP, JR., ALFONSO SYCIP II, ROSE MARIE SYCIP, JAMES SYCIP & GRACE SYCIP), Represented by NATIVIDAD D. SYCIP, in Civil Case No. 1291, and the plaintiffs YARD URBAN HOMEOWNERS ASSOCIATION, INC., *ET AL*., in Civil Case No. 4647, on that portion of land belonging to plaintiffs in Civil Case No. [1291] and defendants in Civil Case No. 4647, MELENCIO YU and TALINANAP MATUALAGA covered by Original Certificate of Title No. (V-14496) (P-2331) P-523, located in Apopong, General Santos City.
>
> This Special Order of Demolition shall be returned by you to this Court within ten (10) days from date of receipt hereof together with your proceedings indorsed hereon.[10]

By virtue of the aforesaid Order, a notice to vacate was issued by Sheriff Nasil S. Palati and noted by Clerk of Court Atty. Elmer D. Lastimosa addressed to the heirs of John Z. Sycip, members of YUHAI and all adverse claimants and actual occupants of the disputed lot.[11] As a result, private respondents filed a Special Appearance with Urgent *Ex-Parte* Manifestation, praying that the "Provincial Sheriff or any of his deputies be

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[8] *Rollo*, pp. 8, 58.

[9] *Id.* at 54.

[10] *Id.*

[11] *Id.* at 294.

properly informed [of the pending protest between petitioners and private respondents before the Department of Environment and Natural Resources] and enjoined from [implementing] the Special Order of Demolition on the improvements made by Concepcion Non Andres, her heirs and assigns."[12] As their demands went unheeded, private respondents filed a complaint for quieting of title, specific performance, reconveyance and damages with prayer for the issuance of TRO, WPI and WPMI. Docketed as Civil Case No. 7066 and raffled before RTC Br. 22, among those impleaded as defendants were petitioners, Sheriff Palati, Atty. Lastimosa, Retired Presiding Judge Majaducon, and the officers/directors of YUHAI. The trial court denied the issuance of a TRO and the case is still pending trial at this time.[13]

Likewise, YUHAI once more filed a complaint on October 10, 2001 against the spouses Melencio Yu and Talinanap Matualaga.[14] This time, the case was for quieting of title, damages and attorney's fees with application for TRO and WPI. It was docketed as Special Civil Case No. 562 and raffled before RTC Br. 22. The trial court declined to issue a TRO on October 19, 2001; denied YUHAI's urgent motion for clarification on November 5, 2001; and rejected for the second time YUHAI's prayer for issuance of TRO or WPI on February 4, 2002.[15]

Meantime, on January 3, 2002, RTC Br. 23 directed the Sheriff to proceed with his duties of implementing the Special Order of Demolition.

The above prompted YUHAI to file a petition for *certiorari* before the CA. The petition, which was docketed as CA-G.R. SP No. 69176, sought to annul the Special Order of Demolition dated August 22, 2001 and Order dated January 3, 2002, both issued by RTC Br. 23, as well as all the adverse resolutions of RTC Br. 22. On March 5, 2002, the CA issued a TRO.

[12] *Id.*

[13] *Id.* at 17, 165-166, 265.

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

[15] *Id.* at 51.

However, on July 27, 2004, the appellate court revoked the TRO, denied due course to the petition and dismissed the same for lack of merit.[16] YUHAI's motion for reconsideration was denied on November 29, 2006.[17] The CA essentially ruled that the issue of ownership over the subject lot was already passed upon in CA-G.R. CV No. 54003 and binds YUHAI under the principle of *res judicata*. Subsequently, YUHAI filed a petition before this Court, but it was denied on September 16, 2009.[18]

On December 27, 2006, petitioners filed a Motion to Resume and Complete Demolition[19] pursuant to the Special Order of Demolition dated August 22, 2001. The trial court, now RTC Br. 36, granted the motion on October 9, 2007, instructing the Provincial Sheriff of General Santos City or any of his deputies to resume and complete the demolition in Civil Case Nos. 1291 and 4647 as directed in the Special Order of Demolition issued by then Judge Majaducon.[20]

Responding to the Notice to Vacate that was served in accordance with the October 9, 2007 Order, private respondents wrote the Sheriff on November 26, 2007, contending that they should not be included in the implementation of the Order since they are not parties in Civil Case Nos. 1291 and 4647.[21] Three days after, private respondents filed a Special Appearance with *Ex-Parte* Manifestation and Motion before RTC Branch 36, again arguing that they should not be included in the demolition as they are not parties to both cases and that Civil Case Nos. 7066 and 7364[22] are still pending before RTC Branches 22 and

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[16] *Id.* at 60.

[17] *Id.* at 63.

[18] *Yard Urban Homeowners Association, Inc. v. The Heirs of Melencio Yu, Represented by Virgilio Yu, et al.*, G.R. No. 176096, September 16, 2009, Third Division Minute Resolution.

[19] *Rollo*, pp. 62-66.

[20] *Id.* at 67-69.

[21] *Id.* at 165.

[22] Allegedly a case for reversion filed by the Office of the Solicitor General against the Heirs of Melencio Yu (*Id.* at 162, 176).

23, respectively. The pleading was, however, denied on December 7, 2007.[23] Hence, a petition for *certiorari* with prayer for TRO and/or WPI seeking to set aside the October 9, 2007 Order was filed before the CA and docketed as CA-G.R. SP No. 02084-MIN.[24]

On December 14, 2007, the CA issued a TRO,[25] but, on February 13, 2008, the restraining order was vacated for being moot and academic after the appellate court noted the December 20, 2007 Order of the Presiding Judge of RTC Br. 36 manifesting that the writ of demolition was already executed and completed on December 13, 2007.[26]

Arguing in main that there was no complete demolition and no proper turn-over of the contested lot on December 13, 2007, private respondents filed a motion for reconsideration with very urgent prayer for immediate issuance of WPI and WPMI.[27] On April 3, 2008, the CA resolved to grant the prayer for preliminary mandatory injunction.[28] On the same day, the writ was issued by respondent Rosemarie D. Anacan-Dizon.[29]

Aggrieved, petitioners filed an Urgent Motion for Reconsideration[30] and, later, an Urgent Motion for Dissolution of the Writ of Preliminary Mandatory Injunction[31] on April 9, 2008 and April 14, 2008, respectively. Without waiting for the CA resolution on the two motions, petitioner filed the present case before Us on April 21, 2008.[32]

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[23] *Rollo*, p. 87.

[24] *Id.* at 166, 235.

[25] *Id.* at 232-238.

[26] *Id.* at 79-81.

[27] *Id.* at 201-216.

[28] *Id.* at 23-25.

[29] *Id.* at 26-27.

[30] *Id.* at 28-43.

[31] *Id.* at 44-49.

[32] *Id.* at 3.

The petition is granted.

The rule is well settled that a motion for reconsideration before the respondent court is an indispensable condition to the filing of a special civil action for *certiorari* before the Supreme Court. Nonetheless, this rule admits of exceptions. In *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services, Inc.*,[33] We have painstakingly cited a number of jurisprudence on the matter and held:

> x x x As early as *Director of Lands v. Santamaria*, this Court held that there are notable exceptions to the general rule that a motion for reconsideration must first be filed before resort to *certiorari* can be availed of. This rule has been applied by this Court in a plethora of cases. A motion for reconsideration is no longer necessary when other special circumstances warrant immediate and more direct action.
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> x x x x x x x x x
>
> Although a motion for reconsideration has often been considered a condition precedent for granting the writ of *certiorari*, this rule finds exception in this case where execution has been ordered and the need for relief is urgent. Otherwise, a motion for reconsideration of the contested order would have served no purpose. The rule on exhaustion of remedies does not call for an exercise in futility. In *Gonzales, Jr. v. Intermediate Appellate Court*, this Court said:
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> > As a general rule, *certiorari* will not lie, unless an inferior court has, through a motion for reconsideration, a chance to correct the errors imputed to him. This, however, admits of exceptions, namely: (1) when the issue raised is one purely of law; (2) where public interest is involved; and (3) in case of urgency.[34]

In the case at bar, the different issues raised by petitioners and countered by private respondents ultimately boil down to the propriety of the issuance of the writ of preliminary mandatory

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[33] G.R. No. 174136, December 23, 2008, 575 SCRA 291.

[34] *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services, Inc., supra,* at 303-306. (Citations omitted)

injunction, which, aside from the need to urgently resolve in view of the peculiar facts involved, is an issue that is purely a question of law.

From the procedural standpoint, petitioners correctly argued that respondent Anacan-Dizon hastily issued and released for service the Order and the Writ of Preliminary Mandatory Injunction simultaneously on the same day, April 3, 2008, without first waiting for private respondents to post the required bond in the amount of Php300,000.00 as mandated by the Order. Private respondents candidly admitted in paragraph 36, page 16 of their Comment that it was only on April 14, 2008 that they posted the required bond.[35] This is obviously contrary to the provision of the Rules of Court ("Rules"), Section 4, Rule 58 of which states in no uncertain terms:

> **SEC. 4.** ***Verified application and bond for preliminary injunction or temporary restraining order.*** – A preliminary injunction or temporary restraining order may be granted only when:
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> x x x x x x x x x
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> (b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. **Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.**[36]

To be sure, an Order granting a preliminary injunction, whether mandatory or prohibitory, does not automatically entitle the applicant-movant to an immediate enforcement. Posting of a bond is a condition *sine qua non* for the issuance of a corresponding writ.[37] In fact, under the Rules, the party filing

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[35] *Rollo*, p. 172.

[36] Emphasis supplied.

[37] See *Garcia v. Adeva*, 550 Phil. 663, 677-678 (2007), citing *San Miguel v. Hon. Elbinias, etc.*, 212 Phil. 291, 297 (1984).

a bond is mandated to serve a copy thereof to the other party, who may oppose the sufficiency of the bond or the qualifications of its surety or sureties. This is clearly expressed in Section 7, Rule 58 of the Rules:

> **SEC. 7.** ***Service of copies of bonds; effect of disapproval of same.*** – The party filing a bond in accordance with the provisions of this Rule shall forthwith serve a copy of such bond on the other party, who may except to the sufficiency of the bond, or of the surety or sureties thereon. If the applicant's bond is found to be insufficient in amount, or if the surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be dissolved. If the bond of the adverse party is found to be insufficient in amount, or the surety or sureties thereon fail to justify a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be granted or restored, as the case may be.

Yet more than the undue haste by which the writ was issued, the Court believes and so holds that respondent CA acted with grave abuse of discretion when it granted private respondents' prayer for a preliminary mandatory injunction.

We explain.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.[38] To justify the issuance of a writ of preliminary mandatory injunction, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage.[39] An injunction

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[38] Rules of Court, Rule 58, Sec. 1.

[39] *Pelejo v. Court of Appeals*, 203 Phil. 29, 33 (1982), as cited in *Semirara Coal Corporation v. HGL Development Corporation*, 539 Phil. 532, 545 (2006); *Pablo-Gualberto v. Gualberto*, 500 Phil. 226, 253 (2005);

will not issue to protect a right not *in esse,* or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law.[40] As this Court opined in *Dela Rosa v. Heirs of Juan Valdez*:[41]

> A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.[42]

Thus, a preliminary mandatory injunction should only be granted "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."[43]

De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region, 464 Phil. 1033, 1052 (2004); and *Gateway Electronics Corporation v. Land Bank of the Philippines*, 455 Phil. 196, 210 (2003).

[40] See *Delos Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 424 and *Nerwin Industries Corporation v. PNOC-Energy Development Corporation*, G.R. No. 167057, April 11, 2012, 669 SCRA 173, 187.

[41] G.R. No. 159101, July 27, 2011, 654 SCRA 467.

[42] *Dela Rosa v. Heirs of Juan Valdez, supra*, at 479-480. (Citation omitted)

[43] *Power Sites and Signs, Inc. v. United Neon (a Division of Ever*

In this case, there is doubt on private respondents' entitlement to a preliminary mandatory injunction since the evidence presented before the respondent CA in support thereof appears to be weak and inconclusive, and the alleged right sought to be protected is vehemently disputed. The documentary evidence presented by private respondents does not suffice to prove their ownership and possession of the contested lot. Notably, both the Quitclaim Deed[44] allegedly executed on April 16, 1957 by the spouses Melencio Yu and Talinanap Matualaga in favor of Alfonso Aguinaldo Non and the Transfer of Free Patent Rights[45] allegedly executed on May 28, 1957 by Melencio Yu in favor of Concepcion Non Andres were among those documents already declared null and void by the trial court in Civil Case No. 1291 on the grounds that: (a) the spouses never received any consideration for said conveyances; (b) the documents were falsified; (c) the instruments were not approved by the Provincial Governor or his duly-authorized representative pursuant to Sections 145 and 146 of the Revised Administrative Code of Mindanao and Sulu; (d) all transactions were restricted by the law governing free patent; and (e) Lot No. 2, Psu-135740-Amd is a paraphernal property of Talinanap Matualaga and was sold without her consent.[46] The trial court's decision was affirmed in *Heirs of John Z. Sycip v. Court of Appeals*,[47] wherein this Court ratiocionated:

It is not disputed that the private respondents are Muslims who belong to the cultural minority or non-Christian Filipinos as members of the Maguindanao Tribe. Any transaction, involving real property with them is governed by the provisions of Sections 145 and 146 of the Revised Administrative Code of Mindanao and Sulu, Section 120

Corporation), G.R. No. 163406, November 24, 2009, 605 SCRA 196, 208-209. (Citation omitted) and *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*, G.R. No. 145742, July 14, 2005, 463 SCRA 358, 374.

[44] *Rollo*, p. 187.

[45] *Id.* at 189.

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

[47] *Supra* note 5.

of the Public Land Act (Commonwealth Act No. 141), as amended, and Republic Act No. 3872, further amending the Public Land Act.

Section 145 of the Revised Administrative Code of Mindanao and Sulu provides that any transaction involving real property with said non-Christian tribes shall bear the approval of the provincial governor wherein the same was executed or of his representative duly authorized in writing for such purpose, indorsed upon it. *Section 146 of the same code considers every contract or agreement made in violation of Section 145 as null and void.* (Italics supplied)

Section 120 of the Public Land Act (Commonwealth Act No. 141) provides that conveyances and encumbrances made by persons belonging to the so-called "non-Christian tribe" shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument of conveyance or encumbrance is written. Conveyances and encumbrances made by illiterate non-Christians shall not be valid unless duly approved by the Commissioner of Mindanao and Sulu.

Republic Act No. 3872 provides that conveyances and encumbrances made by illiterate non-Christian or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.

All the documents declared null and void or inexistent by the trial court and affirmed by the Court of Appeals were found to have been falsified in Civil Case No. 969; without consideration and more importantly without approval by any of the following officials: the Provincial Governor of Cotabato, Commissioner of Mindanao and Sulu, or the Chairman of the Commission on National Integration and therefore null and void.[48]

The above ruling already binds private respondents, considering that Alfonso Aguinaldo Non and Concepcion Non Andres were both their predecessors-in-interest because they are their grandfather and mother, respectively.[49] As a matter of fact, in

[48] *Heirs of John Z. Sycip v. Court of Appeals*, *supra* note 5, at 267. (Emphasis ours)

[49] *Rollo*, pp. 160-161.

Andres v. Majaducon,[50] which is an administrative case filed by Sergio and Gracelda Andres, who are private respondents herein, against Clerk of Court and *Ex-Officio* Provincial Sheriff Lastimosa and Sheriff Palati for alleged abuse of authority when they enforced the order of demolition against them (private respondents) even though they were not impleaded as parties in Civil Case Nos. 1291 and 4647, We dismissed the charge and instead ruled:

> Worth quoting here is the decision of the CA in CA-G.R. CV No. 54003, which decided the appeal of the decision in Civil Case No. 4647, *viz*.:
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> > Finally, the appellants' assertion that they are not bound by the decision in Civil Case No. 1291 because they are not parties therein and that the appellees should first institute an action for ejectment in order to acquire possession of the property is without merit. The appellants' failure to establish a vested and better right, either derivative or personal, to the land in question as against the appellees, forecloses any posturing of exemption from the legal force and effect of the writ of execution issued by the trial court to enforce a final judgment under the guise of denial of due process. **A judgment pertaining to ownership and/or possession of real property is binding upon the defendants and all persons claiming right of possession or ownership from the said defendant and the prevailing party need not file a separate action for ejectment to evict the said privies from the premises**.
>
> Evidently, the decision in Civil Case Nos. 1291 and 4647, which had long become final and executory, can be enforced against herein complainants although they were not parties thereto. There is no question that complainants merely relied on the title of their predecessor-in-interest who was privy to John Sycip, the defendant in Civil Case No. 1291. As such, complainants and their predecessor-in-interest can be reached by the order of demolition.[51]

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[50] A.M. No. RTJ-03-1762 (Formerly OCA I.P.I. No. 02-1422-RTJ), December 17, 2008, 574 SCRA 169.

[51] *Andres v. Majaducon*, *supra*, at 184-185. (Emphasis in the original; citations omitted)

In issuing the subject writ, respondent CA certainly ignored the fundamental rule in Our jurisdiction that a writ of preliminary mandatory injunction cannot be used to oust a party from his possession of a property and to put in his place another party whose right has not been clearly established.[52] Respondent CA should have exercised more prudence, considering that the arguments raised by petitioners in their Comment in CA-G.R. SP No. 02084-MIN deserve more credit than private respondents' bare allegations. Other than the Quitclaim Deed and the Transfer of Free Patent Rights, which were long ago nullified in *Heirs of John Z. Sycip v. Court of Appeals*,[53] the other public documents "left untouched by the Supreme Court and the other lower courts for that matter x x x such as the Free Patent Application of Concepcion Non Andres, which were never nullified or declared void by any judicial or quasi-judicial body"[54] being claimed by private respondents are still inconclusive as to their existence and due execution and are highly disputed by petitioners; hence, these cannot be a source of a clear or unmistakable right. At the very least, respondent CA should have accorded respect to the presumed indefeasibility of Original Certificate of Title No. (V-14496) (P-2331) P-523 issued on August 23, 1961 in favor of Melencio Yu, which has not been cancelled to date.

As well, the issue of prior possession by private respondents are very much contested by petitioners. Private respondents argued that they are the actual possessors – open, continuous, and adverse possession in the concept of an owner – and not squatters, of the subject lot for over 50 years and that petitioners and their predecessors-in-interest have never been in possession of the contested lot.[55] Yet such allegation is factual in nature. Therefore, prior to the issuance of the challenged Order and writ, respondent CA should have fully ascertained whether there

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[52] *Alvaro v. Zapata*, 204 Phil. 356, 363 (1982). (Citation omitted)

[53] *Supra* note 5.

[54] *Rollo*, p. 176.

[55] *Id.*

is truth to private respondents' representation that they have improvements or structures on the subject lot which would suffer from the intended demolition.

Finally, granting that there is strong evidence to prove private respondents' ownership and possession of the disputed lot, still, they are not entitled to the grant of preliminary mandatory injunction. As the damages alleged by them can be quantified, it cannot be considered as "grave and irreparable injury" as understood in law:

> It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money" is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona:*
>
> > Damages are irreparable within the meaning of the rule relative to the issuance of injunction where **there is no standard by which their amount can be measured with reasonable accuracy**. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which **produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement."** An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that **its pecuniary value will not fairly recompense the owner of the loss thereof.** (Emphasis supplied)

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*, the writ of injunction –

> should *never* issue when an action for damages would adequately compensate the injuries caused. The very foundation

> of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[56]

Thus, in case of doubt, respondent CA should have denied private respondents' prayer as it appeared that although they *may* be entitled to the injunction, they could still be fully compensated for the damages they *may* suffer by simply requiring petitioners to file a bond to answer for all damages that *may* be suffered by such denial.[57]

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The Order and Writ of Preliminary Mandatory Injunction, both dated April 3, 2008, issued by the Court of Appeals in CA-G.R. SP No. 02084-MIN, are **REVERSED AND SET ASIDE**. Petitioners are entitled to possess *pendente lite* Lot No. 2, Psu-135740-Amd, situated in Sogod, Barangay Apopong, General Santos City, South Cotabato.

SO ORDERED.

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

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[56] *Power Sites and Signs, Inc. v. United Neon (a Division of Ever Corporation), supra* note 43, at 210-211.

[57] See Rules of Court, Rule 58, Sec. 6.

SECOND DIVISION

[G.R. No. 187268. September 4, 2013]

JOVITO C. PLAMERAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED.— As defined, a question of fact also known as a point of fact, is "a question which must be answered by reference to facts and evidence, and inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact is usually dependent on a particular circumstances or factual situations." We cannot, as a rule, re-evaluate the facts. Section 1, Rule 45 of the Rules of Court states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth."

2. ID.; ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED.— The Court reiterates the well-settled rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court. As held in the case of *Navallo v. Sandiganbayan*, the Court ruled that *"xxx Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored xxx.*

3. CRIMINAL LAW; RA 3019, SECTION 3(e) ON CORRUPT PRACTICES OF PUBLIC OFFICERS; ELEMENTS.— [Under] Section 3(e) of Republic Act 3019 [on] Corrupt practices of public officers, x x x the following elements must concur: 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) That his action caused undue injury to any party, including the

government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

4. ID.; ID.; ID.; MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE; ELUCIDATED.— The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." *In Uriarte v. People*, this Court explained that Section 3(e) of RA 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 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. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of 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 wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ACQUISITION OF SUPPLIES OR PROPERTY BY LOCAL GOVERNMENT UNITS SHALL BE THROUGH COMPETITIVE PUBLIC BIDDING; VIOLATION THEREOF IS GROSS INEXCUSABLE NEGLIGENCE.— As correctly observed by the Sandiganbayan, certain established rules, regulations and policies of the Commission on Audit and those mandated under the *Local Government Code of 1991* (R.A. No. 7160) were knowingly sidestepped and ignored by the petitioner which enabled CKL Enterprises/Dela Cruz to successfully get full payment for the school desks and armchairs, despite non-delivery – an act or omission evidencing bad faith and manifest partiality. It must be borne to mind that any procurement or "acquisition of supplies or property by local government units shall be through competitive public bidding." This was reiterated in the Local Government Code of 1991 on procurement of supplies x x x

The petitioner admitted in his testimony that he is aware of such requirement, however, he proceeded just the same due to the alleged advice of the unnamed DECS representative that there was already a negotiated contract – a representation or misrepresentation he willfully believed in, without any verification. As a Governor, he must know that negotiated contract can only be resorted to in case of failure of a public bidding. As it is, there is no public bidding to speak of that has been conducted. Intentionally or not, it is his duty to act in a circumspect manner to protect government funds. To do otherwise is gross inexcusable negligence, at the very least, especially so, that petitioner acted on his own initiative and without authorization from the Provincial School Board. This can be proved by his failure to present even a single witness from the members of the Board whom he consulted as he claimed.

APPEARANCES OF COUNSEL

Herrera Batacan & Associates Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This resolves the appeal interposed by petitioner Jovito C. Plameras (petitioner), who at the time relevant to the case at bench was discharging the duties of a Governor of the Province of Antique, from the Decision[1] promulgated on 2 December 2008 by the Sandiganbayan in Criminal Case No. 26172 entitled *People of the Philippines v. Jovito C. Plameras*. The dispositive portion of the decision appealed from is hereunder quoted as follows:

WHEREFORE, finding accused Jovito C. Plameras, Jr. guilty beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019), judgment is hereby rendered sentencing the said accused to an indeterminate prison term of SIX

[1] *Rollo*, pp. 56-105.

(6) years and ONE (1) month as minimum to TEN (10) years as maximum, and to suffer perpetual disqualification from public office. [2]

The Facts

This case stems from the implementation of a project known as the "Purchase of School Desks Program" piloted by the Department of Education, Culture and Sports (DECS) Central Office, through the Poverty Alleviation Fund (PAF) for the purpose of giving assistance to the most depressed provinces in the country. The Province of Antique was among the beneficiaries, with a budget allocation of ₱5,666,667.00.

It was on 12 March 1997, during his incumbency as Provincial Governor of the Province of Antique, that petitioner Plameras received two (2) checks from the DECS-PAF in the total amount of ₱5,666,667.00 drawn against the Land Bank of the Philippines (LBP), for the purchase of school desks and armchairs. The checks were deposited with the LBP, San Jose, Antique Branch, where the Province of Antique maintains an account. Later on, the Province of Antique, through the petitioner, issued a check drawn against its account at the LBP San Jose, Antique Branch in the same amount and deposited it to the LBP Pasig City Branch.

On 8 April 1997, petitioner signed a Purchaser-Seller Agreement for the Supply and Delivery of Monoblock Grader's Desks[3] with CKL Enterprises, as represented by Jesusa T. Dela Cruz (Dela Cruz), the same enterprise which the DECS Central Office had entered into, through a negotiated contract for the supply of desks, sometime in 1996.

Consequently, on 21 April 1997, petitioner applied with the LBP Head Office for the opening of an Irrevocable Domestic Letter of Credit[4] in behalf of the Provincial School Board of Antique in the amount of ₱5,666,600.00 in favor of CKL Enterprises/Dela Cruz. Such application was approved by the

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[2] *Id*. at 103.

[3] Exhibit "5", records, volume III, pp. 142-148.

[4] Exhibit "7", folder of exhibits.

LBP; thus, the issuance of Letter of Credit No. 97073/D[5] was issued on 22 April 1997 in favor of Dela Cruz.

In both the LBP application form and Letter of Credit, it was duly noted that "All documents dated prior to LC opening date acceptable. This L/C is transferable and withdrawable."

On 24 April 1997, the petitioner signed Sales Invoice No. 0220[6] and accepted LBP Draft No. DB97121.[7] The sales invoice stated that the petitioner received and accepted 1,354 grader's desks and 5,246 tablet armchairs in good order and condition for the total value of ₱5,666,600.00.

On even date, Dela Cruz of CKL Enterprises submitted the said sales invoice and draft to the LBP Head Office. Thereupon, the said bank fully negotiated the letter of credit for the full amount and remitted its proceeds to Land Bank Pasig City Branch for credit to the account of CKL Enterprises/Dela Cruz, charging the full payment to the Provincial School Board/Governor Jovito Plameras, Jr. Province of Antique.

On 2 March 1998,[8] upon inquiry by the petitioner, the Office of the Provincial Committee On Award reported that CKL had delivered only 1,294 pieces of grader's desks and 1,838 pieces of tablet armchairs as of 9 July 1997.

In a letter dated 4 March 1998,[9] the petitioner demanded from CKL Enterprises/Dela Cruz, the complete delivery of the purchased items. Unheeded, the petitioner, in a letter dated 5 March 1998,[10] requested the LBP for the copies of pertinent documents pertaining to the Letter of Credit in favor of CKL Enterprises as well as debit memos or status of the fund deposited

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5 Exhibit "8", *id.*

6 Exhibit "9", *id.*

7 Exhibit "10", *id.*

8 Exhibit "13", *id*.

9 Exhibit "14", *id.*

10 Exhibit "15", *id.*

therein. In addition, the petitioner, in a separate letter dated 26 November 1998,[11] asked assistance from the LBP to compel CKL Enterprises to complete the delivery of the purchased items under the Letter of Credit and to settle the case amicably, claiming some deception or misrepresentation in the execution of the sales invoice.

For failure to settle the matter, a case was filed by the Province of Antique, represented by its new Governor, Exequiel B. Javier before the Regional Trial Court (RTC), Branch 12 of San Jose, Antique docketed as Civil Case No. 99-5-3121[12] to compel CKL Enterprises to refund the amount of ₱5,666,600.00 with interests at the legal rate.

While the civil case was pending in court, Governor Javier likewise instituted a criminal complaint before the Office of the Ombudsman against petitioner Plameras for Violation of Section 3(e) of R.A. No. 3019.

In its Resolution[13] dated 18 May 2000, the Office of the Ombudsman for Visayas found probable cause to indict petitioner for the offense charged. It concluded, among others, that:

> The purchase of 1,356 desks and 5,246 armchairs by the Province of Antique was made in apparent violation of existing rules and regulations as evident [sic] by the following facts:
>
> 1. Payment was made before the desks and chairs were delivered;
> 2. Procurement was made without the required authorization from the Provincial School Board;
> 3. Proper procedure was disregarded, there being no bidding process.
>
> As a result thereof, delivery of desks and armchairs was delayed and the said desks and armchairs delivered are defective. Moreover, the remaining 3,468 desks and chairs amounting to ₱2,697,168.00 have

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[11] Exhibit "16", *id.*

[12] Exhibit "17", *id.*

[13] Records, Volume I, pp. 5-7.

not been delivered by the supplier despite demands. Unwarranted benefit was thus given to the supplier and undue injury was caused to the government.

Respondent's evident bad faith and manifest partiality are indicated by the fact that the purchase and payment of the desks and chairs were made in clear violation of existing COA rules and regulations.

The pending civil case filed by the Province of Antique for the reimbursement of the amount of ₱5,666,600.00 is not determinative of the guilt or innocence of respondent in this case. The issues in the civil case are independent of the issue of whether or not there is a *prima facie* case against respondent for Violation of Sec. 3(e) of R.A. 3019, as amended. No prejudicial question therefore, need be resolved in this case.[14]

Consequently, an Information[15] was filed before the Sandiganbayan, the accusatory portion of which reads:

That in or about the month of April 1997, at the Municipality of San Jose, Province of Antique, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being then the Provincial Governor of the Province of Antique, in such capacity and committing the offense in relation to office, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously disburse or cause the payment of the amount of FIVE MILLION SIX HUNDRED SIXTY-SIX THOUSAND SIX HUNDRED PESOS (₱5,666,600.00), Philippine Currency, to Jesusa T. Dela Cruz/CKL Enterprises,) for the purchase of 1,356 desks and 5,246 armchairs, without authorization from the Provincial School Board and without observance of the proper procedure, there being no bidding process, and before delivery of the said desks and chairs purchased by the Province of Antique, resulting in delayed delivery of desks and armchairs which are defective, and non-delivery of sixty (60) desks valued at SEVENTY THREE THOUSAND THREE HUNDRED SIXTY PESOS (₱73,360.00), Philippine Currency, and three thousand four hundred eight (3,408) armchairs, valued at TWO MILLION SIX HUNDRED NINETY-SEVEN ONE HUNDRED SIXTY-EIGHT PESOS (₱2,697,168.00), Philippine

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[14] *Id*. at 6-7.

[15] *Id.* at 1-3.

Currency, thus, accused in the course of the performance of his official functions had given unwarranted benefit to Jesusa T. Dela Cruz/CKL Enterprises, to the damage and injury of the Province of Antique, and detriment public interest.[16]

Prior to his arraignment, or on 16 August 2000, petitioner filed a Motion for Reinvestigation and/or Suspend Proceedings[17] which was granted in the 23 August 2000 Resolution of the Sandiganbayan cancelling the arraignment and further directing the Office of the Special Prosecutor (OSP) to reevaluate its findings and conclusions of the case. As a result, the OSP issued the 29 May 2001 Order,[18] recommending the withdrawal of the Information due to the existence of undisputed facts that led to irrefutable conclusions negating criminal liablity on the part of the petitioner.[19] However, upon review, the Office of the Ombudsman in its 18 July 2001 Memorandum,[20] set aside and ignored said recommendation ratiocinating that the grounds, as set forth, are matters of evidence to be ventilated in court.

Thus, arraignment proceeded where the petitioner pleaded not guilty.[21]

Thereafter, trial on the merits ensued.

The prosecution presented seven (7) witnesses, namely: Exequiel V. Javier, Zyril D. Arroyo, Cesar Maranon, Pedro B. Juluat, Jr., Sherlita Mahandog, Atty. Eufracio R. Rara, Jr. and Elizabeth Arevalo, whose testimonies primarily supported the allegations in the complaint.

After the prosecution had rested its case, the petitioner filed a Motion for Leave of Court to File Demurrer to Evidence,[22]

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16 *Id.* at 1-2.

17 *Id.* at 50-55.

18 *Rollo*, pp. 127-142.

19 *Id.* at 140.

20 Records, Volume I, pp. 108-110.

21 *Id.* at 171.

22 *Id.* at 406.

which the Sandiganbayan granted in its Resolution dated 30 August 2006.[23] However, in its Resolution dated 15 January 2007,[24] the Sandiganbayan denied the Demurrer to Evidence[25] filed by the petitioner. Likewise, the Motion for Reconsideration thereof was denied in the Sandiganbayan's Resolution of 12 April 2007.[26]

The petitioner thereby proceeded with the presentation of his testimonial and documentary evidence. Petitioner offered his testimony[27] and that of his two (2) witnesses, namely: Florante Moscoso (Moscoso), the former Head Executive Assistant[28] of petitioner, and Atty. Marciano G. Delson,[29] Legal Counsel of former DECS Undersecretary Antonio B. Nachura (Nachura) and the late former DECS Secretary Ricardo T. Gloria (Gloria). Taken together, the testimonies of both the petitioner and Moscoso as summarized by the court *a quo*, hereto quoted in part, show that:

> x x x. On March 12, 1997, he [Moscoso] was in the governor's office when an unidentified Tagalog-speaking DECS lady representative and Jesusa dela Cruz of CKL Enterprises visited the accused in the latter's office to personally hand, and in fact they handed, to the governor two checks worth ₱5,666,667.00, as the share of the province from the Poverty Alleviation Fund of DECS from the national government. The checks were intended for the Antique Provincial School Board for the procurement of chairs and desks to be used by the elementary and high school students of the different municipalities of Antique. In answer to the question of the governor, the DECS representative told the governor that there was no need for a public bidding inasmuch as a public bidding was already held in the Central Office of DECS, and it failed because there was only

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23 *Id.* at 424.

24 *Rollo*, pp. 214-218.

25 Records, Volume II, pp. 6-40.

26 *Id*. at 127-129.

27 TSN dated 14 January 2008.

28 TSN dated 13 August 2007.

29 TSN dated 1 October 2007.

one bidder, CKL Enterprises, in view of which the DECS resorted to a negotiated contract with the lone bidder. When asked by the accused if there was still a need for public bidding inasmuch as the fund was from the national government, the provincial treasurer said the procurement entered into by the national government should be resorted to inasmuch as those were national funds and do not involve the local procedures. Thereupon, on the instruction of the accused, he called some of the members of the provincial school board at the office of the accused for consultation. The accused informed the members of the school board present about the funds received from DECS and that inasmuch as it was only a consultation dialogue that they were having, the procurement system by the national government would be followed like rest of the recipient provinces had done.

After almost a month later, or on April 8, 1997, the same DECS representative and Jesusa dela Cruz returned to the office of the accused bringing with them the Purchaser-Seller Agreement, which the accused, after reading, signed. After that, the accused gave him a copy of the agreement. In a matter of days thereafter, or on April 12, 1997, the two ladies came back handing two documents that is, the sales invoice and the bank draft, for the signature of the accused. Because of the voluminous routine work of the accused, and because the DECS representative and Jesusa dela Cruz told him that the sales invoice and the bank draft would satisfy the conditions of the Purchaser-Seller Agreement, the accused just immediately signed the sales invoice and the bank draft[30] x x x.

In his own testimony, petitioner added that:

x x x. The DECS representative told him that such Purchaser-Seller Agreement was the standard format of the DECS that was followed by all the beneficiary provinces. The DECS representative informed him that sometime in November 1996, DECS conducted a public bidding for the purchase of desks and armchairs but it resulted to a failure and so DECS resorted to a negotiated contract and awarded the contract to CKL Enterprises. He forgot the name of the lady DECS representative. Although the DECS representative told him that the resolution of Provincial School Board may no longer be necessary, after he had signed the Purchaser-Seller Agreement, he still consulted the members of the Provincial School Board about the Purchaser-Seller Agreement and about the assistance from the Poverty

[30] *Rollo*, pp. 72-74.

Alleviation Fund of the DECS. He knew and was aware that an important condition of the Purchaser-Seller Agreement was that payment shall be effected upon submission of delivery receipts, inspection report, acceptance report, sales invoice and letter to the bank to effect payment equal to the equivalent amounts of the units delivered. After signing the agreement, he applied for a letter of credit with Land Bank, Pasig Branch, and he attached to the application a copy of the Purchaser-Seller Agreement to inform Land Bank of the conditions of payment, because it was Land Bank that would pay the supplier. He paid Land Bank for the letter of credit the amount of ₱5,666,600.00 through a check on April 16, 1997. The application was approved by the Land Bank the day after he filed it, which approval he came to know because Land Bank informed CKL about it through the Irrevocable Domestic Letter of Credit No. 97073/D. Land Bank also issued a draft. On April 24, 1997, Jesusa dela Cruz returned to the accused's office and had him sign Sales Invoice No. 0220 as well as assured him that "the other required documents will follow," referring to the delivery receipt, acceptance report, sales invoice and letter of the bank which will prove performance of the seller under the contract and which performance will be the basis of payment by Land Bank. He signed the sales invoice and the bank draft upon this assurance of Jesusa dela Cruz thinking that the required documents will pass his office. On March 2, 1998 Provincial General Services Officer Pedro Juluat, Jr. gave him a Summary Report on the desks and armchairs delivered to the province by CKL showing a shortage of delivery. Meanwhile, on the same day that he signed the sales invoice and the bank draft on April 24, 1997 CKL Enterprises/ Jesusa T. dela Cruz negotiated the letter of credit and Land Bank fully paid CKL which he came to know after writing Land Bank on November 26, 1998, and which full negotiation and full payment Land Bank certified on December 4, 1998. Land Bank Pasig branch, through its manager Leila C. Martin, informed him through a letter, dated December 11, 1998, that the negotiation was based on the bank draft and the sales invoice. There was misrepresentation in securing his signature on the sales invoice because he was assured that the other (required) documents will follow, only to realize that the letter of credit was fully negotiated that same day. Gov. Exequiel Javier filed a case against him at the Office of the Ombudsman.[31]

For his part, Atty. Marciano G. Delson stated that:

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[31] *Id.* at 76-79.

He handled the administrative case of former DECS Undersecretary Nachura and the late former Secretary Gloria before the Office of the Ombudsman in connection with the purchase of armchairs and desks from CKL Enterprises through a negotiated contract. There was a failed bidding so the DECS proceeded with the execution of the negotiated contract. The Poverty Alleviation Program of the DECS was a project for the acquisition of school desks for the poorest provinces around the country. The mode of payment in that contract was a letter of credit opened by the DECS Central Office with the Land Bank, with the payment to CKL conditioned that delivery of the desks to the recepients.[32]

In rebuttal, the prosecution presented another witness named Lydia de Asis,[33] Head of International Banking Department of the LBP who testified that when her department received the Letter of Credit Application Form from LBP Pasig Branch, only the application with the sales invoice and the duly accepted beneficiary's draft were received without any copy of the Purchaser-Seller Agreement. Under the Letter of Credit, only those two documents were required, with the draft duly accepted by the petitioner.

After assessing the facts and evidence of the case, the Sandiganbayan issued its 2 December 2008 Decision, now being assailed in this petition.

In questioning the ruling contained in the assailed decision, the petitioner claims misappreciation of facts and evidence. Petitioner contends that he never profited from the transaction. The school desk procurement program was implemented by the then DECS, with the Province of Antique where petitioner was then Governor, as a mere beneficiary. Petitioner insists that he had no hand in choosing the procurement method and the means of effecting payment through Letter of Credit adopted by DECS as the implementing agency. Also, petitioner did not actually pay the supplier since by the terms of the Letter of Credit, it was the LBP that was tasked to release the payment only after compliance with some requirements, such as the

[32] *Id.* at 75.

[33] TSN dated 3 April 2008.

delivery receipts, among others. According to him, there was patent collusion with the DECS and LBP personnel that enabled the supplier to immediately negotiate and encash the Letter of Credit without his knowledge and without the required documents for the release of payment. Yet, the DECS people are scot-free, the LBP personnel got off the hook, and the supplier was spared. The petitioner, on the other hand, was convicted.

Hence, this petition at bench assigning as errors the following:

A.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN TREATING THE PURCHASER-SELLER AGREEMENT ENTERED INTO BY CKL WITH THE PROVINCE OF ANTIQUE SEPARATE AND INDEPENDENT OF THE MOTHER CONTRACT ENTERED INTO BY CKL WITH THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS. THESE TWO (2) AGREEMENTS WERE COMPONENTS OF ONLY ONE PROJECT WHICH WAS THE POVERTY ALLEVIATION FUND (PAF) PURCHASE OF SCHOOL DESKS PROGRAM OF THE DEPARTMENT OF EDUCATION CULTURE AND SPORTS TO ASSIST THE MOST DEPRESSED PROVINCES IN THE COUNTRY.

B.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT PETITIONER PLAMERAS VIOLATED THE PROCUREMENT RULES ON PUBLIC BIDDING. IT WAS THE DECS AS IMPLEMENTING AGENCY THAT WAS REQUIRED TO CONDUCT THE BIDDING, THE FAILURE OF WHICH RESULTED TO PROCUREMENT BY NEGOTIATED CONTRACT. THE PROVINCE OF ANTIQUE WAS ONLY A BENEFICIARY.

C.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT PETITIONER PLAMERAS VIOLATED SECTION 338 OF RA 6170, WHICH PROHIBITS ADVANCE PAYMENT. IN THE FIRST PLACE, PETITIONER DID NOT PAY CKL. THERE WAS NO ADVANCE PAYMENT SINCE THE OPENING OF THE LETTER OF CREDIT WITH THE LAND BANK OF THE PHILIPPINES IS NOT TANTAMOUNT TO AND CANNOT BE EQUATED TO PAYMENT IN FAVOR OF CKL IN VIEW OF THE STRICT INSTRUCTIONS

PRESCRIBED FOR THE RELEASE BY THE BANK OF PAYMENT. SINCE THE OFFICE OF THE OMBUDSMAN EXONERATED DECS OFFICIALS WHO USED THE SAME SCHEME IN THE INITIAL IMPLEMENTATION OF THE PROGRAM, THERE IS NO REASON WHY THE SAME TREATMENT CANNOT BE ACCORDED [TO PETITIONER].

D.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING BEYOND REASONABLE DOUBT THAT PETITIONER PLAMERAS ACTED WITH EVIDENT BAD FAITH AND MANIFEST PARTIALITY. PETITIONER WAS OBVIOUSLY THE VICTIM OF THE COLLUSION AMONG CKL, DECS, AND LAND BANK PERSONNEL.

E.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING PETITIONER PLAMERAS GUILTY OF GIVING UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE IN THE DISCHARGE OF HIS FUNCTIONS TO CKL. IT WAS NOT [PETITIONER] BUT THE LAND BANK OF THE PHILIPPINES PERSONNEL WHO PAID THE MONEY TO CKL IN VIOLATION OF THE TERMS OF THE LETTER OF CREDIT. THE CONCLUSION OF THE HONORABLE SANDIGANBAYAN THAT [PETITIONER] DID NOT ATTACH A COPY OF THE PURCHASER-SELLER AGREEMENT TO HIS APPLICATION FOR A LETTER OF CREDIT HAS NO BASIS. ON THE CONTRARY, IT WAS STIPULATED BY THE PARTIES THAT THE DELIVERY RECEIPT, ACCEPTANCE AND INSPECTION REPORTS AND A LETTER OF AUTHORITY ARE REQUIREMENTS FOR THE RELEASE OF THE FUND.[34]

Our Ruling

The petition must fail.

Petitioner, in the main, insists that the questionable transaction that gave rise to the present controversy is related to the mother contract between the DECS and CKL Enterprises involving the purchase of desks and armchairs utilizing the PAF, which culminated in a case filed with the Office of the Ombudsman,

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[34] *Rollo*, pp. 23-26.

entitled: "*Fact Finding and Intelligence Bureau v. Ricardo T. Gloria, Antonio E.B. Nachura & Blanquita D. Bautista*" docketed as OMB-0-97-0694.[35] Such case pertains to the award of the contract for the purchase of desks and armchairs in favor of CKL Enterprises sometime in 1996 through negotiated contract in the total amount of ₱81,788,170.70. The manner in which payment thereof was effected, likewise followed the scheme of opening a Letter of Credit with the LBP. However, unlike the present case, the Office of the Ombudsman in its 14 April 1998 Resolution, exonerated the DECS officials declaring that: (1) fault cannot be ascribed on therein respondents in view of the failure of LBP to uphold the conditions set forth in the Letter of Credit; (2) the irregularity in the payment for the contract ascribes liability to the officials of the LBP and; (3) that, in view of the need to determine the identity of those LBP officials liable for the irregularity, the Ombudsman required the conduct of further investigation by its Fact Finding and Intelligence Bureau which at such time is yet to be complied with.

Being a mere component of the said contract, the Province of Antique as represented by the petitioner should only be considered as a mere beneficiary, thereby, exonerating him of any liability for merely following the scheme observed by the DECS in allowing a negotiated contract, instead of a public bidding. This is not to mention the recommendation of the OSP in withdrawing the Information for insufficiency of evidence.

In other words, the petitioner wants us to uphold the validity of the contract he had entered into and the procedure undertaken therefor, on the basis of the exoneration of the DECS Officials in OMB-ADM-0-97-0694.

At the outset, we must say that OMB-ADM-0-97-0694 pertains to a separate transaction, the validity of which has yet to be fully determined. It has no bearing in this case where it was proved, without any doubt, that the Province of Antique was prejudiced by the non-delivery of the most needed school desks and armchairs.

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[35] Exhibit "18", folder of exhibits.

Notably, the stand of the OSP for the dismissal of this case was already overturned by the Office of the Ombudsman. The Sandiganbayan in its 16 December 2002 Resolution,[36] followed suit denying the Motion for Judicial Determination of Probable Cause with Prayer to Throw Out Information, on the ground that all the elements of the offense charged are sufficiently alleged and that there exists probable cause. Eventually, the issues as presented were then fully litigated and the facts and evidence were exhaustively examined leading to petitioner's conviction.

At any rate, whether the questioned transaction entered into by the petitioner with the CKL Enterprises/Dela Cruz was part of a mother contract referred to as DECS Project, such that, the payment made was not his fault, but rather an error of the LBP, are matters of fact and does not involve a question of law. As defined, a question of fact also known as a point of fact, is "a question which must be answered by reference to facts and evidence, and inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact is usually dependent on a particular circumstances or factual situations."[37]

We cannot, as a rule, re-evaluate the facts.

Section 1, Rule 45 of the Rules of Court states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth." In *Pagsibigan v. People*,[38] the Court held that:

> A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts.

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[36] Records, Volume I, pp. 150-151.

[37] Wikipedia, *The Free Encyclopedia*.

[38] G.R. No. 163868, 4 June 2009, 588 SCRA 249, 256.

In another case, the Court also held that:

> There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.[39]

Neither can we go into a re-evaluation as an exception to the rule.

The Court reiterates the well-settled rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.[40] As held in the case of *Navallo v. Sandiganbayan*,[41] the Court ruled that *"xxx Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored xxx."* (Italics supplied)

Indeed, even if the foregoing rules were, to be relaxed in the interest of substantial justice, this Court, nevertheless finds no reason to disagree with the comparative analysis of the Sandiganbayan between the 1996 DECS contract and the contract subject matter of this case, which resulted in the conclusion that the two contracts are different, separate and distinct from one another. Otherwise, there would have been no need for a separate check issued to the petitioner and for the opening of a letter of credit in favor of CKL Enterprise, in the same way, that it becomes unnecessary to draft another Purchaser-Seller Agreement – the same being already covered by the prior contract where CKL Enterprises/Dela Cruz was

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[39] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

[40] *Castillo v. Court of Appeals*, 329 Phil. 150, 152 (1996).

[41] G.R. No. 97214, 18 July 1994, 234 SCRA 175, 185-186.

fully paid in the amount of ₱81,788,170.70 under Check No. 247768 dated 24 December 1996.[42]

In all, the petitioner failed to demonstrate that the Sandiganbayan committed reversible errors in finding him guilty of the offense charged.

Section 3(e) of Republic Act 3019, provides:

Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

For the aforecited provision to lie against the petitioner, the following elements must concur:

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) That his action caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[43]

We focus on the next elements, there being no dispute that the first element of the offense is present.

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[42] Exhibit "18", folder of exhibits.

[43] *Uriarte v. People*, 540 Phil. 477, 493 (2006), citing *Santos v. People*, 520 Phil. 58, 68 (2006); *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004), and *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 26 (1989).

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence."[44] In *Uriarte v. People*,[45] this Court explained that Section 3(e) of RA 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 clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[46] "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.[47] "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes.[48] "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 wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[49]

As correctly observed by the Sandiganbayan, certain established rules, regulations and policies of the Commission on Audit and those mandated under the *Local Government Code of 1991* (R.A. No. 7160) were knowingly sidestepped and ignored by the petitioner which enabled CKL Enterprises/

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[44] *People v. Atienza*, G.R. No. 171671, 18 June 2012, 673 SCRA 470, 480 citing *Gallego v. Sandiganbayan*, 201 Phil. 379, 383 (1982).

[45] *Uriarte v. People*, *supra* note 42.

[46] *Id*. at 494, citing *Alvizo v. Sandiganbayan*, 454 Phil. 32, 72 (2003).

[47] *Id*., citing *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002)

[48] *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 290 citing *Air France v. Carrascoso, et al*., 124 Phil. 722, 737 (1966).

[49] *Albert v. Sandiganbayan*, *id*. at 290, citing *Sistoza v. Desierto*, *supra* note 46 at 132.

Dela Cruz to successfully get full payment for the school desks and armchairs, despite non-delivery – an act or omission evidencing bad faith and manifest partiality.

It must be borne to mind that any procurement or "acquisition of supplies or property by local government units shall be through competitive public bidding."[50] This was reiterated in the Local Government Code of 1991 on procurement of supplies which provides:

> Sec. 356. **General Rule in Procurement or Disposal. –** Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive public bidding. x x x

The petitioner admitted in his testimony[51] that he is aware of such requirement, however, he proceeded just the same due to the alleged advice of the unnamed DECS representative that there was already a negotiated contract – a representation or misrepresentation he willfully believed in, without any verification. As a Governor, he must know that negotiated contract can only be resorted to in case of failure of a public bidding. As it is, there is no public bidding to speak of that has been conducted. Intentionally or not, it is his duty to act in a circumspect manner to protect government funds. To do otherwise is gross inexcusable negligence, at the very least, especially so, that petitioner acted on his own initiative and without authorization from the Provincial School Board. This can be proved by his failure to present even a single witness from the members of the Board whom he consulted as he claimed.

The same thing can be said about the act of petitioner in signing the sales invoice and the bank draft knowing that such documents would cause the withdrawal by CKL Enterprises/ Dela Cruz of the corresponding amount covered by the Irrevocable Domestic Letter of Credit. A Letter of Credit in itself, is not a prohibited form of payment. It is simply a promise to pay.

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[50] Section 27, Rule 5 of COA Circular No. 92-386, otherwise known as the "Rules and Regulations on Supply and Property Management in the Local Governments."

[51] TSN, 15 January 2008, p. 20.

Banks issue Letters of Credit as a way to ensure sellers that they will get paid as long as they do what they've agreed to do.[52] The problem arises when the money or fund covered by the Letter of Credit is withdrawn irregularly, such as in this case at bench. It must be noted that any withdrawal with the LBP must be accompanied by the appropriate document evidencing deliveries. In signing the draft and sales invoice, petitioner made it possible for CKL Enterprises/Dela Cruz to withdraw the entire ₱5,666,600.00 without any delivery of the items.

As the records would bear, the CKL Enterprises Invoice dated 16 April 1997, contains the signature of the accused as customer. Above the customer's signature is the phrase: "Received and accepted the above items in good condition." The significance of the customer's signature on the invoice is that it initiates the process of releasing the payment to the seller. This is all that the LBP needs in order to release the money alloted for the purchase. Unfortunately, despite receipt of payment, it was almost a year after when delivery of the items was made on a piece meal basis – some of which were even defective.

This Court, therefore, is not persuaded that petitioner deserves to be exonerated. On the contrary, evidence of undue injury caused to the Province of Antique and giving of unwarranted benefit, advantage or preference to CKL Enterprises/Dela Cruz committed through gross inexcusable negligence was beyond reasonable doubt, proven.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated 2 December 2008 of the Sandiganbayan in Criminal Case No. 26172 is **AFFIRMED.**

SO ORDERED.

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

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[52] About.com. Banking/Loans, How Letters of Credit Work by Justin Pritchard.

FIRST DIVISION

[G.R. No. 189874. September 4, 2013]

RODULFO VALCURZA and BEATRIZ LASAGA, SPOUSES RONALDO GADIAN & JULIETA TAGALOG, SPOUSES ALLAN VALCURZA and GINA LABADO, SPOUSES ROLDAN JUMAWAN and RUBY VALCURZA, SPOUSES EMPERATREZ VALCURZA and ENRIQUE VALCURZA, CIRILA PANTUHAN, SPOUSES DANIEL VALCURZA and JOVETA RODELA, SPOUSES LORETO NAELGA and REMEDIOS DAROY, SPOUSES VERGILIO VALCURZA and ROSARIO SINELLO, SPOUSES PATRICIO EBANIT and OTHELIA CABANDAY, SPOUSES ABNER MEDIO and MIRIAM TAGALOG, SPOUSES CARMEN MAGTRAYO and MEDIO MAGTRAYO, SPOUSES MARIO VALCURZA and EDITHA MARBA, SPOUSES ADELARDO VALCURZA and PRISCILLA LAGUE, SPOUSES VICTOR VALCURZA and MERUBELLA BEHAG, and SPOUSES HENRY MEDIO and ROSALINDA ALOLHA, *petitioners, vs.* **ATTY. CASIMIRO N. TAMPARONG, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; RULE THAT JURISDICTION IS CONFERRED BY LAW, ELUCIDATED.— The jurisdiction of a court or tribunal over the nature and subject matter of an action is conferred by law. The court or tribunal must look at the material allegations in the complaint, the issues or questions that are the subject of the controversy, and the character of the relief prayed for in order to determine whether the nature and subject matter of the complaint is within its jurisdiction. If the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of a court or tribunal, the dispute must be addressed and resolved by the said court or tribunal.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); HAS JURISDICTION OVER AGRARIAN REFORM CASES.— Section 50 of Executive Order (E.O.) No. 229 vests the DAR with quasi-judicial powers to determine and adjudicate agrarian reform matters, as well as with exclusive original jurisdiction over all matters involving the implementation of agrarian reform. The jurisdiction of the DAR over the adjudication of agrarian reform cases was later on delegated to the DARAB, while the former's jurisdiction over agrarian reform implementation was assigned to its regional offices.

3. ID.; ID.; ID.; ID.; DARAB'S 1994 NEW RULES OF PROCEDURE INCLUDES JURISDICTION OVER AGRARIAN DISPUTES AND CANCELLATION OF CERTIFICATES OF LAND OWNERSHIP AWARD (CLOAs).— The DARAB's New Rules of Procedure issued in 1994, which were in force at the time of the filing of the complaint, provide, in pertinent part: Section 1. *Primary and Exclusive Original and Appellate Jurisdiction.* – The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all **agrarian disputes** involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following: x x x f) Those involving the issuance, correction and **cancellation of Certificates of Land Ownership Award (CLOAs)** and Emancipation Patents (EPs) which are registered with the Land Registration Authority x x x.

4. ID.; ID.; AGRARIAN DISPUTE AS CONTROVERSY RELATING TO TENURIAL ARRANGEMENT; WHEN TENURIAL ARRANGEMENT EXISTS.— Section 3(d) of Republic Act (R.A.) No. 6657 defines an agrarian dispute as x x x any controversy relating to **tenurial arrangements**, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such

tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. A tenurial arrangement exists when the following are established: 1) The parties are the landowner and the tenant or agricultural lessees; 2) The subject matter of the relationship is an agricultural land; 3) There is consent between the parties to the relationship; 4) The purpose of the agricultural relationship is to bring about agricultural production; 5) There is personal cultivation on the part of the tenant or agricultural lessees; and 6) The harvest is shared between the landowner and the tenant or agricultural lessee.

5. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM (DAR); HAS JURISDICTION OVER CASES ON CANCELLATION OF CLOAs INVOLVING PARTIES WHO ARE NOT AGRICULTURAL TENANTS OR LESSEES.— [I]n cases concerning the cancellation of CLOAs that involve parties who are not agricultural tenants or lessees – cases related to the administrative implementation of agrarian reform laws, rules and regulations – the jurisdiction is with the DAR, and not the DARAB.

APPEARANCES OF COUNSEL

Dela Rosa Nagtalon Gomos Partners & Associates for petitioners.

Baduel Espina & Associates for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Petition for Review on *Certiorari*[1] of the Decision[2] dated 24 September 2009 issued by the Court of

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[1] *Rollo,* pp. 11-43.

[2] *Id.* at 107-129.

Appeals (CA) in CA-G.R. SP No. 01244-MIN. The CA reversed and set aside the Decision[3] dated 26 April 2005 of the Department of Agrarian Reform and Adjudication Board (DARAB) and reinstated the Decision[4] dated 2 January 2002 of the Provincial Agrarian Reform and Adjudication Board (PARAB).

Casimiro N. Tamparong, Jr. (respondent) is the registered owner of a landholding with an area of 412,004 square meters[5] and covered by Original Certificate of Title (OCT) No. 0-363[6] pursuant to a judicial decree rendered on 24 June 1962.[7] The *Sangguniang Bayan* of Villanueva, Misamis Oriental allegedly passed a Comprehensive Zoning Ordinance – Resolution No. 51-98, Series of 1982 – classifying respondent's land from agricultural to industrial.[8]

A Notice of Coverage was issued by the Department of Agrarian Reform (DAR) on 3 November 1992 over 276,411 square meters out of the 412,004 square meters of respondent's land. The 276,411 square meters of land were collectively designated as Lot No. 1100.[9] The DAR Secretary eventually issued Certificate of Land Ownership Award (CLOA) No. 00102751 over the land in favor of Rodulfo Valcurza, Beatriz Lasaga, Ronaldo Gandian, Julieta Tagalog, Allan Valcurza, Gina Labado, Roldan Jumawan, Ruby Valcurza, Emperatrez Valcurza, Enrique Valcurza, Cirila Pantuhan, Daniel Valcurza, Joveta Rodela, Loreto Naelga, Remedios Daroy, Vergilio Valcurza, Rosario Sinello, Patricio Ebanit, Othelia Cabanday, Abner Medio, Miriam Tagalog, Carmen Magtrayo, Medio Magtrayo, Mario

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[3] *Id.* at 94-105.

[4] *Id.* at 69-90.

[5] *Id.* at 109 (CA Decision); 95 (DARAB Decision); 80 (PARAB Decision).

[6] *Id.* at 109 (CA Decision); 96 (DARAB Decision).

[7] *Id.* at 96 (DARAB Decision).

[8] *Id.* at 109 (CA Decision); 96 (DARAB Decision); 81 (PARAB Decision).

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

Valcurza, Editha Marba, Adelardo Valcurza, Priscilla Lague, Victor Valcurza, Merubella Behag, Henry Medio, and Rosalinda Alolha (petitioners).[10] As a result, OCT No. E-4640 was issued in favor of petitioners on 30 May 1994.[11]

Respondent filed a protest against the Comprehensive Agrarian Reform Program (CARP) coverage on the ground that his land was industrial, being found within the industrial estate of PHIVIDEC per Zoning Ordinance No. 123, Series of 1997.[12] His protest was resolved in a Resolution[13] issued by Regional Director Benjamin R. de Vera on 9 October 2000. The Resolution denied respondent's protest because Zoning Ordinance No. 123, Series of 1997, never unequivocally stated that all the landholdings within the PHIVIDEC area had been classified as industrial. Furthermore, the Municipal Planning and Development Council of Villanueva, Misamis Oriental, issued a letter to the Municipal Agrarian Reform Office (MARO) stating that Lot No. 1100 was classified as agricultural per Municipal Ordinance No. 51-98, Series of 1982. Also, PHIVIDEC certified that the same lot is located outside the PHIVIDEC Industrial Estate.[14]

Aggrieved, respondent filed a Complaint for Annulment of Certificate of Land Ownership Award No. 00102751 and Cancellation of OCT No. E-4640 with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order.[15] In the Complaint filed with the Provincial Adjudication Reform and Adjudication Board (PARAB) of Misamis Oriental on 6 July 2001, he questioned the issuance of the CLOA on the ground that his land had long been classified by the municipality

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[10] *Rollo*, p. 109 (CA Decision); 96 (DARAB Decision); pp. 69, 81 (PARAB Decision).

[11] *Id.* at 109.

[12] *Id.* at 266.

[13] CA *rollo*, pp. 266-267.

[14] *Id.*

[15] *Id.* at 180-188.

as industrial. It was also covered by Presidential Proclamation No. 1962, being adjacent to the PHIVIDEC Industrial Estate, and was thus exempted from CARP coverage.[16]

The PARAB declared that Comprehensive Zoning Ordinance No. 51-98, Series of 1982 had reclassified Lot No. 2252 from agricultural to industrial land prior to the effectivity of the Comprehensive Agrarian Reform Law. It held that the complaint was not a protest or an application for exemption, but also for annulment and cancellation of title over which DARAB had jurisdiction. As the PARAB exercised delegated authority from the DARAB, it was but proper for the former to rule on the complaint.[17] In the exercise of this jurisdiction, the PARAB found the CARP coverage irregular and anomalous because the issuance of the CLOA, as well as its registration with the Register of Deeds, happened before the survey plan was approved by the DENR.[18] The dispositive portion of the Decision is as follows:

> WHEREFORE, premises considered, Decision is hereby rendered in favor of the plaintiff Casimiro N. Tamparong, Jr. and against the defendants ordering as follows:
>
> 1. The immediate annulment and cancellation of CLOA No. 00102751 and OCT No. E-4640, and all other derivative titles that may have been issued pursuant to, in connection with, and by reason of the fraudulent and perjured coverage of the disputed land by the DAR;
>
> 2. The cancellation of Subdivision Plan Bsd-10-002693 (AR); and
>
> 3. The ejectment of the sixteen (16) private-defendants farmer beneficiaries led by Sps. Rodulfo Valcurza, *et al*. from the disputed landholding and to surrender their possession thereof to the plaintiff.[19]

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[16] *Rollo*, p. 49.

[17] *Id.* at 87.

[18] *Id.* at 81.

[19] *Id.* at 90.

On appeal, the DARAB held that the identification of lands that are subject to CARP and the declaration of exemption therefrom are within the exclusive jurisdiction of the DAR Secretary. As the grounds relied upon by petitioners in their complaint partook of a protest against the coverage of the subject landholding from CARP and/or exemption therefrom, the DARAB concluded that the DAR Secretary had exclusive jurisdiction over the matter.[20] Hence, the DARAB reversed the PARAB, maintained the validity of the CLOA, and dismissed the complaint for lack of merit.[21]

Dissatisfied, respondent filed a Petition for Review under Rule 43 with the CA, which ruled that the annulment of duly registered CLOAs with the Land Registration Authority falls within the exclusive jurisdiction of the DARAB and not of the regional director. Furthermore, the subject landholding was considered industrial because of a zoning classification issued by the Municipal Council of Villanueva, Misamis Oriental, prior to 15 June 1988. This ruling is consistent with the power of local governments to reclassify lands through a local ordinance, which is not subject to DAR's approval.[22]

Thus, this Petition.

Petitioners claim that respondent's complaint before the PARAB concerns the DAR's implementation of the agrarian law and implementation of CLOA as an incident thereof.[23] The PARAB had no jurisdiction, because matters strictly involving the administrative implementation of the CARL and other agrarian laws are the exclusive prerogative of and are cognizable by the DAR Secretary.[24] Yet, supposing that PARAB had jurisdiction, its authority to cancel CLOAs is based on the ground that the land was found to be exempted or excluded from CARP

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[20] *Id.* at 102-104.

[21] *Id.* at 104.

[22] *Id.* at 124-125.

[23] *Id.* at 24.

[24] *Id.* at 25.

coverage by the DAR Secretary or the latter's authorized representatives, which is not the case here.[25] The subject landholding has also been declared as agricultural by various government agencies as evidenced by the Department of Environment and Natural Resources-City Environment and Natural Resources Office Certification declaring the land to be alienable and disposable and not covered by any public land application; by the PHIVIDEC Industrial Authority Certification that the land is outside the industrial area of PHIVIDEC; and by the letter of the Deputized Zoning Administrator of Villanueva, Misamis Oriental, saying that the land is classified as agricultural.[26] Moreover, the Resolution and Zoning Ordinance reclassifying the land from agricultural to industrial was not shown to have been approved by the Housing and Land Use Regulatory Board (HLURB) or cleared by the DAR as required by DAR Administrative Order No. 1, Series of 1990.[27]

In a Resolution dated 11 January 2010, we required respondent to comment, which he did.[28] Upon noting his Comment, we asked petitioners to file their reply, and they complied.[29]

The determination of issues brought by petitioners before this Court revolves around the sole question of whether the DARAB has jurisdiction over the subject matter of the case.

We rule in the negative.

The jurisdiction of a court or tribunal over the nature and subject matter of an action is conferred by law.[30] The court or tribunal must look at the material allegations in the complaint, the issues or questions that are the subject of the controversy, and the character of the relief prayed for in order to determine

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

[26] *Id.* at 32-34.

[27] *Id.* at 34-35.

[28] *Id.* at 140-141, 145-171 (Comment).

[29] *Id.* at 237-238 (Resolution dated 5 April 2010), 241-246 (Reply).

[30] *Heirs of Dela Cruz v. Heirs of Cruz*, 512 Phil. 389, 400 (2005).

whether the nature and subject matter of the complaint is within its jurisdiction.[31] If the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of a court or tribunal, the dispute must be addressed and resolved by the said court or tribunal.[32]

Section 50 of Executive Order (E.O.) No. 229 vests the DAR with quasi-judicial powers to determine and adjudicate agrarian reform matters, as well as with exclusive original jurisdiction over all matters involving the implementation of agrarian reform. The jurisdiction of the DAR over the adjudication of agrarian reform cases was later on delegated to the DARAB,[33] while the former's jurisdiction over agrarian reform implementation was assigned to its regional offices.[34]

The DARAB's New Rules of Procedure issued in 1994, which were in force at the time of the filing of the complaint, provide, in pertinent part:

> Section 1. *Primary and Exclusive Original and Appellate Jurisdiction.* – The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all **agrarian disputes** involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:
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> x x x x x x x x x
>
> f) Those involving the issuance, correction and **cancellation of Certificates of Land Ownership Award (CLOAs)** and Emancipation Patents (EPs) which are registered with the Land Registration Authority x x x. (Emphases supplied)

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[31] *Id.*

[32] *Soriano v. Bravo*, G.R. No. 152086, 15 December 2010, 638 SCRA 403, 422.

[33] E.O. No. 129-A (1987), Sec. 13.

[34] E.O. No. 129-A (1987), Sec. 24.

Section 3(d) of Republic Act (R.A.) No. 6657 defines an agrarian dispute as

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

A tenurial arrangement exists when the following are established:

1) The parties are the landowner and the tenant or agricultural lessees;
2) The subject matter of the relationship is an agricultural land;
3) There is consent between the parties to the relationship;
4) The purpose of the agricultural relationship is to bring about agricultural production;
5) There is personal cultivation on the part of the tenant or agricultural lessees; and
6) The harvest is shared between the landowner and the tenant or agricultural lessee.[35]

Thus, the DARAB has jurisdiction over cases involving the cancellation of registered CLOAs relating to an agrarian dispute between landowners and tenants. However, in cases concerning the cancellation of CLOAs that involve parties who are not agricultural tenants or lessees – cases related to the administrative implementation of agrarian reform laws, rules and regulations – the jurisdiction is with the DAR, and not the DARAB.[36]

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[35] *Sutton v. Lim*, G.R. No. 191660, 3 December 2012, 686 SCRA 745, 755.

[36] *Supra* note 32.

Here, petitioner is correct in alleging that it is the DAR and not the DARAB that has jurisdiction. First, the issue of whether the CLOA issued to petitioners over respondent's land should be cancelled hinges on that of whether the subject landholding is exempt from CARP coverage by virtue of two zoning ordinances. This question involves the DAR's determination of whether the subject land is indeed exempt from CARP coverage – a matter involving the administrative implementation of the CARP Law. Second, respondent's complaint does not allege that the prayer for the cancellation of the CLOA was in connection with an agrarian dispute. The complaint is centered on the fraudulent acts of the MARO, PARO, and the regional director that led to the issuance of the CLOA.[37]

Also, the elements showing that a tenurial relationship existed between respondent and petitioners were never alleged, much less proven. In reality, respondent only mentioned petitioners twice in his complaint. Although he admitted that they occupied his land, he did not specify the nature of his relationship with them. He only said that their stay on his land was based on mere tolerance.[38] Furthermore, the only other instance when respondent mentioned petitioners in his complaint was when they informed him that he could no longer harvest the fruits of the land, because they were already the owners thereof. He never stated the circumstances that would have shown that the harvest of the fruits was in relation to a tenurial arrangement.[39]

Nevertheless, assuming *arguendo* that the DARAB had jurisdiction, the CA was mistaken in upholding the PARAB's Decision that the land is industrial based on a zoning ordinance, without a prior finding on whether the ordinance had been approved by the HLURB. We ruled in *Heirs of Luna v. Afable* as follows:[40]

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[37] *Rollo*, pp. 47-49.

[38] *Id.* at 47-48.

[39] *Id.* at 48.

[40] G.R. No. 188299, 23 January 2013, 689 SCRA 207, 225-227.

The meaning of "agricultural lands" covered by the CARL was explained further by the DAR in its AO No. 1, Series of 1990, dated 22 March 1990, entitled "Revised Rules and Regulations Governing Conversion of Private Agricultural Land to Non-Agricultural Uses," issued pursuant to Section 49 of the CARL. Thus:

> Agricultural land refers to those devoted to agricultural activity as defined in RA 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use. (Emphasis omitted)

It is clear from the last clause of the afore-quoted provision that a land is not agricultural, and therefore, outside the ambit of the CARP if the following conditions concur:

> **1. the land has been classified in town plans and zoning ordinances as residential, commercial or industrial; and**
>
> **2. the town plan and zoning ordinance embodying the land classification has been approved by the HLURB or its predecessor agency prior to 15 June 1988.**

It is undeniable that local governments have the power to reclassify agricultural into non-agricultural lands. Section 3 of RA No. 2264 (The Local Autonomy Act of 1959) specifically empowers municipal and/or city councils to adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission. By virtue of a zoning ordinance, the local legislature may arrange, prescribe, define, and apportion the land within its political jurisdiction into specific uses based not only on the present, but also on the future projection of needs. It may, therefore, be reasonably presumed that when city and municipal boards and councils approved an ordinance delineating an area or district in their cities or municipalities as residential, commercial, or industrial zone pursuant to the power granted to them under Section 3 of the Local Autonomy Act of 1959, they were, at the same time, reclassifying any agricultural lands within the zone for non-agricultural use; hence, ensuring the implementation of and compliance with their zoning ordinances.

The regulation by local legislatures of land use in their respective territorial jurisdiction through zoning and reclassification is an exercise

of police power. The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality. Ordinance No. 21 of the *Sangguniang Bayan* of Calapan was issued pursuant to Section 3 of the Local Autonomy Act of 1959 and is, consequently, a valid exercise of police power by the local government of Calapan.

The second requirement — that a zoning ordinance, in order to validly reclassify land, must have been approved by the HLURB prior to 15 June 1988 — is the result of Letter of Instructions No. 729, dated 9 August 1978. According to this issuance, local governments are required to submit their existing land use plans, zoning ordinances, enforcement systems and procedures to the Ministry of Human Settlements — one of the precursor agencies of the HLURB — for review and ratification. (Emphasis supplied)

Here, the records of the case show the absence of HLURB Certifications approving Comprehensive Zoning Ordinance Resolution No. 51-98, Series of 1982, and Zoning Ordinance No. 123, Series of 1997. Hence, it cannot be said that the land is industrial and outside the ambit of CARP.

WHEREFORE, in view of the foregoing, the Petition dated 19 November 2009 is hereby **GRANTED**. The 24 September 2009 Decision of the Court of Appeals in CA-G.R. SP No. 01244-MIN is **REVERSED** and **SET ASIDE**. The 26 April 2005 Decision of the Department of Agrarian Reform and Adjudication Board is **REINSTATED**.

SO ORDERED.

Bersamin,[*] *Villarama, Jr., Reyes,* and *Perlas-Bernabe,*[**] *JJ.*, concur.

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[*] Acting Working Chairperson in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 1533 dated 29 August 2013.

[**] Designated additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 1529 dated 29 August 2013.

SECOND DIVISION

[G.R. No. 198075. September 4, 2013]

KOPPEL, INC., (formerly known as KPL AIRCON, INC.), *petitioner, vs.* **MAKATI ROTARY CLUB FOUNDATION, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LEASE; ARBITRATION CLAUSE OF THE LEASE AGREEMENT IN CASE AT BAR; APPLIED TO *"ANY DISAGREEMENT"* MEANS ANY KIND OF DISPUTE THAT MAY ARISE FROM THE CONTRACT, INCLUDING VALIDITY OF THE STIPULATIONS.— [T]he dispute between the petitioner and respondent emanates from the rental stipulations of the *2005 Lease Contract*. The respondent insists upon the enforceability and validity of such stipulations, whereas, petitioner, in substance, repudiates them. It is from petitioner's apparent breach of the *2005 Lease Contract* that respondent filed the instant unlawful detainer action. [U]nder the foregoing premises, the dispute between the petitioner and respondent arose from the *application* or *execution* of the *2005 Lease Contract.* Undoubtedly, such kinds of dispute are covered by the arbitration clause of the *2005 Lease Contract*. x x x The arbitration clause of the *2005 Lease Contract* stipulates that "*any disagreement*" as to the "*interpretation, application or execution*" of the *2005 Lease Contract* ought to be submitted to arbitration. [S]uch stipulation is clear and is comprehensive enough so as to include virtually any kind of conflict or dispute that may arise from the *2005 Lease Contract.* x x x [T]he disagreement between the petitioner and respondent falls within the all-encompassing terms of the arbitration clause of the *2005 Lease Contract.* While it may be conceded that in the arbitration of such disagreement, the validity of the *2005 Lease Contract*, or at least, of such contract's rental stipulations would have to be determined, the same would *not* render such disagreement non-arbitrable.

2. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF SEPARABILITY APPLIED AS ARBITRATION AGREEMENT CONSIDERED INDEPENDENT OF THE MAIN CONTRACT THAT MAY BE REQUESTED BY

EITHER PARTY OR THE TRIAL COURT APPRISED THEREOF; DISCUSSED.— Petitioner may still invoke the arbitration clause of the *2005 Lease Contract* notwithstanding the fact that it assails the validity of such contract. This is due to the *doctrine of separability*. Under the doctrine of separability, an arbitration agreement is considered as independent of the main contract. Being a separate contract in itself, the arbitration agreement may thus be invoked regardless of the possible nullity or invalidity of the main contract. [A]s a further consequence of the doctrine of separability, even the very party who repudiates the main contract may invoke its arbitration clause. The operation of the arbitration clause in this case is not at all defeated by the failure of the petitioner to file a formal "*request*" or application therefor with the MeTC. We find that the filing of a "*request*" pursuant to Section 24 of R.A. No. 9285 is *not* the sole means by which an arbitration clause may be validly invoked in a pending suit. Section 24 of R.A. No. 9285 reads: **SEC. 24. *Referral to Arbitration.* –** A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so **requests** not later that the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The "*request*" referred to in the above provision is, in turn, implemented by Rules 4.1 to 4.3 of A.M. No. 07-11-08-SC or the *Special Rules of Court on Alternative Dispute Resolution* (Special ADR Rules). x x x Attention must be paid, however, to the salient wordings of Rule 4.1. It reads: "*[a] party to a pending action filed in violation of the arbitration agreement x x x* ***may*** *request the court to refer the parties to arbitration in accordance with such agreement*." In using the word "*may*" to qualify the act of filing a "*request*" under Section 24 of R.A. No. 9285, the Special ADR Rules clearly did not intend to limit the invocation of an arbitration agreement in a pending suit solely *via* such "*request*." After all, non-compliance with an arbitration agreement is a valid defense to any offending suit and, as such, may even be raised in an *answer* as provided in our ordinary rules of procedure. In this case, it is conceded that petitioner was not able to file a separate "*request*" of arbitration before the MeTC. However, it is equally conceded that the petitioner,

as early as in its *Answer with Counterclaim*, had already apprised the MeTC of the existence of the arbitration clause in the *2005 Lease Contract* and, more significantly, of its desire to have the same enforced in this case. This act of petitioner is enough valid invocation of his right to arbitrate.

3. ID.; ID.; ID.; ID.; UNDERGOING JUDICIAL DISPUTE RESOLUTION (JDR) PROCEEDINGS WILL NOT MAKE THE SUBSEQUENT CONDUCT OF ARBITRATION BETWEEN THE PARTIES UNNECESSARY.— The fact that the petitioner and respondent already underwent through JDR proceedings before the RTC, will not make the subsequent conduct of arbitration between the parties unnecessary or circuitous. The Judicial Dispute Resolution (JDR) system is substantially different from arbitration proceedings. The JDR framework is based on the processes of *mediation*, *conciliation* or *early neutral evaluation* which entails the submission of a dispute before a "*JDR judge*" who shall merely "*facilitate settlement*" between the parties in conflict or make a "*non-binding evaluation or assessment of the chances of each party's case*." Thus in JDR, the JDR judge lacks the authority to render a resolution of the dispute that is binding upon the parties in conflict. In arbitration, on the other hand, the dispute is submitted to an *arbitrator/s*—a neutral third person or a group of thereof—who shall have the authority to render a resolution binding upon the parties. Clearly, the mere submission of a dispute to JDR proceedings would *not* necessarily render the subsequent conduct of arbitration a mere surplusage. The failure of the parties in conflict to reach an amicable settlement before the JDR may, in fact, be supplemented by their resort to arbitration where a binding resolution to the dispute could finally be achieved. This situation precisely finds application to the case at bench.

4. ID.; ID.; ID.; ID.; SUMMARY NATURE OF EJECTMENT CASE WILL NOT DISREGARD THE ENFORCEMENT OF THE ARBITRATION CLAUSE OF THE LEASE CONTRACT.— Neither would the summary nature of ejectment cases be a valid reason to disregard the enforcement of the arbitration clause of the *2005 Lease Contract*. Notwithstanding the summary nature of ejectment cases, arbitration still remains relevant as it aims not only to afford the parties an expeditious method of resolving their dispute. A pivotal feature of arbitration as an

> alternative mode of dispute resolution is that it is, first and foremost, a product of *party autonomy* or the freedom of the parties to "*make their own arrangements to resolve their own disputes*." Arbitration agreements manifest not only the desire of the parties in conflict for an expeditious resolution of their dispute. They also represent, if not more so, the parties' mutual aspiration to achieve such resolution outside of judicial auspices, in a more informal and less antagonistic environment under the terms of their choosing. Needless to state, this critical feature can never be satisfied in an ejectment case no matter how summary it may be. x x x Since there really are no legal impediments to the application of the arbitration clause of the *2005 Contract of Lease* in this case, We find that the instant unlawful detainer action was instituted in violation of such clause. The Law, therefore, that should have governed the fate of the parties and this suit are Section 7 of RA No. 876 on Stay of civil action and Section 24 of RA No. 9285 on Referral to Arbitration.

APPEARANCES OF COUNSEL

JGLAW for petitioner.
Chavez Miranda Aseoche Law Offices for respondent.

D E C I S I O N

PEREZ, *J.*:

This case is an appeal[1] from the Decision[2] dated 19 August 2011 of the Court of Appeals in C.A.-G.R. SP No. 116865.

The facts:

The Donation

Fedders Koppel, Incorporated (FKI), a manufacturer of air-conditioning products, was the registered owner of a parcel of

[1] The appeal was filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. *Rollo*, pp. 3-56.

[2] The decision was penned by Justice Angelita A. Gacutan for the Sixteenth Division of the Court of Appeals, with Justices Vicente S.E. Veloso and Francisco P. Acosta concurring; *id*. at 61-82.

land located at Km. 16, South Superhighway, Parañaque City (subject land).[3] Within the subject land are buildings and other improvements dedicated to the business of FKI.[4]

In 1975, FKI[5] bequeathed the subject land (exclusive of the improvements thereon) in favor of herein respondent Makati Rotary Club Foundation, Incorporated by way of a *conditional* donation.[6] The respondent accepted the donation with all of its conditions.[7] On 26 May 1975, FKI and the respondent executed a *Deed of Donation*[8] evidencing their consensus.

The Lease and the Amended Deed of Donation

One of the conditions of the donation required the respondent to lease the subject land back to FKI under terms specified in their *Deed of Donation*.[9] With the respondent's acceptance of the donation, a lease agreement between FKI and the respondent was, therefore, effectively incorporated in the *Deed of Donation*.

Pertinent terms of such lease agreement, as provided in the *Deed of Donation*, were as follows:

1. The period of the lease is for twenty-five (25) years,[10] or until the 25th of May 2000;
2. The amount of rent to be paid by FKI for the first twenty-five (25) years is ₱40,126.00 per *annum*.[11]

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[3] Per TCT No. 357817. The land has an aggregate area of 20,063 square meters.

[4] *See* Deed of Donation dated 26 May 1975, (*rollo*, p. 238); and Amended Deed of Donation dated 27 October 1976, (*rollo*, pp. 100-105).

[5] Then known as Koppel, Incorporated.

[6] *Rollo*, pp. 238-243.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 239-241.

[10] *Id*. at 239.

[11] *Id*. at 240.

The *Deed of Donation* also stipulated that the lease over the subject property is renewable for another period of twenty-five (25) years "*upon mutual agreement*" of FKI and the respondent.[12] In which case, the amount of rent shall be determined in accordance with item 2(g) of the *Deed of Donation*, *viz*:

> g. The rental for the second 25 years shall be the subject of mutual agreement and in case of disagreement the matter shall be referred to a Board of three Arbitrators appointed and with powers in accordance with the Arbitration Law of the Philippines, Republic Act 878, whose function shall be to decide the current fair market value of the land excluding the improvements, provided, that, any increase in the fair market value of the land shall not exceed twenty five percent (25%) of the original value of the land donated as stated in paragraph 2(c) of this Deed. The rental for the second 25 years shall not exceed three percent (3%) of the fair market value of the land excluding the improvements as determined by the Board of Arbitrators.[13]

In October 1976, FKI and the respondent executed an *Amended Deed of Donation*[14] that reiterated the provisions of the *Deed of Donation*, including those relating to the lease of the subject land.

Verily, by virtue of the lease agreement contained in the *Deed of Donation* and *Amended Deed of Donation*, FKI was able to continue in its possession and use of the subject land.

2000 Lease Contract

Two (2) days before the lease incorporated in the *Deed of Donation* and *Amended Deed of Donation* was set to expire, or on 23 May 2000, FKI and respondent executed another contract of lease (*2000 Lease Contract*)[15] covering the subject land. In this *2000 Lease Contract*, FKI and respondent agreed on a new five-year lease to take effect on the 26th of May 2000,

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[12] *Id.* at 239.

[13] *Id.* at 240.

[14] *Id.* at 100-105.

[15] *Id.* at 106-116.

with annual rents ranging from ₱4,000,000 for the first year up to ₱4,900,000 for the fifth year.[16]

The *2000 Lease Contract* also contained an arbitration clause enforceable in the event the parties come to disagreement about the "*interpretation, application and execution*" of the lease, *viz*:

> 19. Governing Law – The provisions of this [2000 Lease Contract] shall be governed, interpreted and construed in all aspects in accordance with the laws of the Republic of the Philippines.
>
> **Any disagreement as to the interpretation, application or execution of this [2000 Lease Contract] shall be submitted to a board of three (3) arbitrators constituted in accordance with the arbitration law of the Philippines. The decision of the majority of the arbitrators shall be binding upon [FKI and respondent].**[17] (Emphasis supplied)

2005 Lease Contract

After the *2000 Lease Contract* expired, FKI and respondent agreed to renew their lease for another five (5) years. This new lease (*2005 Lease Contract*)[18] required FKI to pay a fixed annual rent of ₱4,200,000.[19] In addition to paying the fixed rent, however, the *2005 Lease Contract* also obligated FKI to make a yearly "*donation*" of money to the respondent.[20] Such donations ranged from ₱3,000,000 for the first year up to ₱3,900,000 for the fifth year.[21]

Notably, the *2005 Lease Contract* contained an arbitration clause similar to that in the *2000 Lease Contract*, to wit:

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[16] The schedule of rental fees were as follows: ₱4,000,000 for the years 2000 and 2001; ₱4,300,000 for the year 2002; ₱4,600,000 for the year 2003; and ₱4,900,000 for the year 2004 (*id*. at 108).

[17] *Id*. at 114.

[18] The contract was dated 10 August 2005; *id*. at 117-123.

[19] Plus value added tax; *id*. at 118.

[20] *Id*. at 118.

[21] The schedule of "*donations*" are as follows: ₱3,000,000 for the year 2005; ₱3,200,000 for the year 2006; ₱3,300,000 for the year 2007; ₱3,600,000 for the year 2008; and ₱3,900,000 for the year 2009 (*id*).

19. Governing Law – The provisions of this [2005 Lease Contract] shall be governed, interpreted and construed in all aspects in accordance with the laws of the Republic of the Philippines.

Any disagreement as to the interpretation, application or execution of this [2005 Lease Contract] shall be submitted to a board of three (3) arbitrators constituted in accordance with the arbitration law of the Philippines. The decision of the majority of the arbitrators shall be binding upon [FKI and respondent].[22] (Emphasis supplied)

The Assignment and Petitioner's Refusal to Pay

From 2005 to 2008, FKI faithfully paid the rentals and "*donations*" due it per the *2005 Lease Contract*.[23] But in June of 2008, FKI sold all its rights and properties relative to its business in favor of herein petitioner Koppel, Incorporated.[24] On 29 August 2008, FKI and petitioner executed an *Assignment and Assumption of Lease and Donation*[25]—wherein FKI, with the conformity of the respondent, formally assigned all of its interests and obligations under the *Amended Deed of Donation* and the *2005 Lease Contract* in favor of petitioner.

The following year, petitioner discontinued the payment of the rent and "*donation*" under the *2005 Lease Contract*.

Petitioner's refusal to pay such rent and "*donation*" emanated from its belief that the rental stipulations of the *2005 Lease Contract*, and even of the *2000 Lease Contract*, cannot be given effect because they violated one of the "*material conditions*" of the donation of the subject land, as stated in the *Deed of Donation* and *Amended Deed of Donation*.[26]

According to petitioner, the *Deed of Donation* and *Amended Deed of Donation* actually established not only one but two

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[22] *Id*. at 114.

[23] *Id*. at 64.

[24] *See* Assignment and Assumption of Lease and Donation; *id*. at 124. Petitioner was then known as KPL Aircon, Incorporated; *id*. at 124.

[25] *Id*. at 124-129.

[26] *See* petitioner's Answer with Compulsory Counterclaim; *id*. at 140-142.

(2) lease agreements between FKI and respondent, *i.e.*, one lease for the first twenty-five (25) years or from 1975 to 2000, and another lease for the next twenty-five (25) years thereafter or from 2000 to 2025.[27] Both leases are material conditions of the donation of the subject land.

Petitioner points out that while a definite amount of rent for the second twenty-five (25) year lease was not fixed in the *Deed of Donation* and *Amended Deed of Donation*, both deeds nevertheless prescribed rules and limitations by which the same may be determined. Such rules and limitations ought to be observed in any succeeding lease agreements between petitioner and respondent for they are, in themselves, material conditions of the donation of the subject land.[28]

In this connection, petitioner cites item 2(g) of the *Deed of Donation* and *Amended Deed of Donation* that supposedly limits the amount of rent for the lease over the second twenty-five (25) years to only "*three percent (3%) of the fair market value of the [subject] land excluding the improvements*.[29]

For petitioner then, the rental stipulations of both the *2000 Lease Contract* and *2005 Lease Contract* cannot be enforced as they are clearly, in view of their exorbitant exactions, in violation of the aforementioned threshold in item 2(g) of the *Deed of Donation* and *Amended Deed of Donation*. Consequently, petitioner insists that the amount of rent it has to pay thereon is and must still be governed by the limitations prescribed in the *Deed of Donation* and *Amended Deed of Donation*.[30]

The Demand Letters

On 1 June 2009, respondent sent a letter (*First Demand Letter*)[31] to petitioner notifying the latter of its default "*per*

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[27] *See* Petition for Review on *Certiorari*; *id*. at 43-49.

[28] *Id*.

[29] *See* petitioner's Letter dated 22 September 2009; *id*. at 131.

[30] *Id*. at 131-132.

[31] *Id*. at 130.

Section 12 of the [2005 Lease Contract]" and demanding for the settlement of the rent and "*donation*" due for the year 2009. Respondent, in the same letter, further intimated of cancelling the *2005 Lease Contract* should petitioner fail to settle the said obligations.[32] Petitioner received the *First Demand Letter* on 2 June 2009.[33]

On 22 September 2009, petitioner sent a reply[34] to respondent expressing its disagreement over the rental stipulations of the *2005 Lease Contract*—calling them "*severely disproportionate*," "*unconscionable*" and "*in clear violation to the nominal rentals mandated by the Amended Deed of Donation*." *In lieu* of the amount demanded by the respondent, which purportedly totaled to ₱8,394,000.00, exclusive of interests, petitioner offered to pay only ₱80,502.79,[35] in accordance with the rental provisions of the *Deed of Donation* and *Amended Deed of Donatio*n.[36] Respondent refused this offer.[37]

On 25 September 2009, respondent sent another letter (*Second Demand Letter*)[38] to petitioner, reiterating its demand for the payment of the obligations already due under the *2005 Lease Contract*. The *Second Demand Letter* also contained a demand for petitioner to "*immediately vacate the leased premises*" should it fail to pay such obligations within seven (7) days from its receipt of the letter.[39] The respondent warned of taking "*legal steps*" in the event that petitioner failed to comply with

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[32] *Id*.

[33] *Id*. at 9.

[34] *Id*. at 131-133.

[35] Inclusive of 12% Value Added Tax and net of 5% Expanded Withholding Tax. The offer is further coupled by an undertaking to pay real estate tax due on the subject land on the part of petitioner; *id*. at 132.

[36] *Id*.

[37] *See* respondent's Letter dated 25 September 2009; *id*. at 504-505.

[38] *Id*.

[39] *Id*.

any of the said demands.[40] Petitioner received the *Second Demand Letter* on 26 September 2009.[41]

Petitioner refused to comply with the demands of the respondent. Instead, on 30 September 2009, petitioner filed with the Regional Trial Court (RTC) of Parañaque City a complaint[42] for the rescission or cancellation of the *Deed of Donation* and *Amended Deed of Donation* against the respondent. This case is currently pending before Branch 257 of the RTC, docketed as Civil Case No. CV 09-0346.

The Ejectment Suit

On 5 October 2009, respondent filed an unlawful detainer case[43] against the petitioner before the Metropolitan Trial Court (MeTC) of Parañaque City. The ejectment case was raffled to Branch 77 and was docketed as Civil Case No. 2009-307.

On 4 November 2009, petitioner filed an *Answer with Compulsory Counterclaim*.[44] In it, petitioner reiterated its objection over the rental stipulations of the *2005 Lease Contract* for being violative of the material conditions of the *Deed of Donation* and *Amended Deed of Donation*.[45] In addition to the foregoing, however, petitioner also interposed the following defenses:

1. The MeTC was not able to validly acquire jurisdiction over the instant unlawful detainer case in view of the insufficiency of respondent's demand.[46] The *First Demand Letter* did not contain an actual demand to

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[40] *Id*. at 505.

[41] *Id*. at 40.

[42] *Id*. at 181-193.

[43] *Id*. at 84-93.

[44] *Id*. at 134-148.

[45] *Id*. at 140-142.

[46] *Id*. at 139-140.

vacate the premises and, therefore, the refusal to comply therewith does not give rise to an action for unlawful detainer.[47]

2. Assuming that the MeTC was able to acquire jurisdiction, it may not exercise the same until the disagreement between the parties is first referred to arbitration pursuant to the arbitration clause of the *2005 Lease Contract*.[48]

3. Assuming further that the MeTC has jurisdiction that it can exercise, ejectment still would not lie as the *2005 Lease Contract* is void *ab initio*.[49] The stipulation in the *2005 Lease Contract* requiring petitioner to give yearly "*donations*" to respondent is a simulation, for they are, in fact, parts of the rent.[50] Such grants were only denominated as "*donations*" in the contract so that the respondent—a non-stock and non-profit corporation—could evade payment of the taxes otherwise due thereon.[51]

In due course, petitioner and respondent both submitted their position papers, together with their other documentary evidence.[52] Remarkably, however, respondent failed to submit the *Second Demand Letter* as part of its documentary evidence.

Rulings of the MeTC, RTC and Court of Appeals

On 27 April 2010, the MeTC rendered judgment[53] in favor of the petitioner. While the MeTC refused to dismiss the action on the ground that the dispute is subject to arbitration, it nonetheless sided with the petitioner with respect to the issues regarding the insufficiency of the respondent's demand and

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[47] *Id*.

[48] *Id*. at 137-139.

[49] *Id*. at 143-145.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 154-174 and 196-225.

[53] The decision was penned by Assisting Judge Bibiano G. Colasito; *id.* at 288-299.

the nullity of the *2005 Lease Contract*.[54] The MeTC thus disposed:

> WHEREFORE, judgment is hereby rendered dismissing the case x x x, without pronouncement as to costs.
>
> SO ORDERED.[55]

The respondent appealed to the Regional Trial Court (RTC). This appeal was assigned to Branch 274 of the RTC of Parañaque City and was docketed as Civil Case No. 10-0255.

On 29 October 2010, the RTC reversed[56] the MeTC and ordered the eviction of the petitioner from the subject land:

> WHEREFORE, all the foregoing duly considered, the appealed Decision of the Metropolitan Trial Court, Branch 77, Parañaque City, is hereby reversed, judgment is thus rendered in favor of the plaintiff-appellant and against the defendant-appellee, and ordering the latter –
>
> (1) to vacate the lease[d] premises made subject of the case and to restore the possession thereof to the plaintiff-appellant;
>
> (2) to pay to the plaintiff-appellant the amount of Nine Million Three Hundred Sixty Two Thousand Four Hundred Thirty Six Pesos (₱9,362,436.00), penalties and net of 5% withholding tax, for the lease period from May 25, 2009 to May 25, 2010 and such monthly rental as will accrue during the pendency of this case;
>
> (3) to pay attorney's fees in the sum of ₱100,000.00 plus appearance fee of ₱3,000.00;
>
> (4) and costs of suit.
>
> **As to the existing improvements belonging to the defendant-appellee, as these were built in good faith, the provisions of Art. 1678 of the Civil Code shall apply**.

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[54] *Id*.

[55] *Id*. at 299.

[56] The decision was penned by Presiding Judge Fortunito L. Madrona, *id*. at 373-388.

SO ORDERED.[57]

The ruling of the RTC is premised on the following ratiocinations:

1. The respondent had adequately complied with the requirement of demand as a jurisdictional precursor to an unlawful detainer action.[58] The *First Demand Letter*, in substance, contains a demand for petitioner to vacate when it mentioned that it was a notice "*per Section 12 of the [2005 Lease Contract]*."[59] Moreover, the issue of sufficiency of the respondent's demand ought to have been laid to rest by the *Second Demand Letter* which, though not submitted in evidence, was nonetheless admitted by petitioner as containing a "*demand to eject*" in its *Answer with Compulsory Counterclaim*.[60]

2. The petitioner cannot validly invoke the arbitration clause of the *2005 Lease Contract* while, at the same time, impugn such contract's validity.[61] Even assuming that it can, petitioner still did not file a formal application before the MeTC so as to render such arbitration clause operational.[62] At any rate, the MeTC would not be precluded from exercising its jurisdiction over an action for unlawful detainer, over which, it has exclusive original jurisdiction.[63]

3. The *2005 Lease Contract* must be sustained as a valid contract since petitioner was not able to adduce any evidence to support its allegation that the same is void.[64] There was, in this case, no evidence that respondent is guilty of any tax evasion.[65]

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[57] *Id*. at 387-388; emphasis ours.

[58] *Id*. at 383-384.

[59] *Id*.

[60] *Id*.

[61] *Id*. at 384-387.

[62] *Id*.

[63] *Id*.

[64] *Id*. at 382-383.

[65] *Id*.

Aggrieved, the petitioner appealed to the Court of Appeals.

On 19 August 2011, the Court of Appeals affirmed[66] the decision of the RTC:

> **WHEREFORE**, the petition is **DENIED**. The assailed Decision of the Regional Trial Court of Parañaque City, Branch 274, in Civil Case No. 10-0255 is **AFFIRMED**.
>
> x x x x x x x x x
>
> **SO ORDERED**.[67]

Hence, this appeal.

On 5 September 2011, this Court granted petitioner's prayer for the issuance of a Temporary Restraining Order[68] staying the immediate implementation of the decisions adverse to it.

OUR RULING

Independently of the merits of the case, the MeTC, RTC and Court of Appeals all erred in overlooking the significance of the arbitration clause incorporated in the *2005 Lease Contract*. As the Court sees it, that is a fatal mistake.

For this reason, We grant the petition.

Present Dispute is Arbitrable Under the Arbitration Clause of the 2005 Lease Agreement Contract

Going back to the records of this case, it is discernable that the dispute between the petitioner and respondent emanates from the rental stipulations of the *2005 Lease Contract*. The respondent insists upon the enforceability and validity of such stipulations, whereas, petitioner, in substance, repudiates them. It is from petitioner's apparent breach of the *2005 Lease Contract* that respondent filed the instant unlawful detainer action.

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[66] *Id*. at 61-82.

[67] *Id*. at 81-82; emphasis in the original.

[68] *Id*. at 508-509.

One cannot escape the conclusion that, under the foregoing premises, the dispute between the petitioner and respondent arose from the *application* or *execution* of the *2005 Lease Contract*. Undoubtedly, such kinds of dispute are covered by the arbitration clause of the *2005 Lease Contract* to wit:

> 19. Governing Law – The provisions of this [2005 Lease Contract] shall be governed, interpreted and construed in all aspects in accordance with the laws of the Republic of the Philippines.
>
> **Any disagreement as to the interpretation, application or execution of this [2005 Lease Contract] shall be submitted to a board of three (3) arbitrators constituted in accordance with the arbitration law of the Philippines. The decision of the majority of the arbitrators shall be binding upon [FKI and respondent].**[69] (Emphasis supplied)

The arbitration clause of the *2005 Lease Contract* stipulates that "*any disagreement*" as to the "*interpretation, application or execution*" of the *2005 Lease Contract* ought to be submitted to arbitration.[70] To the mind of this Court, such stipulation is clear and is comprehensive enough so as to include virtually any kind of conflict or dispute that may arise from the *2005 Lease Contract* including the one that presently besets petitioner and respondent.

The application of the arbitration clause of the *2005 Lease Contract* in this case carries with it certain legal effects. However, before discussing what these legal effects are, We shall first deal with the challenges posed against the application of such arbitration clause.

Challenges Against the Application of the Arbitration Clause of the 2005 Lease Contract

Curiously, despite the lucidity of the arbitration clause of the *2005 Lease Contract*, the petitioner, as well as the MeTC, RTC and the Court of Appeals, vouched for the non-application of the same in the instant case. A plethora of arguments was hurled in favor of bypassing arbitration. We now address them.

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[69] *Id*. at 114.

[70] *Id*.

At different points in the proceedings of this case, the following arguments were offered against the application of the arbitration clause of the *2005 Lease Contract*:

1. The disagreement between the petitioner and respondent is non-arbitrable as it will inevitably touch upon the issue of the validity of the *2005 Lease Contract*.[71] It was submitted that one of the reasons offered by the petitioner in justifying its failure to pay under the *2005 Lease Contract* was the nullity of such contract for being contrary to law and public policy.[72] The Supreme Court, in ***Gonzales v. Climax Mining, Ltd.***,[73] held that "*the validity of contract cannot be subject of arbitration proceedings*" as such questions are "*legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function*."[74]

2. The petitioner cannot validly invoke the arbitration clause of the *2005 Lease Contract* while, at the same time, impugn such contract's validity.[75]

3. Even assuming that it can invoke the arbitration clause whilst denying the validity of the *2005 Lease Contract*, petitioner still did not file a formal application before the MeTC so as to render such arbitration clause operational.[76] Section 24 of Republic Act No. 9285 requires the party seeking arbitration to first file a "*request*" or an application therefor with the court *not later than the preliminary conference*.[77]

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[71] *See* respondent's Comment dated 22 September 2011; *id.* at 851-852.

[72] *Id.*

[73] 492 Phil. 682 (2005).

[74] *Id.* at 697.

[75] *See* Decision of the RTC dated 29 October 2010, (*rollo*, p. 386); and the respondent's Comment dated 22 September 2011; *rollo*, pp. 854-855.

[76] *See* Decision of the RTC dated 29 October 2010; (*id.* at 387); and the Decision of the Court of Appeals dated 19 August 2011; (*id.* at 71).

[77] *Id.* at 71.

4. Petitioner and respondent already underwent Judicial Dispute Resolution (JDR) proceedings before the RTC.[78] Hence, a further referral of the dispute to arbitration would only be circuitous.[79] Moreover, an ejectment case, in view of its summary nature, already fulfills the prime purpose of arbitration, *i.e.*, to provide parties in conflict with an expedient method for the resolution of their dispute.[80] Arbitration then would no longer be necessary in this case.[81]

None of the arguments have any merit.

First. As highlighted in the previous discussion, the disagreement between the petitioner and respondent falls within the all-encompassing terms of the arbitration clause of the *2005 Lease Contract*. While it may be conceded that in the arbitration of such disagreement, the validity of the *2005 Lease Contract*, or at least, of such contract's rental stipulations would have to be determined, the same would *not* render such disagreement non-arbitrable. The quotation from ***Gonzales*** that was used to justify the contrary position was taken out of context. A rereading of ***Gonzales*** would fix its relevance to this case.

In ***Gonzales***, a complaint for arbitration was filed before the Panel of Arbitrators of the Mines and Geosciences Bureau (PA-MGB) seeking the nullification of a Financial Technical Assistance Agreement and other mining related agreements entered into by private parties.[82] Grounds invoked for the nullification

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[78] *Id*. at 72.

[79] *Id*.

[80] *Id*.

[81] *Id*. *See* also respondent's Comment dated 22 September 2011; *rollo*, pp. 853-854.

[82] *Gonzales v. Climax Mining, Ltd.*, *supra* note 73. Aside from the FTAA, the arbitration complaint seeks to annul the following agreements entered into between the parties in *Gonzales*: (a) *Addendum to the May 14, 1987 Letter of Intent and February 29, 1989 Agreement with Express Adhesion Thereto*; (b) *Operating and Financial Accommodation Contract*; (c) *Assignment, Accession Agreement* and; (d) *Memorandum of Agreement*.

of such agreements include fraud and unconstitutionality.[83] The pivotal issue that confronted the Court then was whether the PA-MGB has jurisdiction over that particular arbitration complaint. Stated otherwise, the question was whether the complaint for arbitration raises arbitrable issues that the PA-MGB can take cognizance of.

Gonzales decided the issue in the negative. In holding that the PA-MGB was devoid of any jurisdiction to take cognizance of the complaint for arbitration, this Court pointed out to the provisions of R.A. No. 7942, or the Mining Act of 1995, which granted the PA-MGB with exclusive original jurisdiction only over *mining disputes, i.e.*, disputes involving "*rights to mining areas*," "*mineral agreements or permits*," and "*surface owners, occupants, claimholders or concessionaires*" requiring the technical knowledge and experience of mining authorities in order to be resolved.[84] Accordingly, since the complaint for arbitration in ***Gonzales*** did not raise *mining disputes* as contemplated under R.A. No. 7942 but only issues relating to the validity of certain mining related agreements, this Court held that such complaint could not be arbitrated before the PA-MGB.[85] It is in this context that we made the pronouncement now in discussion:

> 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.**[86] (Emphasis supplied)

[83] *Id*. at 697.

[84] *Id*. at 692-693. *See* Section 77 of R.A. No. 7942.

[85] *Id*. at 696.

[86] *Id*. at 696-697.

The Court in ***Gonzales*** did not simply base its rejection of the complaint for arbitration on the ground that the issue raised therein, *i.e.*, the validity of contracts, is *per se* non-arbitrable. The real consideration behind the ruling was the **limitation that was placed by R.A. No. 7942 upon the jurisdiction of the PA-MGB as an arbitral body**. ***Gonzales*** rejected the complaint for arbitration because the issue raised therein is not a *mining dispute* per R.A. No. 7942 and it is for this reason, and only for this reason, that such issue is rendered non-arbitrable before the PA-MGB. As stated beforehand, R.A. No. 7942 clearly limited the jurisdiction of the PA-MGB only to *mining disputes*.[87]

Much more instructive for our purposes, on the other hand, is the recent case of ***Cargill Philippines, Inc. v. San Fernando Regal Trading, Inc.***[88] In ***Cargill***, this Court answered the question of whether issues involving the *rescission* of a contract are arbitrable. The respondent in ***Cargill*** argued against arbitrability, also citing therein ***Gonzales***. After dissecting ***Gonzales***, this Court ruled in favor of arbitrability.[89] Thus, We held:

> Respondent contends that assuming that the existence of the contract and the arbitration clause is conceded, the CA's decision declining referral of the parties' dispute to arbitration is still correct. It claims that its complaint in the RTC presents the issue of whether under the facts alleged, it is entitled to rescind the contract with damages; and that issue constitutes a judicial question or one that requires the exercise of judicial function and cannot be the subject of an arbitration proceeding. Respondent cites our ruling in *Gonzales*, wherein we held that a panel of arbitrator is bereft of jurisdiction over the complaint for declaration of nullity/or termination of the subject contracts on the grounds of fraud and oppression attendant to the execution of the addendum contract and the other contracts emanating from it, and that the complaint should have been filed with the regular courts as it involved issues which are judicial in nature.

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[87] *Id.* at 696. *See* Section 77 of R.A. No. 7942.

[88] G.R. No. 175404, 31 January 2011, 641 SCRA 31.

[89] *Id.* at 50.

Such argument is misplaced and respondent cannot rely on the *Gonzales* case to support its argument.[90] (Emphasis ours)

Second. Petitioner may still invoke the arbitration clause of the *2005 Lease Contract* notwithstanding the fact that it assails the validity of such contract. This is due to the *doctrine of separability*.[91]

Under the doctrine of separability, an arbitration agreement is considered as independent of the main contract.[92] Being a separate contract in itself, the arbitration agreement may thus be invoked regardless of the possible nullity or invalidity of the main contract.[93]

Once again instructive is ***Cargill***, wherein this Court held that, as a further consequence of the doctrine of separability, even the very party who repudiates the main contract may invoke its arbitration clause.[94]

Third. The operation of the arbitration clause in this case is not at all defeated by the failure of the petitioner to file a formal "*request*" or application therefor with the MeTC. We find that the filing of a "*request*" pursuant to Section 24 of R.A. No. 9285 is *not* the sole means by which an arbitration clause may be validly invoked in a pending suit.

Section 24 of R.A. No. 9285 reads:

SEC. 24. *Referral to Arbitration*. - A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so **requests** not later that the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration

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[90] *Id*. at 47-48.

[91] *Gonzales v. Climax Mining Ltd.*, 541 Phil. 143, 166 (2007).

[92] *Id*.

[93] *Id*. at 158.

[94] *Cargill Philippines. Inc. v. San Fernando Regal Trading, Inc.*, *supra* note 88 at 47.

agreement is null and void, inoperative or incapable of being performed. [Emphasis ours; italics original]

The "*request*" referred to in the above provision is, in turn, implemented by Rules 4.1 to 4.3 of A.M. No. 07-11-08-SC or the *Special Rules of Court on Alternative Dispute Resolution* (Special ADR Rules):

RULE 4: REFERRAL TO ADR

Rule 4.1. *Who makes the request*. - A party to a pending action filed in violation of the arbitration agreement, whether contained in an arbitration clause or in a submission agreement, **may** request the court to refer the parties to arbitration in accordance with such agreement.

Rule 4.2. *When to make request*. - (A) *Where the arbitration agreement exists before the action is filed*. - The request for referral shall be made not later than the pre-trial conference. After the pre-trial conference, the court will only act upon the request for referral if it is made with the agreement of all parties to the case.

(B) *Submission agreement*. - If there is no existing arbitration agreement at the time the case is filed but the parties subsequently enter into an arbitration agreement, they may request the court to refer their dispute to arbitration at any time during the proceedings.

Rule 4.3. *Contents of request*. - The request for referral shall be in the form of a motion, which shall state that the dispute is covered by an arbitration agreement.

Apart from other submissions, the movant shall attach to his motion an authentic copy of the arbitration agreement.

The request shall contain a notice of hearing addressed to all parties specifying the date and time when it would be heard. The party making the request shall serve it upon the respondent to give him the opportunity to file a comment or opposition as provided in the immediately succeeding Rule before the hearing. [Emphasis ours; italics original]

Attention must be paid, however, to the salient wordings of Rule 4.1. It reads: "*[a] party to a pending action filed in violation of the arbitration agreement x x x* ***may*** *request the court to refer the parties to arbitration in accordance with such agreement*."

In using the word "*may*" to qualify the act of filing a "*request*" under Section 24 of R.A. No. 9285, the Special ADR Rules clearly did not intend to limit the invocation of an arbitration agreement in a pending suit solely *via* such "*request*." After all, non-compliance with an arbitration agreement is a valid defense to any offending suit and, as such, may even be raised in an *answer* as provided in our ordinary rules of procedure.[95]

In this case, it is conceded that petitioner was not able to file a separate "*request*" of arbitration before the MeTC. However, it is equally conceded that the petitioner, as early as in its *Answer with Counterclaim*, had already apprised the MeTC of the existence of the arbitration clause in the *2005 Lease Contract*[96] and, more significantly, of its desire to have the same enforced in this case.[97]

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[95] *See* Section 4 of Rule 6 of the Rules of Court.

[96] *Rollo*, pp. 137-138. In its Answer with Compulsory Counterclaim, petitioner made known the existence of the arbitration clause of the 2005 Lease Contract in this wise:

> 16. [Respondent] bases its purported causes of action on [Petitioner's] alleged violation of the 2005 [Lease Contract] dated 10 August 2005 executed by [Respondent] and [Petitioner's] predecessor in interest involving the subject parcel of land covered by Transfer Certificate of Title (TCT) No. 357817. Paragraph 19 of the contract provides:
>
> x x x
>
> **Any disagreement as to the interpretation, application or execution of this CONTRACT shall be submitted to a board of three (3) arbitrators constituted in accordance with the arbitration law of the Philippines**. The decision of the majority of the arbitrators shall be binding upon the Parties. (Emphasis and underscoring in the original).

[97] *Id*. at 139. Petitioner, in its Answer with Compulsory Counterclaim, was categorical of its desire to have the arbitration clause enforced in the unlawful detainer suit:

> 21. **Thus, the parties are contractually bound to refer the issue of possession and the alleged non-payment of rent of the subject property to an arbitral body. The filing of the present case is a gross violation of the contract and, therefore, the same must be dismissed**. (Emphasis and underscoring in the original)

This act of petitioner is enough valid invocation of his right to arbitrate.

Fourth. The fact that the petitioner and respondent already underwent through JDR proceedings before the RTC, will not make the subsequent conduct of arbitration between the parties unnecessary or circuitous. The JDR system is substantially different from arbitration proceedings.

The JDR framework is based on the processes of *mediation, conciliation* or *early neutral evaluation* which entails the submission of a dispute before a "*JDR judge*" who shall merely "*facilitate settlement*" between the parties in conflict or make a "*non-binding evaluation or assessment of the chances of each party's case*."[98] Thus in JDR, the JDR judge lacks the authority to render a resolution of the dispute that is binding upon the parties in conflict. In arbitration, on the other hand, the dispute is submitted to an *arbitrator/s*—a neutral third person or a group of thereof—who shall have the authority to render a resolution binding upon the parties.[99]

Clearly, the mere submission of a dispute to JDR proceedings would *not* necessarily render the subsequent conduct of arbitration a mere surplusage. The failure of the parties in conflict to reach an amicable settlement before the JDR may, in fact, be supplemented by their resort to arbitration where a binding resolution to the dispute could finally be achieved. This situation precisely finds application to the case at bench.

Neither would the summary nature of ejectment cases be a valid reason to disregard the enforcement of the arbitration clause of the *2005 Lease Contract*. Notwithstanding the summary nature of ejectment cases, arbitration still remains relevant as it aims not only to afford the parties an expeditious method of resolving their dispute.

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[98] A.M. No. 11-1-6-SC-PHILJA, 11 January 2011.

[99] *Uniwide Sales Realty and Resources Corporation v. Titan Ikeda Construction and Development Corporation*, 540 Phil. 350, 370 (2006).

A pivotal feature of arbitration as an alternative mode of dispute resolution is that it is, first and foremost, a product of *party autonomy* or the freedom of the parties to "*make their own arrangements to resolve their own disputes*."[100] Arbitration agreements manifest not only the desire of the parties in conflict for an expeditious resolution of their dispute. They also represent, if not more so, the parties' mutual aspiration to achieve such resolution outside of judicial auspices, in a more informal and less antagonistic environment under the terms of their choosing. Needless to state, this critical feature can never be satisfied in an ejectment case no matter how summary it may be.

Having hurdled all the challenges against the application of the arbitration clause of the *2005 Lease Agreement* in this case, We shall now proceed with the discussion of its legal effects.

Legal Effect of the Application of the Arbitration Clause

Since there really are no legal impediments to the application of the arbitration clause of the *2005 Contract of Lease* in this case, We find that the instant unlawful detainer action was instituted in violation of such clause. The Law, therefore, should have governed the fate of the parties and this suit:

R.A. No. 876

Section 7. *Stay of civil action.* - If any suit or proceeding be brought upon an issue arising out of an agreement providing for the arbitration thereof, the court in which such suit or proceeding is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration, **shall stay the action or proceeding until an arbitration has been had in accordance with the terms of the agreement**: Provided, That the applicant for the stay is not in default in proceeding with such arbitration. [Emphasis supplied]

R.A. No. 9285

Section 24. *Referral to Arbitration*. - A court before which an action is brought in a matter which is the subject matter of an arbitration

[100] Rule 2.1 of A.M. No. 07-11-08-SC, 1 September 2009.

agreement shall, if at least one party so requests not later that the pre-trial conference, or upon the request of both parties thereafter, **refer the parties to arbitration** unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. [Emphasis supplied]

It is clear that under the law, the instant unlawful detainer action should have been stayed;[101] the petitioner and the respondent should have been referred to arbitration pursuant to the arbitration clause of the *2005 Lease Contract*. The MeTC, however, did not do so in violation of the law—which violation was, in turn, affirmed by the RTC and Court of Appeals on appeal.

The violation by the MeTC of the clear directives under R.A. Nos. 876 and 9285 renders invalid all proceedings it undertook in the ejectment case ***after*** the filing by petitioner of its *Answer with Counterclaim*—the point when the petitioner and the respondent should have been referred to arbitration. This case must, therefore, be remanded to the MeTC and be suspended at said point. Inevitably, the decisions of the MeTC, RTC and the Court of Appeals must all be vacated and set aside.

[101] Relevantly, Rule 2.4 of A.M. No. 07-11-08-SC provides:

Rule 2.4. *Policy implementing competence-competence principle.* - The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues.

Where the court is asked to make a determination of whether the arbitration agreement is null and void, inoperative or incapable of being performed, under this policy of judicial restraint, the court must make no more than a *prima facie* determination of that issue.

Unless the court, pursuant to such *prima facie* determination, concludes that the arbitration agreement is null and void, inoperative or incapable of being performed, the court must suspend the action before it and refer the parties to arbitration pursuant to the arbitration agreement. [Emphasis supplied]

The petitioner and the respondent must then be referred to arbitration pursuant to the arbitration clause of the *2005 Lease Contract*.

This Court is not unaware of the *apparent* harshness of the Decision that it is about to make. Nonetheless, this Court must make the same if only to stress the point that, in our jurisdiction, *bona fide* arbitration agreements are recognized as valid;[102] and that laws,[103] rules and regulations[104] do exist protecting and ensuring their enforcement as a matter of state policy. Gone should be the days when courts treat otherwise valid arbitration agreements with disdain and hostility, if not outright "*jealousy*,"[105] and then get away with it. Courts should instead learn to treat alternative means of dispute resolution as effective partners in the administration of justice and, in the case of arbitration agreements, to afford them *judicial restraint*.[106] Today, this Court only performs its part in upholding a once disregarded state policy.

Civil Case No. CV 09-0346

This Court notes that, on 30 September 2009, petitioner filed with the RTC of Parañaque City, a complaint[107] for the rescission or cancellation of the *Deed of Donation* and *Amended Deed of Donation* against the respondent. The case is currently

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[102] *Mindanao Portland Cement Corp. v. McDonough Construction Company of Florida*, 126 Phil. 78, 84-85 (1967); *General Insurance & Surety Corp. v. Union Insurance Society of Canton, Ltd.*, 259 Phil. 132, 143-144 (1989); *Chung Fu Industries Phils. Inc. v. Court of Appeals*, G.R. No. 96283, 25 February 1992, 206 SCRA 545, 551-552.

[103] *See* Articles 2042 to 2046 of R.A. No. 386 or the New Civil Code of the Philippines; R.A. No. 876; R.A. No. 9285.

[104] *See* A.M. No. 07-11-08-SC, 1 September 2009.

[105] *See* Dissenting Opinion of Justice George A. Malcolm in *Vega v. San Carlos Milling Co.*, 51 Phil. 908, 917 (1924).

[106] Rule 2.4 of A.M. No. 07-11-08-SC, 1 September 2009.

[107] *Rollo*, pp. 181-193.

pending before Branch 257 of the RTC, docketed as Civil Case No. CV 09-0346.

This Court recognizes the great possibility that issues raised in Civil Case No. CV 09-0346 may involve matters that are rightfully arbitrable per the arbitration clause of the *2005 Lease Contract*. However, since the records of Civil Case No. CV 09-0346 are not before this Court, We can never know with true certainty and only speculate.

In this light, let a copy of this Decision be also served to Branch 257 of the RTC of Parañaque for its consideration and, possible, application to Civil Case No. CV 09-0346.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. Accordingly, We hereby render a Decision:

1. **SETTING ASIDE all the proceedings** undertaken by the Metropolitan Trial Court, Branch 77, of Parañaque City in relation to Civil Case No. 2009-307 ***after*** the filing by petitioner of its *Answer with Counterclaim*;

2. **REMANDING** the instant case to the MeTC, **SUSPENDED** at the point ***after*** the filing by petitioner of its *Answer with Counterclaim;*

3. **SETTING ASIDE** the following:

    a. Decision dated 19 August 2011 of the Court of Appeals in C.A.-G.R. SP No. 116865,

    b. Decision dated 29 October 2010 of the Regional Trial Court, Branch 274, of Parañaque City in Civil Case No. 10-0255,

    c. Decision dated 27 April 2010 of the Metropolitan Trial Court, Branch 77, of Parañaque City in Civil Case No. 2009-307; *and*

4. **REFERRING** the petitioner and the respondent to arbitration pursuant to the arbitration clause of the *2005 Lease Contract,* repeatedly included in the 2000 Lease Contract and in the 1976 Amended Deed of Donation.

Let a copy of this Decision be served to Branch 257 of the RTC of Parañaque for its consideration and, possible, application to Civil Case No. CV 09-0346.

No costs.

SO ORDERED.

Brion, del Castillo, Abad,[*] and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 198444. September 4, 2013]

CITIBANK N.A. and THE CITIGROUP PRIVATE BANK, *petitioners, vs.* **ESTER H. TANCO-GABALDON, ARSENIO TANCO & THE HEIRS OF KU TIONG LAM,** *respondents.*

[G.R. Nos. 198469-70. September 4, 2013]

CAROL LIM, *petitioner, vs.* **ESTER H. TANCO-GABALDON, ARSENIO TANCO & THE HEIRS OF KU TIONG LAM,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; SECURITIES REGULATION CODE (SRC); LIMITATIONS OF ACTIONS; ELUCIDATED.— [T]he pertinent provisions of the SRC, particularly Section 62, states: *Limitation of Actions*. – 62.1. No action shall be maintained to enforce any liability created under Section 56 or 57 of this Code unless brought within two (2) years after the discovery of the untrue

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[*] Per Raffle dated 10 October 2011.

statement or the omission, or, if the action is to enforce a liability created under Subsection 57.1(a), unless brought within two (2) years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section 56 or Subsection 57.1(a) more than five (5) years after the security was *bona fide* offered to the public, or under Subsection 57.1(b) more than five (5) years after the sale. 62.2. No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued. Section 62 provides for two different prescriptive periods. Section 62.1 specifically sets out the prescriptive period for the liabilities created under Sections 56, 57, 57.1(a) and 57.1(b). Section 56 refers to Civil Liabilities on Account of False Registration Statement while Section 57 pertains to Civil Liabilities on Arising in Connection with Prospectus, Communications and Reports. Under these provisions, enforcement of the civil liability must be brought within two (2) years or five (5) years, as the case may be. On the other hand, Section 62.2 provides for the prescriptive period to enforce **any liability** created under the SRC.

2. ID.; ID.; ID.; SECTION 62.2 THEREOF, ON THE PRESCRIPTIVE PERIOD TO ENFORCE *ANY LIABILITY* CREATED UNDER THE SRC; REFERS ONLY TO THE CIVIL LIABILITY IN CASES OF VIOLATIONS OF THE SRC.— [It is] the rule of statutory construction that every part of the statute must be interpreted with reference to the context, *i.e*., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Section 62.2 (of the SRC) should not be read in isolation of the other provision included in Section 62, particularly Section 62.1, which provides for the prescriptive period for the enforcement of civil liability in cases of violations of Sections 56, 57, 57.1(a) and 57.1(b). Moreover, it should be noted that the civil liabilities provided in the SRC are not limited to Sections 56 and 57. Section 58 provides for Civil Liability For Fraud in Connection With Securities Transactions; Section 59 – Civil Liability For Manipulation of Security Prices; Section 60 – Civil Liability With Respect to Commodity Future Contracts and Pre-need Plans; and Section 61 – Civil Liability on Account of

Insider Trading. Thus, bearing in mind that Section 62.1 merely addressed the prescriptive period for the civil liability provided in Sections 56, 57, 57.1(a) and 57.1(b), then it reasonably follows that the other sub-provision, Section 62.2, deals with the other civil liabilities that were not covered by Section 62.1, namely Sections 59, 60 and 61. This conclusion is further supported by the fact that the subsequent provision, Section 63, explicitly pertains to the amount of damages recoverable under Sections 56, 57, 58, 59, 60 and 61, the trial court having jurisdiction over such actions, the persons liable and the extent of their liability. Clearly, the intent is to encompass in Section 62 the prescriptive periods only of the civil liability in cases of violations of the SRC.

3. ID.; ID.; CRIMINAL LIABILITY FOR VIOLATIONS OF THE SRC RULES AND REGULATIONS, PUNISHABLE WITH IMPRISONMENT OF SEVEN (7) YEARS TO 21 YEARS; PRESCRIPTION PERIOD IS 12 YEARS UNDER ACT NO. 3326.— Given the absence of a prescriptive period for the enforcement of the criminal liability in violations of the SRC, Act No. 3326 now comes into play. *Panaguiton, Jr. v. Department of Justice* expressly ruled that **Act No. 3326 is the law applicable to offenses under special laws which do not provide their own prescriptive periods**. Section 1 of Act No. 3326 provides: Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) **after twelve years for any other offense punished by imprisonment for six years or more**, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months. Under Section 73 of the SRC, violation of its provisions or the rules and regulations is punishable with imprisonment of not less than seven (7) years nor more than twenty-one (21) years. Applying Section 1 of Act No. 3326, a criminal prosecution for violations of the SRC shall, therefore, prescribe in twelve (12) years. Hand in hand with Section 1, Section 2 of Act No. 3326 states that "prescription

shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment."

4. CIVIL LAW; LACHES; APPLICATION ADDRESSED TO THE SOUND DISCRETION OF THE COURT.— Laches has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders. Just as the SRC did not provide a prescriptive period for the filing of criminal actions, it likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated. On this score, it is a well-settled principle of law that laches is a recourse in equity, which is, applied only in the absence of statutory law. And though laches applies even to imprescriptible actions, its elements must be proved positively. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for Citibank, N.A., *et al.*

Siguion Reyna Montecillo & Ongsiako Law Offices for Carol Lim.

Soriano Julian & Partners Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

These consolidated cases arose from the same antecedent facts.

On September 21, 2007, Ester H. Tanco-Gabaldon (Gabaldon), Arsenio Tanco (Tanco) and the Heirs of Ku Tiong Lam (Lam)

(respondents) filed with the Securities and Exchange Commission's Enforcement and Prosecution Department[1] (SEC-EPD) a complaint for violation of the Revised Securities Act (RSA) and the Securities Regulation Code (SRC) against petitioners Citibank N.A. (Citibank) and its officials,[2] Citigroup Private Bank (Citigroup) and its officials,[3] and petitioner Carol Lim (Lim), who is Citigroup's Vice-President and Director. In their Complaint,[4] the respondents alleged that Gabaldon, Tanco and Lam were joint account holders of petitioner Citigroup. Sometime in March 2000, the respondents met with petitioner Lim, who "induced" them into signing a subscription agreement for the purchase of USD 2,000,000.00 worth of Ceres II Finance Ltd. Income Notes. In September of the same year, they met again with Lim for another investment proposal, this time for the purchase of USD 500,000.00 worth of Aeries Finance II Ltd. Senior Subordinated Income Notes. In a January 2003 statement issued by the Citigroup, the respondents learned that their investments declined, until their account was totally wiped out. Upon verification with the SEC, they learned that the Ceres II Finance Ltd. Notes and the Aeries Finance II Ltd. Notes were not duly registered securities. They also learned that Ceres II Finance Ltd., Aeries Finance II Ltd. and the petitioners, among others, are not duly-registered security issuers, brokers, dealers or agents.

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[1] Formerly the Compliance and Enforcement Department.

[2] Included as respondents were Citibank's Country Manager Mark Jones and its Resident Agent Umesh Patel.

[3] Citigroup officials who were included as respondents were Citigroup's Hong Kong Investment Center head Sam Tse, Akbar A. Shah who is the Managing Director of Global Market Manager (Philippines) and Head of Citigroup's Philippines team, Vice-President and Citigroup's former Global Market Manager (Philippines) Pakorn Boonyakurkul, Vice-President and Citigroup's Country Manager Richard J. Smith.

[4] *Rollo* (G.R. No. 198444), pp. 146-187; *rollo* (G.R. Nos. 198469-70), pp. 134-175.

Hence, the respondents prayed in their complaint that: (1) the petitioners be held administratively liable;[5] (2) the petitioners be liable to pay an administrative fine pursuant to Section 54(ii), SRC; (3) the petitioners' existing registration/s or secondary license/s to act as a broker/dealer in securities, government securities eligible dealer, investment adviser of an investment house/underwriter of securities and transfer agent be revoked; and (4) criminal complaints against the petitioners be filed and endorsed to the Department of Justice (DOJ) for investigation.[6]

Petitioners Citibank and Citigroup claimed that they did not receive a copy of the complaint and it was only after the *Bangko Sentral ng Pilipinas* (BSP) wrote them on October 26, 2007 that they were furnished a copy. They replied to the BSP disclaiming any participation by the Citibank or its officers on the transactions and products complained of. Citibank and Citigroup furnished a copy of its letter to the SEC-EPD and the respondents' counsel.

On August 1, 2008, the SEC-EPD asked from the petitioners certain documents to be submitted during a scheduled conference, to which they complied. The petitioners, however, reiterated its position that they are not submitting to the jurisdiction of the

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[5] For violation of the following: (1) Section 4(a), RSA and Section 8(8.1), SRC for offering and selling unregistered securities; (2) Section 19, RSA and Section 28(28.1) and (28.2), SRC for engaging in the business of selling securities in the Philippines, as broker or dealer, without being registered and for employing unregistered salesmen or agents; (3) Section 13 (a)(2), RSA and Section 57(57.1)(b), SRC for offering and selling unregistered and worthless securities by means of written/oral communication, which include untrue statements/omitting material facts; (4) Section 29, RSA and Section 26, SRC for offering and selling unregistered and worthless securities through fraudulent means; (5) Section 44, RSA and Section 51(51.1), (51.2), (51.4) and (51.5), SRC for aiding and abetting the sale of unregistered and worthless securities in the Philippines; and (6) Section 23, RSA and Section 48, SRC for extending credits beyond the margin established by law. *Rollo* (G.R. No. 198444), p. 186; *rollo* (G.R. Nos. 198469-70), p. 173.

[6] *Rollo* (G.R. No. 198444), pp. 186-187; *rollo* (G.R. Nos. 198469-70), pp. 173-174.

SEC. The petitioners were also required to submit other documents.[6.a]

Thereafter, in an order dated December 8, 2008, the SEC-EPD terminated its investigation on the ground that the respondents' action has already prescribed.[7] According to the SEC-EPD, "[t]he aforesaid complaint was filed before the [SEC-EPD] on 21 September 2007 while a similar complaint was lodged before the [DOJ] on October 2005. Seven (7) years had lapsed before the filing of the action before the SEC while the complaint instituted before the DOJ was filed one month after the expiration of the allowable period."[8] It appears that on October 24, 2005,[9] the respondents had already filed with the Mandaluyong City Prosecutor's Office a complaint for violation of the RSA and SRC but it was referred to the SEC pursuant to *Baviera v. Prosecutor Paglinawan*.[10]

In 2009, petitioners Citibank and Citigroup received a copy of the respondents' Notice of Appeal and Memorandum of Appeals but the officials did not, as according to them, the latter were not connected with them. Citibank also alleged that they did not receive any order to file a Reply Memorandum, in contravention of Section 11-5, Rule XI of the 2006 SEC Rules of Procedure. It turned out, however, that an order was issued by the SEC, dated February 26, 2009, requiring the petitioners to file their reply.[11]

[6.a] *Rollo* (G.R. No. 198444), pp. 194-195; *rollo* (G.R. Nos. 198469-70, pp. 208-209.

[7] *Rollo* (G.R. No. 198444), pp. 247-248.

[8] *Id.* at 248.

[9] *Id.* at 163-164.

[10] *Baviera* ruled that all complaints for any violation of the SRC and its implementing rules and regulations should be filed with the SEC; where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 of the SRC; 544 Phil. 107, 119 (2007).

[11] *Rollo* (G.R. No. 198444), p. 252.

On November 6, 2009, petitioners Citibank and Citigroup received the SEC *en banc* Decision[12] dated October 15, 2009 reinstating the complaint and ordering the immediate investigation of the case. Petitioner Lim, who was then based in Hong Kong, learned of the rendition of the SEC decision on November 20, 2009 through a teleconference with petitioner Citibank's counsel.[13] Thus, petitioners Citibank and Citigroup filed a petition for review with the Court of Appeals (CA), docketed as CA-G.R. SP No. 111501. Petitioner Lim filed her own petition for review with the CA, docketed as CA-G.R. SP No. 112309. These two petitions were then consolidated.

Finally, the CA rendered the Decision[14] dated October 5, 2010, which provides for the following dispositive portion:

> **WHEREFORE**, the foregoing premises considered, the petition is partly **GRANTED**. The writ of injunction is hereby **DISSOLVED**. The Securities and Exchange Commission-Enforcement and Prosecution Department is ordered to proceed with its investigation with dispatch and with due regard to the parties' right to notice and hearing.
>
> **SO ORDERED**.[15]

The petitioners filed a motion for reconsideration, which was denied by the CA in its Resolution[16] dated August 31, 2011. The petitioners then filed the present consolidated petitions for review under Rule 45 of the Rules of Court.

The issues raised in these petitions are: (1) whether the criminal action for offenses punished under the SRC filed by

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[12] *Rollo* (G.R. Nos. 198469-70), pp. 897-907.

[13] *Id.* at 60.

[14] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ricardo R. Rosario and Manuel M. Barrios, concurring; *rollo* (G.R. No. 198444), pp. 94-121; *rollo*, *id.* at 93-120.

[15] *Rollo* (G.R. No. 198444), p. 120; *rollo* (G.R. Nos. 198469-70), p. 119.

[16] *Rollo* (G.R. No. 198444), pp. 124-135; *rollo* (G.R. Nos. 198469-70), pp. 38-49.

the respondents against the petitioners has already prescribed; and (2) whether the filing of the action for the petitioners' administrative liability is barred by laches.

It was the CA's view that since the SRC has no specific provision on prescription of criminal offenses, the applicable law is Act No. 3326.[17] Under the SRC, imprisonment of more than six (6) years is the imposable penalty for the offenses with which the petitioners were charged, and applying Act No. 3326, the prescriptive period for the filing of an action is twelve (12) years, reckoned from the time of commission or discovery of the offense.[18] The respondents' filing of the complaint with the SEC, therefore, was within the prescriptive period.

In **G.R. Nos. 198469-70**, petitioner Lim share the view of petitioners Citibank and Citigroup that Act No. 3326 is not applicable and the SRC provides for its own prescriptive period.[19] Meanwhile, in **G.R. No. 198444**, petitioners Citibank and Citigroup maintain that the CA committed an error in applying Act No. 3326. According to the petitioners, Section 62.2 of the SRC applies to both civil and criminal liability. The petitioners also insist that laches bar the investigation of the respondents' complaint against the petitioners. On the other hand, the respondents assert, among others, the applicability of Act No. 3326.[20]

Ruling of the Court

Resolution of the issue raised by the petitioners call for an examination of the pertinent provisions of the SRC, particularly Section 62, which states:

SEC. 62. *Limitation of Actions.* –

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[17] An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin.

[18] *Rollo* (G.R. No. 198444), p. 110; *rollo* (G.R. Nos. 198469-70), p. 109.

[19] *Rollo* (G.R. Nos. 198469-70), pp. 63-81.

[20] *Rollo* (G.R. No. 198444), pp. 595-607; *id.* at 743-757.

62.1. No action shall be maintained to enforce any liability created under Section 56 or 57 of this Code unless brought within two (2) years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection 57.1(a), unless brought within two (2) years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section 56 or Subsection 57.1(a) more than five (5) years after the security was *bona fide* offered to the public, or under Subsection 57.1(b) more than five (5) years after the sale.

62.2. No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued.

Section 62 provides for two different prescriptive periods.

Section 62.1 specifically sets out the prescriptive period for the liabilities created under Sections 56, 57, 57.1(a) and 57.1(b). Section 56 refers to Civil Liabilities on Account of False Registration Statement while Section 57 pertains to Civil Liabilities on Arising in Connection with Prospectus, Communications and Reports. Under these provisions, enforcement of the civil liability must be brought within two (2) years or five (5) years, as the case may be.

On the other hand, Section 62.2 provides for the prescriptive period to enforce **any liability** created under the SRC. It is the interpretation of the phrase "any liability" that creates the uncertainty. Does it include both civil and criminal liability? Or does it pertain solely to civil liability?

In order to put said phrase in its proper perspective, reference must be made to the rule of statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[21] Section 62.2 should not be

[21] *Garcia v. Social Security Commission Legal and Collection, Social Security System*, 565 Phil. 193, 206 (2007).

read in isolation of the other provision included in Section 62, particularly Section 62.1, which provides for the prescriptive period for the enforcement of civil liability in cases of violations of Sections 56, 57, 57.1(a) and 57.1(b).

Moreover, it should be noted that the civil liabilities provided in the SRC are not limited to Sections 56 and 57. Section 58 provides for Civil Liability For Fraud in Connection With Securities Transactions; Section 59 – Civil Liability For Manipulation of Security Prices; Section 60 – Civil Liability With Respect to Commodity Future Contracts and Pre-need Plans; and Section 61 – Civil Liability on Account of Insider Trading. Thus, bearing in mind that Section 62.1 merely addressed the prescriptive period for the civil liability provided in Sections 56, 57, 57.1(a) and 57.1(b), then it reasonably follows that the other sub-provision, Section 62.2, deals with the other civil liabilities that were not covered by Section 62.1, namely Sections 59, 60 and 61. This conclusion is further supported by the fact that the subsequent provision, Section 63, explicitly pertains to the amount of damages recoverable under Sections 56, 57, 58, 59, 60 and 61,[22] the trial court having jurisdiction over such actions,[23] the persons liable[24] and the extent of their liability[25]. Clearly, the intent is to encompass in Section 62 the prescriptive periods only of the civil liability in cases of violations of the SRC.

The CA, therefore, did not commit any error when it ruled that "the phrase 'any liability' in subsection 62.2 can only refer to other liabilities that are also civil in nature. The phrase could not have suddenly intended to mean criminal liability for this would go beyond the context of the other provisions among which it is found."[26]

Given the absence of a prescriptive period for the enforcement of the criminal liability in violations of the SRC, Act No. 3326

[22] R.A. No. 8799, Sec. 63.1.

[23] *Id.*

[24] *Id.*, Sec. 63.2.

[25] *Id.*, Sec. 63.3.

[26] *Rollo* (G.R. Nos. 198469-70), pp. 108-109.

now comes into play. *Panaguiton, Jr. v. Department of Justice*[27] expressly ruled that **Act No. 3326 is the law applicable to offenses under special laws which do not provide their own prescriptive periods**.[28]

Section 1 of Act No. 3326 provides:

> Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) **after twelve years for any other offense punished by imprisonment for six years or more**, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months. (Emphasis ours)

Under Section 73 of the SRC, violation of its provisions or the rules and regulations is punishable with imprisonment of not less than seven (7) years nor more than twenty-one (21) years. Applying Section 1 of Act No. 3326, a criminal prosecution for violations of the SRC shall, therefore, prescribe in twelve (12) years.

Hand in hand with Section 1, Section 2 of Act No. 3326 states that "prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment." In *Republic v. Cojuangco, Jr.*[29] the Court ruled that Section 2 provides two rules for determining when the prescriptive period shall begin to run: *first*, from the day of the commission of the violation of the law, **if such commission is known**; and *second*,

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[27] G.R. No. 167571, November 25, 2008, 571 SCRA 549.

[28] *Id.* at 558.

[29] G.R. No. 139930, June 26, 2012, 674 SCRA 492.

from its discovery, **if not then known**, and the institution of judicial proceedings for its investigation and punishment.[30]

The respondents alleged in their complaint that the transactions occurred between September 2000, when they purchased the Subscription Agreement for the purchase of USD 2,000,000.00 worth of Ceres II Finance Ltd. Income Notes, and July 31, 2003, when their Ceres II Finance Ltd. account was totally wiped out. Nevertheless, it was only sometime in November 2004 that the respondents discovered that the securities they purchased were actually worthless. Thereafter, the respondents filed on October 23, 2005 with the Mandaluyong City Prosecutor's Office a complaint for violation of the RSA and SRC. In Resolution dated July 18, 2007, however, the prosecutor's office referred the complaint to the SEC.[31] Finally, the respondents filed the complaint with the SEC on September 21, 2007. Based on the foregoing antecedents, only seven (7) years lapsed since the respondents invested their funds with the petitioners, and three (3) years since the respondents' discovery of the alleged offenses, that the complaint was correctly filed with the SEC for investigation. Hence, the respondents' complaint was filed well within the twelve (12)-year prescriptive period provided by Section 1 of Act No. 3326.

On the issue of laches.

Petitioner Lim contends that the CA committed an error when it did not apply the principle of laches *vis-à-vis* the petitioners' administrative liability.[32]

Laches has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done

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[30] *Id.* at 505, citing *Presidential Commission on Good Government v. Desierto*, 484 Phil. 53, 60 (2004).

[31] Included in the complaint were charges for Estafa under Article 315, paragraph 3(a) of the Revised Penal Code, which the Mandaluyong City Prosecutor's Office retained for preliminary investigation.

[32] *Rollo* (G.R. No. 198444), p. 33.

earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.[33]

Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders.[34] Just as the SRC did not provide a prescriptive period for the filing of criminal actions, it likewise omitted to provide for the period until when complaints for

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[33] *Insurance of the Philippine Island Corporation v. Gregorio*, G.R. No. 174104, February 14, 2011, 642 SCRA 685, 691.

[34] Sec. 54. *Administrative Sanctions*.

54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

(i) Suspension, or revocation of any registration for the offering of securities;

(ii) A fine of no less than Ten Thousand pesos (₱10,000.00) nor more than One Million pesos (₱1,000,000.00) plus not more than Two Thousand pesos (₱2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose.

administrative liability under the law should be initiated. On this score, it is a well-settled principle of law that laches is a recourse in equity, which is, applied only in the absence of statutory law.[35] And though laches applies even to imprescriptible actions, its elements must be proved positively.[36] Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations.[37]

In this case, records bear that immediately after the respondents discovered in 2004 that the securities they invested in were actually worthless, they filed on October 23, 2005 a complaint for violation of the RSA and SRC with the Mandaluyong City Prosecutor's Office. It took the prosecutor three (3) years to resolve the complaint and refer the case to the SEC,[38] in conformity with the Court's pronouncement in *Baviera*[39] that all complaints for any violation of the SRC and its implementing rules and regulations should be filed with the SEC. Clearly, the filing of the complaint with the SEC on September 21, 2007 is not barred by laches as the respondents' judicious actions reveal otherwise.

WHEREFORE, the petitions are **DENIED** for lack of merit.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[35] *See Bank of the Philippine Islands v. Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207, 219.

[36] *Abadiano v. Martir*, G.R. No. 156310, July 31, 2008, 560 SCRA 676, 695.

[37] *Id.* at 694-695.

[38] Included in the complaint were charges for Estafa under Article 315, paragraph 3(a) of the Revised Penal Code, which the Mandaluyong City Prosecutor's Office retained for preliminary investigation.

[39] *Supra* note 10.

[*] Acting member per Special Order No. 1529 dated August 29, 2013.

THIRD DIVISION

[G.R. No. 200508. September 4, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER RIVERA *y* ROYO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CREDIBLE TESTIMONY OF RAPE VICTIM MAY BE THE BASIS OF CONVICTION.— Inasmuch as the crime of rape is essentially committed in relative isolation or even secrecy, it is usually the victim alone who can testify with regard to the fact of the forced sexual intercourse. Therefore, in a prosecution for rape, the credibility of the victim is almost always the single and most important point to consider. Thus, if the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of this testimony; otherwise, the accused should be acquitted of the crime.

2. ID.; ID.; FINDINGS OF TRIAL COURT NEGATING SWEETHEART DEFENSE IN RAPE CASE, RESPECTED.— By invoking the "sweetheart defense," Rivera essentially admitted having carnal knowledge with AAA. x x x In determining whether or not the act was consensual and that no force of any kind and degree was employed, circumstances as to the age, size and strength of both parties must also be looked into because force in rape is relative. x x x AAA consistently claimed that the bigger Rivera pushed her to the bed, forcefully undressed her and succeeded in ravishing her. x x x On the other hand, Rivera, when he was at the witness stand, desperately tried to show that theirs was a consensual act by claiming that AAA was his girlfriend and that she voluntarily went with him to the lodging house. The RTC, which had the vantage point in observing the witness' demeanor at the witness stand, considered AAA's testimony as credible and sufficient to sustain Rivera's conviction for the crime of rape, and did not believe his defense of denial. It was of the strong view that AAA did not consent to the sexual act as she, in fact,

resisted his aggression. x x x As held in *People v. Cabanilla*, the sweetheart defense is an affirmative defense that must be supported by convincing proof. As correctly ruled by the CA, such defense is "effectively an admission of carnal knowledge of the victim and consequently places on accused-appellant the burden of proving the alleged relationship by substantial evidence." Independent proof is required.

3. ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED.— This appreciation of the trial court judge carries a lot of weight. The rule in this regard, applicable to this case, is: "The assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. These are the utmost significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.

4. CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF VAGINAL LACERATIONS.— In his last ditch effort to secure his exoneration, Rivera pointed out that the records were bereft of evidence to prove that AAA suffered vaginal lacerations. The lack of lacerated wounds in the vagina, however, does not negate sexual intercourse. Laceration of the hymen, even if considered the most telling and irrefutable physical evidence of sexual assault, is not always essential to establish the consummation of the crime of rape. In the context used in the RPC, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. Accordingly, granting *arguendo* that AAA did not suffer any laceration, Rivera would still be guilty of rape after it was clearly established that he did succeed in having carnal knowledge of her. At any rate, it has been repeatedly held that the medical examination

of the victim is not indispensable in a prosecution for rape. Expert testimony is merely corroborative in character and not essential to a conviction.

5. ID.; ID.; DAMAGES.— The damages imposed by the trial court upon accused Rivera, to wit: ₱50,000.00 as civil liability *ex delicto;* ₱50,000.00 moral damages; and ₱30,000.00 as exemplary damages, are correct being in accordance with the latest jurisprudence on the matter.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the June 23, 2011 Decision[1] of the Court of Appeals *(CA)*, affirming the Judgment[2] handed down by the Regional Trial Court Branch 17, Manila *(RTC)*, in Criminal Case No. 04-230720, finding the accused, Christopher Rivera *y* Royo *(Rivera)*, guilty beyond reasonable doubt of the crime of rape defined under Article 266-A of the Revised Penal Code *(RPC)* and penalized under Article 266-B thereof.

The Facts

On October 4, 2004, an Information for Rape under Article 266-A of the Revised Penal Code was filed against Rivera stating:

That on or about September 29, 2004, in the City of Manila, Philippines, the said accused, with lewd designs and by means of

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justice Ramon M. Bato, Jr. and Associate Justice Florito S. Macalino, concurring. *Rollo*, pp. 2-10.

[2] Penned by Judge Eduardo B. Peralta, Jr., (now Associate Justice of the Court of Appeals), CA records, pp. 27-33.

force and intimidation, to wit: by then and there forcibly undressing one AAA and inserting his penis in her vagina, did then and there, wilfully, unlawfully and feloniously succeeded in having carnal knowledge of her against her will and without her consent.

CONTRARY TO LAW.[3]

As succinctly stated in the decision of the CA, AAA narrated the following:

She was 20-years old and worked as a housemaid in a house located at Quezon City. She came to know Rivera on September 28, 2004 because he was also working thereat as a security guard. She told Rivera about a misunderstanding with a co-worker. Rivera then offered to help her look for another job.

At around 10:00 o'clock in the morning of September 29, 2004, AAA went with Rivera believing that the latter will bring her to his parent's house in Quiapo. Rivera brought her to Ilang Ilang Motel[4] located along Quezon Boulevard. AAA asked Rivera if that was his parent's house, to which he replied "Yes."

Rivera shoved her inside, pushed her towards the bed, forced her to remove her clothes. He went on top of her, shoved her penis into her underwear and inserted the same into her vagina. She struggled to push Rivera but the latter held her hands tightly. She shouted for help, but nobody heard her.

Rivera stayed on top of AAA for about ten (10) minutes. Thereafter, they went to her cousin's house in Antipolo City. She reported the incident to the police authorities and Rivera was apprehended.

AAA went to Camp Crame for medico-legal examination, which later revealed that her hymen had sustained shallow fresh laceration at 9:00 o'clock position.

AAA did not complain to the nearest police station because she was ashamed and thought of bringing Rivera to her cousin's house.[5]

For the defense, Rivera and a certain Grace Dueño *(Dueño)*, were presented as witnesses.

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[3] CA Decision, *rollo*, p. 3.

[4] Ilang Ilang Lodge. See CA records, p. 19.

[5] *Rollo*, pp. 3-4.

Rivera claimed that AAA was his girlfriend, whom he promised to help look for another job; that on September 29, 2004, AAA went with him and looked for a lodging house in Quiapo; and that they checked in at the Ilang Ilang Lodge,[6] with AAA contributing 25.00 for the ₱125.00 rental rate of their room for three (3) hours. He added that:

> Once inside the room, AAA professed her love for him and is ready to face the consequences of their acts. They started kissing each other after a brief conversation. He started undressing AAA and the latter assisted him in removing her pants. AAA took a bath while Rivera went downstairs to buy "banana que" and buko juice. AAA got annoyed when he told her that they would eat as soon as they are downstairs. AAA got dressed and went out of the room ahead of him.
>
> Together, they left the motel, rode a jeepney towards Cubao and disembarked thereat. They took another ride going to Cogeo where they arrived at the place where AAA's relative resides. AAA discussed something with her relative in Visayan dialect and mentioned something about the police. When they entered the house, Rivera watched TV. AAA went out and when she returned, a policeman accosted him due to a complaint. He went with the policeman to the police precinct. He was forced to admit the charge.[7]

Rivera insisted that AAA voluntarily went with him to the Ilang Ilang lodging house in Quiapo.

The other defense witness, Dueño, the cashier at the lodging house, supported the version of Rivera. She observed that both were happy when they checked in at the lodge and added that it was even AAA who paid for the room.[8]

Thereafter, the RTC rendered its Judgment[9] finding Rivera guilty beyond reasonable doubt of the crime of rape, the dispositive portion of which reads:

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[6] Records, p. 19.

[7] *Rollo*, p. 5.

[8] *Id.* at 6.

[9] RTC Decision, CA Records, pp. 27-33.

WHEREFORE, by reason of the foregoing premises, judgment of conviction beyond an iota of doubt for the felony of consummated rape defined in Article 266-A of the Revised Penal Code is hereby rendered against accused Christopher Rivera *y* Royo in Criminal Case No. 04-230720 for which he must suffer the penalty of *reclusion perpetua*. Apart from the principal penalty of incarceration, which is subject to Article 29 of the Revised Penal Code, the accused must indemnify the complainant with the sum of ₱50,000.00 as civil liability *ex delicto,* ₱50,000.00 moral damages, and ₱30,000.00 as exemplary damages.

IT IS SO ORDERED.[10]

In finding Rivera guilty, the RTC explained that "even then, it was precisely defendant's machination that the room was where his parents stayed, or they only will spend time to simply rest therein, which constitutes the very essence of cajolery as prelude to what was in the offing."[11] It further wrote that even assuming *ex gratia argumenti* that AAA and the accused were indeed lovers, as claimed by Rivera, "there is judicial aversion to the sweetheart theory and a love affair is not a license to expel lust."[12] Specifically, the pertinent portions of its evaluation read:

At first blush, a flashback of the complainant's story of defloration evoked some somber reflection if there was semblance of accuracy to her statements. Evidence on record from Miss X disclosed that she was a high school graduate 20 years old, and had been in Manila for about a year prior to the incident on September 29, 2004. These acknowledged details might have raised quizzical eyebrows to her public outcry of *deflorare* for she could not have been duped into believing that the area where she went with the accused was far from a place for romance or a quick sexual tryst. Even then, **it was precisely defendant's machination that the room was where his parents stayed, or they only will spend time to simply rest therein, which constitutes the very essence of cajolery as prelude to what was in the offing.**

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[10] *Id.* at 32.

[11] *Id.*

[12] *Id.* at 31-32, citing *People v. Nogpo, Jr.*, G.R. No. 184791, April 16, 2009, 585 SCRA 725.

Given the recognized isolated state in rape as a crime, if walls could only speak as a mute witness to either a dastardly deed or the product of sheer love within Room 22, judicial quandary could have been diminished. The Court's predicament becomes even more piercing when there is heavy reliance on the sheer revelation of the complainant's cry for vindication, when equated with defendant's protestation of innocence. In resolving such impasse, jurisprudence dictates supremacy of affirmative evidence when compared with the adverse party's disavowal, especially so when the complainant's candid version herein was not properly impeached by the defense through acceptable evidence of a sinister plot supposedly concocted by the complainant and her relative. Indeed, it is hornbook precept that the lone testimony of the victim in the crime of rape, if credible, is enough to sustain a conviction for, by the very nature of offense, the only evidence that oftentimes can be relied upon is the victim's own lips.

Shifting one's attention now to the demeanor of Miss X prior to, during, and after the incident on September 29, 2004, evidence at hand revealed that she resisted the sexual advances of the accused. She also shouted but her voice fell on deaf ears and she had no other option but to immediately report the matter to the police after she and the accused arrived in the place of Cogeo. Amendatory of the law on rape is Republic Act No. 8353, which reclassified it as a crime against persons, and it clearly spelled a presumption in Article 266-D of the Revised Penal Code that any physical overt act of opposition, irrespective of degree from the complainant, can be rightly appreciated as evidence in a prosecution for rape in Article 266-A.

Even assuming *ex gratia argumenti* that Miss X and the accused were lovers as put forward by the accused, there is judicial aversion to the sweetheart theory and a love affair is not a license to expel lust. Surely, defendant's response in the vernacular, as quoted in the text of this discourse, to the effect that **he did not expect that the complainant would seek assistance of the police amidst defendant's trust reposed on her, was also a formidable piece of vital information, nay, a negative pregnant, that the accused had accomplished a misdeed.** Notwithstanding some disparities in Miss X's declarations as to the exact floor where the task was accomplished and how the defendant inserted his penis beneath the underwear of Miss X, such divergence in perceptions cannot create significant doubt for the accused as these matters referred to minor details of the sexual breach. Besides, the witness for the defendant can hardly

corroborate defendant's revelation, since the witness who testified for the accused referred to an incident on September 22, 2004, unlike the crucial date mentioned by both Miss X and the accused. [Emphases supplied]

Ruling of the Court of Appeals

On appeal, the CA affirmed the RTC judgment of conviction. It stated that Rivera, other than his bare assertions, failed to adduce convincing proof showing the existence of a romantic relationship. It likewise agreed with the RTC in stating that even assuming they were lovers, the relationship did not give him the license to sexually assault AAA.[13] The CA further pointed out that the gravamen of the offense of rape was sexual congress with a woman by force and without consent.[14]

As to AAA's behavior after the sexual assault, the CA was of the view that her failure to escape despite an opportunity to do so and to immediately seek help thereafter should not be interpreted as consent; that these circumstances, by themselves, did not necessarily negate rape or taint her credibility; and that there was no code of conduct prescribing the correct reaction of a rape victim to the sexual assault.[15]

Thus, in affirming the RTC, the CA ruled that Rivera, having the burden of proof, failed to clearly and convincingly prove that AAA consented to the sexual act.

Hence, this appeal.

Ruling of the Court

Inasmuch as the crime of rape is essentially committed in relative isolation or even secrecy, it is usually the victim alone who can testify with regard to the fact of the forced sexual intercourse.[16] Therefore, in a prosecution for rape, the credibility

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[13] *Rollo,* pp. 7-8.

[14] *Id.* at 8.

[15] *Id.* at 9.

[16] *People v. Olasco,* G.R. No. 174861, April 11, 2011, 647 SCRA 461, 470.

of the victim is almost always the single and most important point to consider. Thus, if the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of this testimony; otherwise, the accused should be acquitted of the crime.[17]

After a thorough review of the evidentiary record, the Court affirms the conviction.

Paragraph (1), Article 266-A of the Revised Penal Code *(RPC),* in relation to paragraph (2), Article 266-B thereof, as amended by Republic Act *(R.A.)* No. 8353, provides that:

> Article 266-A. *Rape, When and How Committed*. - Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat, or intimidation;
>
> b. When the offended party is deprived of reason or otherwise unconscious;
>
> c. By means of fraudulent machination or grave abuse of authority; and
>
> d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> x x x
>
> Article 266-B. *Penalty*. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*
>
> x x x

By invoking the "sweetheart defense," Rivera essentially admitted having carnal knowledge with AAA. The next query is whether or not she consented to the sexual act for the gravamen

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[17] *People v. Cias*, G.R. No. 194379, June 1, 2011, 650 SCRA 326, 337, citing *People v. Lazaro*, G.R. No. 186379, August 19, 2009, 596 SCRA 587, 596.

of the offense of rape, as the CA correctly stated, is sexual congress with a woman by force and without consent.[18]

In determining whether or not the act was consensual and that no force of any kind and degree was employed, circumstances as to the age, size and strength of both parties must also be looked into because force in rape is relative.[19] Here, records reveal that as per the Medico-Legal Report[20] of the Crime Laboratory in Camp Crame, Quezon City, AAA was 18 years old at the time of the alleged rape. She stood four (4) feet and nine (9) inches (4'9") and weighed 93.3 lbs. On the other hand, as per the Booking Sheet and Arrest Report[21] of the Western Police District, Central Market Sta. Cruz Police Station, Rivera was 24 years old, stood five (5) feet and six (6) inches and weighed 143.3 lbs.

AAA consistently claimed that the bigger Rivera pushed her to the bed, forcefully undressed her and succeeded in ravishing her. In her affidavit,[22] dated September 30, 2004, she stated:

T – *Maaari mo bang ikuwento sa akin ang nangyari*?

S – x x x *Dinala niya ako sa may ilang ilang at pumasok kami doon at nakita ko siya na may pinirmahan. Pumasok po siya sa kwarto at tinawag niya ako pero tinanong ko siya ng "ITO BA ANG BOARDING HOUSE MO"? Sumagot siya ng "oo." Pumasok po ako sa loob at doon niya ako pinagsamantalahan. Sumigaw ako ng sumigaw pero sinabihan niya ako na kahit magsisigaw ako ay walang makakarinig sa akin.* ***Tinulak niya ako sa kama at pinilit niyang hubarin ang aking damit pero nanlalaban ako pero malakas siya kaya nagawa niyang akong pagsamantalahan.*** x x x

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[18] *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 659, citing *People v. Baluya*, 430 Phil. 349 (2005), citing *People v. Dela Cruz*, 393 Phil. 231 (2000).

[19] *Id.*, citing *People v. Yparraguire*, 390 Phil. 366 (2000).

[20] Records, pp. 11-12.

[21] *Id.* at 13.

[22] *Id.* at 8.

On December 21, 2005, during her direct examination, AAA testified on the details as follows:[23]

Q: Reaching Quiapo, Manila, with the accused, what happened next?
A: *"Biglang pinasok nya po ako sa may motel,* ***pero hindi ko po alam na motel yun kasi first time kong pumasok dun."*** He suddenly brought me inside a motel but I did not know that it was a motel since that was my first time to enter a motel, sir.

Q: You said that reaching Quiapo with the accused, the accused suddenly pushed you inside a motel, what happened there inside the motel?
A: *"Pinilit nya pong hinubad po yung damit ko."* He forced me to remove my clothes, sir.

Q: Now, prior to that undressing [of] you by the accused, you said you were pushed inside a motel by the accused, what happened before that undressing?
A: ***"Tinanong ko po na ito ba yung bahay ng parents mo na sinasabi mo."*** I asked him if that was the house of his parents, sir.

Q: And when you asked him that, what was his reply?
A: **He answered yes, sir.**

Q: And when he answered yes, what happened next?
A: *"Yun po, bigla na lang po ako tinulak nya."* He suddenly pushed me, sir.

Q: Pushed you to what?
A: To the bed, sir. [Emphases supplied]

On the other hand, Rivera, when he was at the witness stand, desperately tried to show that theirs was a consensual act by claiming that AAA was his girlfriend and that she voluntarily went with him to the lodging house.

The RTC, which had the vantage point in observing the witness' demeanor at the witness stand, considered AAA's testimony as credible and sufficient to sustain Rivera's conviction

[23] *Id.*, TSN, December 21, 2005, pp. 75-76.

for the crime of rape, and did not believe his defense of denial. It was of the strong view that AAA did not consent to the sexual act as she, in fact, resisted his aggression. As earlier cited, the RTC observed that:

> Shifting one's attention now to the demeanor of Miss X prior to, during, and after the incident on September 29, 2004, evidence at hand revealed that she resisted the sexual advances of the accused.[24]

This appreciation of the trial court judge carries a lot of weight. The rule in this regard, applicable to this case, is: "The assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. These are the utmost significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case."[25] In the case of *People v. Belga*,[26] the Supreme Court reiterated and expounded on the rule.

> Time and again, we have held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, her *"furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an*

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[24] RTC Decision, CA records, p. 31.

[25] *People v. Onabia*, 365 Phil. 464, 481 (1999).

[26] 402 Phil. 734 (2001).

oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they are lying.[27] [Italicization supplied]

In this case, the CA also concluded that AAA's unwavering answers during cross-examination removed all doubt as to her credibility and manifested the truthfulness of her testimony.[28] Citing *People v. Canuto*,[29] the CA stated that when a rape victim's testimony was straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its vital points, the same must be given full faith and credit.[30] When the findings of the trial court are affirmed by the appellate court, the Court will not disturb the same, save for exceptional circumstances which are not present in this case.

The Court, in its own assessment of the case, casts no doubt on AAA's credibility and to the truthfulness of her testimony, as opposed to Rivera's weak reliance on the "sweetheart theory." Not even an iota of ill motive to file such a malicious case for rape on the part of AAA was shown by Rivera to at least discredit her claim that the act was not consensual. As held in *People v. Cabanilla*,[31] the sweetheart defense is an affirmative defense that must be supported by convincing proof. As correctly ruled by the CA, such defense is "effectively an admission of carnal knowledge of the victim and consequently places on accused-appellant the burden of proving the alleged relationship by substantial evidence."[32] Independent proof is required.

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[27] *People v. Belga*, 402 Phil. 734, 742-743 (2001).

[28] *Rollo*, p. 7.

[29] 529 Phil. 855, 872 (2006).

[30] *Rollo*, p. 7.

[31] G.R. No. 185839, November 17, 2010, 635 SCRA 300, 316.

[32] *Rollo*, p. 8.

Rivera, however, failed to discharge such burden. It is inconceivable that, in *barely one day* of having known each other, Rivera and AAA were already in a relationship. Rivera wanted to impress upon the Court that, after having met AAA on September 28, 2004 for the first time at around 1:00 o'clock in the afternoon and conversing with her about her problem with a co-worker, he "courted"[33] her and she "accepted"[34] him as her boyfriend. In less than 24 hours or at around 10:00 o'clock in the morning of the following day, September 29, 2004, she agreed to go with him to Ilang-Ilang Lodge to have consensual sex. The Court, though, is not very impressed. A careful perusal of the records, including Rivera's own testimony, shows that AAA agreed to go with him because of his promise that he would help her look for another job.

It cannot be argued that because AAA voluntarily went with Rivera to the Ilang-Ilang Lodge, she consented to have sex with him. To presume otherwise would be *non sequitur*. It must be noted that AAA, who was not in good terms with a co-worker, wanted a change in employer. She easily believed Rivera who convinced her that he could help her look for a new job. Thus, she trusted Rivera and went along with him because of his assurance that he could help her find a new employment.

Considering that she trusted him, it is not far-fetched that she fell for his every word, including the claim that his parents also stayed in said lodging house. With his assurance, she felt comfortable going with him to the place. It was only when they were inside the room that she realized his true intentions. From that time on, she became uneasy.

The trial court heard her story and became convinced that it was part of his machination to take advantage of AAA's naiveté and satisfy his lust. Rivera contended that there was lack of physical evidence to prove that AAA ever resisted his advances.[35] In this regard, the RPC, as amended by R.A. No.

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[33] Records, TSN, December 5, 2007, pp. 263-264.

[34] *Id.*

[35] *CA rollo*, p. 79.

8353 (Anti-Rape Law of 1997), particularly Article 266-D, provides for a presumption that any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A. This rule properly applies in this case as AAA's credibility in testifying that she was ruthlessly ravished by Rivera has been clearly established. She testified as follows:[36]

Q: You said you were pushed by the accused to the bed, what happened when the accused pushed you to the bed?
A: "*Ginahasa nya po ako, sir.*"
He raped me, sir.

Q: Would you please tell us in particular how the accused raped you?
A: "*Hawak nya po yung aking dalawang kamay*."
He held my two hands, sir.

Q: What happened next?
A: **He inserted his penis to me, sir.**

Q: To where?
A: To my vagina, sir.

Q: What happened when the accused inserted his penis to your vagina, what did you do?
A: ***"Tinutulak ko po sya pero hindi ko po kaya kasi malakas siya."***
I pushed him hard but he was strong, sir.

Q: What happened when you were pushing him?
A: *Wala po*.

Fiscal Orda, Jr.:
Ano yun?

Interpreter:
Ano daw nangyari nung tinutulak mo siya?

A: ***Mas hinigpitan po yung hawak nya sa akin*, sir.**
"He held me tightly, sir."

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[36] Records, pp. 76-77.

Q: When he held you tightly, when you said you were pushing him and then he held you tightly, what happened next?

A: ***"Sumisigaw po ako pero wala pong makarinig sa akin*, sir.** I was screaming but nobody heard me, sir.

Resistance from Rivera's sexual advances, although not an element of rape, was sufficiently narrated by AAA. Profusely, in *People v. Baldo*,[37] the Court ruled that:

AAA's failure to shout or to tenaciously resist appellant should not be taken against her since such negative assertion would not *ipso facto* make voluntary her submission to appellant's criminal act. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in our jurisprudence, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. Moreover, **resistance is not an element of rape**. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as the force or intimidation is present, whether it was more or less irresistible is beside the point.

In his last ditch effort to secure his exoneration, Rivera pointed out that the records were bereft of evidence to prove that AAA suffered vaginal lacerations.[38] The lack of lacerated wounds in the vagina, however, does not negate sexual intercourse.[39] Laceration of the hymen, even if considered the most telling and irrefutable physical evidence of sexual assault, is not always

[37] G.R. No. 175238, February 24, 2009, 580 SCRA 225, 233, citing *People v. Calongui*, 519 Phil. 71 (2006); *People v. Dadulla*, 547 Phil. 708, 718 (2007); *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 771; *People v. Soriano*, G.R. No. 172373, September 25, 2007, 534 SCRA 140, 145; *People v. Ilao*, 463 Phil. 797, 808 (2003); *People v. Fernandez*, 550 Phil. 358, 370 (2007); *People v. Durano*, 548 Phil. 383, 397 (2007); *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428.

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

[39] *People v. Banig*, G.R. No. 177137, August 23, 2012, 679 SCRA 133, 148, citing *People v. Ortoa*, G.R. No. 174484, February 23, 2009, 580 SCRA 80, 95-96.

essential to establish the consummation of the crime of rape. In the context used in the RPC, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured.[40] Accordingly, granting *arguendo* that AAA did not suffer any laceration, Rivera would still be guilty of rape after it was clearly established that he did succeed in having carnal knowledge of her. At any rate, it has been repeatedly held that the medical examination of the victim is not indispensable in a prosecution for rape. Expert testimony is merely corroborative in character and not essential to a conviction.[41]

The testimony of Dueño cannot be of help either. She merely related what transpired when they arrived at the lodge. She had no knowledge or inkling of what befell AAA in the hands of Rivera inside Room 22.

All told, the controversy is not simply about justifying AAA's presence in the lodging house with Rivera, but rather, it was about the consent that she did not give to satisfy his thirst for lust.

Indeed, the situation in which AAA found herself may cast suspicion on her, but the fact remains that Rivera forced himself upon her and she resisted to no avail.

There appears to be a growing public awareness and an improving environment for reporting of cases of violence against women such as rape. Rape victims are showing greater resolve to bring their accusation to court. It is rather an unfortunate reality though, that in prosecution of rape cases, the proceedings against the man perpetrator almost always turn into a trial of the woman victim as well. The Court intends to disabuse the victims on the belief that, in a court of justice, she will be judged for what she did or did not do, rather than her ravisher be condemned for his criminal actions.

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[40] *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673, citing *People v. Tagun*, 427 Phil. 389, 403-404 (2002).

[41] *Id.*

There being no showing of any reversible error in the CA's affirmance of the RTC judgment of conviction, the Court sees no compelling reason to reverse it.

The damages imposed by the trial court upon accused Rivera, to wit: ₱50,000.00 as civil liability *ex delicto*; ₱50,000.00 moral damages; and ₱30,000.00 as exemplary damages, are correct being in accordance with the latest jurisprudence on the matter.

WHEREFORE, the appeal is **DENIED**. Accordingly, the June 23, 2011 Decision of the Court of Appeals, in CA-G.R. CR-H.C. No. 04104, affirming the judgment of conviction by the Regional Trial Court, Branch 17, Manila, in Criminal Case No. 04-230720, is hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Brion,[*] *Peralta,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 158866. September 9, 2013]

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, *petitioner, vs.* **TALA REALTY SERVICES CORPORATION, PEDRO B. AGUIRRE, REMEDIOS A. DUPASQUIER, PILAR D. ONGKING, ELIZABETH H. PALMA, DOLLY W. LIM, RUBENCITO M. DEL MUNDO, ADD INTERNATIONAL SERVICES INCORPORATED, and NANCY L. TY,** *respondents.*

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[*] Designated Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1534 dated August 29, 2013.

[G.R. No. 181933. September 9, 2013]

NANCY L. TY, *petitioner, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

[G.R. No. 187551. September 9, 2013]

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, *petitioner, vs.* **COURT OF APPEALS, TALA REALTY SERVICES CORPORATION, NANCY L. TY, PEDRO B. AGUIRRE, REMEDIOS A. DUPASQUIER, PILAR D. ONGKING, ELIZABETH H. PALMA, DOLLY W. LIM, RUBENCITO M. DEL MUNDO, and ADD INTERNATIONAL SERVICES, INCORPORATED,** *respondents.*

SYLLABUS

CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOID CONTRACTS; NO AFFIRMATIVE RELIEF CAN BE ACCORDED TO ONE PARTY AGAINST THE OTHER WHERE BOTH ACTED *IN PARI DELICTO*.— [T]he basic facts as well as the issues raised in the petitions have already been passed upon by the Court x x x wherein it declared, in no uncertain terms, that the implied trust agreement between Banco Filipino and Tala Realty is "inexistent and void for being contrary to law." As such, Banco Filipino cannot demand the reconveyance of the subject properties in the present cases; neither can any affirmative relief be accorded to one party against the other since they have been found to have acted *in pari delicto*.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Associates Law Offices for Tala Realty Services Corp., *et al.*

Angara Abello Concepcion Regala & Cruz for Nancy Ty.

Office of the General Counsel and *Alampay and Tamase Law Office* for PDIC.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in these consolidated petitions for review on *certiorari*[1] are the separate issuances of the Court of Appeals (CA) in relation to several complaints for reconveyance filed by Banco Filipino Savings and Mortgage Bank (Banco Filipino).

In particular, the petition in G.R. No. 158866 filed by Banco Filipino assails the CA's Decision[2] dated June 23, 2003 in CA-G.R. SP No. 43550 which affirmed the Orders of the Regional Trial Court (RTC) of San Fernando, La Union, Branch 66 (RTC-La Union) dated November 25, 1996[3] and January 22, 1997,[4] dismissing Banco Filipino's complaint for reconveyance in Civil Case No. 4992.

Meanwhile, the petition in G.R. No. 181933 filed by Nancy L. Ty (Nancy) assails the CA's Decision[5] dated June 19, 2007 and Resolution[6] dated February 20, 2008 in CA-G.R. SP No. 78241 which affirmed the Orders of the RTC of Parañaque City, Branch 274 (RTC-Parañaque City) dated January 13, 2003[7] and May 16, 2003,[8] denying Nancy's motion to dismiss Banco Filipino's complaint for reconveyance in Civil Case No. 95-0230.

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[1] *Rollo* (G.R. No. 158866), pp. 10-32; *rollo* (G.R. No. 181933), pp. 11-46; and *rollo* (G.R. No. 187551), pp. 54-115.

[2] *Rollo* (G.R. No. 158866), pp. 40-46. Penned by Associate Justice Conrado M. Vasquez, Jr. (retired), with Associate Justices Mercedes Gozo-Dadole (retired) and Rosmari D. Carandang, concurring.

[3] *Id.* at 152-154. Penned by Judge Adolfo F. Alagar.

[4] *Id.* at 155.

[5] *Rollo* (G.R. No. 181933), pp. 53-64. Penned by Associate Justice Josefina Guevara-Salonga (retired), with Associate Justices Vicente Q. Roxas (retired) and Ramon R. Garcia, concurring.

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

[7] *Id.* at 338-339. Penned by Judge Fortunito L. Madrona.

[8] *Id.* at 442-443.

Lastly, the petition in G.R. No. 187551 filed by Banco Filipino assails the CA's Decision[9] dated December 12, 2008 and Resolution[10] dated April 3, 2009 in CA-G.R. CV No. 85159 which affirmed the Orders of the RTC of Las Piñas City, Branch 255 (RTC-Las Piñas City) dated August 31, 2004[11] and May 27, 2005,[12] dismissing Banco Filipino's complaint for reconveyance in Civil Case No. 96-0036.

The Facts

Sometime in 1979, in the course of the expansion of its operations, Banco Filipino found the necessity of acquiring real properties in order to open new branch sites. In view, however, of the restriction imposed by Sections 25(a) and 34[13] of Republic Act No. 337[14] limiting a bank's real estate investments to only 50% of its capital assets, Banco Filipino, through its board of directors, decided to "warehouse" several of its properties.[15]

Upon her behest and initiative, Nancy, together with Tomas B. Aguirre (Tomas) and his brother Pedro B. Aguirre (Pedro) – all major stockholders of Banco Filipino – organized and incorporated Tala Realty Services Corporation (Tala Realty) to purchase and hold the real properties owned by Banco Filipino in trust.[16] Subsequently, Tomas, upon the insistence of his sister Remedios A. Dupasquier (Remedios), endorsed to the latter

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[9] *Rollo* (G.R. No. 187551), pp. 11-40. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring.

[10] *Id.* at 42-51.

[11] *Id.* at 259-266. Penned by Judge (now Deputy Court Administrator) Raul Bautista Villanueva.

[12] *Id.* at 320-321.

[13] Now Section 51 of Republic Act No. 8791, otherwise known as "The General Banking Law of 2000."

[14] Otherwise known as the "General Banking Act."

[15] *Rollo* (G.R. No. 158866), p. 41; *rollo* (G.R. No. 181933), p. 15; and *rollo* (G.R. No. 187551), pp. 12 and 14.

[16] *Rollo* (G.R. No. 181933), pp. 15 and 56.

his shares in Tala Realty, which she eventually registered in the name of her own corporation, Add International Services, Inc. (Add International).[17] As a result, Remedios, together with Nancy and Pedro, had control of Tala Realty: Remedios exercised control through Add International and her nominee Elizabeth H. Palma (Elizabeth); Nancy through her nominees Pilar D. Ongking (Pilar), Dolly W. Lim (Dolly), and a certain Cynthia E. Mesina (Cynthia);[18] and Pedro through Tala Realty's President, Rubencito M. del Mundo (Rubencito).[19]

Banco Filipino entered into and, thereafter, proceeded to implement a certain trust agreement (trust agreement) with Tala Realty by selling to the latter some of its properties located in various cities and provinces nationwide. In turn, Tala Realty leased these properties to Banco Filipino.[20]

In August 1992, however, Tala Realty repudiated the trust agreement, asserted ownership and claimed full title over the properties, prompting Banco Filipino to institute a total of 17 complaints for the reconveyance of the said properties against Tala Realty and Add International, as well as Nancy, Tomas, Pedro, Remedios, Pilar, Dolly, Elizabeth, and Rubencito (defendants) in the various RTCs where the subject properties are found.[21]

The present consolidated petitions[22] stemmed from three of these reconveyance cases, in particular: (*a*) G.R. No. 158866

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[17] *Rollo* (G.R. No. 158866), p. 52; *rollo* (G.R. No. 181933), p. 57; and *rollo* (G.R. No. 187551), pp. 14-15 and 50.

[18] Cynthia Mesina has been dropped as party and is no longer involved in these proceedings. See Order dated January 13, 2003 of the RTC-Parañaque City (*rollo* [G.R. No. 181933], p. 338.)

[19] *Rollo* (G.R. No. 158866), pp. 52-53, *rollo* (G.R. No. 181933), p. 57; and *rollo* (G.R. No. 187551), p. 50.

[20] *Rollo* (G.R. No. 158866), pp. 13 and 41; and *rollo* (G.R. No. 187551), pp. 16 and 51.

[21] *Rollo* (G.R. No. 158866), pp. 41-42; *rollo* (G.R. No. 181933), p. 57; and *rollo* (G.R. No. 187551), p. 16.

[22] *Rollo* (G.R. No. 158866), pp. 1287-1288; *rollo* (G.R. No. 181933), pp. 992-993; and *rollo* (G.R. No. 187551), pp. 1132-1133. Court Resolution dated November 23, 2011.

originated from Civil Case No. 4992[23] which involved two parcels of land situated in La Union;[24] (*b*) G.R. No. 181933 was derived from Civil Case No. 95-0230[25] which involved a total of 12 properties located in Parañaque City;[26] and (*c*) G.R. No. 187551 originated from Civil Case No. 96-0036[27] which involved one property found in Las Piñas City.[28]

Tala Realty, Add International, and the individual defendants, with the exception of Nancy, moved[29] for the dismissal of these complaints on the common grounds of forum shopping, lack of cause of action, *in pari delicto* and the unenforceability of the trust agreement. On the other hand, Nancy separately filed motions to dismiss[30] the three complaints, raising the grounds of lack of jurisdiction, *lis pendens*, lack of cause of action as against her and prescription.

The Proceedings Antecedent to G.R. No. 158866

In an Order[31] dated November 25, 1996, the RTC-La Union granted the defendants' motions to dismiss on the ground of forum shopping. Taking into consideration the various complaints for reconveyance filed by Banco Filipino which were all hinged upon the same trust agreement executed with Tala Realty, the RTC-La Union ratiocinated that the cause of action as well as

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[23] *Rollo* (G.R. No. 158866), pp. 48-64. Complaint dated August 1, 1995.

[24] *Id.* at 56-57.

[25] *Rollo* (G.R. No. 181933), pp. 70-94. Complaint dated August 15, 1995.

[26] *Id.* at 78-85.

[27] *Rollo* (G.R. No. 187551), pp. 161-177. Complaint dated August 15, 1995.

[28] *Id.* at 169-170.

[29] *Rollo* (G.R. No. 158866), pp. 105-121 (Dated December 19, 2005); *rollo* (G.R. No. 187551), pp. 223-243 (Dated March 6, 1996).

[30] *Rollo* (G.R. No. 158866), pp. 122-131 (Dated December 26, 1995); *rollo* (G.R. No. 181933), pp. 95-104 (Dated February 13, 1996); and *rollo* (G.R. No. 187551), pp. 244-258 (Dated March 7, 1996).

[31] *Rollo* (G.R. No. 158866), pp. 152-154.

the evidence to be presented in the case before it are the same as the cause of action and evidence in the other reconveyance cases, thereby falling under the prohibition against forum shopping.

Banco Filipino's motion for reconsideration was denied by the same court in an Order dated January 22, 1997,[32] hence, the recourse to the CA *via* a petition for *certiorari* and *mandamus*,[33] docketed as CA-G.R. SP No. 43550.

In the said petition, Banco Filipino insisted that there could be no forum shopping when the reconveyance cases that it filed involved various sets of real properties found in different locations and covered by separate contracts of sale and lease, thus, giving rise to different causes of action.[34]

After due proceedings, the CA, through the assailed Decision[35] dated June 23, 2003, dismissed Banco Filipino's petition, finding that the reconveyance suits filed by the latter were all based on the same trust agreement with Tala Realty. In this regard, the CA held that all of the said cases are anchored upon an identical cause of action and would necessarily involve the same evidence.[36]

Dissatisfied, Banco Filipino filed the instant petition for review on *certiorari* before the Court, docketed as G.R. No. 158866, maintaining its stance that it did not engage in forum shopping.

The Proceedings Antecedent to G.R. No. 181933

In an Order[37] dated January 13, 2003, the RTC-Parañaque City denied the defendants' motions to dismiss the complaint, finding no concurrence of the elements of *litis pendentia*.[38]

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[32] *Id.* at 155.

[33] *Id.* at 156-172.

[34] *Id.* at 168-172.

[35] *Id.* at 40-46.

[36] *Id.* at 45.

[37] *Rollo* (G.R. No. 181933), pp. 338-340.

[38] *Id.* at 338.

Thus, it held that Banco Filipino committed no forum shopping in the filing of the reconveyance cases. The RTC-Parañaque City likewise found that the allegations in the complaint sufficiently state a cause of action, and disregarded the question of *in pari delicto*, not being a proper ground in a motion to dismiss.[39]

The motions for reconsideration separately filed by the defendants were denied in the RTC-Parañaque City's May 16, 2003 Order.[40] However, only Nancy elevated the case to the CA *via* petition for *certiorari*,[41] docketed as CA-G.R. SP No. 78241. In her petition, she ascribed grave abuse of discretion on the part of the RTC-Parañaque City in denying her motion to dismiss, insisting that Banco Filipino had only one cause of action and therefore, violated the rule on forum shopping when it split a single cause of action. She also reiterated that the complaint stated no cause of action as against her, and that Banco Filipino's claim had already prescribed.[42]

In the assailed Decision[43] dated June 19, 2007, the CA dismissed Nancy's petition, concurring with Banco Filipino's posturing that while there may be similarities in the factual antecedents of the reconveyance cases it had simultaneously instituted, the differences in the property locations, as well as in the manner by which the trusts were repudiated, gave rise to a distinct cause of action in all the 17 reconveyance cases.[44]

Nancy's motion for reconsideration was subsequently denied by the CA in a Resolution dated February 20, 2008,[45] hence, the petition for review on *certiorari* in G.R. No. 181933, imputing error upon the CA for not finding that the allegations in Banco Filipino's complaint were insufficient to establish a cause of

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[39] *Id.* at 339.

[40] *Id.* at 442-443.

[41] *Id.* at 444-490.

[42] See *id.* at 465-485.

[43] *Id.* at 53-64.

[44] *Id.* at 59-63.

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

action as against her. She also maintained that Banco Filipino's action had already prescribed and that the trust insisted upon by the latter was void due to the principle of *in pari delicto*, thus, no recovery can be made thereunder.

The Proceedings Antecedent to G.R. No. 187551

In an Order[46] dated August 31, 2004, the RTC-Las Piñas City granted the defendants' motions to dismiss, finding that all the elements of *litis pendentia* exist in the case before it: there was an identity of parties in the 17 reconveyance cases filed by Banco Filipino and pending in different *fora*, identity of rights or causes of action founded on the same transaction and identity of reliefs sought, which is the recovery of its properties.[47]

Banco Filipino's motion for reconsideration was subsequently denied in the RTC-Las Piñas City's May 27, 2005 Order,[48] hence, Banco Filipino appealed to the CA, docketed as CA-G.R. CV No. 85159.

In a Decision[49] dated December 12, 2008, the CA dismissed Banco Filipino's appeal not on the ground of forum shopping but for lack of cause of action. In ruling that Banco Filipino committed no forum shopping when it filed 17 reconveyance cases based on the same trust agreement, the CA considered the rulings of the Court in G.R. No. 130184,[50] G.R. No. 139166[51] and in G.R. No. 144705[52] finding that the elements of *litis pendentia* are not present.

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[46] *Rollo* (G.R. No. 187551), pp. 259-266.

[47] *Id.* at 264.

[48] *Id.* at 320-321.

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

[50] *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 130184,November 19, 2001, minute resolution.

[51] *Ty v. Banco Filipino Savings and Mortgage Bank,* G.R. No. 139166, November 19, 2001, minute resolution.

[52] *Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, November 15, 2005, 475 SCRA 65.

Nonetheless, the CA dismissed Banco Filipino's complaint on the ground of lack of cause of action, taking into account the Court's Decision in G.R. No. 137533[53] wherein it was pronounced that the implied trust between Banco Filipino and Tala Realty was "inexistent and void for being contrary to law."[54] Consequently, Banco Filipino cannot demand the reconveyance of its properties based on the said implied trust, effectively depriving it of any cause of action in these cases.

Aggrieved, Banco Filipino filed before the Court its petition for review on *certiorari* in G.R. No. 187551, raising the same issues that it had priorly advanced before the appellate court.

The Issue Before the Court

At the core of the consolidated petitions is the essential and imperative question of whether the reconveyance complaints filed by Banco Filipino before the courts *a quo* can be allowed to prosper.

The Court's Ruling

At the outset, the basic facts as well as the issues raised in these petitions have already been passed upon by the Court in its Decision[55] dated April 7, 2009 in G.R. Nos. 130088, 131469, 155171, 155201, and 166608 as well as its more recent Decision[56] dated June 27, 2012 in G.R. No. 188302. Pertinently, in these cases, the Court applied the earlier case of *Tala Realty Services Corporation v. Banco Filipino Savings & Mortgage Bank*, docketed as G.R. No. 137533,[57] wherein it declared, in no uncertain terms, that the implied trust agreement between Banco

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[53] *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 137533, November 22, 2002, 392 SCRA 506.

[54] *Id.* at 533.

[55] *Tala Realty Services Corporation v. CA*, G.R. Nos. 130088, 131469, 155171, 155201, 166608, April 7, 2009, 584 SCRA 64.

[56] *Ty v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 188302, June 27, 2012, 675 SCRA 339.

[57] *Supra* note 53, at 533.

Filipino and Tala Realty is "inexistent and void for being contrary to law." As such, Banco Filipino cannot demand the reconveyance of the subject properties in the present cases; neither can any affirmative relief be accorded to one party against the other since they have been found to have acted *in pari delicto*,[58] *viz*.:

> An implied trust could not have been formed between the Bank and Tala as this Court has held that "where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud." x x x.
>
> x x x x x x x x x
>
> x x x **[T]he Bank cannot use the defense of nor seek enforcement of its alleged implied trust with Tala since its purpose was contrary to law**. As admitted by the Bank, it "warehoused" its branch site holdings to Tala to enable it to pursue its expansion program and purchase new branch sites including its main branch in Makati, and at the same time avoid the real property holdings limit under Sections 25(a) and 34 of the General Banking Act which it had already reached. x x x
>
> Clearly, the Bank was well aware of the limitations on its real estate holdings under the General Banking Act and that its "warehousing agreement" with Tala was a scheme to circumvent the limitation. Thus, the Bank opted not to put the agreement in writing and call a spade a spade, but instead phrased its right to reconveyance of the subject property at any time as a "first preference to buy" at the "same transfer price." This arrangement which the Bank claims to be an implied trust is contrary to law. Thus, while we find the sale and lease of the subject property genuine and binding upon the parties, we cannot enforce the implied trust even assuming the parties intended to create it. x x x "[T]he courts will not assist the payor in achieving his improper purpose by enforcing a resultant trust for him in accordance

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[58] Article 1412 of the Civil Code provides in part:

> Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
>
> (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking; x x x.

with the 'clean hands' doctrine." **The Bank cannot thus demand reconveyance of the property based on its alleged implied trust relationship with Tala.** x x x.

x x x x x x x x x

The Bank and Tala are *in pari delicto*, thus, no affirmative relief should be given to one against the other. The Bank should not be allowed to dispute the sale of its lands to Tala nor should Tala be allowed to further collect rent from the Bank. The clean hands doctrine will not allow the creation or the use of a juridical relation such as a trust to subvert, directly or indirectly, the law. Neither the Bank nor Tala came to court with clean hands; neither will obtain relief from the court as one who seeks equity and justice must come to court with clean hands. By not allowing Tala to collect from the Bank rent for the period during which the latter was arbitrarily closed, both Tala and the Bank will be left where they are, each paying the price for its deception.[59] (Emphasis supplied; citations omitted)

Dictated by the principle of *stare decisis et non quieta movere*,[60] which enjoins adherence to judicial precedents, the Court therefore enforces its ruling in G.R. No. 137533, as duly applied in the succeeding cases, *i.e.*, G.R. Nos. 130088, 131469, 155171, 155201, and 166608; and G.R. No. 188302, as the controlling and binding doctrine in the resolution of these

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[59] *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank, supra* note 53, at 535-540.

[60] "Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue." (*Ty v. Banco Filipino Savings and Mortgage Bank, supra* note 56, at 350.)

consolidated petitions. In view of the nullity of the trust agreement, Banco Filipino has no cause of action against Tala Realty, thereby validating the dismissal of the former's reconveyance complaints filed before the courts *a quo*. For these reasons, the Court denies the petitions in G.R. Nos. 158866 and 187551 given that they both seek the reversal of the CA's Decision granting defendants' motions to dismiss. On the contrary, the Court grants the petition in G.R. No. 181933 since it properly seeks to reverse the CA's denial of Nancy's motions to dismiss the reconveyance cases.

WHEREFORE, the petitions in G.R. Nos. 158866 and 187551 are **DENIED** and the Court of Appeals' Decision dated June 23, 2003 in CA-G.R. SP No. 43550 and the Decision dated December 12, 2008 and Resolution dated April 3, 2009 in CA-G.R. CV No. 85159 are hereby **AFFIRMED**; while the petition in G.R. No. 181933 is **GRANTED** and the Court of Appeals' Decision dated June 19, 2007 and Resolution dated February 20, 2008 in CA-G.R. SP No. 78241 are hereby **REVERSED** and **SET ASIDE**. The complaints for reconveyance filed by Banco Filipino Savings and Mortgage Bank before the courts *a quo* are therefore **DISMISSED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167484. September 9, 2013]

HERNANDO BORRA, JOHN PACHEO, DANILO PEREZ, FELIZARDO SIMON, RAMON BUENACOSA, JR., FELIX BELADOR, WILFREDO LUPO, RONALD VILLARIAS, ARSENIO MINDANAO, MAX NONALA, SIMPLICIO DE ERIT, NOEL DONGUINES, JULIO BORRA, MELCHOR JAVIER, JOHNNY ENRICO VARGAS, PAQUITO SONDIA, JOSE SALAJOG, ELMER LUPO, RAZUL ARANEZ, NELSON PEREZ, BALBINO ABLAY, FERNANDO SIMON, JIMMY VILLARTA, ROMEO CAINDOC, SALVADOR SANTILLAN, ROMONEL JANEO, ERNESTO GONZALUDO, JOSE PAJES, ROY TAN, FERNANDO SANTILLAN JR., DEMETRIO SEMILLA, RENE CORDERO, EDUARDO MOLENO, ROMY DINAGA, HERNANDO GUMBAN, FEDERICO ALVARICO, ELMER CATO, ROGELIO CORDERO, RODNEY PAJES, ERNIE BAYER, ARMANDO TABARES, NOLI AMADOR, MARIO SANTILLAN, ALANIL TRASMONTE, VICTOR ORTEGA, JOEVING ROQUERO, CYRUS PINAS, DANILO PERALES, and ALFONSO COSAS, JR., *petitioners, vs.* **COURT OF APPEALS SECOND AND NINETEENTH DIVISIONS and HAWAIIAN PHILIPPINE COMPANY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION OVER SUBJECT MATTER; CONFERRED BY LAW. — It is settled that jurisdiction over the subject matter is conferred by law and it is not within the courts, let alone the parties, to themselves determine or conveniently set aside. In this regard, it should be reiterated that what has been filed by private respondent with the CA is

a special civil action for *certiorari* assailing the Labor Arbiter's Order which denied its motion to dismiss.

2. LABOR AND SOCIAL LEGISLATION; NLRC RULES OF PROCEDURE; MOTION TO DISMISS; DENIAL THEREOF BY THE LABOR ARBITER; PROPER REMEDY IS SPECIAL CIVIL ACTION FOR *CERTIORARI*; DISCUSSED. — Section 3, Rule V of the NLRC Rules of Procedure, which was then prevailing at the time of the filing of private respondent's petition for *certiorari* with the CA, clearly provides: SECTION 3. *MOTION TO DISMISS*. – x x x **An order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable.** In the case of *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association-Federation of Free Workers,* this Court held that: **x x x In order to avail of the extraordinary writ of *certiorari,* it is incumbent upon petitioner to establish that the denial of the motion to dismiss was tainted with grave abuse of discretion.** In this regard, Rule 41 of the Rules of Court, which is applied in a suppletory character to cases covered by the NLRC Rules, provides that in all the instances enumerated under the said Rule, where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. Thus, this Court has held that when the denial of a motion to dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of *certiorari* may be justified.

3. REMEDIAL LAW; CIVIL PROCEDURE; PRINCIPLE OF *RES JUDICATA*; APPLICATION. — In the already final and executory decision of the Labor Arbiter in RAB Case No. 06-09-10699-97, it was ruled therein that no employer-employee relationship exists between private respondent and petitioners because the latter's real employer is Fela Contractor. Thus, insofar as the question of employer and employee relations between private respondent and petitioners is concerned, the final judgment in RAB Case No. 06-09-10699-97 has the effect and authority of *res judicata* by conclusiveness of judgment. Discussing the concept of *res judicata*, this Court held in *Antonio v. Sayman Vda. de Monje* that: x x x [*R*]*es judicata* is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." According to the doctrine of *res judicata*, an existing final judgment or

decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits **on all points and matters determined in the former suit.** The principle of *res judicata* is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment."

4. ID.; ID.; FORUM SHOPPING; NOT APPRECIATED IN CASE AT BAR. — In *Pentacapital Investment Corporation v. Mahinay*, this Court's discussion on forum shopping is instructive, to wit: 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. x x x More particularly, the elements of forum-shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, **the relief being founded on the same facts**; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. In the instant case, there can be no forum shopping, because the grounds cited by private respondent in its motions to dismiss filed in 1998 and in the present case are different.

5. LABOR AND SOCIAL LEGISLATION; NLRC RULES OF PROCEDURE; CONSOLIDATION OF CASES PROPER WHERE THEY INVOLVE THE PARTIES AND THE BASIC ISSUE. — Under Section 3, Rule IV of the then prevailing, as well as in the presently existing, NLRC Rules of Procedure, it is clearly provided that: Section 3. *Consolidation of Cases*. – Where there are two or more cases pending before different Labor Arbiters in the same Regional Arbitration Branch involving the same employer and issues, or the same parties

and different issues, whenever practicable, the subsequent cases shall be consolidated with the first to avoid unnecessary costs or delay. x x x In the same manner, Section 1, Rule 31 of the 1997 Rules of Civil Procedure, allows consolidation, thus: SECTION 1. *Consolidation*. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Considering that the cases involved essentially the same parties and the basic issue of employer-employee relations between private respondent and petitioners, the Labor Arbiter should have been more circumspect and should have allowed the cases to be consolidated. This would be in consonance with the parties' constitutional right to a speedy disposition of cases as well as in keeping with the orderly and efficient disposition of cases.

APPEARANCES OF COUNSEL

Hilado Hagad & Hilado Law Offices for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking the nullification of the November 14, 2003 Resolution,[1] as well as the subsequent Decision[2] and Resolution,[3] dated June 22, 2004 and January 14, 2005, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 78729. The November 14, 2003 Resolution granted

[1] Penned by Associate Justice Andres B. Reyes, Jr. (now CA Presiding Justice), with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring; Annex "D" to Petition, *rollo*, pp. 100-103.

[2] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr., concurring; Annex "E" to Petition, *rollo*, pp. 104-113.

[3] Annex "F" to Petition, *rollo*, pp. 114-115.

private respondent's motion for the issuance of a preliminary mandatory injunction. The assailed CA Decision, on the other hand, set aside the Order of the Labor Arbiter, dated August 12, 2003, and dismissed RAB Case No. 09-10698-97, while the January 14, 2005 CA Resolution denied petitioners' motion for reconsideration.

The factual and procedural antecedents of the case are as follows:

On September 12, 1997, herein petitioners filed with the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VI in Bacolod City two separate complaints which were docketed as RAB Case No. 06-09-10698-97 and RAB Case No. 06-09-10699-97. RAB Case No. 06-09-10698-97 was filed against herein private respondent alone, while RAB Case No. 06-09-10699-97 impleaded herein private respondent and a certain Fela Contractor as respondents. In RAB Case No. 06-09-10698-97, herein petitioners asked that they be recognized and confirmed as regular employees of herein private respondent and further prayed that they be awarded various benefits received by regular employees for three (3) years prior to the filing of the complaint, while in RAB Case No. 06-09-10699-97, herein petitioners sought for payment of unpaid wages, holiday pay, allowances, 13th month pay, service incentive leave pay, moral and exemplary damages also during the three (3) years preceding the filing of the complaint.

On October 16, 1997, private respondent filed a Motion to Consolidate[4] the abovementioned cases, but the Labor Arbiter in charge of the case denied the said Motion in its Order[5] dated October 20, 1997.

On January 9, 1998, private respondent filed a Motion to Dismiss[6] RAB Case No. 06-09-10698-97 on the ground of *res judicata*. Private respondent cited an earlier decided case entitled

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[4] Records, Vol. I, pp. 16-17.

[5] *Id.* at 24.

[6] *Id.* at 31-42.

"*Humphrey Perez, et al. v. Hawaiian Philippine Co. et al.*" (Perez case) and docketed as RAB Case No. 06-04-10169-95, which was an action for recovery of 13th month pay and service incentive leave pay, and it includes herein petitioners among the complainants and herein private respondent and one Jose Castillon (Castillon) as respondents. Private respondent contended that the *Perez* case, which has already become final and executory, as no appeal was taken therefrom, serves as a bar to the litigation of RAB Case No. 06-09-10698-97, because it was ruled therein that petitioners are not employees of private respondent but of Castillon.

In an Order[7] dated July 9, 1998, the Labor Arbiter granted private respondent's Motion to Dismiss.

Petitioners appealed to the NLRC which set aside the Order of the Labor Arbiter, reinstated the complaint in RAB Case No. 06-09-10698-97 and remanded the same for further proceedings.[8]

Private respondent appealed to the CA. On January 12, 2001, the CA rendered judgment, affirming the Decision of the NLRC and denied the subsequent motion for reconsideration.

Aggrieved, private respondent filed a petition for review on *certiorari* before this Court. The case was entitled as "*Hawaiian Philippine Company v. Borra*" and docketed as *G.R. No. 151801*. On November 12, 2002, this Court rendered its Decision denying the petition and affirming the Decision of the CA. Quoting with approval, the assailed Decision of the CA, this Court held, thus:

The Court of Appeals committed no reversible error. The two cases in question indeed involved different causes of action. The previous case of "*Humphrey Perez vs. Hawaiian Philippine Company*" concerned a money claim and pertained to the years 1987 up until 1995. During that period, private respondents were engaged by

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

[8] See NLRC Decision dated November 25, 1999, records, Vol. I, pp. 253-259.

contractor Jose Castillon to work for petitioner at its warehouse. It would appear that the finding of the Labor Arbiter, to the effect that no employer-employee relationship existed between petitioner and private respondents, was largely predicated on the absence of privity between them. The complaint for confirmation of employment, however, was filed by private respondents on 12 September 1997, by which time, Jose Castillon was no longer the contractor. The Court of Appeals came out with these findings; *viz*.:

> At first glance, it would appear that the case at bench is indeed barred by Labor Arbiter Drilon's findings since both petitioner and private respondents are parties in *Perez* and the issue of employer-employee relationship was finally resolved therein.
>
> However, the factual milieu of the *Perez* case covered the period November 1987 to April 6, 1995 (date of filing of the complaint), during which time private respondents, by their own admission, were engaged by Castillon to work at petitioner's warehouse.
>
> In contrast, the instant case was filed on September 12, 1997, by which time, the contractor involved was Fela Contractor; and private respondents' prayer is for confirmation of their status as regular employees of petitioner.
>
> Stated differently, *Perez* pertains to private respondents' employment from 1987 to 1995, while the instant case covers a different (subsequent) period. Moreover, in *Perez*, the finding that no employer-employee relationship existed between petitioner and private respondents was premised on absence of privity between Castillon and petitioner. Consequently, *Perez* and the instant case involve different subject matters and causes of action.
>
> On the other hand, resolution of the case at bench would hinge on the nature of the relationship between petitioner and Fela Contractor. In other words, private respondents' action for declaration as regular employees of petitioner will not succeed unless it is established that Fela Contractor is merely a "labor-only" contractor and that petitioner is their real employer.
>
> Indeed, it is pure conjecture to conclude that the circumstances obtaining in *Perez* subsisted until the filing of the case at bench as there is no evidence supporting such

> conclusion. There is, as yet, no showing that Fela Contractor merely stepped into the shoes of Castillon. Neither has Fela Contractor's real principal been shown: petitioner or the sugar traders/planters?
>
> Consequently, factual issues must first be ventilated in appropriate proceedings before the issue of employer-employee relationship between petitioner and private respondents [herein private respondent and petitioners] can be determined.
>
> It is premature to conclude that the evidence in *Perez* would determine the outcome of the case at bench because as earlier pointed out, there is still no showing that the contractor (Fela contractor) in this case can be considered as on the same footing as the previous contractor (Castillon). Such factual issue is crucial in determining whether petitioner is the real employer of private respondents.[9]

In the meantime, on December 21, 1998, the Labor Arbiter rendered a Decision[10] in RAB Case No. 06-09-10699-97 holding that there is no employer-employee relations between private respondent and petitioners. The Labor Arbiter held as follows:

> x x x Fela Contractor as may be noted happened to replace Jose Castillon, as Contractor of the traders or sugar planters, who absorbed the workers of the erstwhile contractor Castillon. **The complainants herein, who were the workers of Castillon, formally applied for employment with respondent Jose Castillon, the owner of Fela Contractor, the new handler and hauler of the sugar planters and traders. Thus, on February 15, 1996, respondent Jardinico, representative of respondent Fela Contractor, wrote a letter to the Administrative Manager of respondent Hawaiian informing the latter that as of March 1, 1996, the former workers of Castillon the previous contractor, who undertook the handling and withdrawal of the sugar of the traders and planters[,] have been absorbed and employed by Fela, with a request to allow them to enter the premises of the company.**
>
> In this suit, the same complainants now seek monetary benefits arising from the employment and they again impleaded respondent Hawaiian.

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[9] See *Hawaiian Philippine Company v. Borra*, G.R. No. 151801, November 12, 2002, 391 SCRA 453, 455-456.

[10] Annex "H" to private respondent's Comment, *rollo*, pp. 393-408.

We, thus resolve to dismiss the complaint against respondent Hawaiian, who as we have found in an earlier pronouncement has no employer-employee relations with the complainant, let alone, any privity of relationship, except for the fact that it is the depository of sugar where the sugar of the planters and traders are hauled by the workers of the contractor, like respondent herein Fela Contractor/ Jardinico.[11]

No appeal was taken from the abovequoted Decision. Thus, the same became final and executory.[12]

As a consequence of the finality of the Decision in RAB Case No. 06-09-10699-97, herein private respondent again filed a Motion to Dismiss[13] RAB Case No. 06-09-10698-97 on the ground, among others, of *res judicata*. Private respondent contended that the final and executory Decision of the Labor Arbiter in RAB Case No. 06-09-10699-97, which found no employer-employee relations between private respondent and petitioners, serves as a bar to the further litigation of RAB Case No. 06-09-10698-97.

On August 12, 2003, the Labor Arbiter handling RAB Case No. 06-09-10698-97 issued an Order[14] denying private respondent's Motion to Dismiss.

Private respondent then filed a petition for *certiorari* and prohibition with the CA assailing the August 12, 2003 Order of the Labor Arbiter.

On June 22, 2004, the CA rendered its questioned Decision, the dispositive portion of which reads, thus:

WHEREFORE, foregoing premises considered, the petition is GRANTED. Accordingly, the Order dated August 12, 2003 of public respondent is hereby ANNULLED and SET ASIDE. RAB Case No. 09-10698-97 is ordered DISMISSED.

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[11] *Id.* at 402-403. (Emphasis supplied)

[12] *See* NLRC Certification dated January 11, 2000, Annex "H-1" to private respondent's Comment, *rollo*, p. 409.

[13] Records, Vol. I, pp. 661-671.

[14] Records, Vol. II, pp. 1005-1007.

SO ORDERED.[15]

Petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution[16] dated January 14, 2005.

Hence, the present petition for *certiorari* based on the following grounds:

I. THE COURT OF APPEALS ACTED ABSOLUTELY WITHOUT ANY JURISDICTION WHEN IT TOOK COGNIZANCE OF THE 2nd PETITION OF HPCO DESPITE THE ABSOLUTE LACK OF ANY INTERVENING OR SUPERVENING EVENT THAT WOULD RENDER THE ORDERS OF THE SUPREME COURT AND COURT OF APPEALS INAPPLICABLE AND THE CLEAR AND ESTABLISHED DECISION LAID DOWN BY THE FIRST DIVISION OF THE SUPREME COURT UNDER CHIEF JUSTICE HILARIO G. DAVIDE, JR., ASSOCIATE JUSTICES JOSE C. VITUG, CONSUELO YNARES-SANTIAGO, ANTONIO T. CARPIO, AND ADOLFO S. AZCUNA AND BY THE COURT OF APPEALS UNDER JUSTICES EDGARDO P. CRUZ, RAMON MABUTAS, JR., ROBERTO A. BARRIOS, MA. ALICIA AUSTRIA-MARTINEZ AND HILARION L. AQUINO, RULING THAT FURTHER HEARINGS AND TRIAL MUST BE CONDUCTED BY THE LABOR ARBITER WHICH SIGNIFICANTLY FOUND THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP IN HIS DECISION DATED SEPTEMBER 25, 2003.

II. THE COURT OF APPEALS HAD SERIOUSLY ERRED, IF NOT GRAVELY ABUSED ITS DISCRETION WHEN IT CHOSE TO DELIBERATELY IGNORE AND/OR ENTIRELY DISREGARD THE CLEAR AND ESTABLISHED FACTS ON RECORD AS TO THE EXISTENCE OF THE IDENTITY OF SUBJECT MATTER AND CAUSE OF ACTION BETWEEN *HPCO VS. BORRA & 48 OTHERS/NLRC, ET AL.*, C.A. G.R. NO. 59132 AND *HPCO VS. NLRC, BORRA, ET AL.*, G.R. NO. 151801 ON ONE HAND AND *HPCO VS. HON. PHEBUN PURA/ BORRA & 48 OTHERS*, C.A. G.R. NO. 78729 ON THE OTHER HAND.

III. THE COURT OF APPEALS SERIOUSLY ERRED IN TAKING COGNIZANCE OF THE SECOND PETITION OF HPCO DESPITE THE CLEAR AND ESTABLISHED FACT ON RECORD THAT HPCO HAD SIMULTANEOUSLY AND SUCCESSIVELY FILED AN (sic)

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[15] *Rollo*, p. 113.

[16] *Id.* at 115.

IDENTICAL THREE (3) MOTIONS TO DISMISS IN THE SALA OF LABOR ARBITERS AND TWO (2) PETITIONS FOR *CERTIORARI* IN THE COURT OF APPEALS WHICH IS A FLAGRANT VIOLATION ON THE LAW OF FORUM SHOPPING.[17]

The petition lacks merit.

This Court is not persuaded by petitioners' argument that the CA has no jurisdiction over private respondent's petition for *certiorari* because this Court, in *G.R. No. 151801,* lodged jurisdiction in the Labor Arbiter by directing the remand of RAB Case No. 06-09-10698-97 thereto for further proceedings.

It is settled that jurisdiction over the subject matter is conferred by law and it is not within the courts, let alone the parties, to themselves determine or conveniently set aside.[18]

In this regard, it should be reiterated that what has been filed by private respondent with the CA is a special civil action for *certiorari* assailing the Labor Arbiter's Order which denied its motion to dismiss.

Section 3, Rule V of the NLRC Rules of Procedure, which was then prevailing at the time of the filing of private respondent's petition for *certiorari* with the CA, clearly provides:

SECTION 3. *MOTION TO DISMISS*. - On or before the date set for the conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue, or that the cause of action is barred by prior judgment, prescription or forum shopping, shall be immediately resolved by the Labor Arbiter by a written order. **An order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable.**[19]

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

[18] *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559; *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 90.

[19] Emphasis supplied.

In the case of *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association-Federation of Free Workers*,[20] this Court held that:

> x x x The NLRC rule proscribing appeal from a denial of a motion to dismiss is similar to the general rule observed in civil procedure that an order denying a motion to dismiss is interlocutory and, hence, not appealable until final judgment or order is rendered. The remedy of the aggrieved party in case of denial of the motion to dismiss is to file an answer and interpose, as a defense or defenses, the ground or grounds relied upon in the motion to dismiss, proceed to trial and, in case of adverse judgment, to elevate the entire case by appeal in due course. **In order to avail of the extraordinary writ of *certiorari,* it is incumbent upon petitioner to establish that the denial of the motion to dismiss was tainted with grave abuse of discretion.**[21]

In this regard, Rule 41 of the Rules of Court, which is applied in a suppletory character to cases covered by the NLRC Rules, provides that in all the instances enumerated under the said Rule, where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.[22] Thus, this Court has held that when the denial of a motion to dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of *certiorari* may be justified.[23] On the basis of the foregoing, it is clear that the CA has jurisdiction over the special civil action for *certiorari* filed by private respondent as the latter was able to allege and establish that the denial of its motion to dismiss was tainted with grave abuse of discretion. Petitioners are wrong to argue that this Court's directive in *G.R. No. 151801* to remand RAB Case No. 06-09-10698-97 to the Labor Arbiter for further proceedings deprives the CA of its jurisdiction over private respondent's petition for

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[20] 508 Phil. 47 (2005).

[21] *Id.* at 58-59. (Emphasis supplied)

[22] *See* Rules of Court, Rule 41, Section 1, last paragraph.

[23] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328, 337; *Lim v. Court of Appeals, Mindanao Station*, G.R. No. 192615, January 30, 2013, 689 SCRA 705, 710.

certiorari. The essence of this Court's ruling in *G.R. No. 151801* is simply to require resolution of the factual issue of whether or not Fela Contractor has stepped into the shoes of Castillon and, thus, has taken petitioners in its employ. In other words, this Court called for a prior determination as to who is the real employer of petitioners. This issue, however, was already settled as will be discussed below.

At the outset, the underlying question which has to be resolved in both RAB Case Nos. 06-09-10698-97 and 06-09-10699-97, before any other issue in these cases could be determined, is the matter of determining petitioners' real employer. Is it Fela Contractor, or is it private respondent? Indeed, the tribunals and courts cannot proceed to decide whether or not petitioners should be considered regular employees, and are thus entitled to the benefits they claim, if there is a prior finding that they are, in the first place, not employees of private respondent. Stated differently, and as correctly held by the CA, petitioners' prayer for regularization in RAB Case No. 06-09-10698-97 is essentially dependent on the existence of employer-employee relations between them and private respondent, because one cannot be made a regular employee of one who is not his employer. In the same vein, petitioners' prayer in RAB Case No. 06-09-10699-97 for the recovery of backwages, 13th month pay, holiday pay and service incentive leave pay from private respondent likewise rests on the determination of whether or not the former are, indeed, employees of the latter.

As earlier mentioned, this issue has already been settled. In the already final and executory decision of the Labor Arbiter in RAB Case No. 06-09-10699-97, it was ruled therein that no employer-employee relationship exists between private respondent and petitioners because the latter's real employer is Fela Contractor. Thus, insofar as the question of employer and employee relations between private respondent and petitioners is concerned, the final judgment in RAB Case No. 06-09-10699-97 has the effect and authority of *res judicata* by conclusiveness of judgment.

Discussing the concept of *res judicata*, this Court held in *Antonio v. Sayman Vda. de Monje*[24] that:

x x x [*R*]*es judicata* is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." According to the doctrine of *res judicata*, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits **on all points and matters determined in the former suit.**

The principle of *res judicata* is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment." This Court had occasion to explain the difference between these two aspects of *res judicata* as follows:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, **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**

[24] G.R. No. 149624, September 29, 2010, 631 SCRA 471.

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.

Stated differently, conclusiveness of judgment finds application **when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction.** The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.[25]

Hence, there is no point in determining the main issue raised in RAB Case No. 06-09-10698-97, *i.e.*, whether petitioners may be considered regular employees of private respondent, because, in the first place, they are not even employees of the latter. As such, the CA correctly held that the Labor Arbiter committed grave abuse of discretion in denying private respondent's motion to dismiss RAB Case No. 06-09-10698-97.

The question that follows is whether private respondent is guilty of forum shopping, considering that it already filed a motion to dismiss RAB Case No. 06-09-10698-97 in 1998? The Court answers in the negative.

In *Pentacapital Investment Corporation v. Mahinay*,[26] this Court's discussion on forum shopping is instructive, to wit:

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**

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[25] *Id.* at 479-481. (Emphases in the original; citations omitted)

[26] G.R. Nos. 171736 and 181482, July 5, 2010, 623 SCRA 284.

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.

What is important in determining whether forum-shopping exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.

Forum-shopping can be committed in three ways: (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 (where the ground for dismissal is *litis pendentia*); (2) 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 (3) 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*).

More particularly, the elements of forum-shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, **the relief being founded on the same facts**; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[27]

In the instant case, there can be no forum shopping, because the grounds cited by private respondent in its motions to dismiss filed in 1998 and in the present case are different. In 1998, the motion to dismiss is based on the argument that the final and executory decision in the *Perez* case serves as *res judicata* and, thus, bars the re-litigation of the issue of employer-employee relations between private respondent and petitioners. In the instant case, private respondent again cites *res judicata* as a ground for its motion to dismiss. This time, however, the basis for such ground is not *Perez* but the final and executory decision in RAB Case No. 06-09-10699-97. Thus, the relief prayed

[27] *Id.* at 310-311. (Emphasis supplied; citations omitted)

for in private respondent's motion to dismiss subject of the instant case is founded on totally different facts and issues.

As a final note, this Court cannot help but call the attention of the Labor Arbiter regarding Our observation that the resolution of RAB Case No. 06-09-10698-97 has been unnecessarily pending for almost sixteen (16) years now. The resulting delay in the resolution of the instant case could have been avoided had the Labor Arbiter granted private respondent's Motion to Consolidate RAB Case Nos. 06-09-10698-97 and 06-09-10699-97. This Court quotes with approval the contention of private respondent in its Motion, to wit:

> 3. That in light of the fact that the question as to whether or not there exists employer-employee relations as between complainants [herein petitioners] and herein respondent HPCO will indispensably have to be resolved in light of the presence of an independent contractor (FELA Contractors) in RAB Case No. 06-09-10699-97 – which should otherwise be determinative of the issue involved in the present suit – it should only be logical and proper that for purposes of abating separate and inconsistent verdicts by two distinct arbitration salas of this Commission that the present suit be accordingly consolidated for joint hearing and resolution with said RAB Case No. 06-09-10699-97 x x x.[28]

Under Section 3, Rule IV of the then prevailing, as well as in the presently existing, NLRC Rules of Procedure, it is clearly provided that:

> Section 3. *Consolidation of Cases*. – Where there are two or more cases pending before different Labor Arbiters in the same Regional Arbitration Branch involving the same employer and issues, or the same parties and different issues, whenever practicable, the subsequent case/s shall be consolidated with the first to avoid unnecessary costs or delay. x x x

In the same manner, Section 1, Rule 31 of the 1997 Rules of Civil Procedure, allows consolidation, thus:

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[28] Records, Vol. I, pp. 16-17.

SECTION 1. *Consolidation*. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Considering that the abovementioned cases involved essentially the same parties and the basic issue of employer-employee relations between private respondent and petitioners, the Labor Arbiter should have been more circumspect and should have allowed the cases to be consolidated. This would be in consonance with the parties' constitutional right to a speedy disposition of cases as well as in keeping with the orderly and efficient disposition of cases.

WHEREFORE, the petition is **DISMISSED**. The assailed Decision and Resolutions of the Court of Appeals in CA-G.R. SP No. 78729 are **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183952. September 9, 2013]

CZARINA T. MALVAR, *petitioner, vs.* **KRAFT FOOD PHILS., INC. and/or BIENVENIDO BAUTISTA, KRAFT FOODS INTERNATIONAL,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; CLIENT'S RIGHT TO SETTLE LITIGATION BY COMPROMISE

AGREEMENT AND TO TERMINATE ATTORNEY-CLIENT RELATIONSHIP, LIMITATIONS; THE ATTORNEY WHO HAS ACTED IN GOOD FAITH AND HONESTY IN REPRESENTING AND SERVING THE INTERESTS OF THE CLIENT SHOULD BE REASONABLY COMPENSATED FOR HIS SERVICE.— A compromise agreement is a contract, whereby the parties undertake reciprocal obligations to avoid litigation, or put an end to one already commenced. The client may enter into a compromise agreement with the adverse party to terminate the litigation before a judgment is rendered therein. If the compromise agreement is found to be in order and not contrary to law, morals, good customs and public policy, its judicial approval is in order. A compromise agreement, once approved by final order of the court, has the force of *res judicata* between the parties and will not be disturbed except for vices of consent or forgery. A client has an undoubted right to settle her litigation without the intervention of the attorney, for the former is generally conceded to have exclusive control over the subject matter of the litigation and may at any time, if acting in good faith, settle and adjust the cause of action out of court before judgment, even without the attorney's intervention. It is important for the client to show, however, that the compromise agreement does not adversely affect third persons who are not parties to the agreement. By the same token, a client has the absolute right to terminate the attorney-client relationship at any time with or without cause. But this right of the client is not unlimited because good faith is required in terminating the relationship. The limitation is based on Article 19 of the *Civil Code*, which mandates that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." The right is also subject to the right of the attorney to be compensated. This is clear from Section 26, Rule 138 of the *Rules of Court* x x x. In fine, it is basic that an attorney is entitled to have and to receive a just and reasonable compensation for services performed at the special instance and request of his client. The attorney who has acted in good faith and honesty in representing and serving the interests of the client should be reasonably compensated for his service.

2. ID.; ID.; ID.; ID.; EVEN IF THE COMPENSATION OF THE ATTORNEY IS DEPENDENT ONLY ON WINNING THE LITIGATION, THE SUBSEQUENT WITHDRAWAL OF THE CASE UPON THE CLIENT'S INITIATIVE, WOULD NOT DEPRIVE THE ATTORNEY OF THE LEGITIMATE COMPENSATION FOR PROFESSIONAL SERVICES RENDERED; CLAIM FOR ATTORNEY'S FEES DOES NOT VOID OR NULLIFY THE COMPROMISE AGREEMENT BETWEEN THE CONTENDING PARTIES.— On considerations of equity and fairness, the Court disapproves of the tendencies of clients compromising their cases behind the backs of their attorneys for the purpose of unreasonably reducing or completely setting to naught the stipulated contingent fees. Thus, the Court grants the Intervenor's Motion for Intervention to Protect Attorney's Rights as a measure of protecting the Intervenor's right to its stipulated professional fees that would be denied under the compromise agreement. The Court does so in the interest of protecting the rights of the practicing Bar rendering professional services on contingent fee basis. Nonetheless, the claim for attorney's fees does not void or nullify the compromise agreement between Malvar and the respondents. There being no obstacles to its approval, the Court approves the compromise agreement. The Court adds, however, that the Intervenor is not left without a remedy, for the payment of its adequate and reasonable compensation could not be annulled by the settlement of the litigation without its participation and conformity. It remains entitled to the compensation, and its right is safeguarded by the Court because its members are officers of the Court who are as entitled to judicial protection against injustice or imposition of fraud committed by the client as much as the client is against their abuses as her counsel. In other words, the duty of the Court is not only to ensure that the attorney acts in a proper and lawful manner, but also to see to it that the attorney is paid his just fees. Even if the compensation of the attorney is dependent only on winning the litigation, the subsequent withdrawal of the case upon the client's initiative would not deprive the attorney of the legitimate compensation for professional services rendered.

3. ID.; ID.; ID.; THE CLIENT'S SUBSEQUENT CHANGE OF MIND ON THE AMOUNT SOUGHT FROM THE ADVERSE PARTY AS REFLECTED IN THEIR COMPROMISE AGREEMENT SHOULD NOT NEGATE HER COUNSEL'S RECOVERY OF THE AGREED ATTORNEY'S FEES.— The basis of the intervention is the written agreement on contingent fees contained in the engagement executed on March 19, 2008 between Malvar and the Intervenor, the pertinent portion of which stipulated that the Intervenor would "collect ten percent (10%) of the amount of PhP14,252,192.12 upon its collection and another ten percent (10%) of the remaining balance of PhP41,627,593.75 upon collection thereof, and also ten percent (10%) of whatever is the value of the stock option you are entitled to under the Decision." There is no question that such arrangement was a contingent fee agreement that was valid in this jurisdiction, provided the fees therein fixed were reasonable. We hold that the contingent fee of 10% of ₱41,627,593.75 and 10% of the value of the stock option was reasonable. The ₱41,627,593.75 was already awarded to Malvar by the NLRC but the award became the subject of the appeal in this Court because the CA reversed the NLRC. Be that as it may, her subsequent change of mind on the amount sought from the respondents as reflected in the compromise agreement should not negate or bar the Intervenor's recovery of the agreed attorney's fees. Considering that in the event of a dispute between the attorney and the client as to the amount of fees, and the intervention of the courts is sought, the determination requires that there be evidence to prove the amount of fees and the extent and value of the services rendered, taking into account the facts determinative thereof, the history of the Intervenor's legal representation of Malvar can provide a helpful predicate for resolving the dispute between her and the Intervenor.

4. ID.; ID.; ID.; THE PRACTICE OF LAW IS NOT LIMITED TO THE CONDUCT OF CASES OR LITIGATIONS IN COURT BUT EMBRACED ALSO THE PREPARATION OF PLEADINGS AND OTHER APPEALS INCIDENTAL TO THE CASES OR LITIGATIONS AS WELL AS THE MANAGEMENT OF SUCH ACTIONS AND PROCEEDINGS ON BEHALF OF THE

CLIENT.— The records reveal that on March 18, 2008, Malvar engaged the professional services of the Intervenor to represent her in the case of illegal dismissal. At that time, the case was pending in the CA at the respondents' instance after the NLRC had set aside the RCU's computation of Malvar's backwages and monetary benefits, and had upheld the computation arrived at by the NLRC Computation Unit. On April 17, 2008, the CA set aside the assailed resolution of the NLRC, and remanded the case to the Labor Arbiter for the computation of her monetary awards. It was at this juncture that the Intervenor commenced its legal service x x x. The decision promulgated on April 17, 2008 and the resolution promulgated on July 30, 2008 by the CA prompted Malvar to appeal on August 15, 2008 to this Court with the assistance of the Intervenor. All the subsequent pleadings, including the reply of April 13, 2009, were prepared and filed in Malvar's behalf by the Intervenor. Malvar should accept that the practice of law was not limited to the conduct of cases or litigations in court but embraced also the preparation of pleadings and other papers incidental to the cases or litigations as well as the management of such actions and proceedings on behalf of the clients. Consequently, fairness and justice demand that the Intervenor be accorded full recognition as her counsel who discharged its responsibility for Malvar's cause to its successful end.

5. ID.; ID.; ID.; IN THE ABSENCE OF THE LAWYER'S FAULT, CONSENT OR WAIVER, A CLIENT CANNOT DEPRIVE HER LAWYER OF THE JUST FEES HE ALREADY EARNED IN THE GUISE OF A JUSTIFIABLE REASON; A CLIENT WHO EMPLOYS A LAW FIRM ENGAGES THE ENTIRE LAW FIRM; HENCE, THE RESIGNATION, RETIREMENT OR SEPARATION FROM THE LAW FIRM OF THE HANDLING LAWYER DOES NOT TERMINATE THE RELATIONSHIP, BECAUSE THE LAW FIRM IS BOUND TO PROVIDE A REPLACEMENT.— In the absence of the lawyer's fault, consent or waiver, a client cannot deprive the lawyer of his just fees already earned in the guise of a justifiable reason. Here, Malvar not only downplayed the worth of the Intervenor's legal service to her but also attempted to camouflage her intent to defraud

her lawyer by offering excuses that were not only inconsistent with her actions but, most importantly, fell short of being justifiable. The letter Malvar addressed to Retired Justice Bellosillo, who represented the Intervenor, debunked her allegations of unsatisfactory legal service because she thereby lavishly lauded the Intervenor for its dedication and devotion to the prosecution of her case and to the protection of her interests. Also significant was that the attorney-client relationship between her and the Intervenor was not severed upon Atty. Dasal's appointment to public office and Atty. Llasos' resignation from the law firm. In other words, the Intervenor remained as her counsel of record, for, as we held in *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunication Philippines, Inc.*, a client who employs a law firm engages the entire law firm; hence, the resignation, retirement or separation from the law firm of the handling lawyer does not terminate the relationship, because the law firm is bound to provide a replacement.

6. ID.; ID.; ID.; THE COUNSEL'S WITHDRAWAL FROM THE CASE NEITHER CANCELLED NOR TERMINATED THE VALID WRITTEN AGREEMENT BETWEEN HIM AND THE CLIENT ON THE CONTINGENT ATTORNEY'S FEES. NOR DID THE WITHDRAWAL CONSTITUTES A WAIVER OF THE SAID AGREEMENT.— The stipulations of the written agreement between Malvar and the Intervenors, not being contrary to law, morals, public policy, public order or good customs, were valid and binding on her. They expressly gave rise to the right of the Intervenor to demand compensation. In a word, she could not simply walk away from her contractual obligations towards the Intervenor, for Article 1159 of the *Civil Code* provides that obligations arising from contracts have the force of law between the parties and should be complied with in good faith. To be sure, the Intervenor's withdrawal from the case neither cancelled nor terminated the written agreement on the contingent attorney's fees. Nor did the withdrawal constitute a waiver of the agreement. On the contrary, the agreement continued between them because the Intervenor's Manifestation (with Motion to Withdraw as Counsel for Petitioner) explicitly called

upon the Court to safeguard its rights under the written agreement.

7. ID.; ID.; ID.; THE ADVERSE PARTIES WILL BE SOLIDARILY LIABLE WITH THE CLIENT FOR THE PAYMENT OF THE ATTORNEY'S FEES, AS STIPULATED IN THE WRITTEN AGREEMENT, IF THEY WERE SHOWN TO HAVE UNFAIRLY AND UNJUSTLY INTERFERED WITH THE COUNSEL'S PROFESSIONAL RELATIONSHIP WITH HIS CLIENT.— The respondents would be liable if they were shown to have connived with Malvar in the execution of the compromise agreement, with the intention of depriving the Intervenor of its attorney's fees. Thereby, they would be solidarily liable with her for the attorney's fees as stipulated in the written agreement under the theory that they unfairly and unjustly interfered with the Intervenor's professional relationship with Malvar. The respondents insist that they were not bound by the written agreement, and should not be held liable under it. We disagree with the respondents' insistence. The respondents were complicit in Malvar's move to deprive the Intervenor of its duly earned contingent fees.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; QUASI-DELICTS; JOINT TORT-FEASORS ARE EACH LIABLE AS PRINCIPALS, TO THE SAME EXTENT AND IN THE SAME MANNER AS IF THEY HAD PERFORMED THE WRONGFUL ACT THEMSELVES; IT IS NOT AN EXCUSE FOR ANY OF THE JOINT TORT-FEASORS THAT INDIVIDUAL PARTICIPATION IN THE TORT WAS INSIGNIFICANT AS COMPARED TO THAT OF THE OTHER.— The circumstances show that Malvar and the respondents needed an escape from greater liability towards the Intervenor, and from the possible obstacle to their plan to settle to pay. It cannot be simply assumed that only Malvar would be liable towards the Intervenor at that point, considering that the Intervenor, had it joined the negotiations as her lawyer, would have tenaciously fought all the way for her to receive literally everything that she was entitled to, especially the benefits from the stock option. Her rush to settle because of her financial concerns could have led her to accept the respondents' offer, which offer could be

further reduced by the Intervenor's expected demand for compensation. Thereby, she and the respondents became joint tort-feasors who acted adversely against the interests of the Intervenor. Joint tort-feasors are those who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. They are also referred to as those who act together in committing wrong or whose acts, if independent of each other, unite in causing a single injury. Under Article 2194 of the Civil Code, joint tort-feasors are solidarily liable for the resulting damage. x x x. Joint tort-feasors are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. It is likewise not an excuse for any of the joint tort-feasors that individual participation in the tort was insignificant as compared to that of the other. To stress, joint tort-feasors are not liable *pro rata*. The damages cannot be apportioned among them, except by themselves. They cannot insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the whole amount. Thus, as joint tort-feasors, Malvar and the respondents should be held solidarily liable to the Intervenor. There is no way of appreciating these circumstances except in this light. That the value of the stock options that Malvar waived under the compromise agreement has not been fixed as yet is no hindrance to the implementation of this decision in favor of the Intervenor. The valuation could be reliably made at a subsequent time from the finality of this adjudication. It is enough for the Court to hold the respondents and Malvar solidarily liable for the 10% of that value of the stock options.

9. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; IN THE EXERCISE OF THEIR SUPERVISORY AUTHORITY OVER ATTORNEYS AS OFFICERS OF THE COURT, COURTS ARE BOUND TO RESPECT AND PROTECT THE ATTORNEY'S LIEN AS A NECESSARY MEANS TO PRESERVE THE DECORUM AND RESPECTABILITY OF THE LAW PROFESSION; HENCE, THE COURT MUST THWART ANY AND EVERY EFFORT OF CLIENTS ALREADY SERVED BY

THEIR ATTORNEYS' WORTHY SERVICES TO DEPRIVE THEM OF THEIR HARD-EARNED COMPENSATION.— [I]t is necessary to state that no court can shirk from enforcing the contractual stipulations in the manner they have agreed upon and written. As a rule, the courts, whether trial or appellate, have no power to make or modify contracts between the parties. Nor can the courts save the parties from disadvantageous provisions. The same precepts hold sway when it comes to enforcing fee arrangements entered into in writing between clients and attorneys. In the exercise of their supervisory authority over attorneys as officers of the Court, the courts are bound to respect and protect the attorney's lien as a necessary means to preserve the decorum and respectability of the Law Profession. Hence, the Court must thwart any and every effort of clients already served by their attorneys' worthy services to deprive them of their hard-earned compensation. Truly, the duty of the courts is not only to see to it that attorneys act in a proper and lawful manner, but also to see to it that attorneys are paid their just and lawful fees.

APPEARANCES OF COUNSEL

Malinao Carandang Adan for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondents.
Catindig Flores & Palarca for intervenor.

D E C I S I O N

BERSAMIN, *J.*:

Although the practice of law is not a business, an attorney is entitled to be properly compensated for the professional services rendered for the client, who is bound by her express agreement to duly compensate the attorney. The client may not deny her attorney such just compensation.

The Case

The case initially concerned the execution of a final decision of the Court of Appeals (CA) in a labor litigation, but has mutated

into a dispute over attorney's fees between the winning employee and her attorney after she entered into a compromise agreement with her employer under circumstances that the attorney has bewailed as designed to prevent the recovery of just professional fees.

Antecedents

On August 1, 1988, Kraft Foods (Phils.), Inc. (KFPI) hired Czarina Malvar (Malvar) as its Corporate Planning Manager. From then on, she gradually rose from the ranks, becoming in 1996 the Vice President for Finance in the Southeast Asia Region of Kraft Foods International (KFI), KFPI's mother company. On November 29, 1999, respondent Bienvenido S. Bautista, as Chairman of the Board of KFPI and concurrently the Vice President and Area Director for Southeast Asia of KFI, sent Malvar a memo directing her to explain why no administrative sanctions should be imposed on her for possible breach of trust and confidence and for willful violation of company rules and regulations. Following the submission of her written explanation, an investigating body was formed. In due time, she was placed under preventive suspension with pay. Ultimately, on March 16, 2000, she was served a notice of termination.

Obviously aggrieved, Malvar filed a complaint for illegal suspension and illegal dismissal against KFPI and Bautista in the National Labor Relations Commission (NLRC). In a decision dated April 30, 2001,[1] the Labor Arbiter found and declared her suspension and dismissal illegal, and ordered her reinstatement, and the payment of her full backwages, inclusive of allowances and other benefits, plus attorney's fees.

On October 22, 2001, the NLRC affirmed the decision of the Labor Arbiter but additionally ruled that Malvar was entitled to "any and all stock options and bonuses she was entitled to or would have been entitled to had she not been illegally dismissed from her employment," as well as to moral and exemplary damages.[2]

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[1] *Rollo*, pp. 132-141.

[2] *Id.* at 143-173.

KFPI and Bautista sought the reconsideration of the NLRC's decision, but the NLRC denied their motion to that effect.[3]

Undaunted, KFPI and Bautista assailed the adverse outcome before the CA on *certiorari* (CA-G.R. SP No. 69660), contending that the NLRC thereby committed grave abuse of discretion. However, the petition for *certiorari* was dismissed by the CA on December 22, 2004, but with the CA reversing the order of reinstatement and instead directing the payment of separation pay to Malvar, and also reducing the amounts awarded as moral and exemplary damages.[4]

After the judgment in her favor became final and executory on March 14, 2006, Malvar moved for the issuance of a writ of execution.[5] The Executive Labor Arbiter then referred the case to the Research and Computation Unit (RCU) of the NLRC for the computation of the monetary awards under the judgment. The RCU's computation ultimately arrived at the total sum of ₱41,627,593.75.[6]

On November 9, 2006, however, Labor Arbiter Jaime M. Reyno issued an order,[7] finding that the RCU's computation lacked legal basis for including the salary increases that the decision promulgated in CA-G.R. SP No. 69660 did not include. Hence, Labor Arbiter Reyno reduced Malvar's total monetary award to ₱27,786,378.11, *viz*:

> WHEREFORE, premises considered, in so far as the computation of complainant's other benefits and allowances are concerned, the same are in order. However, insofar as the computation of her backwages and other monetary benefits (separation pay, unpaid salary for January 1 to 26, 2005, holiday pay, sick leave pay, vacation leave pay, 13th month pay), the same are hereby recomputed as follows:

[3] *Id.* at 83.

[4] *Id.* at 175-187; penned by Associate Justice Edgardo P. Cruz (retired), with Associate Justice Godardo A. Jacinto (retired) and Associate Justice Jose C. Mendoza (now a Member of this Court) concurring.

[5] *Id.* at 292-300.

[6] *Id.* at 188-189.

[7] *Id.* at 216-221.

1. Separation Pay		
8/1/88-1/26/05 = 16 yrs		
₱344,575.83 x 16 =		5,513,213.28
2. Unpaid Salary		
1/1-26/05 = 87 mos.		
₱344,575.83 x 87 =		299,780.97
3. Holiday Pay		
4/1/00-1/26/05 = 55 holidays		
₱4,134,910/12 mos/20.83 days x 55 days		909,825.77
4. Unpaid 13th month pay for Dec. 2000		344,575.83
5. Sick Leave Pay		
Year 1999 to 2004 = 6 yrs		
₱344,575.88/20.83 x 15 days x 6 =	1,488,805.79	
Year 2005		
₱344,575.83/20.83 x 15/12 x 1	20,677.86	1,509,483.65
6. Vacation Leave Pay		
Year 1999 to 2004 = 6 years		
₱344,575.88/20.83 x 22 days x 6 =	2,183,581.83	
Year 2005		
₱344,575.83/20.83 x 22/12 x 1	30,327.55	2,213,909.36
		10,790,788.86
Backwages (from 3/7/00-4/30/01, award in LA Sytian's Decision		4,651,773.75
Allowances & Other Benefits:		
Management Incentive Plan		7,355,166.58
Cash Dividend on Philip Morris Shares		2,711,646.00
Car Maintenance		381,702.92
Gas Allowance		198,000.00
Entitlement to a Company Driver		438,650.00
Rice Subsidy		58,650.00
Moral Damages		500,000.00
Exemplary Damages		200,000.00
Attorney's Fees		500,000.00
Entitlement to Philip Sch G "Share Option Grant"		Subject to Market Price
		27,786,378.11

SO ORDERED.

Both parties appealed the computation to the NLRC, which, on April 19, 2007, rendered its decision setting aside Labor Arbiter Reyno's November 9, 2006 order, and adopting the computation by the RCU.[8]

In its resolution dated May 31, 2007,[9] the NLRC denied the respondents' motion for reconsideration.

Malvar filed a second motion for the issuance of a writ of execution to enforce the decision of the NLRC rendered on April 19, 2007. After the writ of execution was issued, a partial enforcement was effected by garnishing the respondents' funds deposited with Citibank worth ₱37,391,696.06.[10]

On July 27, 2007, the respondents went to the CA on *certiorari* (with prayer for the issuance of a temporary restraining order (TRO) or writ of preliminary injunction), assailing the NLRC's setting aside of the computation by Labor Arbiter Reyno (CA-G.R. SP No. 99865). The petition mainly argued that the NLRC had gravely abused its discretion in ruling that: (*a*) the inclusion of the salary increases and other monetary benefits in the award to Malvar was final and executory; and (*b*) the finality of the ruling in CA-G.R. SP No. 69660 precluded the respondents from challenging the inclusion of the salary increases and other monetary benefits. The CA issued a TRO, enjoining the NLRC and Malvar from implementing the NLRC's decision.[11]

On April 17, 2008, the CA rendered its decision in CA-G.R. SP No. 99865,[12] disposing thusly:

WHEREFORE, premises considered, the herein Petition is **GRANTED** and the 19 April 2007 Decision of the NLRC and the 31

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[8] *Id.* at 273-288.

[9] *Id.* at 290-291.

[10] *Id.* at 91.

[11] *Id.* at 96-97.

[12] *Id.* at 450-485.

May 2007 Resolution in NLRC NCR 30-07-02316-00 are hereby **REVERSED** and **SET ASIDE**.

The matter of computation of monetary awards for private respondent is hereby **REMANDED** to the Labor Arbiter and he is **DIRECTED** to recompute the monetary award due to private respondent based on her salary at the time of her termination, without including projected salary increases. In computing the said benefits, the Labor Arbiter is further directed to **DISREGARD** monetary awards arising from: (a) the management incentive plan and (b) the share option grant, including cash dividends arising therefrom without prejudice to the filing of the appropriate remedy by the private respondent in the proper forum. Private respondent's allowances for car maintenance and gasoline are likewise **DELETED** unless private respondent proves, by appropriate receipts, her entitlement thereto.

With respect to the Motion to Exclude the Undisputed Amount of ₱14,252,192.12 from the coverage of the Writ of Preliminary Injunction and to order its immediate release, the same is hereby **GRANTED** for reasons stated therefor, which amount shall be deducted from the amount to be given to private respondent after proper computation.

As regards the Motions for Reconsideration of the Resolution denying the Motion for Voluntary Inhibition and the Omnibus Motion dated 30 October 2007, both motions are hereby **DENIED** for lack of merit.

SO ORDERED.[13]

Malvar sought reconsideration, but the CA denied her motion on July 30, 2008.[14]

Aggrieved, Malvar appealed to the Court, assailing the CA's decision.

On December 9, 2010, while her appeal was pending in this Court, Malvar and the respondents entered into a compromise agreement, the pertinent dispositive portion of which is quoted as follows:

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[13] *Id.* at 483-485.

[14] *Id.* at 487-500.

NOW, THEREFORE, for and in consideration of the covenants and understanding between the parties herein, the parties hereto have entered into this Agreement on the following terms and conditions:

1. Simultaneously upon execution of this Agreement in the presence of Ms. Malvar's attorney, KFPI shall pay Ms. Malvar the amount of Philippine Pesos Forty Million (Php 40,000,000.00), which is in addition to the Philippine Pesos Fourteen Million Two Hundred Fifty-Two Thousand One Hundred Ninety-Two and Twelve Centavos (Php14,252, 192.12) already paid to and received by Ms. Malvar from KFPI in August 2008 (both amounts constituting the "***Compromise Payment***"). The Compromise Payment includes full and complete payment and settlement of Ms. Malvar's salaries and wages up to the last day of her employment, allowances, 13th and 14th month pay, cash conversion of her accrued vacation, sick and emergency leaves, separation pay, retirement pay and such other benefits, entitlements, claims for stock, stock options or other forms of equity compensation whether vested or otherwise and claims of any and all kinds against KFPI and KFI and Altria Group, Inc., their predecessors-in-interest, their stockholders, officers, directors, agents or successors-in-interest, affiliates and subsidiaries, up to the last day of the aforesaid cessation of her employment.

2. In consideration of the Compromise Payment, Ms. Malvar hereby freely and voluntarily releases and forever discharges KFPI and KFI and Altria Group, Inc., their predecessors or successors-in-interest, stockholders, officers, including Mr. Bautista who was impleaded in the Labor Case as a party respondent, directors, agents or successors-in-interest, affiliates and subsidiaries from any and all manner of action, cause of action, sum of money, damages, claims and demands whatsoever in law or in equity which Ms. Malvar or her heirs, successors and assigns had, or now have against KFPI and/or KFI and/or Altria Group, Inc., including but not limited to, unpaid wages, salaries, separation pay, retirement pay, holiday pay, allowances, 13th and 14th month pay, claims for stock, stock options or other forms of equity compensation whether vested or otherwise whether arising from her employment contract, company grant, present and future contractual commitments, company policies or practices, or otherwise, in connection with Ms. Malvar's employment with KFPI.[15]

x x x x x x x x x

[15] *Id.* at 733-734.

Thereafter, Malvar filed an undated Motion to Dismiss/ Withdraw Case,[16] praying that the appeal be immediately dismissed/withdrawn in view of the compromise agreement, and that the case be considered closed and terminated.

Intervention

Before the Court could act on Malvar's Motion to Dismiss/ Withdraw Case, the Court received on February 15, 2011 a so-called Motion for Intervention to Protect Attorney's Rights[17] from The Law Firm of Dasal, Llasos and Associates, through its Of Counsel Retired Supreme Court Associate Justice Josue N. Bellosillo[18] (Intervenor), whereby the Intervenor sought, among others, that both Malvar and KFPI be held and ordered to pay jointly and severally the Intervenor's contingent fees.

The Motion for Intervention relevantly averred:

x x x x x x x x x

Lawyers, oftentimes, are caricatured as alligators or some other specie of voracious carnivore; perceived also as leeches sucking dry the blood of their adversaries, and even their own clients they are sworn to serve and protect! As we lay down the facts in this case, this popular, rather unpopular, perception will be shown wrong. This case is a reversal of this perception.

x x x x x x x x x

Here, it is the lawyer who is eaten up alive by the warring but conspiring litigants who finally settled their differences without the knowledge, much less, participation, of Petitioner's counsel that labored hard and did everything to champion her cause.

x x x x x x x x x

This Motion for Intervention will illustrate an aberration from the norm where the lawyer ends up seeking protection from his client's and Respondents' indecent and cunning maneuverings. x x x.

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[16] *Id.* at 744.

[17] *Id.* at 755-765.

[18] *Id.* at 756.

x x x x x x x x x

On 18 March 2008 Petitioner engaged the professional services of Intervenor x x x on a contingency basis whereby the former agreed in writing to pay the latter contingency fees amounting to almost ₱19,600,000.00 (10% of her total claim of almost ₱196,000,000.00 in connection with her labor case against Respondents. x x x.

x x x x x x x x x

According to their agreement (Annex "A"), Petitioner bound herself to pay Intervenor contingency fees as follows (a) 10% of P14,252,192.12 upon its collection; (b) 10% of the remaining balance of ₱41,627,593.75; and (c) 10% of the value of the stock options Petitioner claims to be entitled to, or roughly ₱154,000,000.00 as of April 2008.

x x x x x x x x x

Intervenor's efforts resulted in the award and partial release of Petitioner's claim amounting to ₱14,252,192.12 out of which Petitioner paid Intervenor 10% or ₱1,425,219.21 as contingency fees pursuant to their engagement agreement (Annex "A"). Copy of the check payment of Petitioner payable to Intervenor's Of Counsel is attached as **Annex "C".**

x x x x x x x x x

On 12 September 2008 Intervenor filed an exhaustive Petition for Review with the Supreme Court containing 70 pages, including its Annexes "A" to "R", or a total of 419 pages against Respondents to collect on the balance of Petitioner's claims amounting to at least ₱27,000,000.00 and ₱154,000,000.00 the latter representing the estimated value of Petitioner's stock options as of April 2008.

x x x x x x x x x

On 15 January 2009 Respondents filed their Comment to the Petition for Review.

x x x x x x x x x

On 13 April 2009 Intervenor, in behalf of Petitioner, filed its Reply to the Comment.

x x x x x x x x x

All the pleadings in this Petition have already been submitted on time **with nothing more to be done except to await the Resolution of this Honorable Court** which, should the petition be decided in her favor, Petitioner would stand to gain ₱182,000,000.00, more or less, which victory would be largely through the efforts of Intervenor.[19] (Bold emphasis supplied).

x x x x x x x x x

It appears that in July 2009, to the Intervenor's surprise, Malvar unceremoniously and without any justifiable reason terminated its legal service and required it to withdraw from the case.[20] Hence, on October 5, 2009, the Intervenor reluctantly filed a Manifestation (With Motion to Withdraw as Counsel for Petitioner),[21] in which it spelled out: (*a*) the terms of and conditions of the Intervenor's engagement as counsel; (*b*) the type of legal services already rendered by the Intervenor for Malvar; (*c*) the absence of any legitimate reason for the termination of their attorney-client relationship; (*d*) the reluctance of the Intervenor to withdraw as Malvar's counsel; and (*e*) the desire of the Intervenor to assert and claim its contingent fee notwithstanding its withdrawal as counsel. The Intervenor prayed that the Court furnish it with copies of resolutions, decisions and other legal papers issued or to be issued after its withdrawal as counsel of Malvar in the interest of protecting its interest as her attorney.

The Intervenor indicated that Malvar's precipitate action had baffled, shocked and even embarrassed the Intervenor, because it had done everything legally possible to serve and protect her interest. It added that it could not recall any instance of conflict or misunderstanding with her, for, on the contrary, she had even commended it for its dedication and devotion to her case through her following letter to Justice Bellosillo, to wit:

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[19] *Id.* at 755-757.

[20] *Id.* at 725.

[21] *Id.* at 718-722.

July 16, 2008

Justice Josue Belocillo (sic)

Dear Justice,

It is almost morning of July 17 as I write this letter to you. Let me first thank you for your continued and unrelenting lead, help and support in the case. You have been our "rock" as far as this case is concerned. Jun and I are forever grateful to you for all your help. I just thought I'd express to you what is in the innermost of my heart as we proceed in the case. It has been around four months now since we met mid-March early this year.

The most important and immediate aspect of the case at this time for me is the collection of the undisputed amount of Pesos 14million which the Court has clearly directed and ordered the NLRC to execute. The only impending constraint for NLRC to execute and collect this amount from the already garnished amount of Pesos 41 million at Citibank is the MR of Kraft on the Order of the Court (CA) to execute collection. We need to get a denial of this motion for NLRC to execute immediately. We already obtained commitment from NLRC that all it needed to execute collection is the denial of the MR.

Jun and I applaud your initiative and efforts to mediate with Romulo on potential settlement. However, as I expressed to you in several instances, I have serious reservations on the willingness of Romulo to settle within reasonable amounts specifically as it relates to the stock options. Let us continue to pursue this route vigorously while not setting aside our efforts to influence the CA to DENY their Motion on the Undisputed amount of Pesos 14million.

At this point, I cannot overemphasize to you our need for funds. We have made financial commitments that require us to raise some amount. But we can barely meet our day to day business and personal requirements given our current situation right now.

Thank you *po* for your understanding and support.[22]

According to the Intervenor, it was certain that the compromise agreement was authored by the respondents to evade a possible loss of ₱182,000,000.00 or more as a result of the labor litigation, but considering the Intervenor's interest in the case as well as

[22] *Id.* at 770.

its resolve in pursuing Malvar's interest, they saw the Intervenor as a major stumbling block to the compromise agreement that it was then brewing with her. Obviously, the only way to remove the Intervenor was to have her terminate its services as her legal counsel. This prompted the Intervenor to bring the matter to the attention of the Court to enable it to recover in full its compensation based on its written agreement with her, averring thus:

x x x x x x x x x

28. Upon execution of the Compromise Agreement and pursuant thereto, Petitioner immediately received (supposedly) from Respondents ₱40,000,000.00. But despite the settlement between the parties, Petitioner did not pay Intervenor its just compensation as set forth in their engagement agreement; instead, she immediately moved to Dismiss/Withdraw the Present Petition.

29. To parties' minds, with the dismissal by Petitioner of Intervenor as her counsel, both Petitioner and Respondents probably thought they would be able to settle the case without any cost to them, with Petitioner saving on Intervenor's contingent fees while Respondents able to take advantage of the absence of Intervenor in determining the settlement price.

30. The parties cannot be any more mistaken. Pursuant to the Second Paragraph of Section 26, Rule 138, of the Revised Rules of Court quoted in paragraph 3 hereof, Intervenor is still entitled to recover from Petitioner the full compensation it deserves as stipulated in its contract.

31. All the elements for the full recovery of Intervenor's compensation are present. First, the contract between the Intervenor and Petitioner is reduced into writing. Second, Intervenor is dismissed without justifiable cause and at the stage of proceedings where there is nothing more to be done but to await the Decision or Resolution of the Present Petition.[23]

x x x x x x x x x

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[23] *Id.* at 761.

In support of the Motion for Intervention, the Intervenor cites the rulings in *Aro v. Nañawa*[24] and *Law Firm of Raymundo A. Armovit v. Court of Appeals*,[25] particularly the following passage:

> x x x. While We here reaffirm the rule that "the client has an undoubted right to compromise a suit without the intervention of his lawyer," We hold that when such compromise is entered into in fraud of the lawyer, with intent to deprive him of the fees justly due him, the compromise must be subject to the said fees and that when it is evident that the said fraud is committed in confabulation with the adverse party who had knowledge of the lawyer's contingent interest or such interest appears of record and who would benefit under such compromise, the better practice is to settle the matter of the attorney's fees in the same proceeding, after hearing all the affected parties and without prejudice to the finality of the compromise agreement in so far as it does not adversely affect the right of the lawyer.[26] x x x.

The Intervenor prays for the following reliefs:

a) Granting the Motion for Intervention to Protect Attorney's Rights in favor of the Intervenor;

b) Directing both Petitioner and Respondents jointly and severally to pay Intervenor its contingent fees;

c) Granting a lien upon all judgments for the payment of money and executions issued in pursuance of such judgments; and

d) Holding in Abeyance in the meantime the Resolution of the Motion to Dismiss/Withdraw Case filed by Petitioner and granting the Motion only after Intervenor has been fully paid its just compensation; and

e) Other reliefs just and equitable.[27]

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[24] G.R. No. L-24163, April 28, 1969, 27 SCRA 1090.

[25] G.R. No. 90983, September 27, 1991, 202 SCRA 16.

[26] *Supra* note 24, at 1105.

[27] *Rollo*, p. 763.

Opposing the Motion for Intervention,[28] Malvar stresses that there was no truth to the Intervenor's claim to defraud it of its professional fees; that the Intervenor lacked the legal capacity to intervene because it had ceased to exist after Atty. Marwil N. Llasos resigned from the Intervenor and Atty. Richard B. Dasal became barred from private practice upon his appointment as head of the Legal Department of the Small Business Guarantee and Finance Corporation, a government subsidiary; and that Atty. Llasos and Atty. Dasal had personally handled her case.

Malvar adds that even assuming, *arguendo*, that the Intervenor still existed as a law firm, it was still not entitled to intervene for the following reasons, namely: firstly, it failed to attend to her multiple pleas and inquiries regarding the case, as when communications to the Intervenor through text messages were left unanswered; secondly, maintaining that this was a justifiable cause to dismiss its services, the Intervenor only heeded her repeated demands to withdraw from the case when Atty. Dasal was confronted about his appointment to the government subsidiary; thirdly, it was misleading and grossly erroneous for the Intervenor to claim that it had rendered to her full and satisfactory services when the truth was that its participation was strictly limited to the preparation, finalization and submission of the petition for review with the Supreme Court; and finally, while the Intervenor withdrew its services on October 5, 2009, the compromise agreement was executed with the respondents on December 9, 2010 and notarized on December 14, 2010, after more than a year and two months, dispelling any badge of bad faith on their end.

On June 21, 2011, the respondents filed their comment to the Intervenor's Motion for Intervention.

On November 18, 2011, the Intervenor submitted its position on the respondent's comment dated June 21, 2011,[29] and thereafter the respondents sent in their reply.[30]

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[28] *Id.* at 792-798.

[29] *Id.* at 802-807.

[30] *Id.* at 809-811.

Issues

The issues for our consideration and determination are twofold, namely: (*a*) whether or not Malvar's motion to dismiss the petition on the ground of the execution of the compromise agreement was proper; and (*b*) whether or not the Motion for Intervention to protect attorney's rights can prosper, and, if so, how much could it recover as attorney's fees.

Ruling of the Court

We shall decide the issues accordingly.

1.
Client's right to settle litigation by compromise agreement, and to terminate counsel; limitations

A compromise agreement is a contract, whereby the parties undertake reciprocal obligations to avoid litigation, or put an end to one already commenced.[31] The client may enter into a compromise agreement with the adverse party to terminate the litigation before a judgment is rendered therein.[32] If the compromise agreement is found to be in order and not contrary to law, morals, good customs and public policy, its judicial approval is in order.[33] A compromise agreement, once approved by final order of the court, has the force of *res judicata* between the parties and will not be disturbed except for vices of consent or forgery.[34]

A client has an undoubted right to settle her litigation without the intervention of the attorney, for the former is generally conceded to have exclusive control over the subject matter of

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[31] Article 2028, *Civil Code*.

[32] *Supra* note 24, at 1098, citing *Jackson v. Stearns*, 48 Ore. 25, 84 Pac. 798.

[33] *Republic v. Court of Appeals*, G.R. Nos. 143108-09, September 26, 2001, 366 SCRA 87, 90.

[34] Article 2037 and Article 2038, *Civil Code*; see *San Antonio v. Court of Appeals*, G.R. No. 121810, December 7, 2001, 371 SCRA 536, 543.

the litigation and may at any time, if acting in good faith, settle and adjust the cause of action out of court before judgment, even without the attorney's intervention.[35] It is important for the client to show, however, that the compromise agreement does not adversely affect third persons who are not parties to the agreement.[36]

By the same token, a client has the absolute right to terminate the attorney-client relationship at any time with or without cause.[37] But this right of the client is not unlimited because good faith is required in terminating the relationship. The limitation is based on Article 19 of the *Civil Code*, which mandates that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." The right is also subject to the right of the attorney to be compensated. This is clear from Section 26, Rule 138 of the *Rules of Court*, which provides:

> Section 26. *Change of attorneys.* - An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.
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> **A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect**

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[35] *Gubat v. National Power Corporation,* G.R. No. 167415, February 26, 2010, 613 SCRA 742, 758-759.

[36] *University of the East v. Secretary of Labor and Employment,* G.R. Nos. 93310-12, November 21, 1991, 204 SCRA 254, 262.

[37] *Francisco v. Portugal,* A.C. No. 6155, March 14, 2006, 484 SCRA 571, 580.

his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client. (Bold emphasis supplied)

In fine, it is basic that an attorney is entitled to have and to receive a just and reasonable compensation for services performed at the special instance and request of his client. The attorney who has acted in good faith and honesty in representing and serving the interests of the client should be reasonably compensated for his service.[38]

2.
Compromise agreement is to be approved despite favorable action on the Intervenor's Motion for Intervention

On considerations of equity and fairness, the Court disapproves of the tendencies of clients compromising their cases behind the backs of their attorneys for the purpose of unreasonably reducing or completely setting to naught the stipulated contingent fees.[39] Thus, the Court grants the Intervenor's Motion for Intervention to Protect Attorney's Rights as a measure of protecting the Intervenor's right to its stipulated professional fees that would be denied under the compromise agreement. The Court does so in the interest of protecting the rights of the practicing Bar rendering professional services on contingent fee basis.

Nonetheless, the claim for attorney's fees does not void or nullify the compromise agreement between Malvar and the respondents. There being no obstacles to its approval, the Court approves the compromise agreement. The Court adds, however, that the Intervenor is not left without a remedy, for the payment of its adequate and reasonable compensation could not be annulled by the settlement of the litigation without its participation and

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[38] *Traders Royal Bank Employees Union–Independent v. NLRC,* G.R. No. 120592, March 14, 1997, 269 SCRA 733, 743.

[39] *Supra* note 24, at 1105.

conformity. It remains entitled to the compensation, and its right is safeguarded by the Court because its members are officers of the Court who are as entitled to judicial protection against injustice or imposition of fraud committed by the client as much as the client is against their abuses as her counsel. In other words, the duty of the Court is not only to ensure that the attorney acts in a proper and lawful manner, but also to see to it that the attorney is paid his just fees. Even if the compensation of the attorney is dependent only on winning the litigation, the subsequent withdrawal of the case upon the client's initiative would not deprive the attorney of the legitimate compensation for professional services rendered.[40]

The basis of the intervention is the written agreement on contingent fees contained in the engagement executed on March 19, 2008 between Malvar and the Intervenor,[41] the pertinent portion of which stipulated that the Intervenor would "collect ten percent (10%) of the amount of PhP14,252,192.12 upon its collection and another ten percent (10%) of the remaining balance of PhP41,627,593.75 upon collection thereof, and also ten percent (10%) of whatever is the value of the stock option you are entitled to under the Decision." There is no question that such arrangement was a contingent fee agreement that was valid in this jurisdiction, provided the fees therein fixed were reasonable.[42]

We hold that the contingent fee of 10% of ₱41,627,593.75 and 10% of the value of the stock option was reasonable. The ₱41,627,593.75 was already awarded to Malvar by the NLRC but the award became the subject of the appeal in this Court because the CA reversed the NLRC. Be that as it may, her subsequent change of mind on the amount sought from the respondents as reflected in the compromise agreement should not negate or bar the Intervenor's recovery of the agreed attorney's fees.

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[40] *Supra* note 35, at 759-760.

[41] *Rollo*, pp. 768-769.

[42] *Sesbreño v. Court of Appeals*, G.R. No. 117438, June 8, 1995, 245 SCRA 30, 36-37.

Considering that in the event of a dispute between the attorney and the client as to the amount of fees, and the intervention of the courts is sought, the determination requires that there be evidence to prove the amount of fees and the extent and value of the services rendered, taking into account the facts determinative thereof,[43] the history of the Intervenor's legal representation of Malvar can provide a helpful predicate for resolving the dispute between her and the Intervenor.

The records reveal that on March 18, 2008, Malvar engaged the professional services of the Intervenor to represent her in the case of illegal dismissal. At that time, the case was pending in the CA at the respondents' instance after the NLRC had set aside the RCU's computation of Malvar's backwages and monetary benefits, and had upheld the computation arrived at by the NLRC Computation Unit. On April 17, 2008, the CA set aside the assailed resolution of the NLRC, and remanded the case to the Labor Arbiter for the computation of her monetary awards. It was at this juncture that the Intervenor commenced its legal service, which included the following incidents, namely:

a) Upon the assumption of its professional duties as Malvar's counsel, a Motion for Reconsideration of the Decision of the Court of Appeals dated April 17, 2008 consisting of thirty-eight pages was filed before the Court of Appeals on May 6, 2008.

b) On June 2, 2009, Intervenors filed a Comment to Respondents' Motion for Partial Reconsideration, said Comment consisted 8 pages.

c) In the execution proceedings before Labor Arbiter Jaime Reyno, Intervenor prepared and filed on Malvar's behalf an "*Ex-Parte* Motion to Release to Complainant the Undisputed amount of ₱14,252,192.12" in NLRC NCR Case No. 30-07-02716-00.

d) On July 29, 2000, Intervenor prepared and filed before the Labor Arbiter a Comment to Respondents' Opposition to the "*Ex-Parte* Motion to Release" and a "Motion Reiterating Immediate Implementation of the Writ of Execution."

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[43] *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, August 24, 2011, 656 SCRA 60, 96-97.

e) On August 6, 2008, Intervenor prepared and filed before the Labor Arbiter Malvar's Motion Reiterating Motion to Release the Amount of ₱14,252,192.12.[44]

The decision promulgated on April 17, 2008[45] and the resolution promulgated on July 30, 2008[46] by the CA prompted Malvar to appeal on August 15, 2008 to this Court with the assistance of the Intervenor. All the subsequent pleadings, including the reply of April 13, 2009,[47] were prepared and filed in Malvar's behalf by the Intervenor.

Malvar should accept that the practice of law was not limited to the conduct of cases or litigations in court but embraced also the preparation of pleadings and other papers incidental to the cases or litigations as well as the management of such actions and proceedings on behalf of the clients.[48] Consequently, fairness and justice demand that the Intervenor be accorded full recognition as her counsel who discharged its responsibility for Malvar's cause to its successful end.

But, as earlier pointed out, although a client may dismiss her lawyer at any time, the dismissal must be for a justifiable cause if a written contract between the lawyer and the client exists.[49] Considering the undisputed existence of the written agreement on contingent fees, the question begging to be answered is: Was the Intervenor dismissed for a justifiable cause?

We do not think so.

In the absence of the lawyer's fault, consent or waiver, a client cannot deprive the lawyer of his just fees already earned in the guise of a justifiable reason. Here, Malvar not only

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[44] *Rollo*, pp. 719-720.

[45] *Id.* at 80-116.

[46] *Id.* at 118-130.

[47] *Id.* at 720.

[48] *Cayetano v. Monsod*, G.R. No. 100113, September 3, 1991, 201 SCRA 210, 213.

[49] Section 26 (2), Rule 138, *Rules of Court*.

downplayed the worth of the Intervenor's legal service to her but also attempted to camouflage her intent to defraud her lawyer by offering excuses that were not only inconsistent with her actions but, most importantly, fell short of being justifiable.

The letter Malvar addressed to Retired Justice Bellosillo, who represented the Intervenor, debunked her allegations of unsatisfactory legal service because she thereby lavishly lauded the Intervenor for its dedication and devotion to the prosecution of her case and to the protection of her interests. Also significant was that the attorney-client relationship between her and the Intervenor was not severed upon Atty. Dasal's appointment to public office and Atty. Llasos' resignation from the law firm. In other words, the Intervenor remained as her counsel of record, for, as we held in *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunication Philippines, Inc.*,[50] a client who employs a law firm engages the entire law firm; hence, the resignation, retirement or separation from the law firm of the handling lawyer does not terminate the relationship, because the law firm is bound to provide a replacement.

The stipulations of the written agreement between Malvar and the Intervenors, not being contrary to law, morals, public policy, public order or good customs, were valid and binding on her. They expressly gave rise to the right of the Intervenor to demand compensation. In a word, she could not simply walk away from her contractual obligations towards the Intervenor, for Article 1159 of the *Civil Code* provides that obligations arising from contracts have the force of law between the parties and should be complied with in good faith.

To be sure, the Intervenor's withdrawal from the case neither cancelled nor terminated the written agreement on the contingent attorney's fees. Nor did the withdrawal constitute a waiver of the agreement. On the contrary, the agreement continued between them because the Intervenor's Manifestation (with Motion to Withdraw as Counsel for Petitioner) explicitly called upon the Court to safeguard its rights under the written agreement, to wit:

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[50] G.R. No. 104600, July 2, 1999, 309 SCRA 566, 574.

WHEREFORE, premises considered, undersigned counsel respectfully pray that instant Motion to Withdraw as Counsel for Petitioner be granted and their attorney's lien pursuant to the written agreement be reflected in the judgment or decision that may be rendered hereafter conformably with par. 2, Sec. 26, Rule 138 of the Rules of Court.

Undersigned counsel further requests that they be furnished copy of the decision, resolutions and other legal processes of this Honorable Court to enable them to protect their interests.[51]

Were the respondents also liable?

The respondents would be liable if they were shown to have connived with Malvar in the execution of the compromise agreement, with the intention of depriving the Intervenor of its attorney's fees. Thereby, they would be solidarily liable with her for the attorney's fees as stipulated in the written agreement under the theory that they unfairly and unjustly interfered with the Intervenor's professional relationship with Malvar.

The respondents insist that they were not bound by the written agreement, and should not be held liable under it.

We disagree with the respondents' insistence. The respondents were complicit in Malvar's move to deprive the Intervenor of its duly earned contingent fees.

First of all, the unusual timing of Malvar's letter terminating the Intervenor's legal representation of her, of her Motion to Dismiss/Withdraw Case, and of the execution of compromise agreement manifested her desire to evade her legal obligation to pay to the Intervenor its attorney's fees for the legal services rendered. The objective of her withdrawal of the case was to release the respondents from all her claims and causes of action in consideration of the settlement in the stated amount of ₱40,000.000.00, a sum that was measly compared to what she was legally entitled to, which, to begin with, already included the ₱41,627,593.75 and the value of the stock option already awarded to her. In other words, she thereby waived more than what she was lawfully expected to receive from the respondents.

[51] *Rollo*, p. 721.

Secondly, the respondents suddenly turned around from their strong stance of berating her demand as offensive to all precepts of justice and fair play and as a form of unjust enrichment for her to a surprisingly generous surrender to her demand, allowing to her through their compromise agreement the additional amount of ₱40,000,000.00 on top of the ₱14,252,192.12 already received by her in August 2008. The softening unavoidably gives the impression that they were now categorically conceding that Malvar deserved much more. Under those circumstances, it is plausible to conclude that her termination of the Intervenor's services was instigated by their prodding in order to remove the Intervenor from the picture for being a solid obstruction to the settlement for a much lower liability, and thereby save for themselves and for her some more amount.

Thirdly, the compromise agreement was silent on the Intervenor's contingent fee, indicating that the objective of the compromise agreement was to secure a huge discount from its liability towards Malvar.

Finally, contrary to the stipulation in the compromise agreement, only Malvar, minus the respondents, filed the Motion to Dismiss/ Withdraw Case.

At this juncture, the Court notes that the compromise agreement would have Malvar waive even the substantial stock options already awarded by the NLRC's decision,[52] which ordered the respondents to pay to her, among others, the value of the stock options and all other bonuses she was entitled to or would have been entitled to had she not been illegally dismissed from her employment. This ruling was affirmed by the CA.[53] But the waiver could not negate the Intervenor's right to 10% of the value of the stock options she was legally entitled to under the decisions of the NLRC and the CA, for that right was expressly stated in the written agreement between her and the Intervenor. Thus, the Intervenor should be declared

[52] *Id.* at 171-172.

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

entitled to recover full compensation in accordance with the written agreement because it did not assent to the waiver of the stock options, and did not waive its right to that part of its compensation.

These circumstances show that Malvar and the respondents needed an escape from greater liability towards the Intervenor, and from the possible obstacle to their plan to settle to pay. It cannot be simply assumed that only Malvar would be liable towards the Intervenor at that point, considering that the Intervenor, had it joined the negotiations as her lawyer, would have tenaciously fought all the way for her to receive literally everything that she was entitled to, especially the benefits from the stock option. Her rush to settle because of her financial concerns could have led her to accept the respondents' offer, which offer could be further reduced by the Intervenor's expected demand for compensation. Thereby, she and the respondents became joint tort-feasors who acted adversely against the interests of the Intervenor. Joint tort-feasors are those who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit.[54] They are also referred to as those who act together in committing wrong or whose acts, if independent of each other, unite in causing a single injury.[55] Under Article 2194 of the Civil Code, joint tort-feasors are solidarily liable for the resulting damage. As regards the extent of their respective liabilities, the Court said in *Far Eastern Shipping Company v. Court of Appeals*:[56]

> x x x. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that

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[54] *Chan, Jr. v. Iglesia ni Cristo, Inc.*, G.R. No. 160283, October 14, 2005, 473 SCRA 177, 186.

[55] *Black's Law Dictionary*, Fifth Edition, 1979, pp. 752-753, citing *Bowen v. Iowa Nat. Mut. Ins. Co.*, 270 N.C. 486, 155 S.E. 2d 238, 242.

[56] G.R. No. 130068, October 1, 1998, 297 SCRA 30, 84.

one of them was more culpable, and that the duty owed by them to the injured person was not same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other acts. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.

There is no contribution between joint tort-feasors whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and either of them is responsible for the whole injury. x x x

Joint tort-feasors are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. It is likewise not an excuse for any of the joint tort-feasors that individual participation in the tort was insignificant as compared to that of the other.[57] To stress, joint tort-feasors are not liable *pro rata*. The damages cannot be apportioned among them, except by themselves. They cannot insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the whole amount.[58] Thus, as joint tort-feasors, Malvar and the respondents should be held solidarily liable to the Intervenor. There is no way of appreciating these circumstances except in this light.

That the value of the stock options that Malvar waived under the compromise agreement has not been fixed as yet is no hindrance to the implementation of this decision in favor of the Intervenor. The valuation could be reliably made at a subsequent time from the finality of this adjudication. It is enough for the Court to hold the respondents and Malvar solidarily liable for the 10% of that value of the stock options.

As a final word, it is necessary to state that no court can shirk from enforcing the contractual stipulations in the manner

[57] *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, G.R. No. 155173, November 23, 2004, 443 SCRA 522, 545.

[58] *Id.*

they have agreed upon and written. As a rule, the courts, whether trial or appellate, have no power to make or modify contracts between the parties. Nor can the courts save the parties from disadvantageous provisions.[59] The same precepts hold sway when it comes to enforcing fee arrangements entered into in writing between clients and attorneys. In the exercise of their supervisory authority over attorneys as officers of the Court, the courts are bound to respect and protect the attorney's lien as a necessary means to preserve the decorum and respectability of the Law Profession.[60] Hence, the Court must thwart any and every effort of clients already served by their attorneys' worthy services to deprive them of their hard-earned compensation. Truly, the duty of the courts is not only to see to it that attorneys act in a proper and lawful manner, but also to see to it that attorneys are paid their just and lawful fees.[61]

WHEREFORE, the Court **APPROVES** the compromise agreement; **GRANTS** the Motion for Intervention to Protect Attorney's Rights; and **ORDERS** Czarina T. Malvar and respondents Kraft Food Philippines Inc. and Kraft Foods International to jointly and severally pay to Intervenor Law Firm, represented by Retired Associate Justice Josue N. Bellosillo, its stipulated contingent fees of 10% of ₱41,627,593.75, and the further sum equivalent to 10% of the value of the stock option.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[59] *Pryce Corporation v. Philippine Amusement and Gaming Corporation,* G.R. No. 157480, May 6, 2005, 458 SCRA 164, 166.

[60] *Matute v. Matute,* G.R. No. L-27832, May 28, 1970, 33 SCRA 35, 37.

[61] *National Power Corporation Drivers and Mechanics Association v. National Power Corporation,* G.R. No. 156208, September 17, 2008, 565 SCRA 417, 437.

SECOND DIVISION

[G.R. No. 184732. September 9, 2013]

CORAZON S. CRUZ under the name and style, VILLA CORAZON CONDO DORMITORY, *petitioner, vs.* **MANILA INTERNATIONAL AIRPORT AUTHORITY,** *respondent.*

SYLLABUS

REMEDIAL LAW; APPEALS; AN APPELLEE CAN NEITHER ASSIGN ANY ERROR NOR SEEK ANY AFFIRMATIVE RELIEF OR MODIFICATION OF THE LOWER COURT'S JUDGMENT WITHOUT INTERPOSING HIS APPEAL; ALL THAT THE SAID APPELLEE CAN DO IS TO MAKE A COUNTER-ASSIGNMENT OF ERROR OR TO ARGUE ON ISSUES RAISED AT THE TRIAL ONLY FOR THE PURPOSE OF SUSTAINING THE JUDGMENT IN HIS FAVOR, EVEN ON GROUNDS NOT INCLUDED IN THE DECISION OF THE COURT *A QUO* NOR RAISED IN THE APPELLANT'S ASSIGNMENT OF ERRORS OR ARGUMENTS.— Jurisprudence dictates that the appellee's role in the appeal process is confined only to the task of refuting the assigned errors interposed by the appellant. Since the appellee is not the party who instituted the appeal and accordingly has not complied with the procedure prescribed therefor, he merely assumes a defensive stance and his interest solely relegated to the affirmance of the judgment appealed from. Keeping in mind that the right to appeal is essentially statutory in character, it is highly erroneous for the appellee to either assign any error or seek any affirmative relief or modification of the lower court's judgment without interposing its own appeal. As held in the case of *Medida v. CA*: **An appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below. He cannot impugn the correctness of a judgment not appealed from by him. He cannot assign such errors as are designed to have the judgment modified.** All that said appellee can do is

to make a counter-assignment of errors or to argue on issues raised at the trial only for the purpose of sustaining the judgment in his favor, even on grounds not included in the decision of the court *a quo* nor raised in the appellant's assignment of errors or arguments. In the case at bar, the Court finds that the CA committed a reversible error in sustaining the dismissal of the Pasig case on the ground of improper venue because the same was not an error raised by Cruz who was the appellant before it. Pursuant to the above-mentioned principles, the CA cannot take cognizance of MIAA's position that the venue was improperly laid since, being the appellee, MIAA's participation was confined to the refutation of the appellant's assignment of errors. As MIAA's interest was limited to sustaining the RTC-Pasig City's judgment, it cannot, without pursuing its own appeal, deviate from the pronouncements made therein.

APPEARANCES OF COUNSEL

Ernesto L. Viovicente for petitioner.
Office of the Corporate Counsel 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 November 27, 2007 and Resolution[3] dated September 26, 2008 of the Court of Appeals in CA-G.R. CV No. 88308 which dismissed the appeal filed by petitioner Corazon S. Cruz (Cruz), affirming with modification the court *a quo's* dismissal of Civil Case No. 70613 on the ground of improper venue.

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[1] *Rollo,* pp. 8-22.

[2] *Id.* at 126-135. Penned by Associate Justice (now Supreme Court Justice) Bienvenido L. Reyes, with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, concurring.

[3] *Id.* at 162-163.

The Facts

On December 7, 2005, Cruz filed before the Regional Trial Court (RTC) of Pasig City, Branch 68 (RTC-Pasig City) a complaint[4] for breach of contract, consignation, and damages (complaint for breach of contract) against respondent Manila International Airport Authority (MIAA), docketed as Civil Case No. 70613 (Pasig case). In her complaint, Cruz alleged that on August 12, 2003, she executed a Contract of Lease (lease contract) with MIAA over a 1,411.98 square meter-property, situated at BAC 1-11, Airport Road, Pasay City, in order to establish a commercial arcade for sublease to other businesses.[5] She averred that MIAA failed to inform her that part of the leased premises is subject to an easement of public use[6] (easement) since the same was adjacent to the Parañaque River.[7] As a result, she was not able to obtain a building permit as well as a certificate of electrical inspection from the Manila Electric Company, leading to her consequent failure to secure an electrical connection for the entire leased premises.[8] Due to the lack of electricity, Cruz's tenants did not pay rent; hence, she was unable to pay her own rental obligations to MIAA from December 2004 onwards.[9] Further, since some of Cruz's stalls were located in the easement area, the Metropolitan Manila Development Authority demolished them, causing her to suffer actual damages in the amount of ₱633,408.64.[10] In view of the foregoing, Cruz sent MIAA her rental computation, pegged at the amount of ₱629,880.02, wherein the aforesaid damages have been deducted. However, instead of accepting Cruz's payment, MIAA sent a letter terminating the lease contract.[11]

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

[5] *Id.* at 24.

[6] See Article 638 of the Civil Code.

[7] *Rollo,* p. 25.

[8] *Id.* at 25-26.

[9] *Id.* at 26.

[10] *Id.* at 27.

[11] *Id.* at 28.

For its part, MIAA filed a Motion to Dismiss[12] (motion to dismiss) hinged on the following grounds: (*a*) violation of the certification requirement against forum shopping under Section 5, Rule 7[13] of the Rules of Court, given that the lease contract subject of the Pasig case is the same actionable document subject of Civil Case No. 1129918 (Manila case) which is a complaint for partial annulment of contract (complaint for annulment of contract) also filed by Cruz before the RTC of Manila, Branch 1;[14] and (*b*) improper venue, since in the complaint for annulment of contract, as well as the verification/certification and the annexes attached thereto, it is indicated that Cruz is a resident of 506, 2nd Street, San Beda Subdivision, San Miguel, Manila.[15]

The RTC Ruling

On August 15, 2006, the RTC-Pasig City issued an Order[16] dismissing Cruz's complaint for breach of contract due to forum shopping since both the Pasig and Manila cases are founded on the same actionable document between the same parties. In addition, it observed that the Pasig case was not being prosecuted by the real party-in-interest since the lessee named in the lease contract is one Frederick Cruz and not Cruz. It did

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[12] *Id.* at 34-43. Dated March 8, 2006.

[13] Section 5, Rule 7 of the Rules of Court provides:

SEC. 5. *Certification against forum shopping.* – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

[14] *Rollo,* p. 36.

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

[16] *Id.* at 49-50. Penned by Judge Santiago G. Estrella.

not, however, sustain MIAA's argument on improper venue since Cruz alleged to be a resident of San Juan, Metro Manila; therefore, unless proven otherwise, the complaint shall be taken on its face value.[17]

Aggrieved, petitioner filed a motion for reconsideration[18] which was, however, denied by the RTC-Pasig City in an Order[19] dated October 2, 2006. Thus, Cruz filed a notice of appeal.[20]

The Proceedings Before the CA

In her Appellant's Brief,[21] Cruz assigned the following errors: (*a*) that the RTC-Pasig City erred in holding that there was forum shopping, considering that the causes of action in the complaints for breach of contract and annulment of contract are separate and distinct; (*b*) that the RTC-Pasig City erred in ruling that Cruz is not the real party-in-interest considering that Frederick Cruz merely signed the lease contract as her attorney-in-fact; and (*c*) that the RTC-Pasig City erred in not denying MIAA's motion to dismiss since it was set for hearing more than 10 days from its filing.[22]

On the other hand, MIAA filed its Defendant-Appellee's Brief[23] refuting the foregoing arguments. In addition, MIAA raised before the CA its argument on improper venue[24] which had been previously denied by the RTC-Pasig City.

On November 27, 2007, the CA rendered a Decision,[25] affirming with modification the RTC-Pasig City's dismissal of

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[17] *Id.* at 49.

[18] *Id.* at 51-59. Dated September 8, 2006.

[19] *Id.* at 75-77.

[20] *Id.* at 78-79. Dated October 20, 2006.

[21] *Id.* at 82-97. Dated May 10, 2007.

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

[23] *Id.* at 101-123. Dated June 25, 2007.

[24] *Id.* at 119-121.

[25] *Id.* at 126-135.

the Pasig case. It held that while Cruz did not commit forum shopping (since the Pasig and Manila cases involve distinct causes of action and issues[26]) and that Cruz should be considered as a real party-in-interest in the Pasig case (since Frederick Cruz was merely her appointed attorney-in-fact in connection with the execution of the lease contract[27]), the Pasig case remains dismissible on the ground of improper venue as Cruz was bound by her judicial admission that her residence was actually in Manila and not in San Juan.[28]

Dissatisfied, Cruz moved for reconsideration[29] but was denied by the CA in a Resolution[30] dated September 26, 2008. Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in dismissing Cruz's appeal on the basis of improper venue.

Cruz contends that the CA may only resolve errors assigned by the appellant and, conversely, cannot rule on a distinct issue raised by the appellee.[31] In this accord, she argues that in ruling on the issue of improper venue, the CA practically allowed MIAA to pursue a lost appeal, although the latter did not file a notice of appeal within the proper reglementary period nor pay the prescribed docket fees.[32]

On the other hand, MIAA maintains, *inter alia*, that despite raising the issue on improper venue before the CA, the RTC-Pasig City did not categorically rule on the said issue. As such,

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[26] *Id.* at 132.

[27] *Id.* at 133.

[28] *Id.* at 134.

[29] *Id.* at 136-143. Dated December 18, 2007.

[30] *Id.* at 162-163.

[31] *Id.* at 18.

[32] *Id.* at 21.

it claims that it could raise the foregoing ground as one of the issues before the CA.[33]

The Court's Ruling

The petition is meritorious.

Jurisprudence dictates that the appellee's role in the appeal process is confined only to the task of refuting the assigned errors interposed by the appellant. Since the appellee is not the party who instituted the appeal and accordingly has not complied with the procedure prescribed therefor, he merely assumes a defensive stance and his interest solely relegated to the affirmance of the judgment appealed from. Keeping in mind that the right to appeal is essentially statutory in character, it is highly erroneous for the appellee to either assign any error or seek any affirmative relief or modification of the lower court's judgment without interposing its own appeal. As held in the case of *Medida v. CA*:[34]

> **An appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below. He cannot impugn the correctness of a judgment not appealed from by him. He cannot assign such errors as are designed to have the judgment modified.** All that said appellee can do is to make a counter-assignment of errors or to argue on issues raised at the trial only for the purpose of sustaining the judgment in his favor, even on grounds not included in the decision of the court *a quo* nor raised in the appellant's assignment of errors or arguments.[35] (Emphasis supplied)

In the case at bar, the Court finds that the CA committed a reversible error in sustaining the dismissal of the Pasig case on the ground of improper venue because the same was not an error raised by Cruz who was the appellant before it. Pursuant to the above-mentioned principles, the CA cannot take cognizance of MIAA's position that the venue was improperly laid since,

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[33] *Id.* at 176. See Comment dated March 10, 2009.

[34] G.R. No. 98334, May 8, 1992, 208 SCRA 887.

[35] *Id.* at 898-899. (Citations omitted)

being the appellee, MIAA's participation was confined to the refutation of the appellant's assignment of errors. As MIAA's interest was limited to sustaining the RTC-Pasig City's judgment, it cannot, without pursuing its own appeal, deviate from the pronouncements made therein. In particular, records bear out that the RTC-Pasig City, while granting MIAA's motion to dismiss, found the latter's argument on improper venue to be erroneous. Hence, given that the said conclusion was not properly contested by MIAA on appeal, the RTC-Pasig City's ruling on the matter should now be deemed as conclusive. Corollary, the CA should not have taken this ground into consideration when it appreciated the case before it. By acting otherwise, it therefore committed a reversible error, which thereby warrants the reversal of its Decision.

WHEREFORE, the petition is **GRANTED.** The Decision dated November 27, 2007 and Resolution dated September 26, 2008 of the Court of Appeals in CA-G.R. CV No. 88308 are hereby **SET ASIDE**. Accordingly, the case is **REMANDED** to the Regional Trial Court of Pasig City, Branch 68 for further proceedings.

SO ORDERED.

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

EN BANC

[A.M. No. P-04-1903. September 10, 2013]
(Formerly A.M. No. 04-10-597-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **DONABEL M. SAVADERA, MA. EVELYN M. LANDICHO and CONCEPCION G. SAYAS, all of the RTC, OCC, Lipa City, Batangas, ATTY. CELSO M. APUSEN and ATTY. SHEILA ANGELA P. SARMIENTO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; AS CUSTODIAN OF COURT FUNDS, REVENUES, RECORDS, PROPERTIES AND PREMISES, A CLERK OF COURT IS LIABLE FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF SAID FUNDS AND PROPERTIES.— As to Atty. Apusen, we agree with the OCA that he failed to exercise his duties as clerk of court. As clerk of court, he is primarily accountable for all funds collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. As custodian of court funds, revenues, records, properties and premises, he is liable for any loss, shortage, destruction or impairment of said funds and properties.

2. ID.; ID.; ID.; FAILURE TO REMIT THE COLLECTIONS UPON DEMAND BY THE COURT CONSTITUTES *PRIMA FACIE* EVIDENCE THAT THE CLERK OF COURT HAS PUT SUCH MISSING FUNDS TO PERSONAL USE; NON-COMPLIANCE WITH THE ORDER OF RESTITUTION CONSTITUTES GROSS DISHONESTY.— Despite a directive from the Court for him to restitute the shortages and account for the missing ORs discovered for the period over which he was accountable, he did not bother to file a comment to dispute the same. The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Hence, silence in such cases is almost always

construed as implied admission of the truth thereof. We can only interpret Atty. Apusen's continued silence as an acknowledgment of the truthfulness of the charges against him. Moreover, his failure to remit these collections upon demand by the Court constitutes *prima facie* evidence that he has put such missing funds to personal use. Atty. Apusen's failure to comply with the order of restitution constitutes gross dishonesty which this Court cannot countenance.

3. ID.; ID.; ID.; ID.; ID.; FLIGHT IS A CLEAR INDICATION OF GUILT.— We likewise agree with the OCA's finding on Savadera's liability. Being a cash clerk, Savadera is an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. Clearly, she miserably failed in such responsibility upon the occurrence of the shortages. Moreover, like Atty. Apusen, after a mere denial of her liability on the incurred shortages after she received a copy of the October 19, 2004 Resolution, she did not anymore file a comment despite the fact that the Court granted her request to inspect the audit documents before she will file her comment. Worse, records show that she has already left her last known address and the Court is yet to receive an update as to her current address. We can only interpret this as Savadera's way of evading her liability. Her flight is a clear indication of her guilt.

4. ID.; ID.; ID.; THOSE CONNECTED WITH THE DISPENSATION OF JUSTICE, FROM THE HIGHEST OFFICIAL TO THE LOWLIEST CLERK, CARRY A HEAVY BURDEN OF RESPONSIBILITY, AND AS FRONTLINERS IN THE ADMINISTRATION OF JUSTICE, THEY SHOULD LIVE UP TO THE STRICTEST STANDARDS OF HONESTY AND INTEGRITY.— As to Landicho, though it was not among her official duties to receive court collections, this cannot exempt her from liability. Having handled court funds, she is deemed an accountable officer who should answer for the shortages that occurred. Moreover, she admitted to having taken ₱80,000 from her collections, a clear case of malversation. As to respondent Sayas, she cannot escape liability by simply claiming that she is a mere social worker who has no knowledge of accounting rules. While she shifts liability to Savadera and Landicho, she admitted that she was aware as early as February 2001 that there was a shortage. However, Sayas kept mum about

the discovered shortage and did not report it to the court. Time and again, we have held that no position demands greater moral righteousness and uprightness from its holder than a judicial office. Those connected with the dispensation of justice, from the highest official to the lowliest clerk, carry a heavy burden of responsibility. As frontliners in the administration of justice, they should live up to the strictest standards of honesty and integrity. They must bear in mind that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there.

5. ID.; ID.; ID.; LONG DELAY IN THE REMITTANCE OF THE COURT'S FUNDS, AS WELL AS THE UNEXPLAINED SHORTAGES THAT REMAINED UNACCOUNTED FOR, RAISE GRAVE DOUBTS REGARDING THE TRUSTWORTHINESS AND INTEGRITY OF THE COURT EMPLOYEES; FAILURE TO REMIT THE FUNDS IN DUE TIME CONSTITUTES GROSS DISHONESTY AND GROSS MISCONDUCT PUNISHABLE BY DISMISSAL FROM THE SERVICE AND FORFEITURE OF RETIREMENT BENEFITS.— Respondents Apusen, Savadera, Landicho, and Sayas failed to offer a valid explanation as to how or why the shortages occurred or where the missing ORs are. Either they kept silent or just pointed fingers at each other. The long delay in the remittance of the court's funds, as well as the unexplained shortages that remained unaccounted for, raises grave doubts regarding their trustworthiness and integrity. Their failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time. As provided under the Uniform Rules on Administrative Cases in the Civil Service, forfeiture of retirement benefits was likewise properly recommended by the OCA.

D E C I S I O N

PER CURIAM:

This administrative matter originated from the financial audit conducted from March 8 to 26, 2004 of the Court Management

Office of the Office of the Court Administrator (CMO-OCA) on the books of accounts of the Office of the Clerk of Court (OCC), Regional Trial Court of Lipa City (RTC Lipa City). The audit covered the transactions of Atty. Celso M. Apusen, former Clerk of Court VI, for the period June 1, 1987 to September 1, 2002, and that of his successor, Atty. Sheila Angela Palo-Sarmiento, Officer-in-Charge (OIC), Clerk of Court V, RTC Lipa City, Branch 85, for the period of September 2, 2002 up to the audit dates. Atty. Sarmiento was appointed OIC after Atty. Apusen's leave of absence from September 2, 2002 and eventual optional retirement effective January 2, 2003. On September 10, 2002, the appointment of Atty. Sarmiento was confirmed by the OCA.[1]

It appears that as Atty. Sarmiento was preoccupied with her duties as Branch Clerk, she delegated the collections of all legal fees to respondent Donabel M. Savadera (Savadera), Cash Clerk II. Savadera collected and deposited various collections of the court and recorded the same in their respective cashbooks. She also signed on behalf of Atty. Sarmiento the monthly report of collections and deposits prepared by respondent Ma. Evelyn M. Landicho (Landicho), Clerk III. If Savadera was absent, Landicho and respondent Concepcion G. Sayas (Sayas), Social Worker, received the court collections.[2]

The audit team discovered that there were cash shortages and that some official receipts (ORs) were missing or tampered with. It also found some tampered deposit slips. The findings of the audit team are summarized as follows:

As of March 8, 2004, the RTC Lipa City had outstanding collections amounting to ₱661,684.26. Of said amount, however, Savadera was able to present only ₱94,560.75 in cash, thereby having a cash shortage in the amount of ₱567,123.51. When Savadera was directed to produce the shortage, she told the audit team that aside from the cash on hand presented to them, she also had check collections in her locked table drawer. She,

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[1] *Rollo*, p. 3.

[2] *Id.*

however, could not show them the said check collections at that time as she forgot to bring her key. Savadera assured them that all her outstanding collections will be deposited within the day.[3]

Based on the duplicate/triplicate copies of ORs presented to the audit team, Savadera's shortage may be reduced to ₱85,505.03 as she has check collections in the total amount of ₱481,618.48, to wit:

[OR] No.	Check No.	Date of Check	Amount
19287261	LBP 09087	11-20-03	₱ 2,300.00
19287263	LBP 06954	09-19-03	2,900.00
19287266	Prudential 0248795	10-23-03	9,075.00
19287267	Prudential 0249474	11-12-03	24,380.00
19287286	LBP 070960	11-28-03	2,000.00
19287287	UCPB 5858158	09-09-03	45,020.00
19287288	UCPB 5190789	11-14-03	18,286.78
19287297	Keppel Bank 17833	11-27-03	377,656.70
Total			**₱ 481,618.48**[4]

Savadera and Atty. Sarmiento were then reminded of their accountabilities for the missing funds. Savadera was also advised to deposit the cash on hand immediately as well as the checks allegedly locked inside her drawer.[5]

On the fourth day of the audit, Landicho presented to the audit team several deposit slips given to her by Savadera supposedly representing full restitution of the cash shortages. A careful perusal of the deposit slips, however, revealed that except for the Keppel Bank check amounting to ₱377,656.70, all other checks that were supposed to be outstanding at the time of the audit were not the ones deposited. Instead, the checks deposited totaling ₱87,507.16, turned out to be the

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

[4] *Id.* at 5.

[5] *Id.*

succeeding collections of the court and the checks allegedly in the accountable officer's possession at the time of the audit had already been deposited beforehand to the Judiciary Development Fund (JDF)/General Fund account but yet to be recorded in the cashbook and to be reported to the Accounting Division of the OCA.[6]

The audit team also found that the dates in the ORIGINAL copies of the receipts are different from those in the DUPLICATE/TRIPLICATE copies. Savadera, Landicho and Sayas did not indicate the date of collection on the duplicate and triplicate copies of the receipt whenever a collection was made. As the space for the date is located in the upper portion of the receipt, they deliberately pulled down the carbon paper in the set of ORs so that what was written in the original will not be reflected in the duplicate and triplicate copies. The collecting officer would then put a later date in the duplicate and triplicate copies of the receipt by using a dater when they are about to submit a monthly report of collections and deposits to this Court. The audit team concluded that this practice was resorted to in order to conceal the accountable officers' misappropriations. Based on the monthly reports of collections submitted to the Court, what was reported were the equivalent collections of only what they had deposited on a certain period.[7]

Landicho also presented to the audit team six booklets of issued ORs coming from the table drawer of Savadera. Several used ORs were also found in the booklets of unissued receipts. Said receipts represent collections from the period December 2003 to March 8, 2004 which were neither recorded in the cashbook nor reported to the Accounting Division of the OCA. The audit team found that although some of them had already been deposited, the deposits were made to cover up the cash collections previously misappropriated. Thus, on March 22, 2004, the audit team demanded from Savadera, Landicho and Sayas the immediate restitution of an initial cash shortage totaling

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[6] *Id.* at 5-6.

[7] *Id.* at 6.

to ₱1,212,086.33 comprising the six booklets and the several ORs mentioned above. The three collecting officers were also required to submit a written explanation within 72 hours on why a cash shortage occurred. Upon discovery of the shortage, Executive Judge Jane Aurora C. Lantion likewise immediately relieved Savadera, Landicho and Sayas of their functions and detailed them to the other offices of the court and designated as cash clerks her three regular branch clerks on March 11, 2004.[8]

In their explanations, Savadera, Landicho and Sayas did not deny the existence of a cash shortage. Landicho even admitted having taken ₱80,000 from her collections. She and Savadera however accused each other for the incurred shortage. Savadera acknowledged having received all of Sayas' collections so the latter's liability will be limited only to her connivance with Savadera and Landicho to defraud the court of its revenues since she allowed herself to be a party to the issuance of undated receipts and her failure to report the cash shortage despite her awareness of its existence as early as February 2001.[9]

On March 16, 2004, the three collecting officers executed a Joint Affidavit[10] absolving Atty. Sarmiento of any financial accountability during her term as OIC. Because of this, the audit team decided not to demand from her the restitution of the shortage, but believed that she cannot escape administrative liability for not closely supervising the personnel of the OCC during her term as OIC.[11]

The audit team likewise discovered two deposit slips that have been tampered with to cover up a shortage in the amount of ₱336,765.64 which was discovered in January 2001 when the Commission on Audit (COA), Batangas City conducted an examination of the books of accounts of the OCC. The said

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[8] *Id.* at 6-7, 27.

[9] *Id.* at 7, 17-25.

[10] *Id.* at 26.

[11] *Id.* at 7.

shortage was settled per deposit slip dated February 13, 2001. It was however discovered that the ₱200,000 used to settle part of the shortage came from the succeeding collections of the court from a Bank of the Philippine Islands (BPI) check amounting to ₱193,202.63 which Landicho was able to re-discount into cash and deposit to her own account. Landicho apparently drew her personal check to settle part of the shortage.[12] To conceal the fact that the succeeding collections were used to cover the shortage, they made it appear that the BPI check previously rediscounted into cash, as well as the other collections, were deposited by them by tampering two deposit slips as follows:

Date of Deposit	***Amount as Presented***	***Correct Amount***	***Difference***
February 15, 2001	₱ 193,202.63	₱ 3,202.63	₱ 190,000.00
March 30, 2001	56,664.33	6,664.33	50,000.00
TOTAL	₱ 249,866.96	₱9,866.96	₱240,000.00[13]

The audit team also found that as of the examination date, the net interest income of ₱551,692.50 on fiduciary deposits from the time of Atty. Apusen up to the time of Atty. Sarmiento remained intact in the court's Fiduciary Fund account instead of being withdrawn and deposited to the account of the JDF in violation of OCA Circular No. 50-95[14] which states that "all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited within 24 hours by the Clerk of Court concerned, upon receipt thereof, with the Landbank of the Philippines."

The audit of the JDF account also disclosed numerous irregularities committed by the collecting officers which contributed to the accumulation of a cash shortage of ₱2,422,687.94 covering the period 1987-2004. The audit team discovered irregularities for the JDF such as tampering of ORs

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[12] *Id.*

[13] *Id.* at 8.

[14] *Id.*

and deposit slips, late recording/reporting of judiciary collections, and juggling of collection.[15]

Aside from the ₱240,000 accountability arising from the tampered deposit slips, Savadera and Landicho also have unaccounted/unrecorded JDF collections for the period December 1, 2003 to March 8, 2004 totaling ₱1,229,158.73. There is also an under deposit of ₱144,024.71 that was uncovered based on the deposits extracted from the bank statements provided by Land Bank. Thus, Savadera and Landicho have a combined accountability of ₱1,613,183.44 and Atty. Apusen should be held accountable only for the unaccounted collections during his term amounting to ₱809,504.50.[16]

An examination of the General Fund account also revealed a cash shortage of ₱34,333.76 covering the period 1987-2003. Of this amount, Atty. Apusen is accountable for ₱22,789.27 while Savadera and Landicho are liable for ₱11,544.49.[17]

There is also a shortage of ₱73,734.45 for the Special Allowance for the Judiciary (SAJ) Fund which includes the shortages in the SAJ collections of Savadera and Landicho in the amount of ₱65,594.35 which are unaccounted/unrecorded as of examination date.[18]

As to the court's fiduciary fund, the audit revealed a cash shortage amounting to ₱1,251,650.32 which was incurred during the term of Atty. Apusen as some of his collections were not deposited.[19]

Twenty-nine booklets and 127 pieces of ORs requisitioned from the Property Division, Supreme Court were also unaccounted for.[20]

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

[16] *Id.* at 10, 13, 31-36.

[17] *Id.* at 10-11, 13.

[18] *Id.* at 11, 13, 37.

[19] *Id.* at 12, 13.

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

Below is the summary of the respective cash accountabilities of Savadera, Landicho, Sayas and Apusen as of March 8, 2004:

[Collecting Officer]	JDF	[General Fund]	SAJ	[Fiduciary Fund]	TOTAL
Ms. Savadera and Ms. Landicho	1,613,183.44	11,544.49	73,734.45	–	₱1,698,462.38
Ms. Sayas	–	–	–	–	–
Atty. Apusen	809,504.50	22,789.27	–	1,251,650.32	2,083,944.09
Grand Total	2,422,687.94	34,333.76	73,734.45	1,251,650.32	₱3,782,406.47[21]

Thus, the audit team recommended that

1. [The audit] report be **DOCKETED** as a regular administrative matter against Ms. Donabel M. Savadera, Ms. Evelyn M. Landicho and Ms. Concepcion G. Sayas.
2. **Ms. Donabel M. Savadera** and **Ms. Evelyn M. Landicho**, Cash Clerk II and Clerk III, respectively be **DIRECTED** to:
    a. **RESTITUTE** the shortages incurred in Judiciary Development Fund, General Fund and Special Allowance for the Judiciary Fund amounting to ₱1,613,183.44, ₱11,544.49, and ₱73,734.45, respectively, or a total of ₱1,698,462.38; and
    b. **ACCOUNT** for the missing Official Receipts with Serial Nos. 11594552, 15436651-15436662 and 15436665-15436700.
3. **Ms. Donabel M. Savadera** and **Ms. Evelyn M. Landicho** be **SUSPENDED** from Office pending resolution of this administrative matter.
4. Former Clerk of Court VI, **Atty. Celso M. Apusen** be **DIRECTED** to:

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[21] *Id.* at 13.

a. **RESTITUTE** the shortages incurred in the Judiciary Development Fund, General Fund and Fiduciary Fund amounting to ₱809,504.50, ₱22,789.27 and ₱1,251,650.32, respectively, or a total of ₱2,083,944.09; and

b. **ACCOUNT** for the missing Official Receipts with Serial Nos. 1778751-1778950; 2240551-2240600; 2241601-2241634; 2241851-2241950; 2614851-2615000; 3277351-3277500; 3321401-3321450; 3321501-3321600; 3941501-3941650; 3941701-3941734; 3943001-3943050; 4448601-4448750; 6027851-6027950; 6869901-6869950; 11620951-11620960; 11594401-11594450 and 11594551-11594600.

5. **Atty. Sheila Angela P. Sarmiento**, incumbent Officer-in-Charge be **DIRECTED** to:

a. **EXPLAIN** in writing within a period of ten (10) days from notice why no administrative sanction shall be imposed upon her for her failure to exercise close supervision over Ms. Donabel M. Savadera, Ms. Evelyn M. Landicho and Ms. Concepcion G. Sayas which resulted [in] the misappropriation of judiciary funds amounting to ₱1,698,462.38 during her period as Officer-in-Charge;

b. **WITHDRAW** the interest earned from fiduciary fund deposits for the period June 30, 1994 to December 31, 2003 amounting to ₱551,[6]92.50 and deposit the same to the JDF account; and

c. **FURNISH** the Fiscal Monitoring Division, CMO, OCA of the machine validated copy of deposit slip of the transfer of ₱551,692.50 to JDF account as proof of remittance thereof.

6. **Hon. Executive Judge Jane Aurora C. Lantion** be **DIRECTED** to properly monitor the incumbent OIC to ensure strict adherence to circulars and other issuances of the Court to avoid commission of similar irregularities in the future.

7. **Hold Departure Order** be **ISSUED** against Ms. Donabel M. Savadera, Ms. Evelyn M. Landicho and Atty. Celso M. Apusen to prevent them from leaving the country without settling the shortages found.

8. The **LEGAL OFFICE** be **DIRECTED** to file appropriate criminal charges against Ms. Donabel M. Savadera, Ms. Evelyn M. Landicho, Atty. Celso M. Apusen and Ms. Concepcion G. Sayas.[22]

Said recommendation was approved by then Court Administrator (now Supreme Court Justice) Presbitero J. Velasco, Jr. and was duly endorsed by Memorandum dated September 22, 2004 for approval of the Court.[23]

By Resolution[24] dated October 19, 2004, the Court resolved to adopt the recommendation of the OCA. On even date, a Hold Departure Order[25] was issued against Savadera, Landicho and Atty. Apusen.

Savadera, in a letter[26] filed with the OCA on November 18, 2004, acknowledged receipt of the October 19, 2004 Resolution and requested that she be allowed to determine how the ₱1,698,462.38 was arrived at and be given the chance to comment on the result of the audit report. She averred that she submitted an answer to the head of the audit team but did not admit that the cash shortages were due to her fault. She also requested that she be given ten days from receipt of the requested documents to comment on the October 19, 2004 Resolution.

Landicho, in her letter[27] dated November 22, 2004, stated that it would be unfair to direct her to restitute the amount of ₱1,698,462.38 when she only admitted responsibility for the amount of ₱80,000. She also alleged that there was no evidence to hold her responsible for the amount in excess of ₱80,000. As to the missing ORs that she was directed to account for, she claimed that she never received any of them; is not their custodian; and is not an accountable officer. She prayed that

[22] *Id.* at 13-15.

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

[24] *Id.* at 38-40.

[25] *Id.* at 41-44.

[26] *Id.* at 45.

[27] *Id.* at 56-57.

she be allowed to restitute ₱80,000 only; be spared from accounting for any of the missing ORs; and that her suspension from office be lifted.

Sayas, in her Motion for Reconsideration[28] dated November 24, 2004, alleged that she was merely constrained to receive payments and issue ORs in the absence of Savadera. She averred that the money was immediately remitted to Savadera to be deposited in Land Bank, Lipa City Branch. She claimed that she has no knowledge on how financial transactions are being undertaken. Sayas also added that the conduct of financial audit by the COA in February 2001 revealed a shortage in the JDF collection amounting to ₱200,000. Said shortage was paid using a rediscounted personal check which was later on paid using the collections under the JDF. Sayas contended that she was not an accountable officer and was clueless that such act was in violation of the accounting rules.

In Atty. Sarmiento's letter-explanation[29] dated November 2, 2004, she stated that concurrent with her position as Branch Clerk of Court, she was also appointed administrative officer. She had an agreement with then Executive Judge Jane Aurora C. Lantion that she would not be involved in the fiscal activities for the reason that there was no audit yet and the accountabilities of Atty. Apusen were yet to be determined. To the best of her abilities, she, together with Judge Lantion, monitored daily the transactions of the OCC, all of which appeared to be regular. She stated that the schemes of the three court personnel involved were evidently premeditated to ensure that the irregularities will not be discovered. She also noted that the familiarity of the three court personnel with the ins and outs of the transactions enabled them to make them appear regular and an outsider could easily be convinced that everything was in order. She likewise claimed that during her incumbency, she acted on all pending matters which needed action promptly and it was never her intention to be remiss in her duties as OIC but she can only do so much under the circumstances.

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[28] *Id.* at 53-54.

[29] *Id.* at 213-215.

In a Resolution[30] dated January 25, 2005, the Court granted Savadera's request to inspect the pertinent documents in the determination of the shortages and submit her comment within 10 days from receipt thereof.

In a letter[31] dated March 30, 2005, Landicho made a request similar to Savadera's. The same was granted by the Court by a Resolution[32] dated May 10, 2005.

By letter[33] dated July 13, 2005, Savadera made another request this time that she be furnished copies of the audit report and other relevant documents. This was again granted by the Court in a Resolution[34] dated August 9, 2005.

In another letter[35] dated October 5, 2005, Landicho requested that she be given 30 more days to file a comment as she received an eviction notice from the Government Service Insurance System. This request was again granted by the Court in a Resolution[36] dated November 8, 2005.

By letter[37] dated September 25, 2007, Sayas inquired about the status of the case and requested a copy of a resolution, if any. She reiterated said request in her letter[38] dated October 4, 2007.

On October 16, 2007, this Court resolved to

(a) **DENY WITH FINALITY** the Letter (by way of motion for reconsideration of the resolution of October 19, 2004) dated November

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[30] *Id.* at 58-59.

[31] *Id.* at 62.

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

[33] *Id.* at 68.

[34] *Id.* at 69.

[35] *Id.* at 70.

[36] *Id.* at 74.

[37] *Id.* at 82.

[38] *Id.* at 107.

22, 2004 filed by Evelyn M. Landicho, Clerk III, RTC-OCC, Lipa City, and **REITERATE** the directive to file the required comment;

(b) **NOTE** the Letter dated September 25, 2007 filed by Concepcion Galotia-Sayas inquiring about the status of her case, and **GRANT** her request for a copy of [a] resolution in the above case, if any; and

(c) **GRANT** the Motion for Reconsideration of the resolution of October 19, 2004 filed by Concepcion Galotia-Sayas praying that the filing of the administrative and criminal cases against her be reconsidered.[39]

For failure of Landicho to submit her comment despite the extensions granted to her, the Court resolved to require her to show cause why she should not be disciplinarily dealt with.[40] Instead of complying, however, she wrote another letter requesting another 30 days extension. This request was denied by the Court, but the Court gave her a non-extendible period of five days within which to submit her comment.[41]

On September 16, 2008, Landicho finally submitted her comment.[42] She alleged that the controversy stemmed from the audit conducted by the Provincial Audit Group of Batangas City in 2001 when a shortage amounting to ₱230,000 was discovered. After the audit, since Savadera did not report for work, she was constrained to receive collections on Savadera's behalf. Her collections for the JDF amounted to ₱193,202.63 in check and ₱30,000 in cash. Landicho claimed that she immediately turned over the collections to Savadera when the latter went back to work.

Landicho also narrated that in a previous letter dated March 23, 2004 to the head of the audit team, John Ferrera, she admitted that she convinced someone to convert the ₱193,202.63 check to cash upon the request of Sayas and Savadera. She likewise

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[39] *Id.* at 90.

[40] *Id.* at 92.

[41] *Id.* at 94-96.

[42] *Id.* at 112-116.

admitted that she deposited the proceeds of the converted check and her other collections totaling ₱200,000 to her newly opened account in the Development Bank of the Philippines, Lipa City branch. Thereafter, she immediately issued a check payable to cash which was properly endorsed by Savadera with the understanding that such amount will cover the cash shortage of their office. Subsequently, the audit team from the CMO-OCA conducted an examination in March 2004 and to her biggest surprise the audit uncovered a shortage amounting to ₱1,212,086.33.

Landicho admitted having borrowed ₱80,000 from the cash collection but this was with Savadera's consent. She further pointed out that it has been the practice of people in their office to borrow from the collections and Savadera even kept a list of all the loans, among which was that of Sayas who obtained a loan of around ₱200,000 for the construction of her house.

As to the missing ORs, Landicho denied any knowledge of their whereabouts or the circumstances leading to their loss.

In a Resolution[43] dated September 30, 2008, this Court recalled paragraph (c) of the October 16, 2007 Resolution granting Sayas' motion to reconsider the directive to the Legal Office, OCA to file the appropriate criminal charges against her. We also required Savadera to submit a comment. To date however, no comment from Savadera has been filed as the notice to her was returned and the Court is yet to receive a report regarding her current address.

In its Memorandum[44] dated July 13, 2012, the OCA recommended that:

1. Atty. Celso M. Apusen, former Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas, be found **GUILTY** of Dishonesty and Grave Misconduct and all his retirement benefits be ordered forfeited in favor of the government;

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[43] *Id.* at 119-120.

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

2. Atty. Celso M. Apusen be directed to **RESTITUTE** the amount of ₱1,823,725.91[45] for the shortages incurred in the Fiduciary Fund, Judiciary Development Fund, and the General Fund. Further, the Financial Management Office, Office of the Court Administrator, be **DIRECTED** to apply the monetary value of the total earned leave credits of Atty. Apusen, dispensing with the documentary requirements, to the incurred shortage in the Fiduciary Fund in the Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas;

3. Ms. Donabel M. Savadera, Cash Clerk II, Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas be held administratively liable and be **DISMISSED** from the service effective immediately for Dishonesty and Grave Misconduct and that all her monetary benefits be ordered forfeited in favor of the Judiciary Development Fund, with prejudice to reemployment in any government office, including government-owned and controlled corporations;

4. Ms. Ma. Evelyn M. Landicho, Clerk III, Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas be held administratively liable and be **DISMISSED** from the service effective immediately for Dishonesty and Grave Misconduct and that all her monetary benefits be ordered forfeited in favor of the Judiciary Development Fund with prejudice to reemployment in any government office, including government-owned and controlled corporations;

5. Ms. Concepcion G. Sayas (now Concepcion Duma[n]geng Galotia), Social Worker, Office of the Clerk of Court, Regional Trial Court, Lipa City be held administratively liable and be **DISMISSED** from the service effective immediately for Dishonesty and Grave Misconduct and her retirement benefits be ordered forfeited in favor of the Judiciary Development Fund, with prejudice to reemployment in any government office, including government-owned and controlled corporations;

6. Mesdames Donabel M. Savadera, Ma. Evelyn M. Landicho and Concepcion G. Sayas (now Concepcion Duma[n]geng

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[45] The amount was arrived at after deducting the amount of ₱260,218.18 or the monetary value of Atty. Apusen's leave credits as of January 31, 2003 from his total accountabilities amounting to ₱2,083,944.09. *Id.* at 201-202.

Galotia) be directed to **RESTITUTE** the amount of ₱1,365,475.12[46] representing the shortages in the Judiciary Development Fund, Special Allowance for the Judiciary Fund and the General Fund. Further, the Financial Management Office, Office of the Court Administrator be **DIRECTED** to apply the monetary value of the total earned leave credits of Donabel M. Savadera, Ma. Evelyn M. Landicho and Concepcion G. Sayas (now Concepcion Duma[n]geng Galotia), dispensing with the documentary requirements, to the incurred shortage in the Judiciary Development Fund; and

7. The Legal Office, Office of the Court Administrator be **DIRECTED** to proceed with the filing of the appropriate criminal cases against Atty. Celso M. Apusen, Donabel M. Savadera, Ma. Evelyn M. Landicho and Concepcion G. Sayas (now Concepcion Duma[n]geng Galotia).[47]

As regards respondent Sarmiento, the OCA noted that records show that the Fiscal Monitoring Division, OCA previously cleared respondent Sarmiento of any financial accountability when she transferred to the Department of Justice on October 4, 2005 on account of the Joint Affidavit executed by Savadera, Sayas and Landicho on March 16, 2004 which absolved respondent Sarmiento from any financial accountability. Thus the OCA recommended that she be cleared of any liability in connection with the present administrative matter.

We agree with the recommendations of the OCA.

As to Atty. Apusen, we agree with the OCA that he failed to exercise his duties as clerk of court. As clerk of court, he is primarily accountable for all funds collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. As custodian of court funds, revenues, records, properties and premises, he

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[46] The amount was arrived at after deducting the monetary value of the leave credits of respondent Savadera (₱31,228.43), respondent Landicho (₱75,644.57), respondent Sayas (₱226,114.26) from the total amount of their accountabilities (₱1,698,462.38). *Id.*

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

is liable for any loss, shortage, destruction or impairment of said funds and properties.[48]

Despite a directive from the Court for him to restitute the shortages and account for the missing ORs discovered for the period over which he was accountable, he did not bother to file a comment to dispute the same. The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Hence, silence in such cases is almost always construed as implied admission of the truth thereof.[49] We can only interpret Atty. Apusen's continued silence as an acknowledgment of the truthfulness of the charges against him. Moreover, his failure to remit these collections upon demand by the Court constitutes *prima facie* evidence that he has put such missing funds to personal use.[50] Atty. Apusen's failure to comply with the order of restitution constitutes gross dishonesty[51] which this Court cannot countenance.

We likewise agree with the OCA's finding on Savadera's liability. Being a cash clerk, Savadera is an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court.[52] Clearly, she miserably failed in such responsibility upon the occurrence of the shortages. Moreover, like Atty. Apusen, after a mere denial of her liability on the incurred shortages after she received a copy of the October 19, 2004 Resolution, she did not anymore file a comment despite the fact that the Court granted her request to inspect the audit documents before she will file her comment. Worse, records show that she has already left her last known address

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[48] *Office of the Court Administrator v. Villanueva*, A.M. No. P-04-1819, March 22, 2010, 616 SCRA 257, 266-267.

[49] *Grefaldeo v. Judge Lacson*, 355 Phil. 266, 271 (1998).

[50] *Office of the Court Administrator v. Recio*, A.M. No. P-04-1813, May 31, 2011, 649 SCRA 552, 567.

[51] *Office of the Court Administrator v. Remoroza*, A.M. Nos. P-05-2083 & P-06-2263, September 6, 2011, 656 SCRA 740, 745.

[52] *Office of the Court Administrator v. Recio, supra* note 50, at 571.

and the Court is yet to receive an update as to her current address. We can only interpret this as Savadera's way of evading her liability. Her flight is a clear indication of her guilt.[53]

As to Landicho, though it was not among her official duties to receive court collections, this cannot exempt her from liability. Having handled court funds, she is deemed an accountable officer who should answer for the shortages that occurred.[54] Moreover, she admitted to having taken ₱80,000 from her collections, a clear case of malversation.

As to respondent Sayas, she cannot escape liability by simply claiming that she is a mere social worker who has no knowledge of accounting rules. While she shifts liability to Savadera and Landicho, she admitted that she was aware as early as February 2001 that there was a shortage. However, Sayas kept mum about the discovered shortage and did not report it to the court.

Time and again, we have held that no position demands greater moral righteousness and uprightness from its holder than a judicial office. Those connected with the dispensation of justice, from the highest official to the lowliest clerk, carry a heavy burden of responsibility. As frontliners in the administration of justice, they should live up to the strictest standards of honesty and integrity. They must bear in mind that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there.[55]

Respondents Apusen, Savadera, Landicho, and Sayas failed to offer a valid explanation as to how or why the shortages occurred or where the missing ORs are. Either they kept silent or just pointed fingers at each other. The long delay in the remittance of the court's funds, as well as the unexplained shortages that remained unaccounted for, raises grave doubts regarding their trustworthiness and integrity. Their failure to remit the funds

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[53] *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 531 (2005).

[54] See *Office of the Court Administrator v. Laya*, 550 Phil. 432, 443 (2007).

[55] *Office of the Court Administrator v. Nacuray*, 521 Phil. 32, 38 (2006).

in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time.[56] As provided under the Uniform Rules on Administrative Cases in the Civil Service, forfeiture of retirement benefits was likewise properly recommended by the OCA.

WHEREFORE, respondent Atty. Celso M. Apusen, former Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas is found liable for gross dishonesty and grave misconduct. In view of his retirement from the service, a fine of ₱20,000 is imposed on him. All his retirement benefits are **FORFEITED** in favor of the government, with prejudice to his reemployment in any branch or instrumentality of the government, including government-owned and -controlled corporations. He is further ordered to **RESTITUTE** the amount of ₱1,823,725.91 for the shortages incurred in the Fiduciary Fund, Judiciary Development Fund, and the General Fund. Further, the Financial Management Office, Office of the Court Administrator, is **DIRECTED** to apply the monetary value of the total earned leave credits of Atty. Apusen, dispensing with the documentary requirements, to the incurred shortage in the Fiduciary Fund in the Office of the Clerk of Court, Regional Trial Court, Lipa City.

Respondents Donabel M. Savadera, Cash Clerk II, Ma. Evelyn M. Landicho, Clerk III, and Concepcion G. Sayas (now Concepcion Dumangeng Galotia), Social Worker, all of the Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas, are found liable for gross dishonesty and grave misconduct and are **DISMISSED** from the service effective immediately. All their monetary benefits are **FORFEITED** in favor of the government and their dismissal is held to be with prejudice to reemployment in any government office, including government-owned and -controlled corporations. They are further ordered to **RESTITUTE** the amount of ₱1,365,475.12 representing the

[56] See *Office of the Court Administrator v. Caballero,* A.M. No. P-05-2064, March 2, 2010, 614 SCRA 21, 39.

shortages in the Judiciary Development Fund, Special Allowance for the Judiciary Fund and the General Fund. Further, the Financial Management Office, Office of the Court Administrator, is **DIRECTED** to apply the monetary value of the total earned leave credits of respondents Donabel M. Savadera, Ma. Evelyn M. Landicho and Concepcion G. Sayas (now Concepcion Dumangeng Galotia), dispensing with the documentary requirements, to the incurred shortage in the Judiciary Development Fund in the Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas. If the monetary value of their leave credits is insufficient, Savadera, Landicho and Sayas are **DIRECTED** to pay, jointly and severally, in cash the resulting deficiency.

The Legal Office, Office of the Court Administrator, is likewise **DIRECTED** to proceed with the filing of the appropriate criminal cases against Atty. Celso M. Apusen, Donabel M. Savadera, Ma. Evelyn M. Landicho and Concepcion G. Sayas (now Concepcion Dumangeng Galotia).

Atty. Sheila Angela P. Sarmiento is hereby **CLEARED** of any liability for the shortages incurred by Savadera, Landicho and Sayas in judiciary funds during her period as Officer-in-Charge, Office of the Clerk of Court, Regional Trial Court, Lipa City, Batangas.

This Decision is immediately **EXECUTORY**.

SO ORDERED.

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

Velasco, Jr., J., no part due to relationship to a party.

Perez, J., no part. Acted on matter as OCA.

EN BANC

[G.R. No. 195395. September 10, 2013]

ENGINEER MANOLITO P. MENDOZA, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; NO DENIAL OF DUE PROCESS WHERE A PARTY HAS BEEN DULY AFFORDED AN OPPORTUNITY TO EXPLAIN HIS SIDE AND SEEK RECONSIDERATION OF THE RULING HE ASSAILS.— The Commission on Audit issued the Notice of Disallowance/s on May 28, 2007. x x x. [C]opies of the Notice of Disallowance/s were received on May 29, 2007 by "the Agency Head," "Accountant," and "Persons Liable" with their signatures appearing beside the three designations. Petitioner Mendoza never disputed this fact. After his receipt of the Notice of Finality of COA Decision on August 27, 2009, petitioner Mendoza filed the Motion for Reconsideration dated September 10, 2009. The Commission on Audit gave due course to the Motion for Reconsideration and issued the assailed Decision two (2) years after the issuance of the Notice of Disallowance/s. It ruled that petitioner Mendoza's salary is covered by the Salary Standardization Law. These circumstances show that the Notice of Disallowance/s was served on the necessary officers in accordance with the 1997 Revised Rules of Procedure of the Commission on Audit. Moreover, this Court *En Banc* in *Gannapao v. Civil Service Commission* ruled that: Time and again, we have held that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. **In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard**. As long as a party was given the opportunity to defend his interests

in due course, he was not denied due process. Petitioner Mendoza was afforded due process despite his claim that he had never personally received a copy of the Notice of Disallowance/s. He was able to file the Motion for Reconsideration. The Commission gave due course to the Motion and ruled on the merits. Petitioner Mendoza, therefore, has been duly afforded an opportunity to explain his side and seek a reconsideration of the ruling he assails, which is the "essence of administrative due process." For these reasons, We rule that the Commission on Audit issued the "Notice of Finality of COA Decision" without grave abuse of discretion, and the Notice of Disallowance/s had become final and executory.

2. ID.; ID.; SALARY STANDARDIZATION LAW; RATIONALE AND COVERAGE THEREOF; REPUBLIC ACT NO. 6758 OR THE "COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989" GOVERNS THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN GOVERNMENT AND THE SAME APPLIES TO THE ENTIRE GOVERNMENT WITHOUT QUALIFICATION.— Legislation on the compensation and position classification of government employees reflects the policy of the State to provide "equal pay for substantially equal work" in government and "to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions." At present, Republic Act No. 6758 or the "Compensation and Position Classification Act of 1989" governs the compensation and position classification system in government. The Compensation and Position Classification System established under Republic Act No. 6758 applies to "all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions." The term "government" in Republic Act No. 6758 "refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government

units, and the armed forces." "Government-owned or controlled corporations and financial institutions," on the other hand, include "all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions." The coverage of Republic Act No. 6758 is comprehensive. In *Commission on Human Rights Employees' Association v. Commission on Human Rights*, this Court ruled that Republic Act No. 6758 applies to the entire government without qualification: The disputation of the Court of Appeals that the CHR is exempt from the long arm of the Salary Standardization Law is flawed considering that the coverage thereof, as defined above, **encompasses the entire gamut of government offices, *sans* qualification.**

3. ID.; ID.; ID.; GOVERNMENT ENTITIES EXEMPTED FROM THE SALARY STANDARDIZATION LAW.— Republic Act No. 6758 became effective on July 1, 1989. Since then, laws have been passed exempting some government entities from the Salary Standardization Law. These entities were allowed to create their own compensation and position classification systems that apply to their respective offices. x x x. In *Intia, Jr. v. Commission on Audit*, this Court affirmed the Philippine Postal Corporation's exemption from the Salary Standardization Law. However, the corporation should report the details of its salary and compensation system to the Department of Budget and Management. x x x. This Court in *Trade and Investment Development Corporation of the Philippines v. Civil Service Commission* recognized the Trade and Investment Development Corporation's exemption from the Salary Standardization Law. The Corporation should, however, "endeavor" to conform to the principles and modes of the Salary Standardization Law in making its own system of compensation and position classification. x x x. From 1995 to 2004, laws were passed exempting several government financial institutions from the Salary Standardization Law. Among these financial institutions are the Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines,

Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

4. ID.; ID.; ID.; THE PROVINCIAL WATER UTILITIES ACT OF 1973 (P.D. NO. 198); WATER UTILITIES ARE GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS CREATED PURSUANT TO PD 198, NOT RA NO. 10149, OTHERWISE KNOWN AS THE "GOCC GOVERNANCE ACT OF 2011".— Water utilities are government-owned or controlled corporations created pursuant to a special law, the Presidential Decree No. 198 or "the Provincial Water Utilities Act of 1973." This Court held in *Davao City Water District v. Civil Service Commission*: After a fair consideration of the parties' arguments coupled with a careful study of the applicable laws as well as the constitutional provisions involved, We rule against the petitioners and reiterate Our ruling in Tanjay case **declaring water districts government-owned or controlled corporations with original charter**. x x x In *Feliciano v. Commission on Audit*, this Court reiterated that local water districts are government-owned or controlled corporations existing pursuant to Presidential Decree No. 198 x x x. Water utilities are not covered by Republic Act No. 10149, otherwise known as the "GOCC Governance Act of 2011." This recognizes that despite being government-owned or controlled corporations, water utilities are governed by a special law, that is, Presidential Decree No. 198 or the "Provincial Water Utilities Act of 1973."

5. ID.; ID.; ID.; THE SALARY STANDARDIZATION LAW APPLIES TO ALL GOVERNMENT POSITIONS INCLUDING THOSE IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, WITHOUT QUALIFICATION, EXCEPT WHEN THE GOVERNMENT-OWNED OR CONTROLLED CORPORATION'S CHARTER EXEMPTS THE CORPORATION FROM THE COVERAGE OF THE LAW; PD NO. 198 DID NOT EXEMPT WATER UTILITIES FROM THE COVERAGE OF THE SALARY STANDARDIZATION LAW.— The Salary Standardization Law applies to all government positions, including those in government-owned or controlled corporations, without qualification. The exception to this rule

is when the government-owned or controlled corporation's charter specifically exempts the corporation from the coverage of the Salary Standardization Law. [W]e examine the provisions of Presidential Decree No. 198 exempting water utilities from the Salary Standardization Law. x x x. We are not convinced that Section 23 of Presidential Decree No. 198, as amended, or any of its provisions, exempts water utilities from the coverage of the Salary Standardization Law. In statutes subsequent to Republic Act No. 6758, Congress consistently provided not only for the power to fix compensation but also the agency's or corporation's exemption from the Salary Standardization Law. If Congress had intended to exempt water utilities from the coverage of the Salary Standardization Law and other laws on compensation and position classification, it could have expressly provided in Presidential Decree No. 198 an exemption clause similar to those provided in the respective charters of the Philippine Postal Corporation, Trade Investment and Development Corporation, Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation. Congress could have amended Section 23 of Presidential Decree No. 198 to expressly provide that the compensation of a general manager is exempted from the Salary Standardization Law. However, Congress did not. Section 23 was amended to emphasize that the general manager "shall not be removed from office, except for cause and after due process."

6. ID.; ID.; ID.; THE WATER UTILITY'S BOARD OF DIRECTORS HAS THE POWER TO DEFINE THE DUTIES AND FIX THE COMPENSATION OF A GENERAL MANAGER PROVIDED THE COMPENSATION FIXED MUST BE IN ACCORDANCE WITH THE POSITION CLASSIFICATION ITEM UNDER THE SALARY STANDARDIZATION LAW; THE MAXIMUM SALARY GRADE FOR A GENERAL MANAGER OF A GOVERNMENT-OWNED OR CONTROLLED CORPORATION IS SALARY GRADE 30.— This does not mean that water utilities cannot fix the compensation of their respective general managers.

Section 23 of Presidential Decree No. 198 clearly provides that a water utility's board of directors has the power to define the duties and fix the compensation of a general manager. However, the compensation fixed must be in accordance with the position classification system under the Salary Standardization Law. Section 5 of the law provides: **Section 5.** ***Position Classification System***. – The Position Classification System shall consist of classes of positions grouped into four main categories, namely: professional supervisory, professional non-supervisory, sub-professional supervisory, and sub-professional non-supervisory, and the rules and regulations for its implementation. x x x. Thus, a general manager's position will be classified under one of the categories in Section 5 of the Salary Standardization Law depending on the duties as defined by the board of directors. After determining the category to which a general manager's position belongs, the board of directors must set the salary compensation package within Salary Steps 1 to 8 of the appropriate salary grade. The salary grade assigned, however, cannot exceed Salary Grade 30 by virtue of Section 9 of the Salary Standardization Law, which reads: x x x. The rationale for setting the maximum salary grade for a general manager of a government-owned or controlled corporation to Salary Grade 30 is to maintain, as much as possible, the same salary of general managers across all government-owned or controlled corporations and financial institutions. All told, the general manager position of a water district is covered by the Salary Standardization Law. The Commission on Audit did not gravely abuse its discretion in disallowing petitioner Mendoza's compensation for exceeding the rate provided in the Salary Standardization Law.

7. ID.; ID.; ID.; THE EMPLOYEE IS NOT REQUIRED TO REFUND THE DISALLOWED AMOUNTS WHERE HE RECEIVED THE SAME IN GOOD FAITH.— Petitioner Mendoza argued that he received the disallowed amounts in good faith, relying on Section 23 of Presidential Decree No. 198. He cited the 2004 case of *De Jesus v. Commission on Audit* as his authority. In *De Jesus v. Commission on Audit*, members of the Metro Cariaga Water District board of directors questioned the Commission

on Audit's disallowance of certain allowances and bonuses they had received under the Local Water Utilities Administration Resolution No. 313, Series of 1995. Resolution No. 313 granted the board of directors of water utilities representation and transportation allowance (RATA), rice allowance, clothing allowance, Christmas bonus, productivity pay, and honorarium. This Court voided Local Water Utilities Administration Resolution No. 313 for being contrary to Section 13 of Presidential Decree No. 198, which only allows for *per diems*. x x x. However, We excused the refund of the disallowed amounts because at the time the board members had received the allowances and benefits, this Court had not yet promulgated *Baybay Water District v. Commission on Audit*. x x x The salaries petitioner Mendoza received were fixed by the Talisay Water District's board of directors pursuant to Section 23 of the Presidential Decree No. 198. Petitioner Mendoza had no hand in fixing the amount of compensation he received. Moreover, at the time petitioner Mendoza received the disputed amount in 2005 and 2006, there was no jurisprudence yet ruling that water utilities are not exempted from the Salary Standardization Law. Pursuant to *De Jesus v. Commission on Audit*, petitioner Mendoza received the disallowed salaries in good faith. He need not refund the disallowed amount.

APPEARANCES OF COUNSEL

Dennis M. Cortes for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The salary of a water district's general manager is covered by the Salary Standardization Law despite Section 23 of the Provincial Water Utilities Act of 1973. The law grants water districts the power to fix the compensation of their respective general managers, but it should be consistent with Republic

Act No. 6758 or the "Compensation and Position Classification Act of 1989."

We are asked in this Petition[1] for *Certiorari* to set aside respondent Commission on Audit's Decision[2] denying petitioner Manolito P. Mendoza's Motion for Reconsideration of the "Notice of Finality of COA Decision."[3] The Commission on Audit ordered petitioner Mendoza to restitute to the government amounts he had received illegally as salary, thus, violating the Salary Standardization Law.

Petitioner Mendoza is the general manager of Talisay Water District in Talisay City, Negros Occidental. The Water District was formed pursuant to Presidential Decree No. 198, otherwise known as the "Provincial Water Utilities Act of 1973."

The Commission on Audit disallowed a total amount of Three Hundred Eighty Thousand Two Hundred Eight Pesos (₱380,208.00) which Mendoza received as part of his salary as the Water District's general manager from 2005 to 2006.[4] The Commission found that petitioner Mendoza's salary as general manager "was not in consonance with the rate prescribed under [Republic Act No.] 6758, otherwise known as the Salary Standardization Law and the approved Plantilla of Position of the district."[5] The Commission also found that petitioner Mendoza's claim of salary was "not supported with an Appointment duly attested by the Civil Service Commission."[6] Payment to petitioner Mendoza was, therefore, "illegal."[7]

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[1] Petitioner filed a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.

[2] November 25, 2010; *Rollo*, pp. 9-15.

[3] July 6, 2009; *Rollo*, p. 26.

[4] This was reported by the Commission on Audit's Notice of Disallowance/s dated May 28, 2007; *Rollo*, pp. 24-25.

[5] *Rollo*, p. 24.

[6] *Id*.

[7] *Id*.

On July 6, 2009, the Commission on Audit issued the "Notice of Finality of COA Decision"[8] informing petitioner Mendoza of the finality of the Notice of Disallowance/s. The Commission then instructed the Talisay Water District cashier to withhold petitioner Mendoza's salaries corresponding to the amount disallowed and apply them in settlement of the audit disallowance in accordance with Rule XII, Section 3 of the Revised Rules of Procedure of the Commission on Audit.[9]

Petitioner Mendoza filed his Motion for Reconsideration[10] of the "Notice of Finality of COA Decision."[11] He assailed the finality of the Notice of Disallowance/s, arguing that he had not personally received a copy of this. This deprived him of the opportunity to answer the Notice immediately. He also argued that Section 23 of the Provincial Water Utilities Act of 1973 gives Talisay Water District board of directors the right to fix and increase his salary as general manager and is an exception to the Salary Standardization Law. Finally, he argued that he had relied on Section 23 in good faith. As such, he cannot be ordered to refund the salaries he had received.

The Commission on Audit denied petitioner Mendoza's Motion for Reconsideration for lack of merit.[12] It found that the Notice of Disallowance/s had been received by petitioner Mendoza's employee and ruled that petitioner Mendoza is deemed to have received the Notice of Disallowance/s constructively. It likened the service of the Notice of Disallowance/s to the service of summons. As a general rule, summons must be personally served on the person to whom it is directed, but substituted service is allowed in certain cases. The Commission also noted that "technical rules of procedure and evidence are not strictly applied"[13] in

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[8] *Id*. at 26.

[9] *Id*. at 27.

[10] September 10, 2009; *Rollo*, pp. 16-23.

[11] *Rollo*, p. 26.

[12] Decision dated November 25, 2010; *Rollo*, pp. 9-15.

[13] *Rollo*, p. 12.

administrative proceedings; therefore, petitioner Mendoza "cannot invoke the defense of technicality."[14]

On the merits, the Commission ruled that Section 23 of the Provincial Water Utilities Act is not an exception to the Salary Standardization Law. According to the Commission, Section 23 of Presidential Decree No. 198 "could be reconciled with the salary standardization policy of the [Salary Standardization Law]."[15] The authority of water districts to fix the salary of a general manager "is not a blanket authority to be exercised without regard to, or outside the strictures of, [Republic Act No.] 6758."[16]

The Commission on Audit determined petitioner Mendoza's proper salary package was "within Salary Steps (1 to 8) in the appropriate Salary Grade, depending on the Position Classification Category of the General Manager under Section 5 of [Republic Act No.] 6758."[17] The case of *Baybay Water District v. Commission on Audit*[18] cited by petitioner Mendoza does not apply to him. In *Baybay*, this Court held that only board members of local water districts are not covered by the Salary Standardization Law. The dispositive portion of its Decision[19] reads:

WHEREFORE, premises considered, the instant motion for reconsideration is **DENIED** for lack of merit. The ATL, Talisay Water District, Talisay City, is hereby directed to enforce the implementation of the FOA dated July 6, 2009 in accordance with the provisions of Section 23.4, Chapter V, of the 2009 Rules and Regulations on the Settlement of Accounts.[20]

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[14] *Id*.

[15] *Id*. at 13.

[16] *Id*.

[17] *Id*.

[18] 425 Phil. 326 (2002).

[19] November 25, 2010; *Rollo*, pp. 9-15.

[20] *Rollo*, p. 14.

On February 11, 2011, petitioner Mendoza filed this Petition[21] to set aside the Commission on Audit's Decision. He alleged that the Commission on Audit had committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the Decision.

In its Comment,[22] the Commission on Audit argued that the rules on personal service of summons are not strictly applied to administrative proceedings, and substantial compliance is sufficient. Considering that the "Agency Head" in petitioner Mendoza's office received the Notice of Disallowance/s, the receipt is sufficient to notify him of his salary's disallowance. At the very least, there was substantial compliance with the service of the Notice of Disallowance/s.

The Commission also argued that Section 23 of Presidential Decree No. 198 can be reconciled with the Salary Standardization Law. Although Section 23 grants a water district the power to fix the compensation of its general manager, this power is not absolute. The salary of a general manager is limited by the Salary Standardization Law to a grade of Salary Grade 30 maximum. The alleged good faith of petitioner Mendoza in relying on Section 23 does not excuse him from reimbursing the government the amounts unduly disbursed to him.

Petitioner Mendoza filed his Reply to Comment,[23] after which the parties filed their respective Memoranda.

The issues for resolution are the following:

(1) Whether the Notice of Disallowance/s became final and executory despite lack of personal service on petitioner Mendoza;

(2) Whether the salary of a water district's general manager is covered by the Salary Standardization Law; and

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[21] *Id*. at 3-8. Petitioner filed a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.

[22] *Id*. at 45-58.

[23] September 28, 2011; *Rollo*, pp. 64-66.

(3) Whether petitioner Mendoza's alleged good faith reliance on Section 23 of the Provincial Water Utilities Act of 1973 excuses him from reimbursing the government the amounts unduly disbursed to him.

The Petition is partly meritorious.

The Notice of Disallowance/s became final and executory.

Petitioner Mendoza argued that the Commission on Audit gravely abused its discretion in issuing the "Notice of Finality of COA Decision."[24] He stated that the Notice of Disallowance/s never became final and executory considering that he was never personally served a copy of the Notice.

Petitioner Mendoza is mistaken.

The Commission on Audit issued the Notice of Disallowance/s on May 28, 2007. The 1997 Revised Rules of Procedure of the Commission on Audit governed pleading and practice in the Commission during this period. Sections 5 and 6 of Rule IV state:

> Sec. 5. ***Number of Copies and Distribution***. - The report, Certificate of Settlement and Balances, notice of disallowances and charges, and order or decision of the Auditor shall be prepared in such number of copies as may be necessary for distribution to the following: (1) original to the head of agency being audited; (2) one copy to the Auditor for his record; (3) one copy to the Director who has jurisdiction over the agency of the government under audit; (4) other copies to the agency officials directly affected by the audit findings.
>
> Sec. 6. ***Finality of the Report, Certificate of Settlement and Balances, Order or Decision.*** - Unless a request for reconsideration in filed or an appeal is taken, the report, Certificate of Settlement and Balances, order or decision of the Auditor shall become final upon the expiration of six (6) months after notice thereof to the parties concerned.

In this case, copies of the Notice of Disallowance/s were received on May 29, 2007 by "the Agency Head," "Accountant,"

[24] *Rollo*, p. 26.

and "Persons Liable" with their signatures appearing beside the three designations.[25] Petitioner Mendoza never disputed this fact. After his receipt of the Notice of Finality of COA Decision on August 27, 2009, petitioner Mendoza filed the Motion for Reconsideration dated September 10, 2009. The Commission on Audit gave due course to the Motion for Reconsideration and issued the assailed Decision two (2) years after the issuance of the Notice of Disallowance/s. It ruled that petitioner Mendoza's salary is covered by the Salary Standardization Law.

These circumstances show that the Notice of Disallowance/s was served on the necessary officers in accordance with the 1997 Revised Rules of Procedure of the Commission on Audit.

Moreover, this Court *En Banc* in *Gannapao v. Civil Service Commission*[26] ruled that:

> Time and again, we have held that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. **In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard**. As long as a party was given the opportunity to defend his interests in due course, he was not denied due process.[27] (Emphasis supplied)

Petitioner Mendoza was afforded due process despite his claim that he had never personally received a copy of the Notice of Disallowance/s. He was able to file the Motion for Reconsideration. The Commission gave due course to the Motion and ruled on the merits. Petitioner Mendoza, therefore, has been duly afforded an opportunity to explain his side and seek a reconsideration of the ruling he assails, which is the "essence of administrative due process."[28]

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[25] *Id.* at 25.

[26] G.R. No. 180141, May 31, 2011, 649 SCRA 595.

[27] *Id.* at 603-604.

[28] *Id.* at 603.

For these reasons, We rule that the Commission on Audit issued the "Notice of Finality of COA Decision"[29] without grave abuse of discretion, and the Notice of Disallowance/s had become final and executory.

The salary of a water utility general manager is covered by the Salary Standardization Law.

To resolve whether water utilities are covered by the Salary Standardization Law, a discussion of the entities covered by and exempted from the Salary Standardization Law must be made.

A. Rationale and Coverage of the Salary Standardization Law

Legislation on the compensation and position classification of government employees reflects the policy of the State to provide "equal pay for substantially equal work"[30] in government and "to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."[31] At present, Republic Act No. 6758 or the "Compensation and Position Classification Act of 1989" governs the compensation and position classification system in government.[32]

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[29] *Rollo*, p. 26.

[30] Republic Act No. 6758 (1989), Sec. 2.

[31] Republic Act No. 6758 (1989), Sec. 2; Presidential Decree No. 985 (1976), Sec. 2.

[32] Republic Act No. 6758 (1989), Sec. 2 provides:

> Sec. 2. *Statement of Policy*. – It is hereby declared the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in the private sector for comparable work. For this purpose, the Department of Budget and Management (DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System, hereinafter referred to as the System, as provided for in Presidential Decree No. 985, as amended, that shall be applied for all government entities, as mandated by the Constitution.

The Compensation and Position Classification System established under Republic Act No. 6758 applies to "all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions."[33]

The term "government" in Republic Act No. 6758 "refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces."[34] "Government-owned or controlled corporations and financial institutions," on the other hand, include "all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions."[35]

The coverage of Republic Act No. 6758 is comprehensive. In *Commission on Human Rights Employees' Association v. Commission on Human Rights*,[36] this Court ruled that Republic Act No. 6758 applies to the entire government without qualification:

> The disputation of the Court of Appeals that the CHR is exempt from the long arm of the Salary Standardization Law is flawed considering that the coverage thereof, as defined above, **encompasses the entire gamut of government offices, *sans* qualification.**[37] (Emphasis supplied)

B. Government Entities Exempted from the Salary Standardization Law

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[33] Republic Act No. 6758 (1989), Sec. 4.

[34] *Id*.

[35] *Id*.

[36] 486 Phil. 509 (2004).

[37] *Id*. at 527.

Republic Act No. 6758 became effective on July 1, 1989. Since then, laws have been passed exempting some government entities from the Salary Standardization Law. These entities were allowed to create their own compensation and position classification systems that apply to their respective offices.

We examine some of these laws for Our guidance.

1. Philippine Postal Corporation

Sections 22 and 25 of Republic Act No. 7354 or the "Postal Service Act of 1992" state:

> Sec. 22. Merit System. — **The Corporation shall establish a human resources management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal of all personnel.** Such system shall aim to establish professionalism and excellence at all levels of the postal organization in accordance with sound principles of management.
>
> A progressive compensation structure, which shall be based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the Corporation's human resources development program. The Corporation, however, may grant across-the-board salary increase or modify its compensation structure as to result in higher salaries, subject to either of the following conditions:
>
> (a) there are evidences of prior improvement in employee productivity, measured by such quantitative indicators as mail volume per employee and delivery times.
>
> (b) a law raising the minimum wage has been enacted with application to all government employees or has the effect of classifying some positions in the postal service as below the floor wage.
>
> x x x x x x x x x
>
> Sec. 25. Exemption from Rules and Regulations of the Compensation and Position Classification Office. — All personnel and positions of the Corporation shall be governed by Section 22 hereof, and as such **shall be exempt from the coverage of the rules and regulations of the Compensation and Position Classification Office.** The Corporation, however, shall see to it that its own system conforms as closely as possible with that provided for under Republic Act No. 6758. (Emphasis supplied)

In *Intia, Jr. v. Commission on Audit*,[38] this Court affirmed the Philippine Postal Corporation's exemption from the Salary Standardization Law. However, the corporation should report the details of its salary and compensation system to the Department of Budget and Management.

First, it is conceded that the PPC, by virtue of its charter, R.A. No. 7354, has the power to fix the salaries and emoluments of its employees. This function, being lodged in the Postmaster General, the same must be exercised with the approval of the Board of Directors. This is clear from Sections 21 and 22 of said charter.

Petitioners correctly noted that since the PPC Board of Directors are authorized to approve the Corporation's compensation structure, it is also within the Board's power to grant or increase the allowances of PPC officials or employees. As can be gleaned from Sections 10 and 17 of P.D No. 985 (A Decree Revising the Position Classification and Compensation System in the National Government, and Integrating the Same), the term "compensation" includes salaries, wages, allowances, and other benefits.

x x x x x x x x x

While the PPC Board of Directors admittedly acted within its powers when it granted the RATA increases in question, the same should have first been reviewed by the DBM before they were implemented Sections 21, 22, and 25 of the PPC charter should be read in conjunction with Section 6 of P.D. No. 1597:

Sec 6. **Exemption from OCPC Rules and Regulations.** Agencies, positions or groups of officials and employees of the national government, including government-owned and controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. **Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details, following such specifications as may be prescribed by the President.** (Emphasis supplied).

[38] 366 Phil. 273 (1999).

x x x x x x x x x

As the Solicitor General correctly observed, there is no express repeal of Section 6, P.D. No. 1597 by RA No. 7354. Neither is there an implied repeal thereof because there is no irreconcilable conflict between the two laws. On the one hand, Section 25 of R.A. No. 7354 provides for the exemption of PPC from the rules and regulations of the CPCO. On the other hand, Section 6 of P.D. 1597 requires PPC to report to the President, through the DBM, the details of its salary and compensation system. **Thus, while the PPC is allowed to fix its own personnel compensation structure through its Board of Directors, the latter is required to follow certain standards in formulating said compensation system. One such standard is specifically stated in Section 25 of R.A. No. 7354.**[39] (Emphasis supplied)

2. Trade and Investment Development Corporation of the Philippines

The Trade and Investment Development Corporation of the Philippines is also exempted from the Salary Standardization Law as provided in Section 7 of Republic Act No. 8494:[40]

Sec. 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding.

All positions in TIDCORP shall be governed by a compensation and position classification system and qualification standards approved by TIDCORP's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the

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[39] *Id.* at 298-290; pp. 605-608..

[40] An Act Further Amending Presidential Decree No. 1080, As Amended, by Reorganizing And Renaming the Philippine Export and Foreign Loan Guarantee Corporation, Expanding Its Primary Purpose, and for Other Purposes, Republic Act No. 8494 (1998).

prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every four (4) years without prejudice to yearly merit reviews or increases based on productivity and profitability. **TIDCORP shall be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.** It shall, however, endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758. (Emphasis supplied)

This Court in *Trade and Investment Development Corporation of the Philippines v. Civil Service Commission*[41] recognized the Trade and Investment Development Corporation's exemption from the Salary Standardization Law. The Corporation should, however, "endeavor" to conform to the principles and modes of the Salary Standardization Law in making its own system of compensation and position classification.

The phrase "to endeavor" means "to devote serious and sustained effort" and "to make an effort to do." It is synonymous with the words to strive, to struggle and to seek. The use of "to endeavor" in the context of Section 7 of R.A. 8494 means that despite TIDCORP's exemption from laws involving compensation, position classification and qualification standards, it should still strive to conform as closely as possible with the principles and modes provided in R.A. 6758. The phrase "as closely as possible," which qualifies TIDCORP's duty "to endeavor to conform," **recognizes that the law allows TIDCORP to deviate from RA 6758, but it should still try to hew closely with its principles and modes.** Had the intent of Congress been to require TIDCORP to fully, exactly and strictly comply with R.A. 6758, it would have so stated in unequivocal terms. Instead, the mandate it gave TIDCORP was to endeavor to conform to the principles and modes of R.A. 6758, and not to the entirety of this law. (Emphasis supplied)

3. Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation

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[41] G.R. No. 182249, March 5, 2013.

From 1995 to 2004, laws were passed exempting several government financial institutions from the Salary Standardization Law. Among these financial institutions are the Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

This Court has taken judicial notice of this development in *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*:[42]

> Indeed, we take judicial notice that after the new BSP charter was enacted in 1993, Congress also undertook the amendment of the charters of the GSIS, LBP, DBP and SSS, and three other GFIs, from 1995 to 2004, *viz*:
>
> 1. R.A. No. 7907 (1995) for Land Bank of the Philippines (LBP);
> 2. R.A. No. 8282 (1997) for Social Security System (SSS);
> 3. R.A. No. 8289 (1997) for Small Business Guarantee and Finance Corporation, (SBGFC);
> 4. R.A. No. 8291 (1997) for Government Service Insurance System (GSIS);
> 5. R.A. No. 8523 (1998) for Development Bank of the Philippines (DBP);
> 6. R.A. No. 8763 (2000) for Home Guaranty Corporation (HGC); and
> 7. R.A. No. 9302 (2004) for Philippine Deposit Insurance Corporation (PDIC).

It is noteworthy, as petitioner points out, **that the subsequent charters of the seven other GFIs share this common *proviso*:** a blanket exemption of **all their employees** from the coverage of the SSL, expressly or impliedly, as illustrated below:

1. Land Bank of the Philippines (Republic Act No. 7907)

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[42] 487 Phil. 531 (2004).

Section 10. Section 90 of [Republic Act No. 3844] is hereby amended to read as follows:

Section 90. *Personnel.* –

xxx x x x xxx

All positions in the Bank shall be governed by a compensation, position classification system and qualification standards approved by the Bank's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. **The Bank shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.** It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758. (Emphasis supplied)

xxx x x x xxx

2. Social Security System (Republic Act No. 8282)

Section 1. [Amending Republic Act No. 1161, Section 3(c)]:

xxx x x x xxx

(c) The Commission, upon the recommendation of the SSS President, shall appoint an actuary and such other personnel as may [be] deemed necessary; fix their reasonable compensation, allowances and other benefits; prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: *Provided, however,* That the personnel of the SSS below the rank of Vice President shall be appointed by the SSS President: *Provided, further,* That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission; *Provided further,* That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: *Provided, finally,* **That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430.** (Emphasis supplied)

3. Small Business Guarantee and Finance Corporation (Republic Act No. 8289)

Section 8. [Amending Republic Act No. 6977, Section 11]:

(e) **notwithstanding the provisions of Republic Act No. 6758, and Compensation Circular No. 10, series of 1989** issued by the Department of Budget and Management, **the Board of Directors of [the Small Business Guarantee and Finance Corporation] shall have the authority to extend to the employees and personnel thereof the allowance and fringe benefits similar to those extended to and currently enjoyed by the employees and personnel of other government financial institutions.** (Emphases supplied)

4. Government Service Insurance System (Republic Act No. 8291)

Section 1. [Amending Section 43(d) of Presidential Decree No. 1146].

x x x x x x x x x

Sec. 43. *Powers and Functions of the Board of Trustees.* - The Board of Trustees shall have the following powers and functions:

x x x x x x x x x

(d) upon the recommendation of the President and General Manager, to approve the GSIS' organizational and administrative structures and staffing pattern, and to establish, fix, review, revise and adjust the appropriate compensation package for the officers and employees of the GSIS with reasonable allowances, incentives, bonuses, privileges and other benefits as may be necessary or proper for the effective management, operation and administration of the **GSIS, which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law and Republic Act No. 7430, otherwise known as the Attrition Law.** (Emphasis supplied)

x x x x x x x x x

5. Development Bank of the Philippines (Republic Act No. 8523)

Section 6. [Amending Executive Order No. 81, Section 13]:

Section 13. *Other Officers and Employees.* - The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and

responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. **The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standards. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).** (Emphasis supplied)

6. Home Guaranty Corporation (Republic Act No. 8763)

Section 9. *Powers, Functions and Duties of the Board of Directors*.

- The Board shall have the following powers, functions and duties:

x x x x x x x x x

(e) To create offices or positions necessary for the efficient management, operation and administration of the Corporation: *Provided*, That all positions in the Home Guaranty Corporation (HGC) shall be governed by a compensation and position classification system and qualifications standards approved by the Corporation's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities: *Provided, further,* **That the compensation plan shall be comparable with the prevailing compensation plans in the private sector and which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law, and from other laws, rules and regulations on salaries and compensations;** and to establish a Provident Fund and determine the Corporation's and the employee's contributions to the Fund; (Emphasis supplied)

x x x x x x x x x

7. Philippine Deposit Insurance Corporation (Republic Act No. 9302)

Section 2. Section 2 of [Republic Act No. 3591, as amended] is hereby further amended to read:

x x x x x x x x x

3.

x x x x x x x x x

A compensation structure, based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the Corporation's human resource development program: *Provided*, That all positions in the Corporation shall be governed by a compensation, position classification system and qualification standards approved by the Board based on a comprehensive job analysis and audit of actual duties and responsibilities. **The compensation plan shall be comparable with the prevailing compensation plans of other government financial institutions** and shall be subject to review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. **The Corporation shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.** It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758, as amended.[43] (Emphases supplied)

C. Water utilities are government-owned or controlled corporations created pursuant to a special law.

Water utilities are government-owned or controlled corporations created pursuant to a special law, the Presidential Decree No. 198 or "the Provincial Water Utilities Act of 1973." This Court held in *Davao City Water District v. Civil Service Commission*:[44]

After a fair consideration of the parties' arguments coupled with a careful study of the applicable laws as well as the constitutional provisions involved, We rule against the petitioners and reiterate Our ruling in Tanjay case **declaring water districts government-owned or controlled corporations with original charter**.

As early as *Baguio Water District v. Trajano, et al.*, (G.R. No. 65428, February 20, 1984, 127 SCRA 730), We already ruled **that a water district is a corporation created pursuant to a special law — P.D. No. 198, as amended**, and as such its officers and employees are covered by the Civil Service Law.

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[43] *Id.* at 568-577.

[44] 278 Phil. 605 (1991).

In another case (*Hagonoy Water District v. NLRC*, G.R. No. 81490, August 31, 1988, 165 SCRA 272), We ruled once again that local water districts are quasi-public corporations whose employees belong to the Civil Service. x x x.

Ascertained from a consideration of the whole statute, PD 198 is a special law applicable only to the different water districts created pursuant thereto. In all its essential terms, it is obvious that it pertains to a special purpose which is intended to meet a particular set of conditions and circumstances. The fact that said decree generally applies to all water districts throughout the country does not change the fact that PD 198 is a special law. Accordingly, this Court's resolution in Metro Iloilo case declaring PD 198 as a general legislation is hereby abandoned.

x x x x x x x x x

No consideration may thus be given to petitioners' contention that the operative act which created the water districts are the resolutions of the respective local sanggunians and that consequently, PD 198, as amended, cannot be considered as their charter.

It is to be noted that PD 198, as amended is the source of authorization and power to form and maintain a district. Section 6 of said decree provides:

> Sec. 6. *Formation of District*. — This Act is the source of authorization and power to form and maintain a district. Once formed, a district is subject to the provisions of this Act and not under the jurisdiction of any political subdivision. x x x.

Moreover, it must be observed that PD 198, [sic] contains all the essential terms necessary to constitute a charter creating a juridical person. x x x.

x x x x x x x x x

Noteworthy, the above quoted provisions of PD 198, as amended, are similar to those which are actually contained in other corporate charters. **The conclusion is inescapable that the said decree is in truth and in fact the charter of the different water districts for it clearly defines the latter's primary purpose and its basic organizational set-up. In other words, PD 198, as amended, is the very law which gives a water district juridical personality.** While it is true that a resolution of a local sanggunian is still necessary for

the final creation of a district, this Court is of the opinion that said resolution cannot be considered as its charter, the same being intended only to implement the provisions of said decree. In passing a resolution forming a water district, the local sanggunian is entrusted with no authority or discretion to grant a charter for the creation of a private corporation. It is merely given the authority for the formation of a water district, on a local option basis, to be exercised under and in pursuance of PD 198.[45] (Emphasis supplied)

In *Feliciano v. Commission on Audit*,[46] this Court reiterated that local water districts are government-owned or controlled corporations existing pursuant to Presidential Decree No. 198, thus:

LWDs exist by virtue of PD 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private corporations with a special charter is to admit that their existence is constitutionally infirm.

Unlike private corporations, which derive their legal existence and power from the Corporation Code, LWDs derive their legal existence and power from PD 198. Sections 6 and 25 of PD 198[14] provide:

> Section 6. Formation of District. — **This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.**

xxx x x x xxx

Clearly, LWDs exist as corporations only by virtue of PD 198, which **expressly confers on LWDs corporate powers**. Section 6 of PD 198 provides that LWDs "shall exercise the powers, rights and privileges given to private corporations under existing laws." Without PD 198, LWDs would have no corporate powers. Thus, PD 198

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[45] *Id.* at 610-616.

[46] 464 Phil. 439 (2004).

constitutes the special enabling charter of LWDs. **The ineluctable conclusion is that LWDs are government-owned and controlled corporations with a special charter.**[47] (Emphasis supplied)

Water utilities are not covered by Republic Act No. 10149, otherwise known as the "GOCC Governance Act of 2011."[48] This recognizes that despite being government-owned or controlled corporations, water utilities are governed by a special law, that is, Presidential Decree No. 198 or the "Provincial Water Utilities Act of 1973."

Given that water utilities are government-owned or controlled corporations existing under the Provincial Water Utilities Act of 1973, the question whether water utilities are covered by the Salary Standardization Law remains.

The Salary Standardization Law applies to all government positions, including those in government-owned or controlled corporations, without qualification.[49] The exception to this rule is when the government-owned or controlled corporation's charter specifically exempts the corporation from the coverage of the Salary Standardization Law. To resolve this case, We examine the provisions of Presidential Decree No. 198 exempting water utilities from the Salary Standardization Law. The petitioner asserts that it is Section 23 of Presidential Decree No. 198, as amended, which grants water utilities this exemption.

Section 23 of Presidential Decree No. 198, promulgated on May 25, 1973, was originally phrased as follows:

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[47] *Id*. at 455-457.

[48] Republic Act No. 10149 (2011), Sec. 4 states:

SEC. 4. Coverage.—This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, **but excluding** the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, **local water districts**, economic zone authorities and research institutions: Provided, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (Emphasis supplied)

[49] Republic Act No. 6758 (1989), Sec. 4.

Section 23. *Additional Officers*. - At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager, an auditor, and an attorney, and shall define their duties and fix their compensation. Said officers shall service at the pleasure of the board.

On April 2, 2004, Republic Act No. 9286 was passed amending certain provisions of Presidential Decree No. 198, including its Section 23, thus:

Sec. 23. *The General Manager*. - At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. **Said officer shall not be removed from office, except for cause and after due process.** (Emphasis supplied)

We are not convinced that Section 23 of Presidential Decree No. 198, as amended, or any of its provisions, exempts water utilities from the coverage of the Salary Standardization Law. In statutes subsequent to Republic Act No. 6758,[50] Congress

[50] An Act Amending Republic Act Numbered Three Thousand Five Hundred Ninety-One, as Amended, Otherwise Known as the "Charter Of The Philippine Deposit Insurance Corporation" and for Other Purposes, Republic Act No. 9302 (2004); Home Guaranty Corporation Act of 2000, Republic Act No. 8763 (2000); An Act Strengthening the Development Bank of the Philippines, Amending for the Purpose Executive Order No. 81, Republic Act No. 8523 (1998); An Act Regulating the Issuance and Use of Access Devices, Prohibiting Fraudulent Acts Committed Relative thereto, Providing Penalties and for Other Purposes, Republic Act No. 8484 (1998); An Act Amending Presidential Decree No. 1146, As Amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and for Other Purposes, Republic Act No. 8291 (1997); An Act to Strengthen the Promotion and Development of, and Assistance to Small and Medium Scale Enterprises, Amending for that Purpose Republic Act No. 6977, Otherwise Known as the "Magna Carta For Small Enterprises" and for Other Purposes, Republic Act No. 8289 (1997); An Act Further Strengthening the Social Security System Thereby Amending for this Purpose Republic Act No. 1161, as Amended, Otherwise Known as the Social Security Law, Republic Act No. 8282 (1997); An Act Amending Republic Act Numbered Thirty-Eight Hundred Forty-Four, as Amended, Otherwise Known as the "Code of Agrarian Reform in the Philippines," Republic Act No. 7907 (1995); The Postal Service Act of 1992, Republic Act No. 7354 (1992).

consistently provided not only for the power to fix compensation but also the agency's or corporation's exemption from the Salary Standardization Law. If Congress had intended to exempt water utilities from the coverage of the Salary Standardization Law and other laws on compensation and position classification, it could have expressly provided in Presidential Decree No. 198 an exemption clause similar to those provided in the respective charters of the Philippine Postal Corporation, Trade Investment and Development Corporation, Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

Congress could have amended Section 23 of Presidential Decree No. 198 to expressly provide that the compensation of a general manager is exempted from the Salary Standardization Law. However, Congress did not. Section 23 was amended to emphasize that the general manager "shall not be removed from office, except for cause and after due process."[51]

This does not mean that water utilities cannot fix the compensation of their respective general managers. Section 23 of Presidential Decree No. 198 clearly provides that a water utility's board of directors has the power to define the duties and fix the compensation of a general manager. However, the compensation fixed must be in accordance with the position classification system under the Salary Standardization Law. Section 5 of the law provides:

Section 5. ***Position Classification System***. – The Position Classification System shall consist of classes of positions grouped into four main categories, namely: professional supervisory, professional non-supervisory, sub-professional supervisory, and sub-professional non-supervisory, and the rules and regulations for its implementation.

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[51] This is without prejudice to *Baybay Water District v. Commission on Audit*, 425 Phil. 326 (2002) where this Court held that members of the board of directors of water utilities are not covered by the Salary Standardization Law.

Categorization of these classes of positions shall be guided by the following considerations:

(a) *Professional Supervisory Category*. – This category includes responsible positions of a managerial character involving the exercise of management functions such as planning, organizing, directing, coordinating, controlling and overseeing within delegated authority the activities of an organization, a unit thereof or of a group, requiring some degree of professional, technical or scientific knowledge and experience, application of managerial or supervisory skills required to carry out their basic duties and responsibilities involving functional guidance and control, leadership, as well as line supervision. These positions require intensive and thorough knowledge of a specialized field usually acquired from completion of a bachelor's degree or higher degree courses.

The positions in this category are assigned Salary Grade 9 to Salary Grade 33.

(b) *Professional Non-Supervisory Category*. – This category includes positions performing task which usually require the exercise of a particular profession or application of knowledge acquired through formal training in a particular field or just the exercise of a natural, creative and artistic ability or talent in literature, drama, music and other branches of arts and letters. Also included are positions involved in research and application of professional knowledge and methods to a variety of technological, economic, social, industrial and governmental functions; the performance of technical tasks auxiliary to scientific research and development; and in the performance of religious, educational, legal, artistic or literary functions.

These positions require thorough knowledge in the field of arts and sciences or learning acquired through completion of at least four (4) years of college studies.

The positions in this category are assigned Salary Grade 8 to Salary Grade 30.

(c) *Sub-Professional Supervisory Category*. – This category includes positions performing supervisory functions over a group of employees engaged in responsible work along technical, manual or clerical lines of work which are short of professional work, requiring training and moderate experience or lower training but considerable experience and knowledge of a limited subject matter or skills in arts, crafts or trades. These positions require knowledge acquired from

secondary or vocational education or completion of up to two (2) years of college education.

The positions in this category are assigned Salary Grade 4 to Salary Grade 18.

(d) *Sub-Professional Non-Supervisory Category*. – This category includes positions involves in structured work in support of office or fiscal operations or those engaged in crafts, trades or manual work. These positions usually require skills acquired through training and experience of completion of elementary education, secondary or vocational education or completion of up to two (2) years of college education.

The positions in this category are assigned Salary Grade 1 to Salary Grade 10.

Thus, a general manager's position will be classified under one of the categories in Section 5 of the Salary Standardization Law depending on the duties as defined by the board of directors. After determining the category to which a general manager's position belongs, the board of directors must set the salary compensation package within Salary Steps 1 to 8 of the appropriate salary grade. The salary grade assigned, however, cannot exceed Salary Grade 30 by virtue of Section 9 of the Salary Standardization Law, which reads:

Section 9. ***Salary Grade Assignments for Other Positions.*** - For positions below the Officials mentioned under Section 8 hereof and their equivalent, whether in the National Government, local government units, government-owned or controlled corporations or financial institutions, the Department of Budget and Management is hereby directed to prepare the Index of Occupational Services to be guided by the Benchmark Position Schedule prescribed hereunder and the following factors: (1) the education and experience required to perform the duties and responsibilities of the positions; (2) the nature and complexity of the work to be performed; (3) the kind of supervision received; (4) mental and/or physical strain required in the completion of the work; (5) nature and extent of internal and external relationships; (6) kind of supervision exercised; (7) decision-making responsibility; (8) responsibility for accuracy of records and reports; (9) accountability for funds, properties and equipment; and (10) hardship, hazard and personal risk involved in the job.

x x x x x x x x x

In no case shall the salary of the chairman, president, **general manager** or administrator, and the board of directors **of government-owned or controlled corporations and financial institutions exceed Salary Grade 30**: Provided, That the President may, in truly exceptional cases, approve higher compensation for the aforesaid officials. (Emphasis supplied)

The rationale for setting the maximum salary grade for a general manager of a government-owned or controlled corporation to Salary Grade 30 is to maintain, as much as possible, the same salary of general managers across all government-owned or controlled corporations and financial institutions.

All told, the general manager position of a water district is covered by the Salary Standardization Law. The Commission on Audit did not gravely abuse its discretion in disallowing petitioner Mendoza's compensation for exceeding the rate provided in the Salary Standardization Law.

Petitioner Mendoza is excused from refunding the disallowed amount due to his good faith.

Petitioner Mendoza argued that he received the disallowed amounts in good faith, relying on Section 23 of Presidential Decree No. 198. He cited the 2004 case of *De Jesus v. Commission on Audit*[52] as his authority.

In *De Jesus v. Commission on Audit*, members of the Metro Cariaga Water District board of directors questioned the Commission on Audit's disallowance of certain allowances and bonuses they had received under the Local Water Utilities Administration Resolution No. 313, Series of 1995. Resolution No. 313 granted the board of directors of water utilities representation and transportation allowance (RATA), rice allowance, clothing allowance, Christmas bonus, productivity pay, and honorarium. This Court voided Local Water Utilities Administration Resolution No. 313 for being contrary to Section

[52] 466 Phil. 912 (2004).

13 of Presidential Decree No. 198, which only allows for *per diems*. Section 13 of Presidential Decree No. 198 states:

> *Compensation.* – Each director shall receive a *per diem*, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive *per diems* in any given month in excess of the equivalent of the total *per diems* of four meetings in any given month. **No director shall receive other compensation for services to the district.**
>
> Any *per diem* in excess of ₱50 shall be subject to approval of the Administration. (Emphasis supplied)

However, We excused the refund of the disallowed amounts because at the time the board members had received the allowances and benefits, this Court had not yet promulgated *Baybay Water District v. Commission on Audit*.[53]

In *Baybay Water District v. Commission on Audit*, members of the water district's board of directors questioned Commission on Audit's disallowance of their representation, transportation allowance, and rice allowances. This Court affirmed the disallowance and ruled that under Section 18 of the Provincial Water Utilities Act of 1973, members of the board of directors of water districts are only entitled to *per diems* and nothing more.

> x x x Under §13 of this Decree, *per diem* is precisely intended to be the compensation of members of board of directors of water districts. Indeed, words and phrases in a statute must be given their natural, ordinary, and commonly-accepted meaning, due regard being given to the context in which the words and phrases are used. By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, and, in the same paragraph, providing "No director shall receive other compensation" than the amount provided for *per diems*, the law quite clearly indicates that directors of water districts are authorized to receive only the

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[53] *Baybay Water District v. Commission on Audit*, *supra* note 18.

per diem authorized by law and no other compensation or allowance in whatever form.[54]

The salaries petitioner Mendoza received were fixed by the Talisay Water District's board of directors pursuant to Section 23 of the Presidential Decree No. 198. Petitioner Mendoza had no hand in fixing the amount of compensation he received. Moreover, at the time petitioner Mendoza received the disputed amount in 2005 and 2006, there was no jurisprudence yet ruling that water utilities are not exempted from the Salary Standardization Law.

Pursuant to *De Jesus v. Commission on Audit*, petitioner Mendoza received the disallowed salaries in good faith. He need not refund the disallowed amount.

WHEREFORE, the Decision of the Commission on Audit dated November 25, 2010 is **AFFIRMED** with **MODIFICATION**. Petitioner Manolito P. Mendoza need not refund the disallowed amount of Three Hundred Eighty Thousand Two Hundred Eight Pesos (₱380,208.00).

SO ORDERED.

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

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[54] *Id*. at 337.

EN BANC

[G.R. No. 206987. September 10, 2013]

ALLIANCE FOR NATIONALISM AND DEMOCRACY (ANAD), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO PROSPER, THERE MUST BE A CLEAR SHOWING OF CAPRICE AND ARBITRARINESS IN THE EXERCISE OF DISCRETION; GRAVE ABUSE OF DISCRETION, EXPLAINED.— The only question that may be raised in a petition for *certiorari* under Section 2, Rule 64 of the Rules of Court is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction. For a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.

2. POLITICAL LAW; ELECTIONS; COMMISSION ON ELECTIONS (COMELEC); IN RE-EVALUATING THE QUALIFICATIONS OF THE PARTY-LIST ORGANIZATION, THE COMELEC NEED NOT CALL ANOTHER SUMMARY MEETING, FOR IT COULD RESORT TO DOCUMENTS AND OTHER PIECES OF EVIDENCE PREVIOUSLY SUBMITTED BY THE PARTY-LIST ORGANIZATION.— ANAD was already given the opportunity to prove its qualifications during the summary hearing of 23 August 2012, during which ANAD submitted documents and other pieces of evidence to establish said qualifications. In re-evaluating ANAD's qualifications in accordance with the parameters laid down in *Atong Paglaum, Inc. v. COMELEC*, the COMELEC need not have called another summary hearing.

The Comelec could, as in fact it did, readily resort to documents and other pieces of evidence previously submitted by petitioners in re-appraising ANAD's qualifications. After all, it can be presumed that the qualifications, or lack thereof, which were established during the summary hearing of 23 August 2012 continued until election day and even thereafter.

3. ID.; ID.; ID.; THE COMELEC'S FACTUAL FINDINGS, CONCLUSIONS, RULINGS AND DECISIONS RENDERED ON MATTERS FALLING WITHIN ITS COMPETENCE SHALL NOT BE INTERFERED WITH BY THE COURT IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION OR ANY JURISDICTIONAL INFIRMITY OR ERROR OF LAW.— As to ANAD's averment that the COMELEC erred in finding that it violated election laws and regulations, we hold that the COMELEC, being a specialized agency tasked with the supervision of elections all over the country, its factual findings, conclusions, rulings and decisions rendered on matters falling within its competence shall not be interfered with by this Court in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law. As found by the COMELEC, ANAD, for unknown reasons, submitted only three nominees instead of five, in violation of Sec. 8 of R.A. No. 7941 (*An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor*). Such factual finding of the COMELEC was based on the Certificate of Nomination presented and marked by petitioner during the 22 and 23 August 2012 summary hearings.

4. ID.; ID.; AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM AND APPROPRIATING FUNDS THEREFOR (R.A. NO. 7941); SECTION 8 THEREOF; A PARTY-LIST ORGANIZATION IS NOT ALLOWED TO SUBSTITUTE AND REPLACE ITS NOMINEES, OR TO SWITCH THE ORDER OF THE NOMINEES AFTER SUBMISSION OF THE LIST TO THE COMELEC; IMPORTANCE OF SECTION 8 OF R.A. NO. 7941, DISCUSSED.— Compliance with Section 8 of R.A. No. 7941 is essential as the said provision is a safeguard against arbitrariness. Section 8 of R.A. No. 7941 rids a party-list organization of the prerogative to substitute and replace its nominees, or even to switch the order of the nominees, after submission of the list to the COMELEC. In *Lokin, Jr. v. Comelec*,

the Court discussed the importance of Sec. 8 of R.A. No. 7941 in this wise: The prohibition is not arbitrary or capricious; neither is it without reason on the part of lawmakers. The COMELEC can rightly presume from the submission of the list that the list reflects the true will of the party-list organization. The COMELEC will not concern itself with whether or not the list contains the real intended nominees of the party-list organization, but will only determine whether the nominees pass all the requirements prescribed by the law and whether or not the nominees possess all the qualifications and none of the disqualifications. Thereafter, the names of the nominees will be published in newspapers of general circulation. Although the people vote for the party-list organization itself in a party-list system of election, not for the individual nominees, they still have the right to know who the nominees of any particular party-list organization are. The publication of the list of the party-list nominees in newspapers of general circulation serves that right of the people, enabling the voters to make intelligent and informed choices. In contrast, 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. The lawmakers' exclusion of such arbitrary withdrawal has eliminated the possibility of such circumvention.

5. ID.; ID.; COMELEC; COMELEC RESOLUTION NO. 9476; FAILURE TO SUBMIT A PROPER STATEMENT OF ELECTION CONTRIBUTIONS AND EXPENDITURES, A VIOLATION THEREOF.— [T]he COMELEC also noted ANAD's failure to submit a proper Statement of Contributions and Expenditures for the 2007 Elections, in violation of COMELEC Resolution No. 9476 x x x. As found by the COMELEC, ANAD failed to comply with the x x x requirements as the exhibits submitted by ANAD consisted mainly of a list of total contributions from other persons, a list of official receipts and amounts without corresponding receipts, and a list of expenditures based on order slips and donations without distinction as to whether the amounts listed were advanced subject to reimbursement or donated. This factual finding was neither contested nor rebutted by ANAD.

6. ID.; ID.; ID.; THE COMELEC HAS BROAD POWERS TO ASCERTAIN THE TRUE RESULTS OF THE ELECTION BY MEANS AVAILABLE TO IT, AND FOR THE ATTAINMENT THEREOF IT IS NOT STRICTLY BOUND BY THE RULES OF EVIDENCE.— We herein take the opportunity to reiterate the well-established principle that the rule that factual findings of administrative bodies will not be disturbed by the courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC – created and explicitly made independent by the Constitution itself – on a level higher than statutory administrative organs. The COMELEC has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence.

7. ID.; ID.; ID.; THE COMELEC MAY *MOTU PROPRIO* CANCEL, AFTER DUE NOTICE AND HEARING, THE REGISTRATION OF ANY PARTY-LIST ORGANIZATION IF IT VIOLATES OR FAILS TO COMPLY WITH LAWS, RULES OR REGULATIONS RELATING TO ELECTIONS.— As empowered by law, the COMELEC may *motu proprio* cancel, after due notice and hearing, the registration of any party-list organization if it violates or fails to comply with laws, rules or regulations relating to elections. Thus, we find no grave abuse of discretion on the part of the COMELEC when it issued the assailed Resolution dated 11 May 2013. In any event, the official tally results of the COMELEC show that ANAD garnered 200,972 votes. As such, even if petitioner is declared qualified and the votes cast for it are canvassed, statistics show that it will still fail to qualify for a seat in the House of Representatives.

APPEARANCES OF COUNSEL

Rolando C. Cipriano for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for *Certiorari* with Urgent Prayer for the Issuance of a Temporary Restraining Order and Writ of *Mandamus*, seeking to compel the Commission on Elections (COMELEC) to canvass the votes cast for petitioner Alliance for Nationalism and Democracy (ANAD) in the recently held 2013 Party-List Elections.

On 7 November 2012, the COMELEC *En Banc* promulgated a Resolution cancelling petitioner's Certificate of Registration and/or Accreditation on three grounds, to wit:[1]

I.

Petitioner ANAD does not belong to, or come within the ambit of, the marginalized and underrepresented sectors enumerated in Section 5 of R.A. No. 7941 and espoused in the cases of ***Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*** and ***Ang Ladlad LGBT Party v. Commission on Elections.***

II.

There is no proof showing that nominees Arthur J. Tariman and Julius D. Labandria are actually nominated by ANAD itself. The Certificate of Nomination, subscribed and sworn to by Mr. Domingo M. Balang, shows that ANAD submitted only the names of Pastor Montero Alcover, Jr., Baltaire Q. Balangauan and Atty. Pedro Leslie B. Salva. It necessarily follows, that having only three (3) nominees, ANAD failed to comply with the procedural requirements set forth in Section 4, Rule 3 of Resolution No. 9366.

III.

ANAD failed to submit its Statement of Contributions and Expenditures for the 2007 National and Local Elections as required by Section 14 of Republic Act No. 7166 ("R.A. No. 7166").

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[1] *Rollo*, p. 18.

ANAD went before this Court challenging the above-mentioned resolution. In *Atong Paglaum, Inc. v. Comelec*,[2] the Court remanded the case to the COMELEC for re-evaluation in accordance with the parameters prescribed in the aforesaid decision.

In the assailed Resolution dated 11 May 2013,[3] the COMELEC affirmed the cancellation of petitioner's Certificate of Registration and/or Accreditation and disqualified it from participating in the 2013 Elections. The COMELEC held that while ANAD can be classified as a sectoral party lacking in well-defined political constituencies, its disqualification still subsists for violation of election laws and regulations, particularly for its failure to submit at least five nominees, and for its failure to submit its Statement of Contributions and Expenditures for the 2007 Elections.

Hence, the present petition raising the issues of whether or not the COMELEC gravely abused its discretion in promulgating the assailed Resolution without the benefit of a summary evidentiary hearing mandated by the due process clause, and whether or not the COMELEC erred in finding that petitioner submitted only three nominees and that it failed to submit its Statement of Contributions and Expenditures in the 2007 Elections.[4]

We dismiss the petition.

The only question that may be raised in a petition for *certiorari* under Section 2, Rule 64 of the Rules of Court is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction. For a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion.[5]

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[2] G.R. No. 203766, 8 April 2013.

[3] *Rollo*, pp. 17-22.

[4] *Id.* at 4.

[5] *Dela Cruz v. COMELEC*, G.R. No. 192221, 13 November 2012, 685 SCRA 347, 359.

"Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[6]

ANAD claims that the COMELEC gravely abused its discretion when it promulgated the assailed Resolution without giving ANAD the benefit of a summary evidentiary hearing, thus violating its right to due process. It is to be noted, however, that ANAD was already afforded a summary hearing on 23 August 2013, during which Mr. Domingo M. Balang, ANAD's president, authenticated documents and answered questions from the members of the COMELEC pertinent to ANAD's qualifications.[7]

ANAD, nonetheless, insists that the COMELEC should have called for another summary hearing after this Court remanded the case to the COMELEC for re-evaluation in accordance with the parameters laid down in *Atong Paglaum, Inc. v. Comelec*. This is a superfluity.

ANAD was already given the opportunity to prove its qualifications during the summary hearing of 23 August 2012, during which ANAD submitted documents and other pieces of evidence to establish said qualifications. In re-evaluating ANAD's qualifications in accordance with the parameters laid down in *Atong Paglaum, Inc. v. COMELEC*, the COMELEC need not have called another summary hearing. The Comelec could, as in fact it did,[8] readily resort to documents and other pieces of evidence previously submitted by petitioners in re-appraising ANAD's qualifications. After all, it can be presumed

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[6] *Beluso v. Comelec*, G.R. No. 180711, 22 June 2010, 621 SCRA 450, 456.

[7] *Rollo*, p. 18.

[8] *Id.* at 68.

that the qualifications, or lack thereof, which were established during the summary hearing of 23 August 2012 continued until election day and even thereafter.

As to ANAD's averment that the COMELEC erred in finding that it violated election laws and regulations, we hold that the COMELEC, being a specialized agency tasked with the supervision of elections all over the country, its factual findings, conclusions, rulings and decisions rendered on matters falling within its competence shall not be interfered with by this Court in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law.[9]

As found by the COMELEC, ANAD, for unknown reasons, submitted only three nominees instead of five, in violation of Sec. 8 of R.A. No. 7941 (*An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor*).[10] Such factual finding of the COMELEC was based on the Certificate of Nomination presented and marked by petitioner during the 22 and 23 August 2012 summary hearings.[11]

Compliance with Section 8 of R.A. No. 7941 is essential as the said provision is a safeguard against arbitrariness. Section 8 of R.A. No. 7941 rids a party-list organization of the prerogative to substitute and replace its nominees, or even to switch the order of the nominees, after submission of the list to the COMELEC.

In *Lokin, Jr. v. Comelec,*[12] the Court discussed the importance of Sec. 8 of R.A. No. 7941 in this wise:

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[9] *Dela Cruz v. COMELEC, supra* note 5 at 359.

[10] Sec. 8. Nomination of Party-List Representatives. – Each registered party, organization or coalition shall submit to the Commission 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.

[11] *Rollo*, p. 73; footnote 21 of Comelec's Comment.

[12] G.R. Nos. 179431-32 and 180443, 22 June 2010, 621 SCRA 385, 408-409.

The prohibition is not arbitrary or capricious; neither is it without reason on the part of lawmakers. The COMELEC can rightly presume from the submission of the list that the list reflects the true will of the party-list organization. The COMELEC will not concern itself with whether or not the list contains the real intended nominees of the party-list organization, but will only determine whether the nominees pass all the requirements prescribed by the law and whether or not the nominees possess all the qualifications and none of the disqualifications. Thereafter, the names of the nominees will be published in newspapers of general circulation. Although the people vote for the party-list organization itself in a party-list system of election, not for the individual nominees, they still have the right to know who the nominees of any particular party-list organization are. The publication of the list of the party-list nominees in newspapers of general circulation serves that right of the people, enabling the voters to make intelligent and informed choices. In contrast, 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. The lawmakers' exclusion of such arbitrary withdrawal has eliminated the possibility of such circumvention.

Moreover, the COMELEC also noted ANAD's failure to submit a proper Statement of Contributions and Expenditures for the 2007 Elections, in violation of COMELEC Resolution No. 9476, *viz*:

Rule 8, Sec. 3. Form and contents of statements. – The statement required in next preceding section shall be in writing, subscribed and sworn to by the candidate or by the treasurer of the party. It shall set forth in detail the following:

a. The amount of contribution, the date of receipt, and the full name, profession, business, taxpayer identification number (TIN) and exact home and business address of the person or entity from whom the contribution was received; (See Schedule of Contributions Received, Annex "G")

b. The amount of every expenditure, the date thereof, the full name and exact address of the person or entity to whom payment was made, and the purpose of the expenditure; (See Schedule of Expenditures, Annex "H")

A Summary Report of Lawful Expenditure categorized according to the list specified above shall be submitted by the candidate or party treasurer within thirty (30) days after the day of the election. The prescribed form for this Summary Report is hereby attached to these Rules as Annex "H-1".

c. Any unpaid obligation, its nature and amount, the full name and exact home and business address of the person or entity to whom said obligation is owing; and (See Schedule of Unpaid Obligations, Annex "I")

d. If the candidate or treasurer of the party has received no contribution, made no expenditure, or has no pending obligation, the statement shall reflect such fact;

e. And such other information that the Commission may require.

The prescribed form for the Statement of Election Contributions and Expenses is attached to these Rules as Annex "F". The Schedules of Contributions and Expenditures (Annexes "G" and "H", respectively) should be supported and accompanied by certified true copies of official receipts, invoices and other similar documents.

An incomplete statement, or a statement that does not contain all the required information and attachments, or does not conform to the prescribed form, shall be considered as not filed and shall subject the candidate or party treasurer to the penalties prescribed by law.

As found by the COMELEC, ANAD failed to comply with the above-mentioned requirements as the exhibits submitted by ANAD consisted mainly of a list of total contributions from other persons, a list of official receipts and amounts without corresponding receipts, and a list of expenditures based on order slips and donations without distinction as to whether the amounts listed were advanced subject to reimbursement or donated.[13] This factual finding was neither contested nor rebutted by ANAD.

We herein take the opportunity to reiterate the well-established principle that the rule that factual findings of administrative bodies will not be disturbed by the courts of justice except when there is absolutely no evidence or no substantial evidence

[13] *Rollo*, p. 75; footnote 24 of Comelec's Comment.

in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC – created and explicitly made independent by the Constitution itself – on a level higher than statutory administrative organs. The COMELEC has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence.[14]

As empowered by law, the COMELEC may *motu proprio* cancel, after due notice and hearing, the registration of any party-list organization if it violates or fails to comply with laws, rules or regulations relating to elections.[15] Thus, we find no grave abuse of discretion on the part of the COMELEC when it issued the assailed Resolution dated 11 May 2013.

In any event, the official tally results of the COMELEC show that ANAD garnered 200,972 votes.[16] As such, even if petitioner is declared qualified and the votes cast for it are canvassed, statistics show that it will still fail to qualify for a seat in the House of Representatives.

WHEREFORE, premises considered, the Court Resolves to **DISMISS** the Petition, finding no grave abuse of discretion on the part of the Commission on Elections.

SO ORDERED.

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

Velasco, Jr., J., no part.

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[14] *Mastura v. Comelec,* G.R. No. 124521, 29 January 1998, 285 SCRA 493, 499.

[15] Section 6, R.A. No. 7941.

[16] NBOC Resolution No. 0008-13, *In the Matter of the Proclamation of Additional Winning Party-List Groups, Organizations and Coalitions in Connection with the 13 May 2013 Automated National and Local Elections,* promulgated on 28 May 2013.

SECOND DIVISION

[A.C. No. 9860. September 11, 2013]

JOSEPHINE L. OROLA, MYRNA L. OROLA, MANUEL L. OROLA, MARY ANGELYN OROLA-BELARGA, MARJORIE MELBA OROLA-CALIP, and KAREN OROLA, *complainants, vs.* **ATTY. JOSEPH ADOR RAMOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY, RULE 15.03 CANON 15; CONFLICT OF INTERESTS; CONCEPT THEREOF, EXPLAINED; LAWYERS HAVE THE DUTY NOT ONLY TO KEEP INVIOLATE THE CLIENT'S CONFIDENCE, BUT ALSO TO AVOID THE APPEARANCE OF TREACHERY AND DOUBLE-DEALING FOR ONLY THEN CAN LITIGANTS BE ENCOURAGED TO ENTRUST THEIR SECRETS TO THEIR LAWYERS, WHICH IS OF PARAMOUNT IMPORTANCE IN THE ADMINISTRATION OF JUSTICE.— Rule 15.03 of the Code reads: CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS. Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of **all concerned** given after a full disclosure of the facts. Under the afore-cited rule, it is explicit that a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. The prohibition is founded on the principles of public policy and good taste. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice. In *Hornilla v. Salunat* (*Hornilla*), the Court explained the concept of conflict of interest, to wit: **There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing**

parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.

2. ID.; ID.; ID.; ID.; THE IMMUTABLE DUTY OF THE LAWYER TO PROTECT THE CLIENT'S INTERESTS COVERS ONLY MATTERS THAT HE PREVIOUSLY HANDLED FOR THE FORMER CLIENT AND NOT FOR MATTERS THAT AROSE AFTER THE LAWYER-CLIENT RELATIONSHIP HAS TERMINATED; RESPONDENT-LAWYER FOUND GUILTY OF VIOLATION OF THE RULE ON CONFLICT OF INTERESTS.— It must, however, be noted that a lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated. Applying the x x x principles, the Court agrees with the IBP's finding that respondent represented conflicting interests and, perforce, must be held administratively liable therefor. Records reveal that respondent was the collaborating counsel not only for Maricar as claimed by him, but for all the Heirs of Antonio in Special Proceeding No. V-3639. In the course thereof, the Heirs of Trinidad and the Heirs of Antonio succeeded in removing Emilio as administrator for having committed acts prejudicial to their interests. Hence, when respondent proceeded to represent Emilio

for the purpose of seeking his reinstatement as administrator in the same case, he clearly worked against the very interest of the Heirs of Antonio – particularly, Karen – in violation of the above-stated rule.

3. ID.; ID.; ID.; ID.; PROHIBITION AGAINST REPRESENTING CONFLICTING INTERESTS IS ABSOLUTE AND THE RULE APPLIES EVEN IF THE LAWYER HAS ACTED IN GOOD FAITH AND WITH NO INTENTION TO REPRESENT CONFLICTING INTERESTS.— Respondent's justification that no confidential information was relayed to him cannot fully exculpate him for the charges against him since the rule on conflict of interests, as enunciated in *Hornilla*, provides an absolute prohibition from representation with respect to opposing parties in the same case. In other words, a lawyer cannot change his representation from one party to the latter's opponent in the same case. That respondent's previous appearances for and in behalf of the Heirs of Antonio was only a friendly accommodation cannot equally be given any credence since the aforesaid rule holds even if the inconsistency is remote or merely probable or even if the lawyer has acted in good faith and with no intention to represent conflicting interests.

4. ID.; ID.; ID.; ID.; THE LAWYER MUST OBTAIN THE WRITTEN CONSENT OF ALL CONCERNED BEFORE HE MAY ACT AS MEDIATOR, CONCILIATOR OR ARBITRATOR IN SETTLING DISPUTES; A LAWYER WHO ACTS AS MEDIATOR, CONCILIATOR OR ARBITRATOR CANNOT REPRESENT ANY OF THE PARTIES TO IT.— Neither can respondent's asseveration that his engagement by Emilio was more of a mediator than a litigator and for the purpose of forging a settlement among the family members render the rule inoperative. In fact, even on that assertion, his conduct is likewise improper since Rule 15.04, Canon 15 of the Code similarly requires the lawyer to obtain the written consent of all concerned before he may act as mediator, conciliator or arbitrator in settling disputes. Irrefragably, respondent failed in this respect as the records show that respondent was remiss in his duty to make a full disclosure of his impending engagement as Emilio's counsel to all the Heirs of Antonio – particularly, Karen – and equally secure their express written consent before consummating the same. Besides, it must be pointed out that a lawyer who acts as such in settling a dispute cannot represent

any of the parties to it. Accordingly, for respondent's violation of the aforestated rules, disciplinary sanction is warranted.

5. ID.; ID.; ID.; ID.; THREE (3) MONTHS SUSPENSION FROM THE PRACTICE OF LAW IMPOSED UPON A COUNSEL FOR REPRESENTING CONFLICTING INTERESTS IN VIOLATION OF RULE 15.03, CANON 15 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; THE DECISION OF THE IBP BOARD OF GOVERNORS IN DISCIPLINARY PROCEEDINGS MUST STATE THE FACTS AND THE REASONS ON WHICH THE SAME IS BASED, AND ITS MODIFICATION OF THE RECOMMENDED PENALTY MUST BE AMPLY JUSTIFIED.— In this case, the penalty recommended by the Investigating Commissioner was increased from severe reprimand to a suspension of six (6) months by the IBP Board of Governors in its Resolution No. XVIII-2008-641. However, the Court observes that the said resolution is bereft of any explanation showing the bases of the IBP Board of Governors' modification; as such, it contravened Section 12(a), Rule 139-B of the Rules which specifically mandates that "[t]he decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based." Verily, the Court looks with disfavor the change in the recommended penalty without any ample justification therefor. To this end, the Court is wont to remind the IBP Board of Governors of the importance of the requirement to announce in plain terms its legal reasoning, since the requirement that its decision in disciplinary proceedings must state the facts and the reasons on which the same is based is akin to what is required of courts in promulgating their decisions. The reasons for handing down a penalty occupy no lesser station than any other portion of the *ratio.* In the foregoing light, the Court finds the penalty of suspension from the practice of law for a period of three (3) months to be more appropriate.

APPEARANCES OF COUNSEL

Alan Contreras for complainants.
Yngcong and Yngcong Law Office for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a disbarment complaint[1] filed against respondent Atty. Joseph Ador Ramos (respondent) for his violation of Rule 15.03, Canon 15 (Rule 15.03) of the Code of Professional Responsibility (Code) and Section 20(e), Rule 138 of the Rules of Court (Rules).

The Facts

Complainants Josephine, Myrna, Manuel, (all surnamed Orola), Mary Angelyn Orola-Belarga (Mary Angelyn), and Marjorie Melba Orola-Calip (Marjorie) are the children of the late Trinidad Laserna-Orola (Trinidad), married to Emilio Q. Orola (Emilio).[2]

Meanwhile, complainant Karen Orola (Karen) is the daughter of Maricar Alba-Orola (Maricar) and Antonio L. Orola (Antonio), the deceased brother of the above-named complainants and the son of Emilio.[3]

In the settlement of Trinidad's estate, pending before the Regional Trial Court of Roxas City, Branch 18 (RTC) and docketed as Special Proceeding No. V-3639, the parties were represented by the following: (*a*) Atty. Roy M. Villa (Atty. Villa) as counsel for and in behalf of Josephine, Myrna, Manuel, Mary Angelyn, and Marjorie (Heirs of Trinidad); (*b*) Atty. Ely F. Azarraga, Jr. (Atty. Azarraga) as counsel for and in behalf of Maricar, Karen, and the other heirs[4] of the late Antonio (Heirs of Antonio), **with respondent as collaborating counsel**; and (*c*) Atty. Aquiliana Brotarlo as counsel for and in behalf of Emilio, the initially appointed administrator of Trinidad's estate. In the course of the proceedings, the Heirs of Trinidad and the Heirs of Antonio moved for the removal of Emilio as

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[1] *Rollo*, pp. 1-7.

[2] *Id.* at 1.

[3] *Id.*

[4] See *id.* at 40.

administrator and, in his stead, sought the appointment of the latter's son, Manuel Orola, which the RTC granted in an Order[5] dated September 20, 2007 (RTC Order). Subsequently, or on October 10, 2007, respondent filed an Entry of Appearance as collaborating counsel for Emilio in the same case and moved for the reconsideration of the RTC Order.[6]

Due to the respondent's new engagement, complainants filed the instant disbarment complaint before the Integrated Bar of the Philippines (IBP), claiming that he violated: (*a*) Rule 15.03 of the Code, as he undertook to represent conflicting interests in the subject case;[7] and (*b*) Section 20(e), Rule 138 of the Rules, as he breached the trust and confidence reposed upon him by his clients, the Heirs of Antonio.[8] Complainants further claimed that while Maricar, the surviving spouse of Antonio and the mother of Karen, consented to the withdrawal of respondent's appearance, the same was obtained only on October 18, 2007, or after he had already entered his appearance for Emilio on October 10, 2007.[9] In this accord, respondent failed to disclose such fact to all the affected heirs and, as such, was not able to obtain their written consent as required under the Rules.[10]

For his part, respondent refuted the abovementioned charges, contending that he never appeared as counsel for the Heirs of Trinidad or for the Heirs of Antonio. He pointed out that the records of the case readily show that the Heirs of Trinidad were represented by Atty. Villa, while the Heirs of Antonio were exclusively represented by Atty. Azarraga.[11] He averred that he only accommodated Maricar's request to temporarily

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[5] *Id.* at 10-16. Penned by Presiding Judge Charlito F. Fantilanan.

[6] *Id.* at 17-22.

[7] *Id.* at 3.

[8] *Id.* at 4.

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

[10] *Id.* at 3.

[11] *Id.* at 39.

appear on her behalf as their counsel of record could not attend the scheduled June 16 and July 14, 2006 hearings and that his appearances thereat were free of charge.[12] In fact, he obtained Maricar's permission for him to withdraw from the case as no further communications transpired after these two hearings. Likewise, he consulted Maricar before he undertook to represent Emilio in the same case.[13] He added that he had no knowledge of the fact that the late Antonio had other heirs and, in this vein, asserted that no information was disclosed to him by Maricar or their counsel of record at any instance.[14] Finally, he clarified that his representation for Emilio in the subject case was more of a mediator, rather than a litigator,[15] and that since no settlement was forged between the parties, he formally withdrew his appearance on December 6, 2007.[16] In support of his assertions, respondent submitted the affidavits of Maricar[17] and Atty. Azarraga[18] relative to his limited appearance and his consultation with Maricar prior to his engagement as counsel for Emilio.

The Recommendation and Action of the IBP

In the Report and Recommendation[19] dated September 15, 2008 submitted by IBP Investigating Commissioner Jose I. De La Rama, Jr. (Investigating Commissioner), respondent was found guilty of representing conflicting interests only with respect to Karen as the records of the case show that he never acted as counsel for the other complainants. The Investigating Commissioner observed that while respondent's withdrawal of appearance was with the express conformity of Maricar, respondent nonetheless failed to obtain the consent of Karen,

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[12] *Id.*

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

[14] *Id.* at 40.

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

[16] *Id.* at 42.

[17] *Id.* at 47.

[18] *Id.* at 50.

[19] *Id.* at 246-257.

who was already of age and one of the Heirs of Antonio, as mandated under Rule 15.03 of the Code.[20]

On the other hand, the Investigating Commissioner held that there was no violation of Section 20, Rule 138 of the Rules as complainants themselves admitted that respondent "did not acquire confidential information from his former client nor did he use against the latter any knowledge obtained in the course of his previous employment."[21] Considering that it was respondent's first offense, the Investigating Commissioner found the imposition of disbarment too harsh a penalty and, instead, recommended that he be severely reprimanded for his act with warning that a repetition of the same or similar acts would be dealt with more severely.[22]

The IBP Board of Governors adopted and approved with modification the aforementioned report in its Resolution No. XVIII-2008-641[23] dated December 11, 2008 (Resolution No. XVIII-2008-641), finding the same to be fully supported by the evidence on record and the applicable laws and rules but imposed against respondent the penalty of six (6) months suspension from the practice of law.

Respondent's motion for reconsideration[24] was denied in IBP Resolution No. XX-2013-17[25] dated January 3, 2013.

The Issue Before the Court

The sole issue in this case is whether or not respondent is guilty of representing conflicting interests in violation of Rule 15.03 of the Code.

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[20] *Id.* at 254-255.

[21] *Id.* at 254.

[22] *Id.* at 257.

[23] *Id.* at 245.

[24] *Id.* at 258-262. Dated April 20, 2009.

[25] *Id.* at 276.

The Court's Ruling

The Court concurs with the IBP's finding that respondent violated Rule 15.03 of the Code, but reduced the recommended period of suspension to three (3) months.

Rule 15.03 of the Code reads:

CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of **all concerned** given after a full disclosure of the facts. (Emphasis supplied)

Under the afore-cited rule, it is explicit that a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. The prohibition is founded on the principles of public policy and good taste.[26] It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.[27] In *Hornilla v. Salunat*[28] (*Hornilla*), the Court explained the concept of conflict of interest, to wit:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used.

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[26] *Quiambao v. Bamba,* A.C. No. 6708, August 25, 2005, 468 SCRA 1, 9-10. (Citation omitted)

[27] *Id.* at 10.

[28] A.C. No. 5804, July 1, 2003, 405 SCRA 220.

Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.[29] (Emphasis supplied; citations omitted)

It must, however, be noted that a lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated.[30]

Applying the above-stated principles, the Court agrees with the IBP's finding that respondent represented conflicting interests and, perforce, must be held administratively liable therefor.

Records reveal that respondent was the collaborating counsel not only for Maricar as claimed by him, but for all the Heirs of Antonio in Special Proceeding No. V-3639. In the course thereof, the Heirs of Trinidad and the Heirs of Antonio succeeded in removing Emilio as administrator for having committed acts prejudicial to their interests. Hence, when respondent proceeded to represent Emilio for the purpose of seeking his reinstatement as administrator in the same case, he clearly worked against the very interest of the Heirs of Antonio – particularly, Karen – in violation of the above-stated rule.

Respondent's justification that no confidential information was relayed to him cannot fully exculpate him for the charges against him since the rule on conflict of interests, as enunciated

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[29] *Id.* at 223.

[30] *Palm v. Iledan, Jr.*, A.C. No. 8242, October 2, 2009, 602 SCRA 12, 20.

in *Hornilla*, provides an absolute prohibition from representation with respect to opposing parties in the same case. In other words, a lawyer cannot change his representation from one party to the latter's opponent in the same case. That respondent's previous appearances for and in behalf of the Heirs of Antonio was only a friendly accommodation cannot equally be given any credence since the aforesaid rule holds even if the inconsistency is remote or merely probable or even if the lawyer has acted in good faith and with no intention to represent conflicting interests.[31]

Neither can respondent's asseveration that his engagement by Emilio was more of a mediator than a litigator and for the purpose of forging a settlement among the family members render the rule inoperative. In fact, even on that assertion, his conduct is likewise improper since Rule 15.04,[32] Canon 15 of the Code similarly requires the lawyer to obtain the written consent of all concerned before he may act as mediator, conciliator or arbitrator in settling disputes. Irrefragably, respondent failed in this respect as the records show that respondent was remiss in his duty to make a full disclosure of his impending engagement as Emilio's counsel to all the Heirs of Antonio – particularly, Karen – and equally secure their express written consent before consummating the same. Besides, it must be pointed out that a lawyer who acts as such in settling a dispute cannot represent any of the parties to it.[33] Accordingly, for respondent's violation of the aforestated rules, disciplinary sanction is warranted.

In this case, the penalty recommended by the Investigating Commissioner was increased from severe reprimand to a suspension of six (6) months by the IBP Board of Governors in its Resolution No. XVIII-2008-641. However, the Court observes that the said resolution is bereft of any explanation

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[31] *Heirs of Falame v. Baguio*, A.C. No. 6876, March 7, 2008, 548 SCRA 1, 12-13.

[32] Rule 15.04 - A lawyer may, with the written consent of all concerned, act as mediator, conciliator or arbitrator in settling disputes.

[33] *Lim, Jr. v. Villarosa*, A.C. No. 5303, June 15, 2006, 490 SCRA 494, 513.

showing the bases of the IBP Board of Governors' modification; as such, it contravened Section 12(a), Rule 139-B of the Rules which specifically mandates that "[t]he decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based."[34] Verily, the Court looks with disfavor the change in the recommended penalty without any ample justification therefor. To this end, the Court is wont to remind the IBP Board of Governors of the importance of the requirement to announce in plain terms its legal reasoning, since the requirement that its decision in disciplinary proceedings must state the facts and the reasons on which the same is based is akin to what is required of courts in promulgating their decisions. The reasons for handing down a penalty occupy no lesser station than any other portion of the *ratio*.[35]

In the foregoing light, the Court finds the penalty of suspension from the practice of law for a period of three (3) months to be more appropriate taking into consideration the following factors: ***first***, respondent is a first time offender; ***second***, it is undisputed that respondent merely accommodated Maricar's request out of *gratis* to temporarily represent her only during the June 16 and July 14, 2006 hearings due to her lawyer's unavailability; ***third***, it is likewise undisputed that respondent had no knowledge that the late Antonio had any other heirs aside from Maricar whose consent he actually acquired (albeit shortly after his first appearance as counsel for and in behalf of Emilio), hence, it can be said that he acted in good faith; and ***fourth***, complainants admit that respondent did not acquire confidential information from the Heirs of Antonio nor did he use against them any

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[34] SEC. 12. *Review and decision by the Board of Governors.* – (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report.

[35] *Quiambao v. Bamba, supra* note 26, at 15-16.

knowledge obtained in the course of his previous employment, hence, the said heirs were not in any manner prejudiced by his subsequent engagement with Emilio. Notably, in *Ilusorio-Bildner v. Lokin, Jr.*,[36] the Court similarly imposed the penalty of suspension from the practice of law for a period of three months to the counsel therein who represented parties whose interests are hostile to his other clients in another case.

WHEREFORE, respondent Atty. Joseph Ador Ramos is hereby held **GUILTY** of representing conflicting interests in violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of three (3) months, with **WARNING** that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. MTJ-07-1683. September 11, 2013]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. SANTIAGO E. SORIANO, former Acting Presiding Judge, Municipal Trial Court in Cities, San Fernando City, La Union, and Presiding Judge, Municipal Trial Court, Naguilian, La Union,** *respondent.*

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[36] See A.C. No. 6554, December 14, 2005, 477 SCRA 634, 647.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; CHARGE OF UNDUE DELAY IN RENDERING A DECISION; INEXCUSABLE FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY, WARRANTING THE IMPOSITION OF AN ADMINISTRATIVE SANCTION ON THE DEFAULTING JUDGE.— Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary mandates judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Similarly, Rule 3.05, Canon 3 of the Code of Judicial Conduct exhorts judges to dispose of the court's business promptly and to decide cases within the required periods. Section 15(1), Article VIII of the Constitution provides that all cases and matters must be decided or resolved by the lower courts within three months from the date of submission of the last pleading. x x x. Judge Soriano has been remiss in the performance of his judicial duties. Judge Soriano's unreasonable delay in deciding cases and resolving incidents and motions, and his failure to decide the remaining cases before his compulsory retirement constitutes gross inefficiency which cannot be tolerated. As held in numerous cases, inexcusable failure to decide cases within the reglementary period constitutes gross inefficiency, warranting the imposition of an administrative sanction on the defaulting judge.

2. ID.; ID.; ID.; ID.; UNDUE DELAY IN RENDERING A DECISION IS A LESS SERIOUS CHARGE PUNISHABLE BY SUSPENSION OR A FINE.— Undue delay in rendering a decision or order is classified as a less serious charge under Section 9, Rule 140 of the Rules of Court. It is punishable by (1) suspension from office without salary and other benefits for not less than one month nor more than three months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.

3. ID.; ID.; ID.; ID.; A JUDGE SHOULD ORGANIZE AND SUPERVISE THE COURT PERSONNEL TO ENSURE THE PROMPT AND EFFICIENT DISPATCH OF BUSINESS, AND MUST REQUIRE AT ALL TIMES THE OBSERVANCE OF HIGH STANDARDS OF PUBLIC SERVICE AND FIDELITY.— Judge Soriano's inefficiency in managing his caseload was compounded by gross

negligence as evinced by the loss of the records of at least four cases which could no longer be located or reconstituted despite diligent efforts by his successor. Judge Soriano was responsible for managing his court efficiently to ensure the prompt delivery of court services, especially the speedy disposition of cases. Under Rule 3.08, Canon 3 of the Code of Judicial Conduct, a judge is mandated to diligently discharge administrative responsibilities and maintain professional competence in court management. Furthermore, a judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity. Judge Soriano failed in this respect.

4. ID.; ID.; ID.; CHARGE OF GROSS IGNORANCE OF THE LAW; A JUDGE WHO HAS AUTOMATICALLY RETIRED FROM SERVICE COULD NO LONGER EXERCISE ON THE DAY OF HIS RETIREMENT THE FUNCTIONS AND DUTIES OF HIS OFFICE INCLUDING THE AUTHORITY TO DECIDE AND PROMULGATE CASES; GROSS IGNORANCE OF THE LAW AND GROSS INEFFICIENCY ARE PUNISHABLE BY A FINE OF ₱40,000.00.— [T]he Court finds Judge Soriano guilty of gross ignorance of the law. As found by the OCA, Judge Soriano decided 12 cases on 25 July 2006, which was the day his compulsory retirement took effect. Section II, Article VIII of the Constitution states that judges shall hold office during good behavior until they reach the age of 70 years or become incapacitated to discharge the duties of their office. Thus, Judge Soriano was automatically retired from service effective 25 July 2006, and he could no longer exercise on that day the functions and duties of his office, including the authority to decide and promulgate cases. Gross ignorance of the law is classified as a serious charge under Section 8(9), Rule 140 of the Rules of Court and is punishable by a fine of more than ₱20,000 but not exceeding ₱40,000. For gross inefficiency and gross ignorance of the law, the Court finds sufficient the OCA's recommended fine of ₱40,000, which will be taken from the amount previously withheld from Judge Soriano's retirement benefits.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from the judicial audit conducted from 22 March 2004 to 5 April 2004 in the Municipal Trial Court (MTC) of Naguilian, La Union, and the Municipal Trial Court in Cities (MTCC), Branch 2 of San Fernando City, La Union, where retired Judge Santiago E. Soriano (Judge Soriano) was then the Presiding Judge and Acting Presiding Judge, respectively.

The Facts

In connection with the judicial audit and inventory of pending cases in the MTCC, Branch 2, San Fernando City, La Union and in the MTC, Naguilian, La Union, the Office of the Court Administrator (OCA)[1] directed Judge Soriano to decide the enumerated cases submitted for decision which were already beyond the reglementary period to decide. The judicial audit team found that in the MTCC, Branch 2, San Fernando City, La Union, out of the 59 cases submitted for decision, 57 cases were already beyond the reglementary period to decide. A similar finding was made in the MTC, Naguilian, La Union wherein out of 41 cases submitted for decision, 39 cases were already beyond the reglementary period to decide.

MTCC, Branch 2, San Fernando City, La Union

In a letter dated 1 September 2004, Judge Soriano, as Acting Presiding Judge of MTCC, San Fernando, La Union, submitted to the OCA a tabulated report of the status of cases, in compliance with the directive in the Memorandum dated 2 July 2004.

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[1] OCA Memoranda dated 1 and 2 July 2004 signed by then Deputy Court Administrator Jose P. Perez (now a member of this Court) addressed to Judge Soriano as Presiding Judge of MTC, Naguilian, La Union, and as Acting Presiding Judge of MTCC. Branch 2, San Fernando City, La Union, respectively.

The OCA issued another Memorandum dated 7 January 2005 addressed to Judge Soriano, noting that 51 cases still remain unresolved. The OCA then directed Judge Soriano to decide the remaining unresolved cases and to resolve the pending motions or incidents in the other cases.

Judge Soriano submitted another tabulated report of the cases in his letter dated 28 April 2005. He requested for an extension of 60 days to decide and resolve the remaining cases and unresolved motions, which the OCA granted.

MTC, Naguilian, La Union

In a November 2004 Memorandum, then Court Administrator Presbitero J. Velasco, Jr.[2] directed Judge Soriano, as Presiding Judge of MTC, Naguilian, La Union, to decide the cases submitted for decision which were already beyond the reglementary period to decide, and to take appropriate action on cases which have not been acted upon, including those with pending motions. In another November 2004 Memorandum, then Court Administrator Velasco directed Ms. Rosie M. Novencido, OIC Clerk of Court of MTC, Naguilian, La Union, to explain why the records of the listed cases could not be located.

Ms. Novencido explained in a letter sent to the OCA that before she was designated OIC Clerk of Court on 5 August 2002, there was no inventory of records. She stated that the cases listed were filed long before she was designated as OIC and that despite diligent efforts by the entire staff, they could not locate the records of the listed cases.

On 25 July 2006, Judge Soriano compulsorily retired from service. In his letter dated 28 July 2006, Judge Soriano submitted an inventory of pending cases and the cases submitted for decision at the MTC, Naguilian, La Union.

In a Resolution dated 1 August 2007, the Court resolved to:

1.TREAT the Report of the Judicial Audit Team as an administrative complaint, and to RE-DOCKET the same as a regular administrative matter against respondent Judge;

[2] Now a member of this Court.

2. DEEM AS SATISFACTORY the explanation of Ms. Rosie M. Novencido, then OIC Clerk of Court, MTC, Naguilian, La Union, and consider the matter under consideration CLOSED and TERMINATED insofar as Ms. Novencido is concerned;

3. DIRECT Hon. Asuncion F. Mandia, Acting Presiding Judge, MTC, Naguilian, La Union, and the Clerk of Court thereof to inform the Court, thru the Office of DCA Perez, of the STATUS of the following cases, to wit: Crim. Case Nos. 2345-B, 2169, 2188, 2203, 2211, 2217, 2218, 2240, 2251, 2257, 2345, 2365, 2366, 2526, 2590, 2768, 2801, 2849, 3367, 3378 and 3988, found during the audit conducted of the MTC, Naguilian, La Union (from 22 March to 5 April 2004) as "cannot be located" and to cause the reconstitution of the missing records, if any, and submit proof of the reconstitution thereof, all within sixty (60) days from notice; and

4. REQUIRE Judge Santiago E. Soriano to comment on the Report of the Judicial Audit Team within ten (10) days from notice.[3]

In his letter dated 4 October 2007, Judge Soriano stated that he had already decided most of the cases enumerated in the Resolution, except those cases which were missing during the term of Clerk of Court Teresita Bravo. Judge Soriano requested for one month to verify the cases still undecided, which the Court granted in a Resolution dated 5 December 2007.

Meanwhile, in a letter dated 15 November 2007, incumbent Presiding Judge Romeo M. Atillo, Jr., of MTC, Naguilian, La Union, informed the Court that aside from Criminal Case No. 2211, reconstitution was no longer possible for the other missing records.

On 9 November 2009, Judge Soriano wrote a letter to the Deputy Court Administrator, requesting for the release of his retirement benefits. Judge Soriano stated that the Court could withhold a portion of his retirement benefits to answer for whatever administrative penalty he might incur in the administrative matter against him.

The Court, in a Resolution dated 24 March 2010, allowed the release of Judge Soriano's retirement benefits provided

[3] *Rollo*, pp. 910-911.

that the amount of ₱40,000 be withheld pending resolution of this administrative matter. The Court also directed Judge Soriano to show cause why he should not be held in contempt of court for his failure to submit his report on the undecided cases as directed in the Resolutions dated 5 December 2007 and 6 October 2008.

Judge Soriano apologized to the Court through his letter dated 21 May 2010, explaining that he neglected to submit the report on the undecided cases because he knew that his branch clerk of court already submitted to the OCA copies of the decided cases.

The Court, in a Resolution dated 21 July 2010, noted Judge Soriano's explanation and required him to submit the report on the undecided cases within ten days from notice.

Judge Soriano requested for an extension of 15 days to submit the required report, which the Court granted. Judge Soriano eventually submitted to the Court the required report, with the request that the contempt charge against him be dismissed and the ₱40,000 deducted from his retirement benefits be returned.

In a Resolution dated 14 September 2011, the Court resolved to:

> 1. DIRECT the OCA to: (a) VERIFY the present status of the cases left undecided, the incidents or motions left unresolved, and the dormant cases left unacted upon, all by Judge Santiago E. Soriano at the MTC, Naguilian and MTCC, San Fernando City, both in the province of La Union; and (b) SUBMIT to the Court a report thereon within fifteen (15) days from receipt of the information required; and
>
> 2. NOTE the letter dated 15 November 2007 of Judge Romeo M. Atillo, Jr., MTC, Naguilian, La Union, and DIRECT Judge Atillo to SUBMIT within fifteen (15) days from notice a written report to the Court, through the OCA, on any further development regarding the reported missing case records.[4]

Meanwhile, in a letter dated 3 September 2012, Judge Soriano prayed for the early resolution of this administrative matter

[4] *Id.* at 1313.

and requested that his monthly pension be released, considering that he should have received his monthly pension beginning 25 July 2011, five years after he compulsorily retired on 25 July 2006 at the age of 70 years old.

The OCA's Report and Recommendation

In its Memorandum dated 3 January 2013, the OCA stated its findings as reported in its Memorandum dated 9 July 2012, thus:

Municipal Trial Court, Naguilian, La Union

1. Of the sixteen (16) undecided cases listed above, four (4) cases, namely, Criminal Case No. 4289, Civil Case Nos. 286 and 287, and LRC No. 002-02, were actually decided by Judge Santiago E. Soriano before he retired compulsorily on July 25, 2006, but all beyond the mandated period; four (4) cases namely, Criminal Case Nos. 3300, 3361, 3927 and 4274, remain undecided up to the present and the respective records thereof are missing and could no longer be found; two (2) cases, namely, Criminal Case Nos. 3663 and 3664, were decided jointly by Acting Presiding Judge Asuncion F. Mandia; five (5) cases, namely, Criminal Case Nos. 2834, 4001, 4002, 4149 and 4154, were decided by Judge Romeo M. Atillo, Jr.; and Criminal Case No. 3922 was reported to have been decided on July 11, 2006, but no copy of the decision was attached to the letter-report;

2. Of the five (5) cases with unresolved incidents or motions listed above, the incidents in four (4) cases, namely, Criminal Case Nos. 3347 and 3351, SP No. 01-03 and Civil Case No. 192, were resolved by Judge Soriano before his compulsory retirement; and the incident, *i.e.*, motion for new trial, in Civil Case No. 282 remains unresolved up to the present; and

3. The records of two (2) of the dormant cases listed above, namely, Criminal Case No. 4117 and Civil Case No. 210, are missing and could no longer be found. All the other dormant cases have already been disposed of by Judge Atillo, Jr.

Municipal Trial Court in Cities, Branch 2, San Fernando City, La Union

1. Of the twenty-seven (27) undecided cases listed above, two (2) cases, namely, Criminal Case No. 31268 and Civil Case No. 3864, were actually decided by Judge Soriano before his compulsory retirement

but beyond the mandated period, and the remaining cases were decided or disposed of by Judge Corpuz;

2. With respect to the two (2) cases with unresolved incidents or motions listed above, Civil Case No. 3851 was decided by Judge Corpuz on October 28, 2008, but it was not reported whether the subject motion for reconsideration of the July 10, 2003 Order declaring defendant in default, which was submitted for resolution on September 24, 2003, was resolved; and the motion for reconsideration of the June 26, 2003 Order in LRC No. N-95-04, which was submitted for resolution on January 21, 2004, was ordered denied by Judge Corpuz on September 15, 2006; and

3. With respect to the two (2) dormant cases listed above, namely, Civil Case No. 3487 and LRC No. N-95-67, both were dismissed by Judge Corpuz on September 29, 2005 and October 11, 2006, respectively.

xxx x x x xxx

The result of the verification of the status of the cases earlier found to have been left undecided by retired Judge Soriano at the MTC, Naguilian and MTCC, Branch 2, San Fernando City, both in the province of La union, showing that he failed to decide a total of thirty-six (36) cases submitted for decision, which were already all due for decision at the time he compulsorily retired on July 25, 2006, confirms our findings against retired Judge Soriano in our March 11, 2011 Memorandum. Worse, the records in four (4) of said cases could no longer be accounted for and were confirmed by Judge Atillo to be missing and beyond recovery. The thirty-two (32) other cases were decided by the judges who succeeded retired Judge Soriano in the MTC, Naguilian and MTCC, Branch 2, San Fernando City, both in the Province of La Union.[5]

The OCA also noted that Judge Soriano decided 12 cases on 25 July 2006, which was the day his compulsory retirement took effect. The OCA stressed that when Judge Soriano reached the compulsory retirement age of 70 on 25 July 2006, he is considered automatically retired on that date and could no longer exercise the powers and functions of his office, particularly promulgation of decisions.

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[5] *Id.* at 1611-1613.

On Judge Soriano's request for the release of his monthly pension beginning 25 July 2011, the OCA found no legal impediment thereto. The OCA stated that when Judge Soriano retired from the Judiciary on 25 July 2006, he had rendered a total of 41 years, 7 months, and 24 days in government service, thus, entitling him to receive gratuity benefits granted under Republic Act No. 910[6] (RA 910), as amended by Republic Act No. 9946[7] (RA 9946).

In conclusion, the OCA recommended that:

1. Ret. Judge Santiago E. Soriano, formerly of the Municipal Trial Court, Naguilian, La Union as its Presiding Judge and of the Municipal Trial Court in Cities as its Acting Presiding Judge, be found GUILTY of Gross Inefficiency and Gross Ignorance of the Law and be FINED in the amount of Php40,000.00, to be taken from the amount earlier withheld from his retirement benefits; and

2. the annuity payable monthly to retired Judge Soriano under R.A. 910, as amended, beginning on July 25, 2011, be RELEASED immediately.[8]

The Ruling of the Court

The Court agrees with the findings and recommendation of the OCA.

Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary mandates judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Similarly, Rule 3.05, Canon 3 of the Code of Judicial Conduct exhorts judges to dispose of the court's business promptly and to decide cases

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[6] An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Provisions hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six.

[7] An Act Granting the Additional Retirement, Survivorship, and other Benefits to Members of the Judiciary, Amending for the Purpose Republic Act No. 910, as Amended, Providing Funds Therefor and for other Purposes.

[8] *Rollo*, p. 1615.

within the required periods. Section 15(1), Article VIII of the Constitution provides that all cases and matters must be decided or resolved by the lower courts within three months from the date of submission of the last pleading.

In this case, the judicial audit team found that out of the 59 cases submitted for decision in the MTCC, Branch 2, San Fernando City, La Union, 57 cases were already beyond the reglementary period to decide. A similar finding was made in the MTC, Naguilian, La Union wherein out of 41 cases submitted for decision, 39 cases were already beyond the reglementary period to decide. The OCA then directed Judge Soriano to decide the remaining unresolved cases and to resolve the pending motions or incidents in the other cases. However, Judge Soriano still failed to decide a total of thirty-six (36) cases submitted for decision in the MTC and MTCC combined, which were already all due for decision at the time he compulsorily retired on 25 July 2006.

Clearly, Judge Soriano has been remiss in the performance of his judicial duties. Judge Soriano's unreasonable delay in deciding cases and resolving incidents and motions, and his failure to decide the remaining cases before his compulsory retirement constitutes gross inefficiency which cannot be tolerated. As held in numerous cases, inexcusable failure to decide cases within the reglementary period constitutes gross inefficiency, warranting the imposition of an administrative sanction on the defaulting judge.[9]

Undue delay in rendering a decision or order is classified as a less serious charge under Section 9, Rule 140 of the Rules

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[9] *Hebron v. Garcia II*, A.M. No. RTJ-12-2334, 14 November 2012, 685 SCRA 417; *Office of the Court Administrator v. Castañeda*, A.M. No. RTJ-12-2316, 9 October 2012, 682 SCRA 321; *Maturan v. Gutierrez-Torres*, A.M. OCA I.P.I. No. 04-1606-MTJ, 19 September 2012, 681 SCRA 311; *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 72 and 22, Narvacan, Ilocos Sur*, A.M. No. 06-9-525-RTC, 13 June 2012, 672 SCRA 21; *Hipe v. Literato*, A.M. No. MTJ-11-1781, 25 April 2012, 671 SCRA 9.

of Court.[10] It is punishable by (1) suspension from office without salary and other benefits for not less than one month nor more than three months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.[11]

Judge Soriano's inefficiency in managing his caseload was compounded by gross negligence as evinced by the loss of the records of at least four cases which could no longer be located or reconstituted despite diligent efforts by his successor. Judge Soriano was responsible for managing his court efficiently to ensure the prompt delivery of court services,[12] especially the speedy disposition of cases.[13] Under Rule 3.08, Canon 3 of the Code of Judicial Conduct, a judge is mandated to diligently discharge administrative responsibilities and maintain professional competence in court management. Furthermore, a judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.[14] Judge Soriano failed in this respect.

Furthermore, the Court finds Judge Soriano guilty of gross ignorance of the law. As found by the OCA, Judge Soriano

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[10] Section 9, Rule 140 of the Rules of Court reads:

Less serious charges. - Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
2. Frequent and unjustified absences without leave or habitual tardiness;
3. Unauthorized practice of law;
4. Violation of Supreme Court rules, directives, and circulars;
5. Receiving additional or double compensation unless specifically authorized by law;
6. Untruthful statements in the certificate of service; and
7. Simple Misconduct.

[11] Section 11(B), Rule 140 of the Rules of Court.

[12] *Re: Report on the Judicial Audit Conducted in the RTC, Br. 4, Dolores, Eastern Samar*, 562 Phil. 301, 316 (2007).

[13] *Re: Cases Left Undecided by Ret. Judge Arbis*, 443 Phil. 496 (2003).

[14] Rule 3.09, Canon 3, Code of Judicial Conduct.

decided 12 cases on 25 July 2006, which was the day his compulsory retirement took effect. Section 11, Article VIII of the Constitution[15] states that judges shall hold office during good behavior until they reach the age of 70 years or become incapacitated to discharge the duties of their office. Thus, Judge Soriano was automatically retired from service effective 25 July 2006, and he could no longer exercise on that day the functions and duties of his office, including the authority to decide and promulgate cases.[16]

Gross ignorance of the law is classified as a serious charge under Section 8(9), Rule 140 of the Rules of Court and is punishable by a fine of more than ₱20,000 but not exceeding ₱40,000.[17]

For gross inefficiency and gross ignorance of the law, the Court finds sufficient the OCA's recommended fine of ₱40,000, which will be taken from the amount previously withheld from Judge Soriano's retirement benefits.

On Judge Soriano's request for the release of his monthly pension beginning 25 July 2011, the Court agrees with the OCA

[15] Sec. 11. The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of the office. The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[16] *Nazareno v. Court of Appeals*, 428 Phil. 32 (2002).

[17] Section 11(A), Rule 140 of the Rules of Court states:

Section 11. Sanctions. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

that it should be released immediately. This is in accordance with RA 910, as amended by RA 9946, which provides that:

> SEC. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years, to further annuity payable monthly during the residue of his/her natural life pursuant to Section 1 hereof x x x.

WHEREFORE, the Court finds retired Judge Santiago E. Soriano guilty of gross inefficiency and gross ignorance of the law, and fines him ₱40,000 to be taken from the amount withheld from his retirement benefits. The Court orders the immediate release of the annuity payable monthly to Judge Soriano under Republic Act No. 910, as amended by Republic Act No. 9946, beginning 25 July 2011.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

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[*] Designated additional member per raffle dated 6 January 2010.

FIRST DIVISION

[A.M. No. P-13-3105. September 11, 2013]
(Formerly A.M. No. 10-7-83-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **DESIDERIO W. MACUSI, JR., Sheriff IV, Regional Trial Court, Branch 25, Tabuk City, Kalinga,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; FAILURE OF A SHERIFF TO FILE PERIODIC REPORTS ON THE WRIT OF EXECUTION ISSUED BY THE COURT CONSTITUTES A VIOLATION OF SECTION 14 OF RULE 39 AND SECTION 10 OF RULE 141 OF THE RULES OF COURT; PERIODIC REPORT IS REQUIRED TO UPDATE THE COURT ON THE STATUS OF THE EXECUTION AND TO TAKE NECESSARY STEPS TO ENSURE THE SPEEDY EXECUTION OF DECISIONS.— As found by Judge Wacas and the OCA, Macusi violated Rule 39, Section 14 and Rule 141, Section 10 of the Rules of Court x x x. The *raison d' etre* behind the requirement of periodic reports under Rule 39, Section 14 of the Rules of Court is to update the court on the status of the execution and to take necessary steps to ensure the speedy execution of decisions. Macusi did not deny that he failed to file periodic reports on the Writ of Execution dated September 10, 2008 in Civil Case No. 429-06, as well as on the writs of execution in the other cases in Judge Dalanao's inventory. In his defense, however, he asserted that the prevailing party in the cases, including Paligan, failed to coordinate or refused to cooperate with him in the implementation of their respective writs of execution; and that the writs of execution were not properly turned over to him when he was appointed Sheriff in April 2005. Macusi's excuses cannot exonerate him.

2. ID.; ID.; ID.; ID.; DUTY THEREOF IN THE EXECUTION OF A WRIT ISSUED BY A COURT IS PURELY MINISTERIAL; HENCE, THEY EXERCISE NO DISCRETION AS TO THE

MANNER OF EXECUTING A FINAL JUDGMENT.— In *Mariñas v. Florendo*, the Court stressed that: Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs of execution. It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom. As observed by Judge Wacas, Macusi exercised excessive discretion in the execution of the writs and in the filing of reports thereon. He seemed to have entirely overlooked that the nature of a sheriff's duty in the execution of a writ issued by a court is purely ministerial. As such, a sheriff has the duty to perform faithfully and accurately what is incumbent upon him. Conversely, he exercises no discretion as to the manner of executing a final judgment. Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.

3. ID.; ID.; ID.; ID.; DIFFICULTIES OR OBSTACLES IN SATISFACTION OF A FINAL JUDGMENT AND EXECUTION OF A WRIT WILL NOT EXCUSE THE SHERIFF FROM TOTAL INACTION.— [D]ifficulties or obstacles in the satisfaction of a final judgment and execution of a writ do not excuse Macusi's total inaction. Neither the Rules nor jurisprudence recognizes any exception from the periodic filing of reports by sheriffs. If only Macusi submitted such periodic reports, he could have brought his predicament to the attention of his superiors and the issuing courts and he could have given his superiors and the issuing courts the opportunity to act and/or move to address the same.

4. ID.; ID.; ID.; ID.; A SHERIFF WHO FAILS TO PREPARE AN ESTIMATE OF EXPENSES TO BE INCURRED IN EXECUTING THE WRIT, ASK FOR THE COURT'S APPROVAL OF HIS ESTIMATES, RENDER AN ACCOUNTING AND ISSUE AN OFFICIAL RECEIPT FOR THE TOTAL AMOUNT HE

RECEIVED FROM THE JUDGMENT DEBTOR, VIOLATES RULE 141, SECTION 10 OF THE RULES OF COURT.— A sheriff is guilty of violating Rule 141, Section 10 of the Rules of Court if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor.

5. ID.; ID.; ID.; ID.; A SHERIFF IS NOT ALLOWED TO RECEIVE ANY VOLUNTARY PAYMENTS FROM PARTIES IN THE COURSE OF THE PERFORMANCE OF HIS DUTIES. NEITHER WILL THE PARTIES' ACQUIESCENCE OR CONSENT TO EXPENSES ABSOLVE THE SHERIFF FOR HIS FAILURE TO SECURE THE PRIOR APPROVAL OF THE COURT CONCERNING SUCH EXPENSE.— There is no showing herein that Macusi complied with the x x x procedure. Macusi even actually admitted that he did not submit an estimate of expenses because the winning parties in some of the cases willingly spent for the execution of their writs. Macusi's explanation only makes matters worse for him as sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps. Even assuming such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will the parties' acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.

6. ID.; ID.; ID.; ID.; THE SHERIFFS AND THEIR DEPUTIES ARE THE FRONT-LINE REPRESENTATIVES OF THE JUSTICE SYSTEM, AND IF, THROUGH THEIR LACK OF CARE AND DILIGENCE IN THE IMPLEMENTATION OF JUDICIAL WRITS, THEY LOSE THE TRUST REPOSED ON THEM, THEY INEVITABLY DIMINISH THE FAITH OF THE PEOPLE IN THE JUDICIARY.— Sheriffs and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish the faith of the people in the Judiciary. It cannot be overstressed

that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work there, from the judge to the lowest employee. As such, the Court will not tolerate or condone any conduct of judicial agents or employees which would tend to or actually diminish the faith of the people in the Judiciary.

7. ID.; ID.; ID.; ID.; THE EMPLOYEE'S CONSTRUCTIVE RESIGNATION FROM THE SERVICE THROUGH FILING OF HIS CERTIFICATE OF CANDIDACY FOR THE LOCAL ELECTIONS DOES NOT RENDER THE ADMINISTRATIVE CASE AGAINST HIM MOOT.— Macusi's prayer for dismissal of the present case for being moot is baseless. Macusi's constructive resignation from service through filing of his Certificate of Candidacy for the 2010 Local Elections does not render the case against him moot. Resignation is not a way out to evade administrative liability when a court employee is facing administrative sanction. As the Court held in *Baquerfo v. Sanchez*: Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.

8. ID.; ID.; ID.; ID.; CARELESS AND IMPRUDENT DISCHARGE OF DUTIES CONSTITUTES SIMPLE NEGLECT OF DUTY; PENALTY OF FINE, IMPOSED.— Considering the grave responsibilities imposed on him, Macusi had been careless and imprudent in discharging his duties. Neither neglect nor delay should be allowed to stall the expeditious disposition of cases. As such, he is indeed guilty of simple neglect of duty, which is the failure of an employee to give proper attention to a required task. Simple neglect of duty signifies "disregard of a duty resulting from carelessness or indifference." Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. However, under Sec. 19, Rule XIV of the same Rules, the penalty of fine

(instead of suspension) may also be imposed in the alternative. Following the Court's ruling in several cases involving (simple) neglect of duty, this Court finds the penalty of a fine in the amount of ₱4,000.00, as recommended by Judge Wacas and the OCA, just and reasonable.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Criselda M. Paligan (Paligan) was the plaintiff in Civil Case No. 429-06, entitled *Ms. Criselda M. Paligan v. Spouses Cornelio and Leonila Tabanganay*, an action for collection of sum of money with damages, before the Municipal Trial Court in Cities (MTCC) of Tabuk City, Kalinga. In a letter dated July 23, 2009,[1] addressed to the Presiding Judge, MTCC,[2] Tabuk City, Kalinga, Paligan inquired as to the status of the writ of execution issued on September 10, 2008 by the MTCC in Civil Case No. 429-06, since she had not received any report or information whether the said writ had already been served. Paligan also furnished the Sheriff of the Regional Trial Court (RTC), Branch 25, of Tabuk City, Kalinga, a copy of her letter.

Judge Victor A. Dalanao (Dalanao), MTCC, Tabuk City, Kalinga, through a 1st Indorsement dated July 29, 2009,[3] referred Paligan's letter to the Office of the Court Administrator (OCA) for appropriate action. Judge Dalanao reported that the writ of execution, issued in Civil Case No. 429-06 on September 10, 2008, was received by the Office of the Provincial Sheriff on September 19, 2008. A return was made on October 30, 2008 informing the court that the writ was returned "unserved." Thereafter, no other report on the writ was made. Judge Dalanao further observed that "a lot of cases are similarly situated, where not even a report [has been] submitted as prescribed by the Rules of Court."

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[1] *Rollo*, p. 50.

[2] Paligan's letter was actually erroneously addressed to the Municipal Trial Court (MTC).

[3] *Rollo*, p. 46.

In a 2nd Indorsement dated August 17, 2009,[4] the OCA referred Judge Dalanao's 1st Indorsement dated July 29, 2009 and Paligan's letter dated July 23, 2009 to Atty. Mary Jane A. Andomang (Andomang), Clerk of Court, RTC, Tabuk City, Kalinga, for comment and appropriate action.

Complying with the 2nd Indorsement, Atty. Andomang sent a Comment and Report on Civil Case No. 429-06 of [MTCC]-Tabuk City, dated September 30, 2009 to the OCA. In her Comment and Report, Atty. Andomang recounted that she already required the Deputy Sheriff[5] to explain why no report was made on the writ in Civil Case No. 429-06 since October 2008. The Deputy Sheriff explained to her in a letter dated September 14, 2009 that no report was made because Paligan never appeared at the Office to coordinate the implementation of the said writ. Atty. Andomang claimed that she had always reminded the Deputy Sheriff of his duties and responsibilities in serving writs and making periodic reports.

Instead of filing a reply to Atty. Andomang's Comment and Report as directed by the OCA, Judge Dalanao submitted a letter dated November 6, 2009 with an inventory of cases[6] "if only to show the acts of the Sheriff." Judge Dalanao pointed out that the Sheriff[7] was inconsistent: making reports in some cases, although some of said reports were late, and making no reports at all in other cases. Judge Dalanao further noted that five years has already lapsed without execution in several cases. He has also yet to receive the Sheriff's estimate of expenses for approval. Judge Dalanao lastly averred that after receiving complaints from parties, he already verbally brought up the matter with the Executive Judge, and even personally talked

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[4] *Id*. at 48.

[5] Atty. Andomang did not name the Deputy Sheriff she was referring to but who turned out to be Desiderio W. Macusi, Jr., Sheriff IV, RTC-Branch 25, Tabuk, Kalinga.

[6] *Rollo*, pp. 17-30.

[7] Again, Judge Dalanao did not specifically name Macusi in his letter dated November 6, 2009.

to the Sheriff several times to remind the Sheriff of his duties and responsibilities.

In his letter dated November 16, 2009,[8] Desiderio W. Macusi, Jr. (Macusi), Sheriff IV, RTC-Branch 25, Tabuk City, Kalinga, defended himself by calling attention to the fact that he was appointed as Sheriff only in 2006, while some of the writs of execution in Judge Dalanao's inventory of cases were issued as early as 1997. While admitting that in some cases, there were late reports or no reports at all on the writs of execution, Macusi argued that "(t)he rule states that the Sheriff must act with celerity and promptness when they are handed the Writs of Execution; yet, the rule also states that when party litigants, in whose favor the Writs, have been issued, frustrate the efforts of the Sheriffs to implement those Writs, the latter are relieved from such duty and incur no administrative liability therefor."[9] Macusi additionally wrote that he did not report regularly despite the presence of the rules since he "relied on the dictates of practicality so as not to waste supplies. Rules, accordingly are there to guide but they are not absolute[,] what matters is what one accomplishes."[10] Macusi then informed the OCA that he had been, in fact, sued before the courts because of his accomplishments as a Sheriff. As for his failure to submit his estimate of expenses for Judge Dalanao's approval, Macusi explicated that he dispensed with the same for the winning parties were already willing to assist him and pay for his expenses.

The OCA, finding that Macusi violated Rule 39, Section 14 and Rule 141, Section 9 of the Rules of Court, sent the latter a letter dated December 2, 2009[11] directing him to show cause why no disciplinary action should be taken against him.

In his letter-compliance dated January 4, 2010,[12] Macusi provided the following explanation:

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[8] *Rollo*, pp. 36-38.

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

[10] *Id*. at 37.

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

[12] *Id*. at 6-8.

1. That I was appointed Court Interpreter on May 24, 2004 and was designated Sheriff in April 2005;

2. That the Writs of Execution issued in the year 1997-2004 were not properly turned over to the undersigned; hence, I could not make any follow-ups and updated reports;

3. That the Writs of Execution without initial or updated reports could not be blamed on the undersigned because as early as August 2006 **[please see attached reports marked as annex A]**, I already informed the Honorable Court of the stand of the plaintiff, Rural Bank of Tabuk [K-A], Inc. regarding the Writs of Execution issued in its favor – **THAT THE WRITS OF EXECUTION WILL ONLY BE DELIVERED AND EXPLAINED TO THE LOSING PARTY LITIGANTS** – thus; what report could be made in such a scenario. **Please see also attached reports marked as Annex A-1 on the stand of the plaintiff of scheduling the service of the Writs of Execution**, this was reported to the Hon. Court in August 2008. Kindly compare this with the report where plaintiffs through their counsels who always coordinate with the Office of the Clerk of Court of RTC BR 25 where I am serving as the Sheriff **resulted to either partial or full satisfaction of the amount of execution [said report is marked as Annex A-2]**;

4. That Plantiff Rural Bank of Tabuk [K-A] Inc. **does not like to make the necessary deposit for the Sheriff's expenses in IMPLEMENTING OR EXECUTING the Writs of Execution because the company [Rural Bank] had been and is spending thousands of pesos for litigation expenses [please see attached report marked as Annex B]**. Thus; no estimated expenses could be shown, **though I AM ACCOMPLISHING THE FORM FOR ESTIMATED EXPENSES WHENEVER I SERVED COURT PROCESSES and said form is attached and marked as Annex C**;

5. That I am attaching **OCA Circular No. [44-2007] marked as Annex D to show why Cooperatives does (sic) not need to make the necessary deposits for Sheriff's expenses; hence, no estimated expenses to be accomplished and shown**;

6. That I have done everything I could to comply with the Rules of Court on Execution and satisfaction of Judgment; hence, I should not be liable for a disciplinary action because **"…the rule also states that when party litigants, in whose favor the Writs, have been issued, frustrate the efforts of the Sheriffs to implement**

those Writs, the latter are relieved from such duty and incur no administrative liability therefore."

In a Resolution dated August 18, 2010,[13] the Court treated the instant matter as an administrative complaint against Macusi and referred the same to Executive Judge Marcelino K. Wacas (Wacas), RTC-Branch 25, Tabuk City, Kalinga, for investigation, report, and recommendation. The Court also directed Atty. Andomang to facilitate, in coordination with all concerned, the immediate implementation of the writs of execution listed in Judge Dalanao's inventory and submit a status report thereon within 30 days from notice.

After his investigation, Judge Wacas submitted a Resolution dated April 20, 2012.[14] Judge Wacas found substantial evidence that Macusi violated Rule 39, Section 14 and Rule 141, Section 10 of the Rules of Court. According to Judge Wacas, Macusi exercised "some degree of discretion," having his own rules and unmindful of the existing rules and established jurisprudence. Judge Wacas took into account the following:

> [T]he attention of this Court was partly focused on the length of service of Mr. Macusi as Deputy Sheriff and that is for the period of more than 3 years and by reason of the same, this Court could say that he wrongly interpreted some basic rules in the implementation of writs of execution and the disbursement of expenses relative thereto. Another point to consider, is the principle of first offense which has the effect of mitigating the administrative liability.[15]

In the end, Judge Wacas recommended that Macusi be found guilty of simple neglect of duty and meted the penalty of a fine in the amount of Four Thousand Pesos (₱4,000.00).

The OCA, in its Memorandum dated October 17, 2012,[16] agreed with the conclusions of fact of Judge Wacas and recommended that:

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

[14] *Id*. at 64-73.

[15] *Id*. at 72.

[16] *Id*. at 76-79.

1. [T]he instant administrative complaint be **RE-DOCKETED** as a regular administrative case;

2. Desiderio W. Macusi, Jr., Sheriff IV, Branch 25, RTC, Tabuk, Kalinga, be found **GUILTY** of Simple Neglect of Duty and a penalty of **FINE** in the amount of Four Thousand Pesos (₱4,000.00) be imposed upon him, with a **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely.[17]

In a Resolution dated February 6, 2013,[18] the Court re-docketed the administrative complaint against Macusi as a regular administrative matter and required Macusi to manifest within 10 days from notice if he was willing to submit the matter for decision/resolution based on the records/pleadings filed.

Macusi[19] submitted his Manifestation and Motion dated May 30, 2013, informing the Court that he was deemed resigned from government service by operation of law when he filed his Certificate of Candidacy for the position of City Councilor in Tabuk City, Kalinga for the 2010 Local Elections. He prayed that the Court dismiss the administrative case against him for being moot and academic.

As found by Judge Wacas and the OCA, Macusi violated Rule 39, Section 14 and Rule 141, Section 10 of the Rules of Court, which provide:

RULE 39
EXECUTION, SATISFACTION AND
EFFECT OF JUDGMENTS

x x x x x x x x x

Sec. 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment

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[17] *Id*. at 79.

[18] *Id*. at 80.

[19] *Id*. at 82-84.

has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. **The officer shall make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.** The returns or the periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Emphasis ours.)

RULE 141
LEGAL FEES

x x x x x x x x x

Section 10. *Sheriffs, Process Servers and other persons serving processes.* –

x x x x x x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rending a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

The *raison d' etre* behind the requirement of periodic reports under Rule 39, Section 14 of the Rules of Court is to update the court on the status of the execution and to take necessary steps to ensure the speedy execution of decisions.[20] Macusi

[20] *Mangubat v. Camino*, 518 Phil. 333, 342 (2006).

did not deny that he failed to file periodic reports on the Writ of Execution dated September 10, 2008 in Civil Case No. 429-06, as well as on the writs of execution in the other cases in Judge Dalanao's inventory. In his defense, however, he asserted that the prevailing party in the cases, including Paligan, failed to coordinate or refused to cooperate with him in the implementation of their respective writs of execution; and that the writs of execution were not properly turned over to him when he was appointed Sheriff in April 2005. Macusi's excuses cannot exonerate him.

In *Mariñas v. Florendo*,[21] the Court stressed that:

> Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs of execution.
>
> It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom. (Citations omitted.)

As observed by Judge Wacas, Macusi exercised excessive discretion in the execution of the writs and in the filing of reports thereon. He seemed to have entirely overlooked that the nature of a sheriff's duty in the execution of a writ issued by a court is purely ministerial. As such, a sheriff has the duty to perform faithfully and accurately what is incumbent upon him. Conversely, he exercises no discretion as to the manner of executing a final judgment. Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.[22]

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[21] A.M. No. P-07-2304, February 12, 2009, 578 SCRA 502, 510-511.

[22] *Spouses Biglete v. Maputi, Jr.*, 427 Phil. 221, 227 (2002).

Moreover, difficulties or obstacles in the satisfaction of a final judgment and execution of a writ do not excuse Macusi's total inaction. Neither the Rules nor jurisprudence recognizes any exception from the periodic filing of reports by sheriffs. If only Macusi submitted such periodic reports, he could have brought his predicament to the attention of his superiors and the issuing courts and he could have given his superiors and the issuing courts the opportunity to act and/or move to address the same.[23]

A sheriff is guilty of violating Rule 141, Section 10 of the Rules of Court if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor.[24]

There is no showing herein that Macusi complied with the foregoing procedure. Macusi even actually admitted that he did not submit an estimate of expenses because the winning parties in some of the cases willingly spent for the execution of their writs. Macusi's explanation only makes matters worse for him as sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps. Even assuming such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will the parties' acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.[25]

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[23] *Astorga and Repol Law Offices v. Roxas*, A.M. No. P-12-3029, August 15, 2012, 678 SCRA 374, 383.

[24] *Gonzalez v. Calo*, A.M. No. P-12-3028, April 11, 2012, 669 SCRA 109, 120.

[25] *Id.* at 120-121.

Sheriffs and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish the faith of the people in the Judiciary. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work there, from the judge to the lowest employee. As such, the Court will not tolerate or condone any conduct of judicial agents or employees which would tend to or actually diminish the faith of the people in the Judiciary.[26]

Macusi's prayer for dismissal of the present case for being moot is baseless. Macusi's constructive resignation from service through filing of his Certificate of Candidacy for the 2010 Local Elections does not render the case against him moot. Resignation is not a way out to evade administrative liability when a court employee is facing administrative sanction.[27] As the Court held in *Baquerfo v. Sanchez*[28]:

> Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable. (Citations omitted.)

Considering the grave responsibilities imposed on him, Macusi had been careless and imprudent in discharging his duties. Neither neglect nor delay should be allowed to stall the expeditious

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[26] *Lambayong Teachers and Employees Cooperative v. Diaz*, A.M. No. P-06-2246, July 11, 2012, 676 SCRA 74, 80-81.

[27] *Clerk of Court Marbas-Vizcarra v. Florendo*, 369 Phil. 840, 849 (1999); *Judge Cajot v. Cledera*, 349 Phil. 907, 912 (1998).

[28] 495 Phil. 10, 16-17 (2005).

disposition of cases. As such, he is indeed guilty of simple neglect of duty, which is the failure of an employee to give proper attention to a required task. Simple neglect of duty signifies "disregard of a duty resulting from carelessness or indifference."[29]

Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. However, under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative.[30] Following the Court's ruling in several cases involving (simple) neglect of duty, this Court finds the penalty of a fine in the amount of ₱4,000.00, as recommended by Judge Wacas and the OCA, just and reasonable.

WHEREFORE, the Court finds Desiderio W. Macusi, Jr., former Sheriff IV, Regional Trial Court, Branch 25, Tabuk City, Kalinga, **GUILTY** of Simple Neglect of Duty and imposes upon him the penalty of a **FINE** in the amount of ₱4,000.00. Considering Macusi's resignation, the Court directs the Office of Administrative Services to compute Macusi's terminal leave credits and the Fiscal Management Office to compute the monetary equivalent thereof, from which his fine of ₱4,000.00 shall be deducted.

SO ORDERED.

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

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[29] *Collado-Lacorte v. Rabena*, A.M. No. P-09-2665, August 4, 2009, 595 SCRA 15, 21-22.

[30] *Id.*

FIRST DIVISION

[G.R. No. 166330. September 11, 2013]

SMART COMMUNICATIONS, INC., *petitioner, vs.* **ARSENIO ALDECOA, JOSE B. TORRE, CONRADO U. PUA, GREGORIO V. MANSANO, JERRY CORPUZ and ESTELITA ACOSTA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXPLAINED.— Based on the principle of exhaustion of administrative remedies and its corollary doctrine of primary jurisdiction, it was premature for the Court of Appeals to take cognizance of and rule upon the issue of the validity or nullity of petitioner's locational clearance for its cellular base station. The principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction were explained at length by the Court in *Province of Zamboanga del Norte v. Court of Appeals*, as follows: The Court in a long line of cases has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case may be dismissed for lack of cause of action. The doctrine of exhaustion of administrative remedies is not without its practical and legal reasons. Indeed, resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Our courts of justice for reason 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 every opportunity to correct its error and to dispose

of the case. x x x The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. We have held that while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of our resources, the judiciary will stand clear. A long line of cases establishes the basic rule that the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. In fact, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly.

2. ID.; ID.; ID.; PARTIES AGGRIEVED BY THE DECISION OF THE HOUSING AND LAND USE REGULATORY BOARD (HLURB) MUST AVAIL FIRST OF THE ADMINISTRATIVE REMEDIES PRIOR TO INSTITUTION OF CIVIL CASE BEFORE THE COURT.— Under the 1996 HLURB Rules of Procedure, as amended, an opposition to an application for a locational clearance for a cellular base station or a complaint for the revocation of a locational clearance for a cellular base station already issued, is within the original jurisdiction of the HLURB Executive Committee. x x x. After the HLURB Executive Committee had rendered its Decision, the aggrieved party could still avail itself of a system of administrative appeal, also provided in the 1996 HLURB Rules of Procedure, as amended x x x. There is no showing that respondents availed themselves of the aforementioned administrative remedies prior to instituting Civil Case No. Br. 23-632-2000 before the RTC. While there are accepted exceptions to the principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction, respondents never asserted nor argued any of them. Thus, there is no cogent reason for the Court to apply the exceptions instead of the general rule to this case.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND THE DOCTRINE OF PRIMARY JURISDICTION WILL RESULT IN THE DISMISSAL OF THE CASE FOR LACK OF CAUSE OF ACTION; NOT APPLICABLE TO COMPLAINT FOR ABATEMENT OF NUISANCE WHICH IS WITHIN THE JURISDICTION OF THE COURT.— Ordinarily, failure to comply with the principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction will result in the dismissal of the case for lack of cause of action. However, the Court herein will not go to the extent of entirely dismissing Civil Case No. Br. 23-632-2000. The Court does not lose sight of the fact that respondents' Complaint in Civil Case No. Br. 23-632-2000 is primarily for abatement of nuisance; and respondents alleged the lack of HLURB requirements for the cellular base station, not to seek nullification of petitioner's locational clearance, but to support their chief argument that said cellular base station is a nuisance which needs to be abated. The issue of whether or not the locational clearance for said cellular base station is valid is actually separate and distinct from the issue of whether or not the cellular base station is a nuisance; one is not necessarily determinative of the other. While the first is within the primary jurisdiction of the HLURB and, therefore, premature for the courts to rule upon in the present case, the latter is within the jurisdiction of the courts to determine but only after trial proper.

4. CIVIL LAW; NUISANCE; DEFINED; THE SIMPLE SUIT FOR ABATEMENT OF NUISANCE, BEING CAPABLE OF PECUNIARY ESTIMATION, IS WITHIN THE EXCLUSIVE JURISDICTION OF THE REGIONAL TRIAL COURT.— Article 694 of the Civil Code defines nuisance as: ART. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) Hinders or impairs the use of property. The term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort. The Court, in *AC*

Enterprises, Inc. v. Frabelle Properties Corporation, settled that a simple suit for abatement of nuisance, being incapable of pecuniary estimation, is within the exclusive jurisdiction of the RTC. Although respondents also prayed for judgment for moral and exemplary damages, attorney's fees, and litigation expenses, such claims are merely incidental to or as a consequence of, their principal relief. Nonetheless, while jurisdiction over respondents' Complaint for abatement of nuisance lies with the courts, the respective judgments of the RTC and the Court of Appeals cannot be upheld.

5. REMEDIAL LAW; SUMMARY JUDGMENTS; WHEN PROPER; DISCUSSED.— Summary judgments are governed by Rule 35 of the Rules of Court x x x. In *Rivera v. Solidbank Corporation*, the Court discussed extensively when a summary judgment is proper: For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment. **A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or a false claim.** The trial court can determine a genuine issue on the basis of the pleadings, admissions, documents, affidavits or counteraffidavits submitted by the parties. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact and summary judgment called for. On the other hand, **where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. The evidence on record must be viewed in light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can reasonably be drawn from the evidence. Courts must be critical of the papers presented by the moving party and not of the papers/documents in opposition thereto.** Conclusory assertions are insufficient to raise an issue of material fact. A party cannot create a genuine

dispute of material fact through mere speculations or compilation of differences. He may not create an issue of fact through bald assertions, unsupported contentions and conclusory statements. He must do more than rely upon allegations but must come forward with specific facts in support of a claim. Where the factual context makes his claim implausible, he must come forward with more persuasive evidence demonstrating a genuine issue for trial. Judging by the aforequoted standards, summary judgment cannot be rendered in this case as there are clearly factual issues disputed or contested by the parties.

6. CIVIL LAW; NUISANCE; RESOLUTION OF THE ACTION FOR ABATEMENT OF NUISANCE, FACTUAL CONSIDERATIONS.— Likewise constituting real or genuine issues for trial, which arose from subsequent events, are the following: whether the generator subject of respondents' Complaint had been removed; whether said generator had been replaced by another that produces as much or even more noise and fumes; and whether the generator is a nuisance that can be abated separately from the rest of the cellular base station. Furthermore, the Court demonstrated in *AC Enterprises, Inc.* the extensive factual considerations of a court before it can arrive at a judgment in an action for abatement of nuisance: x x x. The test is whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it. Commercial and industrial activities which are lawful in themselves may become nuisances if they are so offensive to the senses that they render the enjoyment of life and property uncomfortable. The fact that the cause of the complaint must be substantial has often led to expressions in the opinions that to be a nuisance the noise must be deafening or loud or excessive and unreasonable. *The determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce actual physical discomfort and annoyance to a person of*

ordinary sensibilities, rendering adjacent property less comfortable and valuable. If the noise does that it can well be said to be substantial and unreasonable in degree, and reasonableness is a question of fact dependent upon all the circumstances and conditions. There can be no fixed standard as to what kind of noise constitutes a nuisance. The courts have made it clear that in every case the question is one of reasonableness. What is a reasonable use of one's property and whether a particular use is an unreasonable invasion of another's use and enjoyment of his property so as to constitute a nuisance cannot be determined by exact rules, but must necessarily depend upon the circumstances of each case, such as locality and the character of the surroundings, the nature, utility and social value of the use, the extent and nature of the harm involved, the nature, utility and social value of the use or enjoyment invaded, and the like.

7. ID.; ID.; DECISION OF THE APPELLATE COURT DECLARING PETITIONER'S CELLULAR BASE STATION A NUISANCE WAS SET ASIDE; REMAND OF THE CASE TO THE REGIONAL TRIAL COURT, WARRANTED.— A reading of the RTC Order dated January 16, 2001 readily shows that the trial court did not take into account any of the x x x considerations or tests before summarily dismissing Civil Case No. Br. 23-632-2000. The reasoning of the RTC that similar cellular base stations are scattered in heavily populated areas nationwide and are not declared nuisances is unacceptable. As to whether or not this specific cellular base station of petitioner is a nuisance to respondents is largely dependent on the particular factual circumstances involved in the instant case, which is exactly why a trial for threshing out disputed or contested factual issues is indispensable. Evidently, it was the RTC which engaged in speculations and unsubstantiated conclusions. For the same reasons cited above, without presentation by the parties of evidence on the contested or disputed facts, there was no factual basis for declaring petitioner's cellular base station a nuisance and ordering petitioner to cease and desist from operating the same. Given the equally important interests of the parties in this case, *i.e.*, on one hand, respondents' health, safety, and property, and on the other, petitioner's business interest and the public's need for accessible and better cellular mobile telephone services,

the wise and prudent course to take is to remand the case to the RTC for trial and give the parties the opportunity to prove their respective factual claims.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Adeline Cambri-Cortez for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Smart Communications, Inc., seeking the reversal of the Decision[1] dated July 16, 2004 and Resolution[2] dated December 9, 2004 of the Court of Appeals in CA-G.R. CV No. 71337. The appellate court (1) reversed and set aside the Order[3] dated January 16, 2001 of the Regional Trial Court (RTC), Branch 23, of Roxas, Isabela, in Civil Case No. Br. 23-632-2000 dismissing the complaint for abatement of nuisance and injunction against petitioner, and (2) entered a new judgment declaring petitioner's cellular base station located in *Barangay* Vira, Municipality of Roxas, Province of Isabela, a nuisance and ordering petitioner to cease and desist from operating the said cellular base station.

The instant Petition arose from the following facts:

Petitioner is a domestic corporation engaged in the telecommunications business. On March 9, 2000, petitioner entered into a contract of lease[4] with Florentino Sebastian in which the latter agreed to lease to the former a piece of vacant

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[1] *Rollo*, pp. 44-57; penned by Associate Justice Ruben T. Reyes with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring.

[2] *Id*. at 58-59.

[3] *Id*. at 126-128; penned by Judge Teodulo E. Mirasol.

[4] Records, pp. 127-128.

lot, measuring around 300 square meters, located in *Barangay* Vira, Roxas, Isabela (leased property). Petitioner, through its contractor, Allarilla Construction, immediately constructed and installed a cellular base station on the leased property. Inside the cellular base station is a communications tower, rising as high as 150 feet, with antennas and transmitters; as well as a power house open on three sides containing a 25KVA diesel power generator. Around and close to the cellular base station are houses, hospitals, clinics, and establishments, including the properties of respondents Arsenio Aldecoa, Jose B. Torre, Conrado U. Pua, Gregorio V. Mansano, Jerry Corpuz, and Estelita Acosta.

Respondents filed before the RTC on May 23, 2000 a Complaint against petitioner for abatement of nuisance and injunction with prayer for temporary restraining order and writ of preliminary injunction, docketed as Civil Case No. Br. 23-632-2000. Respondents alleged in their Complaint that:

> 5. [Petitioner's] communications tower is 150 feet in height equivalent to a 15-storey building. It is a tripod-type tower made of tubular steel sections and the last section, to which the huge and heavy antenna/transponder array will be attached, about to be bolted on. Weight of the antenna mast is estimated at one (1) to three (3) tons, more or less. As designed, the antenna/transponder array are held only by steel bolts without support of guywires;
>
> 6. This SMART tower is no different from the *Mobiline* tower constructed at Reina Mercedes, Isabela which collapsed during a typhoon that hit Isabela in October 1998, an incident which is of public knowledge;
>
> 7. With its structural design, SMART's tower being constructed at Vira, Roxas, Isabela, is weak, unstable, and infirm, susceptible to collapse like the *Mobiline* tower which fell during a typhoon as earlier alleged, and its structural integrity being doubtful, and not earthquake proof, this tower poses great danger to life and limb of persons as well as their property, particularly, the [respondents] whose houses abut, or are near or within the periphery of the communications tower;
>
> 8. This tower is powered by a standby generator that emits noxious and deleterious fumes, not to mention the constant noise it

produces, hence, a hazard to the health, not only of the [respondents], but the residents in the area as well;

9. When in operation, the tower would also pose danger to the life and health of [respondents] and residents of the *barangay*, especially children, because of the ultra high frequency (UHF) radio wave emissions it radiates. Only recently, *Cable News Network* (CNN) reported that cell phones, with minimal radiated power, are dangerous to children, so more it is for this communications tower, whose radiated power is thousands of times more than that of a cellphone;

10. Worse, and in violation of law, [petitioner] constructed the tower without the necessary public hearing, permit of the *barangay*, as well as that of the municipality, the Environmental Compliance Certificate of the [Department of Environment and Natural Resources (DENR)], construction permit, and other requirements of the National Telecommunications Commission (NTC), and in fact committed fraud in its application by forging an undated certification "*that Barangay Vira does not interpose any objection to the proposed construction of a 150 ft. tower & site development*," as this certification was never issued by [respondent] Jose Torre, the *Barangay* Captain of Vira, Roxas, Isabela, and without the official *barangay* seal, attached as *Annex "A"* and Certification of the *Barangay* Officer of the Day that no public hearing was held, attached as *Annex "B"* made integral part hereof;

11. Not being armed with the requisite permits/authority as above mentioned, the construction of the tower is illegal and should be abated;

12. [Respondents] and [petitioner] should not wait for the occurrence of death, injuries and damage on account of this structure and judicial intervention is needed to ensure that such event will not happen[.][5]

Respondents thus prayed for the RTC to:

1. Issue a temporary restraining order and after due hearing to issue a writ of preliminary mandatory injunction;

2. Render judgment:

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

- Making the writ of preliminary mandatory injunction permanent;
- Declaring the construction of the SMART tower as a nuisance *per se* or *per accidens*;
- Ordering the abatement of this nuisance by ordering the removal and/or demolition of [petitioner's] communication tower;
- Condemning [petitioner] to pay [respondents] moral damages in the sum of ₱150,000.00 and exemplary damages in the sum of ₱30,000.00;
- Ordering [petitioner] to pay attorney's fees in the amount of ₱20,000.00 plus trial honoraria of ₱1,000.00 for every appearance in Court;
- Ordering [petitioner] to refund to [respondents] litigation expenses in the amount of not less than ₱10,000.00;

3. And for such other reliefs as are just and equitable in the premises.[6]

In its Answer/Motion to Oppose Temporary Restraining Order with Compulsory Counterclaim, petitioner raised the following special and affirmative defenses:

13. [Petitioner] through its contractor, Allarilla Construction (hereafter Allarilla), applied for a Building Permit through the office of Municipal engineer Virgilio A. Batucal on 13 April 2000 and subsequently received its approval 17 April 2000. (a copy of the Official receipt and the Building Permit is hereto attached respectively as Annex "A" and "B" and made an integral part hereof)

14. [Petitioner], again through Allarilla applied for an Environmental Compliance Certificate (ECC) the approval of which, at present, remains pending with the DENR-[Environment Management Bureau (EMB)].

15. [Petitioner] should not in anyway be liable for fraud or bad faith as it had painstakingly secured the consent of majority of the residents surrounding the location of the Tower in order to seek their

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[6] *Id*. at 10.

approval therewith. (a copy of the list of residents who consented thereto is attached herewith as Annex "C" and made an integral part hereof)

16. Among the residents who signed the consent list secured by [petitioner] include the [respondent] Jose B. Torre and a certain Linaflor Aldecoa, who is related to [respondent] Arsenio Aldecoa.

17. [Petitioner] did not forge the *Barangay* Certification but actually secured the consent of *Barangay* Captain Jose Torre through the efforts of Sangguniang Bayan (SB) Board Member Florentino Sebastian. (a copy of the *Barangay* Certification is attached herewith as Annex "D" and made an integral part hereof)

18. [Petitioner] Tower's safety has been pre-cleared and is unlikely to cause harm in exposing the members of the public to levels exceeding health limits considering that the antenna height of the Tower is 45.73 meters or equivalent to 150 feet as stated in a Radio Frequency Evaluation report by Elizabeth H. Mendoza health Physicist II, of the Department of Health Radiation Health Service dated 9 May 2000. (a copy is hereto attached as Annex "E" and made an integral part hereof)

19. The structural stability and soundness of the Tower has been certified by Engr. Melanio A. Guillen Jr. of the Engineering Consulting firm Microflect as contained in their Stress Analysis Report (a copy is hereto attached as Annex "F" and made an integral part hereof)

20. [Petitioner's] impetus to push through with the construction of the Tower is spurred by the Telecommunications Act of 1995 or Republic Act 7925 which states that the "expansion of the telecommunications network shall give priority to improving and extending basic services to areas not yet served." Article II, Sec. 4 par. B. (a copy of RA 7925 is hereto attached as Annex "G" and made an integral part hereof)[7]

In the end, petitioner sought the dismissal of respondents' Complaint; the denial of respondents' prayer for the issuance of a temporary restraining order and writ of preliminary mandatory injunction; the award of moral, nominal, and exemplary damages in the amounts which the court deem just and reasonable; and

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[7] *Id.* at 20-21.

the award of attorney's fees in the sum of ₱500,000.00 and litigation expenses as may be proven at the trial.

Respondents then contested petitioner's allegations and averred in their Reply and Answer to Counterclaim that:

- [Petitioner's] cell site relay antenna operates on the ultra high frequency (UHF) band, or gigabyte band, that is much higher than that of TV and radio broadcasts which operates only on the Very High Frequency (VHF) band, hence, [petitioner's] equipment generates dangerously high radiation and emission that is hazardous to the people exposed to it like [respondents], whose houses are clustered around [petitioner's] cell site antenna/communications tower;
- As admitted, [petitioner] has not secured the required Environmental Compliance Certificate (ECC). It has not even obtained the initial compliance certificate (ICC). In short, [petitioner] should have waited for these documents before constructing its tower, hence, it violated the law and such construction is illegal and all the more sustains the assertions of [respondents];
- The alleged building permit issued to [petitioner] is illegal because of the lack of an ECC and that [petitioner's] application for a building permit covered only a building and not a cell site antenna tower. Moreover, the [petitioner] failed to obtain a National Telecommunications Commission (NTC) Clearance to construct the communications tower. As will be seen in the application and permit, the documents are dated April, 2000 while the construction begun in March, 2000;
- The technical data that served as the basis of the Radio Frequency Radiation Evaluation of [petitioner's] mobile telephone base station was provided solely by the [petitioner] and in fact misled the DOH Radiation Health Service. It states an absurdly low transmitted power of twenty (20) watts for a dual band mobile phone service such as [petitioner] Smart's GSM 900/1800 Dual Band which is the standard service it offers to the public;
- The Stress Analysis Report is self-serving and tested against the communications tower, the structural integrity is flawed;

- While [respondents] may yield to the mandate of Republic Act No. 7925, otherwise known as the Telecommunications Act of 1995, extending and improving or upgrading of basic services to areas not yet served, this should not be taken as a license to gamble and/or destroy the health and well-being of the people;

- [Petitioner's] alleged certification (*Annex "D", should be Annex "4"*) is the very same certification appended to [respondents'] complaint which they have assailed as a forgery and which [respondent] Jose Torre, the *Barangay* Captain of Vira, Roxas, Isabela, emphatically denies having signed and/or issued the same. Moreover, the certification gives [petitioner] away because [respondent] Jose Torre has no technical education using the telecommunications term "*SMART GSM & ETACS project*," in said falsified certification;

- [Petitioner's] claim that it is not liable for fraud or bad faith, proudly stating that it has painstakingly secured the consent of the majority of the residents surrounding the tower site, is belied by the alleged Conformity of Host Community (Residential) – Annex "C" – *should be Annex "3"* – where only a handful of residents signed the document prepared by [petitioner] and the contents of which were misrepresented by [a] Sangguniang Bayan Member in the person of Nick Sebastian who is an interested party being the owner of the land where the tower is constructed. It was misrepresented to Linaflor Aldecoa, wife of [respondent] Arsenio Aldecoa that it was already anyway approved and signed by *Barangay* Captain Jose Torre when in truth his signature was again forged by the [petitioner] and/or its employees or agents or person working for said company. Also, there are persons who are not residents of Vira, Roxas, Isabela who signed the document such as *Melanio C. Gapultos of Rizal, Roxas, Isabela, Carlito Castillo of Nuesa, Roxas, Isabela, and another, Gennie Feliciano from San Antonio, Roxas, Isabela.* Certainly six (6) persons do not constitute the conformity of the majority of the residents of Vira, Roxas, Isabela, and those immediately affected by the cellsite tower like [respondents]. This document is likewise flawed and cannot help [petitioner's] cause. Besides, [respondents] and other residents, sixty-two (62) of them, communicated their protest

against the erection of the cell tower specifying their reasons therefor and expressing their sentiments and fears about [petitioner's] communications tower, xerox copy attached as *Annex "A"* and made integral part hereof;

- [Respondents] likewise specifically deny the truth of the allegation in *paragraph 12* of the answer, the truth being that the lot leased to [petitioner] is owned by SB Member Nick Sebastian and that Florentino Sebastian is dummying for the former in avoidance of possible anti-graft charges against his son concerning this project. It is also further denied for lack of knowledge or information sufficient to form a belief as to the truth thereof. Moreover, the lease contract, copy not annexed to [petitioner's] answer, would automatically be terminated or ended in the event of complaints and/or protests from the residents[.][8]

Civil Case No. Br. 23-632-2000 was set for pre-trial on September 28, 2000.[9]

On September 11, 2000, petitioner filed its Pre-Trial Brief in which it identified the following issues:

4.1. Whether [respondents have] a cause of action against the [petitioner] SMART for this Honorable Court to issue a Preliminary Mandatory Injunction over the SMART tower in Roxas, Isabela as it allegedly poses a threat to the lives and safety of the residents within the area and if [respondents] are entitled to moral and exemplary damages as well as attorney's fees and expenses of litigation.

4.2 Whether the complaint should be dismissed in that the claim or demand set forth in the Complaint is fictitious, imaginary, sham and without any real basis.

4.3. What [petitioner] SMART is entitled under its compulsory counterclaim against [respondents] for moral and exemplary damages, attorney's fees, and other expenses of litigation.[10]

On even date, petitioner filed a Motion for Summary Judgment that reads:

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

[9] *Id*. at 57.

[10] *Id*. at 63.

[Petitioner] SMART Communications Inc., thru counsel, respectfully manifests that:

1. There is no need for a full-blown trial as the causes of action and issues have already been identified in all the pleadings submitted to this Honorable court by both [respondents] and [petitioner]

2. There is clearly no genuine issue as to any material fact or cause in the action.

3. There is no extreme urgency to issue a Preliminary Mandatory Injunction as stated in an affidavit executed by SMART Senior Supervisor Andres V. Romero in an affidavit hereto attached as Annex "A"

4. [Petitioner] seeks immediate declaratory relief from [repondents'] contrived allegations as set forth in [their] complaint;

Wherefore, it is most respectfully prayed of this Honorable Court that summary judgment be rendered pursuant to Rule 35 of the Revised Rules of Court.[11]

Respondents filed their Pre-Trial Brief on September 21, 2000, proposing to limit the issues, *viz*:

- Whether [petitioner's] communications tower is a nuisance *per se/per accidens* and together with its standby generator maybe abated for posing danger to the property and life and limb of the residents of Vira, Roxas, Isabela more particularly the [respondents] and those whose houses are clustered around or in the periphery of the cell site.

- Damages, attorney's fees, litigation expenses and other claims.[12]

Respondents likewise filed on September 21, 2000 their Opposition to petitioner's Motion for Summary Judgment, maintaining that there were several genuine issues relating to the cause of action and material facts of their Complaint. They asserted that there was a need for a full blown trial to prove

[11] *Id*. at 67.

[12] *Id*. at 79.

the allegations in their Complaint, as well as the defenses put up by petitioner.[13]

In its Order[14] dated September 28, 2000, the RTC indefinitely postponed the pre-trial until it has resolved petitioner's Motion for Summary Judgment. In the same Order, the RTC directed the counsels of both parties to submit their memoranda, including supporting affidavits and other documents within 30 days.

Petitioner submitted its Memorandum[15] on October 26, 2000; while respondents, following several motions for extension of time, filed their Memorandum[16] on November 22, 2000. In their Memorandum, respondents additionally alleged that:

> [T]he cellsite base station is powered by a roaring 25KVA power generator. Operated 24 hours since it started more than a month ago, it has sent "*jackhammers into the brains*" of all the inhabitants nearby. Everyone is going crazy. A resident just recently operated for breast cancer is complaining that the noise emanating from the generator is fast tracking her appointment with death. She can no longer bear the unceasing and irritating roar of the power generator.
>
> For this, the residents, led by the [respondents], sought a noise emission test of the power generator of [petitioner] SMART Communications with the DENR. The test was conducted on November 14 and 15, 2000 and the result shows that the [petitioner's] power generator failed the noise emission test, day and night time. Result of this test was furnished the Municipal Mayor of Roxas, Isabela (See Communication of DENR Regional Director Lorenzo C. Aguiluz to Mayor Benedicto Calderon dated November 16, 2000 and the Inspection Monitoring Report).
>
> With these findings, the power generator is also a nuisance. It must also be abated. [17]

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[13] *Id*. at 82.

[14] *Id*. at 84.

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

[16] *Id*. at 101-110.

[17] *Id*. at 107.

On January 16, 2001, the RTC issued its Order granting petitioner's Motion for Summary Judgment and dismissing respondents' Complaint. The RTC ruled as follows:

> What is of prime importance is the fact that contrary to the [respondents'] speculation, the radio frequency radiation as found out by the Department of Health is much lower compared to that of TV and radio broadcast. The [respondents'] counter to this claim is that the Department of Health was misled. This is a mere conclusion of the [respondents].
>
> The [respondents] in opposing the Smart's construction of their cellsite is anchored on the supposition that the operation of said cellsite tower would pose a great hazard to the health of the alleged cluster of residents nearby and the perceived danger that the said tower might also collapse in case of a strong typhoon that fell the Mobiline Cellsite tower of Mobiline (sic). The structured built of the Smart's Cellsite tower is similar to that of the Mobiline.
>
> Now, as to the Court's assessment of the circumstances obtaining, we find the claim of the [respondents] to be highly speculative, if not an isolated one. Elsewhere, we find several cellsite towers scaterred (sic) all over, both of the Smart, Globe, and others, nay even in thickly populated areas like in Metro Manila and also in key cities nationwide, yet they have not been outlawed or declared nuisance as the [respondents] now want this Court to heed. To the thinking of the Court, the [respondents] are harping imagined perils to their health for reason only known to them perhaps especially were we to consider that the Brgy. Captain of Vira earlier gave its imprimatur to this project. Noteworthy is the fact that the alleged cluster of residential houses that abut the cellsite tower in question might be endangered thereby, the [respondents] are but a few of those residents. If indeed, all those residents in Vira were adversely affected for the perceived hazards posed by the tower in question, they should also have been joined in as [respondents] in a class suit. The sinister motive is perhaps obvious.
>
> All the foregoing reasons impel this Court to grant the [petitioner's] motion for the dismissal of the complaint, the perceived dangers being highly speculative without any bases in fact. Allegations in the complaint being more imaginary than real, do not constitute factual bases to require further proceeding or a trial. As to the claim that there is no certification or clearance from the DENR for the [petitioner]

to lay in wait before the construction, suffice it to say that no action as yet has been taken by said office to stop the ongoing operation of said cellsite now in operation. There has been no hue and cry from among the greater majority of the people of Roxas, Isabela, against it. Al contrario, it is most welcome to them as this is another landmark towards the progress of this town.[18]

The dispositive portion of the RTC Order reads:

WHEREFORE, in view of the foregoing considerations, the Court hereby renders judgment dismissing the complaint as the allegations therein are purely speculative and hence no basis in fact to warrant further proceedings of this case.

The Court finds no compelling grounds to award damages.

Without costs.[19]

In another Order[20] dated February 27, 2001, the RTC denied respondents' Motion for Reconsideration.

Respondents filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 71337.

The Court of Appeals rendered its Decision on July 16, 2004. The appellate court declared the cellular base station of petitioner a nuisance that endangered the health and safety of the residents of *Barangay* Vira, Roxas, Isabela because: (1) the locational clearance granted to petitioner was a nullity due to the lack of approval by majority of the actual residents of the *barangay* and a *barangay* resolution endorsing the construction of the cellular base station; and (2) the sound emission of the generator at the cellular base station exceeded the Department of Environment and Natural Resources (DENR) standards. Consequently, the Court of Appeals decreed:

WHEREFORE, the appealed decision is hereby **REVERSED** and **SET ASIDE**. A new one is entered declaring the communications

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[18] *Rollo*, pp. 127-128.

[19] *Id.* at 128.

[20] *Id.* at 136.

tower or base station of [petitioner] Smart Communications, Inc. located at Brigido Pascual Street in Vira, Municipality of Roxas, Province of Isabela, a nuisance. [Petitioner] is ordered to cease and desist from operating the said tower or station.[21]

Petitioner filed its Motion for Reconsideration arguing that: (1) the basis for the judgment of the appellate court that the cellular base station was a nuisance had been extinguished as the generator subject of the Complaint was already removed; and (2) there had been substantial compliance in securing all required permits for the cellular base station.[22]

The Court of Appeals, in a Resolution dated December 9, 2004, refused to reconsider its earlier Decision, reasoning that:

> [Petitioner] principally anchors its pleas for reconsideration on the Certification issued by Roxas, Isabela Municipal Engineer Virgilio Batucal, declaring that upon actual inspection, no Denyo Generator Set has been found in the company's cell site in Roxas, Isabela. We hold, however, that the certification dated August 12, 2004, taken on its own, does not prove Smart's allegation that it has abandoned using diesel-powered generators since January 2002. [Respondents'] current photographs of the cell site clearly shows (sic) that Smart continues to use a mobile generator emitting high level of noise and fumes.
>
> We have gone over [petitioner's] other arguments and observed that they are merely repetitive of previous contentions which we have judiciously ruled upon.[23] (Citations omitted.)

Petitioner seeks recourse from the Court through the instant Petition, assigning the following errors on the part of the Court of Appeals:

> 21.0 The Court of Appeals erred when it encroached upon an executive function of determining the validity of a locational clearance when it declared, contrary to the administrative findings of the Housing Land Use and Regulatory Board ("HLURB"), that the locational clearance of Petitioner was void.

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[21] *Id*. at 56.

[22] CA *rollo*, pp. 93-96.

[23] *Rollo*, p. 59.

22.0 The Court of Appeals erred when it resolved an issue that was not submitted to it for resolution and in the process had usurped a purely executive function.

23.0 The Court of Appeals erred in declaring Petitioner's entire base station a nuisance considering that it was only a small part of the base station, a generator that initially powered the base station, that was reportedly producing unacceptable levels of noise.

24.0 The Court of Appeals erred in not considering that the supervening event of shut down and pull out of the generator in the base station, the source of the perceived nuisance, made the complaint for abatement of nuisance academic.[24]

The Petition is partly meritorious. While the Court agrees that the Court of Appeals should not have taken cognizance of the issue of whether the locational clearance for petitioner's cellular base station is valid, the Court will still not reinstate the RTC Order dated January 16, 2001 granting petitioner's Motion for Summary Judgment and entirely dismissing Civil Case No. Br. 23-632-2000. The issues of (1) whether petitioner's cellular base station is a nuisance, and (2) whether the generator at petitioner's cellular base station is, by itself, also a nuisance, ultimately involve disputed or contested factual matters that call for the presentation of evidence at a full-blown trial.

On the finding of the Court of Appeals that petitioner's locational clearance for its cellular base station is a nullity

Based on the principle of exhaustion of administrative remedies and its corollary doctrine of primary jurisdiction, it was premature for the Court of Appeals to take cognizance of and rule upon the issue of the validity or nullity of petitioner's locational clearance for its cellular base station.

The principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction were explained at length by

[24] *Id*. at 15-16.

the Court in *Province of Zamboanga del Norte v. Court of Appeals*,[25] as follows:

The Court in a long line of cases has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case may be dismissed for lack of cause of action.

The doctrine of exhaustion of administrative remedies is not without its practical and legal reasons. Indeed, resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Our courts of justice for reason 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 every opportunity to correct its error and to dispose of the case.

x x x x x x x x x

The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.

We have held that while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of our resources, the judiciary will stand clear. A long line of cases establishes the basic rule that the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.

In fact, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial

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[25] 396 Phil. 709, 717-720 (2000).

intervention. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly. (Citations omitted.)

The Court again discussed the said principle and doctrine in *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., et al.*,[26] citing *Republic v. Lacap*,[27] to wit:

> 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 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.
>
> In the case of *Republic v. Lacap*, we expounded on the doctrine of exhaustion of administrative remedies and the related doctrine of primary jurisdiction in this wise:
>
> > 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.
> >
> > Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to

[26] G.R. No. 175039, April 18, 2012, 670 SCRA 83, 89-90.

[27] 546 Phil. 87 (2007).

determine technical and intricate matters of fact. (Citations omitted.)

The Housing and Land Use Regulatory Board (HLURB)[28] is the planning, regulatory, and quasi-judicial instrumentality of government for land use development.[29] In the exercise of its mandate to ensure rational land use by regulating land development, it issued HLURB Resolution No. R-626, series of 1998, Approving the Locational Guidelines for Base Stations of Cellular Mobile Telephone Service, Paging Service, Trunking Service, Wireless Loop Service and Other Wireless Communication Services (HLURB Guidelines). Said HLURB Guidelines aim to protect "providers and users, as well as the public in general while ensuring efficient and responsive communication services."

Indeed, the HLURB Guidelines require the submission of several documents for the issuance of a locational clearance for a cellular base station, including:

IV. Requirements and Procedures in Securing Locational Clearance

A. The following documents shall be submitted in duplicate:

x x x x x x x x x

g. Written Consent:

g.1 Subdivisions

x x x x x x x x x

g. 1.2 In the absence of an established [Homeowners Association], consent/ affidavit of non-objection from majority of actual occupants and owners of properties within a radial distance

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[28] Executive Order No. 648, series of 1981, established the Human Settlements Regulatory Commission (HSRC). Subsequently, Executive Order No. 90, series of 1986, renamed the HSRC as the HLURB.

[29] http://hlurb.gov.ph/laws-issuances-2/?tabgarb=tab1

equivalent to the height of the proposed base station measured from its base, including all those whose properties is adjoining the proposed site of the base station. (Refer to Figure 2)

x x x x x x x x x

h. *Barangay* Council Resolution endorsing the base station.

Correlatively, the HLURB provides administrative remedies for non-compliance with its requirements.

In 2000, when factual precedents to the instant case began to take place, HLURB Resolution No. R-586, series of 1996, otherwise known as the 1996 HLURB Rules of Procedure, as amended, was in effect. The original 1996 HLURB Rules of Procedure was precisely amended by HLURB Resolution No. R-655, series of 1999, "so as to afford oppositors with the proper channel and expeditious means to ventilate their objections and oppositions to applications for permits, clearances and licenses, as well as to protect the rights of applicants against frivolous oppositions that may cause undue delay to their projects[.]"

Under the 1996 HLURB Rules of Procedure, as amended, an opposition to an application for a locational clearance for a cellular base station or a complaint for the revocation of a locational clearance for a cellular base station already issued, is within the original jurisdiction of the HLURB Executive Committee. Relevant provisions read:

RULE III
Commencement of Action, Summons and Answer

xxx x x x xxx

SECTION 2. *Opposition to Application for Permit/License/ Clearance.* – When an opposition is filed to an application for a license, permit or clearance with the Board or any of its Regional Field Office, the Regional Officer shall make a **preliminary evaluation and determination** whether the case is impressed with **significant economic, social, environmental or national policy implications**. If he/she determines that the case is so impressed with significant

economic, social, environmental or national policy implications, such as, but not limited to:

1) **Projects of national significance**, for purposes of this rule, a project is of national significance if it is one or falls under any of those enumerated in Rule III, Section 3 of these Rules, as amended;

2) Those involving zoning variances and exceptions;

3) Those involving significant public interest or policy issues;

4) Those endorsed by the zoning administrators of local government units.

The Regional Officer shall cause the records of the case to be transmitted to the **Executive Committee** which shall assume **original jurisdiction** over the case, otherwise, the Regional Officer shall act on and resolve the Opposition.

SECTION 3. A **project is of national significance** if it involves any of the following:

a) Power generating plants (*e.g.*, coal-fired thermal plants) and related facilities (*e.g.*, transmission lines);

b) Airport/seaports; dumping sites/sanitary landfills; reclamation projects;

c) Large-scale piggery and poultry projects;

d) Mining/quarrying projects;

e) National government centers;

f) Golf courses;

g) Fish ponds and aquaculture projects;

h) Cell sites and telecommunication facilities;

i) Economic zones, regional industrial centers, regional agro-industrial centers, provincial industrial centers;

j) All other industrial activities classified as high-intensity uses (1-3 Projects).

SECTION 4. Any party aggrieved, by reason of the elevation or non-elevation of any contested application by the Regional Officer, may file a verified petition for review thereof within thirty (30) days from receipt of the notice of elevation or non-elevation of the contested

application with the Executive Committee which shall resolve whether it shall assume jurisdiction thereon.

The **contested application for clearance, permit or license shall be treated as a complaint** and all other provisions of these rules on complaints not inconsistent with the preceding section shall, as far as practicable, be made applicable to oppositions except that the decision of the Board *en banc* on such contested applications shall be final and executory as provided in Rule XIX, Section 2 of these Rules, as amended.

The Rules pertaining to contested applications for license, permit or clearance shall, by analogy, apply to cases filed primarily for the revocation thereof.

x x x x x x x x x

RULE XVII
Proceedings Before the Board of Commissioners

x x x x x x x x x

SECTION 15. *The Executive Committee.* – The Executive Committee shall be composed of the four regular Commissioners and the *Ex-Officio* Commissioner from the Department of Justice.

x x x x x x x x x

The Executive Committee shall act for the Board on policy matters, measures or proposals concerning the management and substantive administrative operations of the Board subject to ratification by the Board *en banc*, and shall assume **original jurisdiction over cases involving opposition to an application for license, permit or clearance for projects or cases impressed with significant economic, social, environmental or national policy implications or issues** in accordance with Section 2, Rule II of these Rules, as amended. It shall also approve the proposed agenda of the meetings of the Board *en banc*. (Emphases supplied.)

After the HLURB Executive Committee had rendered its Decision, the aggrieved party could still avail itself of a system of administrative appeal, also provided in the 1996 HLURB Rules of Procedure, as amended:

RULE XII
Petition for Review

SECTION 1. *Petition for Review.* – Any party aggrieved by the Decision of the Regional Officer, on any legal ground and upon payment of the review fee may file with the Regional Office a verified Petition for Review of such decision within thirty (30) calendar days from receipt thereof. **In cases decided by the Executive Committee pursuant to Rule II, Section 2 of these Rules, as amended, the verified Petition shall be filed with the Executive Committee within thirty (30) calendar days from receipt of the Committee's Decision.** Copy of such petition shall be furnished the other party and the Board of Commissioners. No motion for reconsideration or mere notice of petition for review of the decision shall be entertained.

Within ten (10) calendar days from receipt of the petition, the Regional Officer, or the Executive Committee, as the case may be, shall elevate the records to the Board of Commissioner together with the summary of proceedings before the Regional Office. **The Petition for Review of a decision rendered by the Executive Committee shall be taken cognizance of by the Board *en banc*.**

RULE XVIII
Appeal from Board Decisions

SECTION 1. *Motion for Reconsideration.* – Within the period for filing an appeal from a Board decision, order or ruling of the Board of Commissioners, any aggrieved party may file a motion for reconsideration with the Board only on the following grounds: (1) serious errors of law which would result in grave injustice if not corrected; and (2) newly discovered evidence.

Only one (1) motion for reconsideration shall be entertained.

Motions for reconsideration shall be assigned to the division from which the decision, order or ruling originated.

SECTION 2. *Appeal.* – Any party may upon notice to the Board and the other party appeal a decision rendered by the Board of Commissioners *en banc* or by one of its divisions to the **Office of the President** within fifteen (15) calendar days from receipt thereof, in accordance with P.D. No. 1344 and A.O. No. 18 Series of 1987.

RULE XIX
Entry of Judgment

x x x x x x x x x

SECTION 2. *Rules on Finality.* – For purposes of determining when a decision or order has become final and executory for purposes of entry in the Book of Judgment, the following shall be observed:

> a. Unless otherwise provided in a decision or resolution rendered by the Regional Officer, the Executive Committee, or the Board of Commissioners, as the case may be, the orders contained therein shall become final as regards a party thirty (30) calendar days after the date of receipt thereof and no petition for review or appeal therefrom has been filed within the said period[.] (Emphases supplied.)

There is no showing that respondents availed themselves of the afore-mentioned administrative remedies prior to instituting Civil Case No. Br. 23-632-2000 before the RTC. While there are accepted exceptions to the principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction,[30] respondents never asserted nor argued any of them. Thus, there is no cogent reason for the Court to apply the exceptions instead of the general rule to this case.

Ordinarily, failure to comply with the principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction will result in the dismissal of the case for lack of cause of action. However, the Court herein will not go to the extent of

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[30] In *Republic v. Lacap* (*supra* note 27 at 97-98), the Court enumerated the exceptions: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings.

entirely dismissing Civil Case No. Br. 23-632-2000. The Court does not lose sight of the fact that respondents' Complaint in Civil Case No. Br. 23-632-2000 is primarily for abatement of nuisance; and respondents alleged the lack of HLURB requirements for the cellular base station, not to seek nullification of petitioner's locational clearance, but to support their chief argument that said cellular base station is a nuisance which needs to be abated. The issue of whether or not the locational clearance for said cellular base station is valid is actually separate and distinct from the issue of whether or not the cellular base station is a nuisance; one is not necessarily determinative of the other. While the first is within the primary jurisdiction of the HLURB and, therefore, premature for the courts to rule upon in the present case, the latter is within the jurisdiction of the courts to determine but only after trial proper.

On the declaration of the Court of Appeals that petitioner's cellular base station is a nuisance that must be abated

Article 694 of the Civil Code defines nuisance as:

ART. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

(1) Injures or endangers the health or safety of others; or

(2) Annoys or offends the senses; or

(3) Shocks, defies or disregards decency or morality; or

(4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or

(5) Hinders or impairs the use of property.

The term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort.[31]

[31] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, 537 Phil. 114, 143 (2006).

The Court, in *AC Enterprises, Inc. v. Frabelle Properties Corporation*,[32] settled that a simple suit for abatement of nuisance, being incapable of pecuniary estimation, is within the exclusive jurisdiction of the RTC. Although respondents also prayed for judgment for moral and exemplary damages, attorney's fees, and litigation expenses, such claims are merely incidental to or as a consequence of, their principal relief.

Nonetheless, while jurisdiction over respondents' Complaint for abatement of nuisance lies with the courts, the respective judgments of the RTC and the Court of Appeals cannot be upheld.

At the outset, the RTC erred in granting petitioner's Motion for Summary Judgment and ordering the dismissal of respondents' Complaint in Civil Case No. Br. 23-632-2000.

Summary judgments are governed by Rule 35 of the Rules of Court, pertinent provisions of which state:

> SEC. 2. *Summary judgment for defending party*. – A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.
>
> SEC. 3. *Motion and proceedings thereon*. – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (Emphases supplied.)

In *Rivera v. Solidbank Corporation*,[33] the Court discussed extensively when a summary judgment is proper:

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[32] *Id*. at 142-143.

[33] 521 Phil. 628, 648-649 (2006).

For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.

A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or a false claim. The trial court can determine a genuine issue on the basis of the pleadings, admissions, documents, affidavits or counteraffidavits submitted by the parties. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact and summary judgment called for. On the other hand, **where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. The evidence on record must be viewed in light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can reasonably be drawn from the evidence.**

Courts must be critical of the papers presented by the moving party and not of the papers/documents in opposition thereto. Conclusory assertions are insufficient to raise an issue of material fact. A party cannot create a genuine dispute of material fact through mere speculations or compilation of differences. He may not create an issue of fact through bald assertions, unsupported contentions and conclusory statements. He must do more than rely upon allegations but must come forward with specific facts in support of a claim. Where the factual context makes his claim implausible, he must come forward with more persuasive evidence demonstrating a genuine issue for trial. (Emphases supplied; citations omitted.)

Judging by the aforequoted standards, summary judgment cannot be rendered in this case as there are clearly factual issues disputed or contested by the parties. As respondents correctly argued in their Opposition to petitioner's Motion for Summary Judgment:

1. Contrary to the claim of [petitioner], there are several genuine issues as to the cause of action and material facts related to the complaint. For one there is an issue on the structural integrity of the tower, the ultra high frequency (UHF) radio wave emission radiated by the communications tower affecting the life, health and well being of the [respondents] and the *barangay* residents, especially their children. Also, the noxious/deleterious fumes and the noise produce[d] by the standby generator and the danger posted by the tower if it collapses in regard to life and limb as well as the property of the [respondents] particularly those whose houses abut, or are near/within the periphery of the communications tower. x x x[34]

Likewise constituting real or genuine issues for trial, which arose from subsequent events, are the following: whether the generator subject of respondents' Complaint had been removed; whether said generator had been replaced by another that produces as much or even more noise and fumes; and whether the generator is a nuisance that can be abated separately from the rest of the cellular base station.

Furthermore, the Court demonstrated in *AC Enterprises, Inc.* the extensive factual considerations of a court before it can arrive at a judgment in an action for abatement of nuisance:

Whether or not noise emanating from a blower of the airconditioning units of the Feliza Building is nuisance is to be resolved only by the court in due course of proceedings. The plaintiff must prove that the noise is a nuisance and the consequences thereof. Noise is not a nuisance *per se*. It may be of such a character as to constitute a nuisance, even though it arises from the operation of a lawful business, only if it affects injuriously the health or comfort of ordinary people in the vicinity to an unreasonable extent. Injury to a particular person in a peculiar position or of especially sensitive characteristics will not render the noise an actionable nuisance. In the conditions of present living, noise seems inseparable from the conduct of many necessary occupations. Its presence is a nuisance in the popular sense in which that word is used, but in the absence of statute, noise becomes actionable only *when it passes the limits of reasonable adjustment to the conditions of the locality and of the needs of the maker to the needs of the listener.* What those

[34] Records, p. 82.

limits are cannot be fixed by any definite measure of quantity or quality; they depend upon the circumstances of the particular case. They may be affected, but are not controlled, by zoning ordinances. The delimitation of designated areas to use for manufacturing, industry or general business is not a license to emit every noise profitably attending the conduct of any one of them.

The test is whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it.

Commercial and industrial activities which are lawful in themselves may become nuisances if they are so offensive to the senses that they render the enjoyment of life and property uncomfortable. The fact that the cause of the complaint must be substantial has often led to expressions in the opinions that to be a nuisance the noise must be deafening or loud or excessive and unreasonable. *The determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities, rendering adjacent property less comfortable and valuable. If the noise does that it can well be said to be substantial and unreasonable in degree, and reasonableness is a question of fact dependent upon all the circumstances and conditions. There can be no fixed standard as to what kind of noise constitutes a* nuisance.

The courts have made it clear that in every case the question is one of reasonableness. What is a reasonable use of one's property and whether a particular use is an unreasonable invasion of another's use and enjoyment of his property so as to constitute a nuisance cannot be determined by exact rules, but must necessarily depend upon the circumstances of each case, such as locality and the character of the surroundings, the nature, utility and social value of the use, the extent and nature of the harm involved, the nature, utility and social value of the use or enjoyment invaded, and the like.

Persons who live or work in thickly populated business districts must necessarily endure the usual annoyances and of those trades and businesses which are properly located and carried on in the neighborhood where they live or work. But these annoyances and discomforts must not be more than those ordinarily to be expected in the community or district, and which are incident to the lawful conduct of such trades and businesses. If they exceed what might be reasonably expected and cause unnecessary harm, then the court will grant relief.

A finding by the LGU that the noise quality standards under the law have not been complied with is not a prerequisite nor constitutes indispensable evidence to prove that the defendant is or is not liable for a nuisance and for damages. Such finding is merely corroborative to the testimonial and/or other evidence to be presented by the parties. The exercise of due care by the owner of a business in its operation does not constitute a defense where, notwithstanding the same, the business as conducted, seriously affects the rights of those in its vicinity.[35] (Citations omitted.)

A reading of the RTC Order dated January 16, 2001 readily shows that the trial court did not take into account any of the foregoing considerations or tests before summarily dismissing Civil Case No. Br. 23-632-2000. The reasoning of the RTC that similar cellular base stations are scattered in heavily populated areas nationwide and are not declared nuisances is unacceptable. As to whether or not this specific cellular base station of petitioner is a nuisance to respondents is largely dependent on the particular factual circumstances involved in the instant case, which is exactly why a trial for threshing out disputed or contested factual issues is indispensable. Evidently, it was the RTC which engaged in speculations and unsubstantiated conclusions.

For the same reasons cited above, without presentation by the parties of evidence on the contested or disputed facts, there was no factual basis for declaring petitioner's cellular base station a nuisance and ordering petitioner to cease and desist from operating the same.

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[35] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 31 at 149-151.

Given the equally important interests of the parties in this case, *i.e.*, on one hand, respondents' health, safety, and property, and on the other, petitioner's business interest and the public's need for accessible and better cellular mobile telephone services, the wise and prudent course to take is to remand the case to the RTC for trial and give the parties the opportunity to prove their respective factual claims.

WHEREFORE, premises considered, the instant Petition is **PARTIALLY GRANTED**. The Decision dated July 16, 2004 and Resolution dated December 9, 2004 of the Court of Appeals in CA-G.R. CV No. 71337 are **REVERSED and SET ASIDE**. Let the records of the case be **REMANDED** to the Regional Trial Court, Branch 23, of Roxas, Isabela, which is **DIRECTED** to reinstate Civil Case No. Br. 23-632-2000 to its docket and proceed with the trial and adjudication thereof with appropriate dispatch in accordance with this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 167274-75. September 11, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FORTUNE TOBACCO CORPORATION,** *respondent.*

[G.R. No. 192576. September 11, 2013]

FORTUNE TOBACCO CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION; A WRIT OF EXECUTION ISSUED BY THE COURT OF ORIGIN TASKED TO IMPLEMENT THE FINAL DECISION IN THE CASE HANDLED BY IT CANNOT GO BEYOND THE CONTENTS OF THE DISPOSITIVE PORTION OF THE DECISION OUGHT TO BE IMPLEMENTED AND THE EXECUTING COURT IS WITHOUT POWER, ON ITS OWN TO TINKER LET ALONE VARY THE EXPLICIT WORDINGS OF THE DISPOSITIVE PORTION, AS COUCHED.— Respondent Commissioner's posture on the tenability of the CTA's assailed denial action is correct. As it were, CTA did no more than simply apply established jurisprudence that a writ of execution issued by the court of origin tasked to implement the final decision in the case handled by it cannot go beyond the contents of the dispositive portion of the decision sought to be implemented. The execution of a judgment is purely a ministerial phase of adjudication. The executing court is without power, on its own, to tinker let alone vary the explicit wordings of the dispositive portion, as couched.

2. ID.; ID.; ID.; WHEN THE DISPOSITIVE PORTION OF A FINAL AND EXECUTORY JUDGMENT CONTAINS A CLERICAL ERROR OR AN AMBIGUITY ARISING FROM AN INADVERTENT OMISSION, SUCH ERROR OR AMBIGUITY MAY BE CLARIFIED BY REFERENCE TO THE BODY OF THE DECISION ITSELF.— But the state of things under the premises ought not to remain uncorrected. And the BIR cannot plausibly raise a valid objection for such approach. That bureau knew where it was coming from when it appealed, first before the CA then to this Court, the award of refund to FTC and the rationale underpinning the award. It cannot plausibly, in all good faith, seek refuge on the basis of slip on the formulation of the *fallo* of a decision to evade a duty. On the other hand, FTC has discharged its burden of establishing its entitlement to the tax refund in the total amount indicated in its underlying petitions for refund filed with the CTA. The successive favorable rulings of the tax court, the appellate court and finally this Court in G.R. Nos. 167274-75 say as much. Accordingly, the Court, in the higher interest of justice and orderly proceedings should make the corresponding clarification on the *fallo* of its July

21, 2008 Decision in G.R. Case Nos. 162274-75. It is an established rule that when the dispositive portion of a judgment, which has meanwhile become final and executory, contains a clerical error or an ambiguity arising from an inadvertent omission, such error or ambiguity may be clarified by reference to the body of the decision itself.

3. ID.; ID.; RENDITION OF A JUDGMENT *NUNC PRO TUNC*, WARRANTED; THE OBJECT OF A JUDGMENT *NUNC PRO TUNC* IS NOT RENDERING OF A NEW JUDGMENT AND THE ASCERTAINMENT AND DETERMINATION OF NEW RIGHTS, BUT IS ONE PLACING IN PROPER FORM ON THE RECORD, THAT HAS BEEN PREVIOUSLY RENDERED, TO MAKE IT SPEAK THE TRUTH, SO AS TO MAKE IT SHOW WHAT THE JUDICIAL ACTION REALLY WAS, NOT TO CORRECT JUDICIAL ERRORS, SUCH AS TO RENDER A JUDGMENT WHICH THE COURT OUGHT TO HAVE RENDERED, IN PLACE OF THE ONE IT DID ERRONEOUSLY RENDER, NOT TO SUPPLY NON-ACTION BY THE COURT, HOWEVER ERRONEOUS THE JUDGMENT MAY HAVE BEEN.— After a scrutiny of the body of the aforesaid July 21, 2008 Decision, the Court finds it necessary to render a judgment *nunc pro tunc* and address an error in the *fallo* of said decision. The office of a judgment *nunc pro tunc* is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has actually been taken. The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, that has been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, not to supply non-action by the court, however erroneous the judgment may have been. The Court would thus have the record reflect the deliberations and discussions had on the issue. In this particular case it is a correction of a clerical, not a judicial error. The body of the decision in question is clear proof that the *fallo* must be corrected, to properly convey the ruling of this Court. We thus declare that the dispositive portion of said

decision should be clarified to include CA G.R. SP No. 83165 which affirmed the December 4, 2003 Decision of the Court of Tax Appeals in CTA Case No. 6612.

4. ID.; ID.; EXECUTION; THE ONLY PORTION OF THE DECISION WHICH BECOMES THE SUBJECT OF EXECUTION AND DETERMINES WHAT IS ORDAINED IS THE DISPOSITIVE PART, THE BODY OF THE DECISION BEING CONSIDERED AS THE REASONS OF THE CONCLUSIONS OF THE COURT, RATHER THAN ITS ADJUDICATION; THE *FALLO* PREVAILS OVER THE BODY OF THE OPINION; EXCEPTIONS; PRESENT.— It is established jurisprudence that "the only portion of the decision which becomes the subject of execution and determines what is ordained is the dispositive part, the body of the decision being considered as the reasons or conclusions of the Court, rather than its adjudication." In the case of *Ong Ching Kian Chung v. China National Cereals Oil and Foodstuffs Import and Export Corporation*, the Court noted two (2) exceptions to the rule that the *fallo* prevails over the body of the opinion, *viz*: (a) where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment because the dispositive part of a decision must find support from the decision's *ratio decidendi*; (b) where extensive and explicit discussion and settlement of the issue is found in the body of the decision. Both exceptions obtain in the present case. We find that there is an ambiguity in the *fallo* of Our July 21, 2008 Decision in G.R. Nos. 167274-75 considering that the propriety of the CA holding in CA-G.R. SP No. 83165 formed part of the core issues raised in G.R. Case Nos. 167274-75, but unfortunately was left out in the all-important decretal portion of the judgment. The *fallo* of Our July 21, 2008 Decision should, therefore, be correspondingly corrected.

5. TAXATION; REFUND; WHEN THE TAXPAYER'S ENTITLEMENT TO A REFUND STANDS UNDISPUTED, THE STATE SHOULD NOT MISUSE TECHNICALITIES AND LEGALISMS, HOWEVER EXALTED, TO KEEP MONEY NOT BELONGING TO IT.— For sure, the CTA cannot, as the Commissioner argues, be faulted for denying petitioner FTC's Motion for Additional Writ of Execution filed in CTA Case Nos. 6365, 6383 and 6612 and for denying petitioner's Motion for Reconsideration for it has no power nor authority to deviate from the wording of the

dispositive portion of Our July 21, 2008 Decision in G.R. Nos. 167274-75. To reiterate, the CTA simply followed the all too familiar doctrine that "when there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of what appears in the body of the decision." Veering away from the *fallo* might even be viewed as irregular and may give rise to a charge of breach of the Code of Judicial Conduct. Nevertheless, it behooves this Court for reasons articulated earlier to grant relief to petitioner FTC by way of clarifying Our July 21, 2008 Decision. This corrective step constitutes, in the final analysis, a continuation of the proceedings in G.R. Case Nos. 167274-75. And it is the right thing to do under the premises. If the BIR, or other government taxing agencies for that matter, expects taxpayers to observe fairness, honesty, transparency and accountability in paying their taxes, it must, to borrow from *BPI Family Savings Bank, Inc. v Court of Appeals* hold itself against the same standard in refunding excess payments or illegal exactions. As a necessary corollary, when the taxpayer's entitlement to a refund stands undisputed, the State should not misuse technicalities and legalisms, however exalted, to keep money not belonging to it. As we stressed in G.R. Nos. 167274-75, the government is not exempt from the application of *solutio indebiti*, a basic postulate proscribing one, including the State, from enriching himself or herself at the expense of another. So it must be here.

APPEARANCES OF COUNSEL

The Solicitor General for Commissioner of Internal Revenue.

Office of the General Counsel (Lucio Tan Group of Companies) and *Angelo Raymundo Q. Valencia* for Fortune Tobacco Corp.

D E C I S I O N

VELASCO, JR., *J.*:

Fortune Tobacco Corporation (FTC), as petitioner in G.R. No. 192576,[1] assails and seeks the reversal of the Decision of

[1] A petition for review on *certiorari* under Rule 45 of the Rules of Court.

the Court of Tax Appeals (CTA) *En Banc* dated March 12, 2010, as effectively reiterated in a Resolution of June 11, 2010, both rendered in C.T.A. EB No. 530 entitled *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*. The assailed issuances affirmed the Resolution of the CTA First Division dated June 4, 2009, denying the Motion for Issuance of Additional Writ of Execution filed by herein petitioner in CTA Case Nos. 6365, 6383 & 66l2, and the Resolution dated August 10, 2009 which denied its Motion for Reconsideration.

The present appellate proceeding traces its origin from and finds context in the July 21, 2008 Decision[2] of the Court in G.R. Nos. 167274-75, an appeal thereto interposed by the Commissioner of Internal Revenue (BIR Commissioner) from the consolidated Decision and Resolution issued by the Court of Appeals on September 28, 2004 and March 1, 2005, respectively, in CA-G.R. SP Nos. 80675 and 83165. The decretal part of the July 21, 2008 Decision reads:

> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals **in CA G.R. SP No. 80675**, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[3] (Emphasis supplied.)

The antecedent facts, as summarized by the CTA in its adverted March 12, 2010 Decision, are as follows:

> FTC (herein petitioner Fortune Tobacco Corporation) is engaged in manufacturing or producing cigarette brands with tax rate classification based on net retail price prescribed as follows:
>
> | Brand | Tax Rate |
> |---|---|
> | Champion M 100 | ₱1.00 |
> | Salem M 100 | ₱1.00 |
> | Salem M King | ₱1.00 |
> | Camel F King | ₱1.00 |

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[2] Penned by Associate Justice Dante Tinga, now retired, for the then Second Division of the Court.

[3] *Rollo* (G.R. Nos. 167274-75), p. 522.

Camel Lights Box 20's	₱1.00
Camel Filters Box 20's	₱1.00
Winston F King	₱5.00
Winston Lights	₱5.00

Prior to January 1, 1997, the aforesaid cigarette brands were subject to ad-valorem tax under Section 142 of the 1977 Tax Code, as amended. However, upon the effectivity of Republic Act (R.A.) No. 8240 on January 1, 1997, a shift from ad valorem tax system to the specific tax system was adopted imposing excise taxes on cigarette brands under Section 142 thereof, now renumbered as Section 145 of the 1997 Tax Code, stating the following pertinent provision:

> The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. x x x The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

Upon the Commissioner's recommendation, the Secretary of Finance, issued Revenue Regulations (RR) No. 17-99 dated December 16, 1999 for the purpose of implementing the provision for a 12% increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000. RR No. 17-99 provides that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine x x x shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.

FTC paid excise taxes on all its cigarettes manufactured and removed from its place of production for the following period:

PERIOD	PAYMENT
January 1, 2000 to January 31, 2000	₱ 585,705,250.00
February 1, 2000 to December 31, 2001	₱19,366,783,535.00
January 1, 2002 to December 31, 2002	₱11,359,578,560.00

FTC subsequently sought administrative redress for refund before the Commissioner on the following dates:

PERIOD	ADMINISTRATIVE FILING OF CLAIM	AMOUNT CLAIMED
January 1, 2000 to January 31, 2000	February 7, 2000	₱35,651,410.00
February 1, 2000 to December 31, 2001	Various claims filed from March 21, 2000 – January 28, 2002	₱644,735,615.00
January 1, 2002 to December 31, 2002	February 3, 2003	₱355,385,920.00

(CTA *En Banc* Decision, Annex "A", Petition, pp. 2-4)

2. Since the claim for refund was not acted upon, petitioner filed on December 11, 2001 and January 30, 2002, respectively, Petitions for Review before the Court of Tax Appeals (CTA) docketed as CTA Case Nos. 6365 and 6383 questioning the validity of Revenue Regulations No. 17-99 with claims for refund in the amounts ₱35,651,410.00 and ₱644,735,615.00, respectively.

These amounts represented overpaid excise taxes for the periods from January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001, respectively (*Ibid*., pp. 4-5).

3. In [separate] Decision dated October 21, 2002, the CTA in Division ordered the Commissioner of Internal Revenue (respondent herein) to refund to petitioner the erroneously paid excise taxes in the amounts of ₱35,651,410.00 for the period covering January 1, 2000 to January 31, 2000 (CTA Case No. 6365) and ₱644,735,615.00 for the period February 1, 2000 to December 31, 2001 (CTA Case No. 6383) (*Ibid.*).

4. Respondent filed a motion for reconsideration of the Decision dated October 21, 2002 covering CTA Case Nos. 6365 and 6383 which was granted in the Resolution dated July 15, 2003.

5. Subsequently, petitioner filed another petition docketed as CTA Case No. 6612 questioning the validity of Revenue Regulations No. 17-99 with a prayer for the refund of overpaid excise tax amounting to ₱355,385,920.00, covering the period from January 1, 2002 to December 31, 2002 (*Ibid., p. 5*).

6. Petitioner thereafter filed a consolidated Motion for Reconsideration of the Resolution dated July 15, 2003 (*Ibid., pp. 5-6*).

7. The CTA in Division issued Resolution dated November 4, 2003 which reversed the Resolution dated July 15, 2003 and ordered respondent to refund to petitioner the amounts of ₱35,651,410.00 for the period covering January 1 to January 31, 2000 and ₱644,735,615.00 for the period covering February 1, 2000 to December 31, 2001, or in the aggregate amount of ₱680,387,025.00, representing erroneously paid excise taxes (*Ibid., p. 6*).

8. In its Decision dated December 4, 2003, the CTA in Division in Case No. 6612 declared RR No. 17-99 invalid and contrary to Section 145 of the 1997 National Internal Revenue Code (NIRC). The Court ordered respondent to refund to petitioner the amount of ₱355,385,920.00 representing overpaid excise taxes for the period covering January 1, 2002 to December 21, 2002 (*Ibid.*)

9. Respondent filed a motion for reconsideration of the Decision dated December 4, 2003 but this was denied in the Resolution dated March 17, 2004 (*Ibid.*)

10. On December 10, 2003, respondent [Commissioner**] filed a Petition for Review with the Court of Appeals (CA) questioning the CTA Resolution dated November 4, 2003 which was issued in CTA Case Nos. 6365 and 6383. The case was docketed as CA-G.R. SP No. 80675 (*Ibid.*).**

11. On April 28, 2004, respondent [Commissioner**] filed another appeal before the CA questioning the CTA Decision dated December 4, 2003 issued in CTA Case No. 6612. The case was docketed as CA-G.R. SP No. 83165 (*Ibid.*, p. 7).**

12. Thereafter, petitioner filed a Consolidated Motion for Execution Pending Appeal before the CTA for CTA Case Nos. 6365 and 6383 and an Amended Motion for Execution Pending Appeal for CTA Case No. 6612 (*Ibid.*).

13. The motions were denied in the CTA Resolutions dated August 2, 2004 and August 3, 2004, respectively.

The CTA in Division pointed out that Section 12, Rule 43 of the 1997 Rules of Civil Procedure should be interpreted with Section 18 of R.A. 1125 which provides that CTA rulings become final and conclusive only where there is no perfected appeal. Considering that respondent filed an appeal with the CA, the CTA in Division's rulings granting the amounts of ₱355,385,920.00 and ₱680,387,025.00 were not yet final and executory (*Ibid.*).

14. In the consolidated CA Decision dated September 28, 2004 issued in CA-G.R. SP Nos. 80675 (CTA Case Nos. 6365 and 6383) and 83165 (CTA Case No. 6612), the appellate court denied respondent's petitions and affirmed petitioner's refund claims in the amounts of ₱680,387,025.00 (CTA Case Nos. 6365 and 6383) and ₱355,385,920.00 (CTA Case No. 6612), respectively (*Ibid*., p. 8).

15. Respondent filed a motion for reconsideration of the CA Decision dated September 28, 2004 but this was denied in the CA's Resolution dated March 1, 2005 (*Ibid*.).

16. Respondent, filed a Petition for Review on *Certiorari* [docketed as G.R. Nos. 167274-75 on May 4, 2005] before the Honorable Court. On June 22, 2005, a Supplemental Petition for Review was filed and the petitions were consolidated (*Ibid*.).

17. In its Decision dated July 21, 2008 [in G.R. Nos. 167274-75], the Honorable Court affirmed the findings of the CA granting petitioner's claim for refund. The dispositive portion of said Decision reads:

> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.
>
> [*Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, 559 SCRA 160 (2008)]*

18. On January 23, 2009, petitioner filed a motion for execution praying for the issuance of a writ of execution of the Decision of the Honorable Court in G.R. Nos. 167274-75 dated July 21, 2008 which was recorded in the Book of Entries of Judgments on November 6, 2008 (*Ibid*., p. 10).

Petitioner's prayer was for the CTA to order the BIR to pay/refund the amounts adjudged by the CTA, as follows:

a) CTA Case No. 6612 under the Decision 04 December 2003 – the amount of Three Hundred Fifty Five Million Three Hundred Eighty Five Thousand Nine Hundred Twenty Pesos (₱355,385,920.00).

b) CTA Case Nos. 6365 and 6383 under the Decisions dated 21 October 2002 and Resolution dated 04 November 2003 – the amount of Six Hundred Eighty Million Three Hundred Eighty Seven Thousand Twenty Five Pesos (₱680,387,025.00).

(Petition, p. 11)

19. On April 14, 2009, the CTA issued a Writ of Execution, which reads:

You are hereby **ORDERED TO REFUND** in favor of the petitioner **FORTUNE TOBACCO CORPORATION**, pursuant to the Supreme Court Decision in the above-entitled case (SC G.R. 167274-75), dated July 21, 2008, which has become final and executory on November 6, 2008, by virtue of the **Entry of Judgment** by the Supreme Court on said dated, which reads as follows:

x x x x x x x x x

the amounts of ₱35,651,410.00 (**C.T.A Case No. 6365**) and ₱644,735,615.00 (**C.T.A Case No. 6383**) or a total of **₱680,387,025.00** representing petitioners' erroneously paid excise taxes for the periods January 1-31, 2000 and February 1, 2000 to December 31, 2001, respectively under CA G.R. SP No. 80675 (C.T.A. Case No. 6365 and C.T.A. Case No. 6383).

(CTA – *1st Division* Resolution dated June 04, 2009, pp. 2-3)

20. On April 21, 2009, petitioner filed a motion for the issuance of an additional writ of execution praying that the CTA order the Commissioner of Internal Revenue to pay petitioner the amount of Three Hundred Fifty-Five Million Three Hundred Eighty Five Thousand Nine Hundred Twenty Pesos (₱355,385,920.00) representing the amount of tax to be refunded in C.T.A. Case No. 6612 under its Decision dated December 4, 2003 and affirmed by the Honorable Court in its Decision dated July 21, 2008 (**Petition, p. 12, CTA Decision dated March 12, 2010, *supra*, p. 10**).

21. In the CTA Resolution dated June 4, 2009, the CTA denied petitioner's Motion for the Issuance of Additional Writ of Execution (*Ibid*., p. 11).

22. Petitioner filed a motion for reconsideration of the Resolution dated June 4, 2009, but this was denied in the CTA Resolution dated August 10, 2009 (*Ibid*.).

The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the instant "Motion for Reconsideration" is hereby DENIED for lack of merit.

23. Aggrieved by the Decision, petitioner filed a petition for review before the CTA *En Banc* docketed as CTA EB Case No. 530, raising the following arguments, to wit:

> The Honorable Court of Tax Appeals seriously erred contrary to law and jurisprudence when it held in the assailed decision and resolution that petitioner Fortune Tobacco Corporation is not entitled to the writ of execution covering the decision in CTA Case No. 6612.
>
> The Decision of the Court of Tax Appeals in CTA Case Nos. 6365, 6383 and 6612 has become final and executory.
>
> The Decision of the Honorable Supreme Court in GR Nos. 167274-75 covers both CA GR SP No. 80675 and 83165.
>
> (*Ibid.*, p. 12)

24. The CTA *En Banc*, in the Decision dated March 12, 2010, dismissed said petition for review. The dispositive portion of said Decision reads:

> **WHEREFORE,** premises considered, the Petition for Review is **DISMISSED**. The Resolutions dated June 4, 2009 and August 10, 2009 are **AFFIRMED**.
>
> **SO ORDERED**.
>
> (Annex "A" , Petition, p. 16)

25. Petitioner filed a Motion for Leave to file Motion for Reconsideration with attached Motion for Reconsideration but this was denied in the CTA *En Banc*'s Resolution dated June 11, 2010. The dispositive portion of said Resolution reads:

> **WHEREFORE,** premises considered, petitioner's Motion for Leave to file attached Motion for Reconsideration and its Motion for Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4] (Emphasis supplied.)

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[4] *Rollo* (G.R. No. 192576), pp. 83-92.

Undeterred by the rebuff from the CTA, petitioner FTC has come to this Court via a petition for review, the recourse docketed as G.R. 192576, thereat praying in essence that an order issue (a) directing the CTA to issue an additional writ of execution directing the Bureau of Internal Revenue (BIR) to pay FTC the amount of tax refund (₱355,385,920.00) as adjudged in CTA Case No. 6612 and (b) clarifying that the Court's Decision in G.R. Nos. 167274-75 applies to the affirmatory ruling of the CA in CA G.R. SP 80675 and CA G.R. SP No. 83165. FTC predicates its instant petition on two (2) stated grounds, *viz*.:

I

The Decision of the Honorable Supreme Court in S.C. GR Nos. 167274-75, which has become final and executory, affirmed the Decision of the Court of Tax Appeals in CTA Case Nos. 6365, 6383 and 6612 and to the Decision of the Court of Appeals in CA G.R. SP No. 80675 and CA G.R. SP No. 83165.

II

The writ of execution prayed for and pertaining to CTA Case No. 6612 and CA G.R. SP No. 83165 is consistent with the decision of the Supreme Court in GR Nos. 167274-75.

The petition is meritorious. But before delving on the merits of this recourse, certain undisputed predicates have to be laid and basic premises restated to explain the consolidation of G.R. Nos. 167274-75 and G.R. No. 192576, thus:

1. As may be recalled, FTC filed before the CTA three (3) separate petitions for refund covering three different periods involving varying amounts as hereunder indicated:

a) **CTA Case No. 6365** (Jan. 1 to Jan. 31, 2000) for ₱35,651,410.00;

b) **CTA Case No. 6383** (Feb. 1, 2000 to Dec. 31, 2001) for ₱644,735,615.00; and

c) **CTA Case No. 6612** (Jan. 1 to Dec. 31, 2002) for ₱355,385,920.00.

In three (3) separate decisions/resolutions, the CTA found the claims for refund for the amounts aforestated valid and thus ordered the payment thereof.

2. From the adverse ruling of the CTA in the three (3) cases, the BIR Commissioner went to the CA on a petition for review assailing in CA-G.R. SP No. 80675 the CTA decision/resolution pertaining to consolidated CTA Case Nos. 6365 & 6383. A similar petition, docketed as CA G.R. SP No. 83165, was subsequently filed assailing the CTA decision/resolution on CTA Case No. 6612.

3. Eventually, the CA, by Decision dated September 4, 2004, denied the Commissioner's consolidated petition for review. The appellate Court also denied the Commissioner's motion for reconsideration on March 1, 2005.

4. It is upon the foregoing state of things that the Commissioner came to this Court in G.R. Nos. 167274-75 to defeat FTC's claim for refund thus granted initially by the CTA and then by the CA in CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165.

By Decision dated July 21, 2008, the Court found against the Commissioner, disposing as follows:

> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals **in CA G.R. SP No. 80675**, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[5] (Emphasis supplied.)

From the foregoing narration, two critical facts are at once apparent. *First*, the BIR Commissioner came to this Court on a petition for review in G.R. Nos. 167274-75 to set aside the consolidated decision of the CA in CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165. *Second*, while the Court's Decision dated July 21, 2008 in G.R. Nos. 167274-75 **denied** the Commissioner's petition for review, necessarily implying that the CA's appealed consolidated decision is **affirmed *in toto***,

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[5] *Rollo* (G.R. Nos. 167274-75), p. 522.

the *fallo* of that decision makes no mention or even alludes to the appealed CA decision in CA-G.R. No. 83165, albeit the main decision's recital of facts made particular reference to that appealed CA decision. In fine, there exists an apparent inconsistency between the dispositive portion and the body of the main decision, which ideally should have been addressed before the finality of the said decision.

Owing to the foregoing aberration, but cognizant of the fact that the process of clarifying the dispositive portion in G.R. Nos. 167274-75 should be acted upon in the main case, the Court, by Resolution[6] dated February 25, 2013 ordered the consolidation of this petition (G.R. No. l92576) with G.R. Nos. 167274-75, to be assigned to any of the members of the Division who participated in the rendition of the decision.

Now to the crux of the controversy.

Petitioner FTC posits that the CTA should have issued the desired additional writ of execution in CTA Case No. 6612 since the body of the Decision of this Court in G.R. Nos. 167274-75 encompasses both CA G.R. Case No. 80675 which covers CTA Case Nos. 6365 and 6383 and CA G.R. Case No. 83165 which embraces CTA Case No. 6612. While the *fallo* of the Decision dated July 21, 2008 in G.R. Case Nos. 167274-75 did not indeed specifically mention CA G.R. SP No. 83165, petitioner FTC would nonetheless maintain that such a slip is but an inadvertent omission in the *fallo*. For the text of the July 21, 2008 Decision, FTC adds, clearly reveals that said CA case was intended to be included in the disposition of the case.

Respondent Commissioner, on the other hand, argues that per the CTA, no reversible error may be attributed to the tax court in rejecting, without more, the prayer for the additional writ of execution pertaining to CTA Case No. 6612, subject of CA G.R. SP No. 83165. For the purpose, the Commissioner cited a catena of cases on the limits of a writ of execution. It is pointed out that such writ must conform to the judgment to be executed; its enforcement may not vary the terms of the

[6] *Rollo* (G.R. No. 192576), pp. 121-127.

judgment it seeks to enforce, nor go beyond its terms. As further asseverated, "whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the court and while they may serve as guide or enlightenment to determine the *ratio decidendi*, what is controlling is what appears in the dispositive part of the decision."[7]

Respondent Commissioner's posture on the tenability of the CTA's assailed denial action is correct. As it were, CTA did no more than simply apply established jurisprudence that a writ of execution issued by the court of origin tasked to implement the final decision in the case handled by it cannot go beyond the contents of the dispositive portion of the decision sought to be implemented. The execution of a judgment is purely a ministerial phase of adjudication. The executing court is without power, on its own, to tinker let alone vary the explicit wordings of the dispositive portion, as couched.

But the state of things under the premises ought not to remain uncorrected. And the BIR cannot plausibly raise a valid objection for such approach. That bureau knew where it was coming from when it appealed, first before the CA then to this Court, the award of refund to FTC and the rationale underpinning the award. It cannot plausibly, in all good faith, seek refuge on the basis of slip on the formulation of the *fallo* of a decision to evade a duty. On the other hand, FTC has discharged its burden of establishing its entitlement to the tax refund in the total amount indicated in its underlying petitions for refund filed with the CTA. The successive favorable rulings of the tax court, the appellate court and finally this Court in G.R. Nos. 167274-75 say as much. Accordingly, the Court, in the higher interest of justice and orderly proceedings should make the corresponding clarification on the *fallo* of its July 21, 2008 Decision in G.R. Case Nos. 162274-75. It is an established rule that when the dispositive portion of a judgment, which has meanwhile become final and executory, contains a clerical error or an ambiguity

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[7] *Tropical Homes, Inc. v. Fortun*, G.R. No. 51554, January 13, 1989, 169 SCRA 81, 91.

arising from an inadvertent omission, such error or ambiguity may be clarified by reference to the body of the decision itself.[8]

After a scrutiny of the body of the aforesaid July 21, 2008 Decision, the Court finds it necessary to render a judgment *nunc pro tunc* and address an error in the *fallo* of said decision. The office of a judgment *nunc pro tunc* is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has actually been taken.[9] The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, that has been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, not to supply non-action by the court, however erroneous the judgment may have been.[10] The Court would thus have the record reflect the deliberations and discussions had on the issue. In this particular case it is a correction of a clerical, not a judicial error. The body of the decision in question is clear proof that the *fallo* must be corrected, to properly convey the ruling of this Court.

We thus declare that the dispositive portion of said decision should be clarified to include CA G.R. SP No. 83165 which affirmed the December 4, 2003 Decision of the Court of Tax Appeals in CTA Case No. 6612, for the following reasons, heretofore summarized:

1. The petition for review on *certiorari* in G.R. Nos. 167274-75 filed by respondent CIR sought the reversal of the

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[8] *Philippine Health Insurance Corporation v. Court of Appeals*, G.R. No. 176276, November 28, 2008, 572 SCRA 720.

[9] *Briones-Vasquez v. Court of Appeals*, G.R. No. 144882, February 4, 2005, 450 SCRA 482, 491.

[10] *Manning International Corporation v. NLRC*, G.R. No. 83018, March 13, 1991, 195 SCRA 155, 161-162.

September 28, 2004 Decision of the Court of Appeals rendered in the consolidated cases of CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165, thus:

> Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks the nullification of the Court of Appeals' (1) Decision promulgated on September 28, 2004 in CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165, both entitled "*Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*," denying the CIR's petition and affirming the assailed decisions and resolutions of the Court of Tax Appeals (CTA) in CTA Cases Nos. 6365, 6383 and 6612; and (2) Resolution dated March 1, 2005 denying petitioner's motion for reconsideration of the said decision."[11]

Earlier on, it was made clear that respondent CIR questioned the Decision of the CTA dated October 21, 2002 in CTA Case Nos. 6365 and 6383 in CA G.R. SP No. 80675 before the Court of Appeals. In CA G.R. SP No. 83165, the Commissioner also assailed the Decision of the CTA dated December 4, 2003 in CTA Case No. 66l2 also before the same appellate court. The two CA cases were later consolidated. Since the appellate court rendered its September 28, 2004 Decision in the consolidated cases of CA G.R. SP Nos. 80675 and 83165, what reached and was challenged before this Court in G.R. Nos. 167274-75 is the ruling of the Court of Appeals in both cases. When this Court rendered its July 21, 2008 Decision, the ruling necessarily embraced both CA G.R. SP Case Nos. 80675 and 83165 and adjudicated the respective rights of the parties. Clearly then, there was indeed an inadvertence in not specifying in the *fallo* of our July 21, 2008 Decision that the September 28, 2004 CA Decision included not only CA G.R. SP No. 80675 but also CA G.R. SP No. 83165 since the two cases were merged prior to the issuance of the September 28, 2004 Decision.

Given the above perspective, the inclusion of CA G.R. SP Case No. 83165 in the *fallo* of the Decision dated July 21, 2008 is very much in order and is in keeping with the imperatives of fairness.

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[11] *Rollo* (G.R. Nos. 167274-75), p. 10.

2. The very contents of the body of the Decision dated July 21, 2008 rendered by this Court in G.R. Nos. 167274-75 undoubtedly reveal that both CA G.R. SP No. 80675 and CA G.R. SP No. 83165 were the subject matter of the petition therein. And as FTC would point out at every turn, the Court's Decision passed upon and decided the merits of the September 28, 2004 Decision of the Court of Appeals in the consolidated cases of CA G.R. SP Case Nos. 80675 and 83165 and necessarily CA G.R. SP No. 83165 was included in our disposition of G.R. Nos. 167274-75. We quote the pertinent portions of the said decision:

The following undisputed facts, summarized by the Court of Appeals, are quoted in the assailed Decision dated 28 September 2004:

CA G.R. SP No. 80675

x x x x x x x x x

Petitioner [FTC] is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to R.A. No. 4280, to wit:

Brand	Tax Rate
Champion M 100	₱1.00
Salem M 100	₱1.00
Salem M King	₱1.00
Camel F King	₱1.00
Camel Lights Box 20's	₱1.00
Camel Filters Box 20's	₱1.00
Winston F Kings	₱5.00
Winston Lights	₱5.00

Immediately prior to January 1, 1997, the above-mentioned cigarette brands were subject to ad *valorem tax* pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, R.A. No. 8240 took effect whereby a shift from the *ad valorem* tax (AVT) system to the specific tax system was made and subjecting the aforesaid cigarette brands to specific tax under [S]ection 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997, pertinent provisions of which are quoted thus:

x x x x x x x x x

The rates of excise tax on cigars and cigarettes under paragraphs (1), (2) (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000. (Emphasis supplied.)

x x x x x x x x x

To implement the provisions for a twelve percent (12%) increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, xxx issued Revenue Regulations [RR] No. 17-99, dated December 16, 1999, which provides the increase on the applicable tax rates on cigar and cigarettes x x x.

[tax rates deleted]

Revenue Regulations No. 17-99 likewise provides in the last paragraph of Section 1 thereof, "**(t)hat the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.**"

For the period covering January 1-31, 2000, petitioner allegedly paid specific taxes on all brands manufactured and removed in the total amounts of ₱585,705,250.00.

On February 7, 2000, petitioner filed with respondent's Appellate Division a claim for refund or tax credit of its purportedly overpaid excise tax for the month of January 2000 in the amount of ₱35,651,410.00.

On June 21, 2001, petitioner filed with respondent's Legal Service a letter dated June 20, 2001 reiterating all the claims for refund/tax credit of its overpaid excise taxes filed on various dates, including the present claim for the month of January 2000 in the amount of ₱35,651,410.00.

As there was no action on the part of the respondent, petitioner filed the instant petition for review with this Court on December 11, 2001, in order to comply with the two-year period for filing a claim for refund.

x x x x x x x x x

CA G.R. SP No. 83165

The petition contains essentially similar facts, except that the said case questions the CTA's December 4, 2003 decision in CTA Case

No. 6612 granting respondent's claim for refund of the amount of ₱355,385,920.00 representing erroneously or illegally collected specific taxes covering the period January 1, 2002 to December 31, 2002, as well as its March 17, 2004 Resolution denying a reconsideration thereof.

x x x x x x x x x

However, on consolidated motions for reconsideration filed by the respondent in CTA Case Nos. 6363 and 6383, the July 15, 2002 resolution was set aside, and the Tax Court ruled, this time with a semblance of finality, that the respondent is entitled to the refund claimed. Hence, in a resolution dated November 4, 2003, the tax court reinstated its December 21, 2002 Decision and disposed as follows:

> **WHEREFORE,** our Decisions in CTA Case Nos. 6365 and 6383 are hereby REINSTATED. Accordingly, respondent is hereby ORDERED to REFUND petitioner the total amount of ₱680,387,025.00 representing erroneously paid excise taxes for the period January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001.
>
> **SO ORDERED**.

Meanwhile, on December 4, 2003, the [CTA] rendered a decision in CTA Case No. 6612 granting the prayer for the refund of the amount of ₱355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002. The tax court disposed of the case as follows:

> **IN VIEW OF THE FOREGOING**, the Petition for Review is GRANTED. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of ₱355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002.
>
> SO ORDERED.

Petitioner sought reconsideration of the decision, but the same was denied in a Resolution dated March 17, 2004. (Emphasis supplied; citations omitted.)

The Commissioner appealed the aforesaid decisions of the CTA. The petition questioning the grant of refund in the amount of ₱680,387,025.00 was docketed as CA-G.R. SP No. 80675, whereas that assailing the grant of refund in the amount of ₱355,385,920.00

was docketed as CA-G.R. SP No. 83165. The petitions were consolidated and eventually denied by the [CA]. The appellate court also denied reconsideration in its Resolution dated 1 March 2005.

In its Memorandum 22 dated November 2006, filed on behalf of the Commissioner, the Office of the Solicitor General (OSG) seeks to convince the Court that the literal interpretation given by the CTA and the [CA] of Section 145 of the Tax Code of 1997 (Tax Code) would lead to a lower tax imposable on 1 January 2000 than that imposable during the transition period. Instead of an increase of 12% in the tax rate effective on 1 January 2000 as allegedly mandated by the Tax Code, the appellate court's ruling would result in a significant decrease in the tax rate by as much as 66%.

x x x x x x x x x

Finally, the OSG asserts that a tax refund is in the nature of a tax exemption and must, therefore, be construed strictly against the taxpayer, such as Fortune Tobacco.

In its Memorandum dated 10 November 2006, Fortune Tobacco argues that the CTA and the [CA] merely followed the letter of the law when they ruled that the basis for the 12% increase in the tax rate should be the net retail price of the cigarettes in the market as outlined in paragraph C, sub [par.] (1)-(4), Section 145 of the Tax Code. The Commissioner allegedly has gone beyond his delegated rule-making power when he promulgated, enforced and implemented [RR] No. 17-99, which effectively created a separate classification for cigarettes based on the excise tax "actually being paid prior to January 1, 2000."

"x x x x x x x x x

This entire controversy revolves around the interplay between Section 145 of the Tax Code and [RR] 17-99. The main issue is an inquiry into whether the revenue regulation has exceeded the allowable limits of legislative delegation.

x x x x x x x x x

Revenue Regulation 17-99, which was issued pursuant to the unquestioned authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of the Tax Code, interprets the above-quoted provision and reflects the 12% increase in excise taxes in the following manner:

[table on tax rates deleted]

This table reflects Section 145 of the Tax Code insofar as it mandates a 12% increase effective on 1 January 2000 based on the taxes indicated under paragraph C, sub-paragraph (1)-(4). However, [RR]No. 17-99 went further and added that "[T]he new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor *shall not be lower than the excise tax that is actually being paid prior to January 1, 2000*."

Parenthetically, Section 145 states that during the transition period, *i.e.*, within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, [RR] No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12%—a situation not supported by the plain wording of Section 145 of the Tax Code.

This is not the first time that national revenue officials had ventured in the area of unauthorized administrative legislation.

In *Commissioner of Internal Revenue v. Reyes*, respondent was not informed in writing of the law and the facts on which the assessment of estate taxes was made pursuant to Section 228 of the 1997 Tax Code, as amended by Republic Act (R.A.) No. 8424. She was merely notified of the findings by the Commissioner, who had simply relied upon the old provisions of the law and [RR] No. 12-85 which was based on the old provision of the law. The Court held that in case of discrepancy between the law as amended and the implementing regulation based on the old law, the former necessarily prevails. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure.

x x x x x x x x x

In the case at bar, the OSG's argument that by 1 January 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by paragraph 5, Section 145 of the Tax Code, is an unsuccessful attempt to justify what is clearly an impermissible incursion into the limits of administrative legislation. Such an interpretation is not supported by the clear language of the law and is obviously only meant to validate the OSG's thesis that Section 145 of the Tax Code is ambiguous and admits of several interpretations.

The contention that the increase of 12% starting on 1 January 2000 does not apply to the brands of cigarettes listed under Annex "D" is likewise unmeritorious, absurd even. Paragraph 8, Section 145 of the Tax Code simply states that, "[T]he classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D', shall remain in force until revised by Congress." This declaration certainly does not lend itself to the interpretation given to it by the OSG. As plainly worded, the average net retail prices of the listed brands under Annex "D," which classify cigarettes according to their net retail price into low, medium or high, obviously remain the bases for the application of the increase in excise tax rates effective on 1 January 2000.

The foregoing leads us to conclude that [RR] No. 17-99 is indeed indefensibly flawed. The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government. Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record, the shift from the *ad valorem* system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned, to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes x x x into high, medium and low-priced based on their net retail price and accordingly graduating tax rates.

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WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.[12]

The July 21, 2008 Decision in G.R. Nos. 167274-75 brings into sharp focus the following facts and proceedings:

1. It specifically mentioned CA G.R. SP No. 80675 and CA G.R. SP No. 83165 as the subject matter of the decision on p. 2 and p. 7, respectively.

2. It traced the history of CTA Case Nos. 6365 and 6383 from the time the CTA peremptorily resolved the twin refund suits to the appeal of the decisions thereat to the Court of Appeals via a petition docketed as CA-G.R. SP No. 80675 and eventually to this Court in G.R. Nos. 167274-75. It likewise narrated the events connected with CTA Case No. 6612 to the time the decision in said case was appealed to the Court of Appeals in CA-G.R. SP No. 83165, consolidated with CA G.R. SP No. 80675 and later decided by the appellate court. It cited the appeal from the CA decision by the BIR Commissioner to this Court in G.R. Nos. 167274-75.

3. It resolved in the negative the main issue presented in both CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165 as to whether or not the last paragraph of Section 1 of Revenue Regulation No. 17-99 is in accordance with the pertinent provisions of Republic Act No. 8240, now incorporated in Section 145 of the Tax Code of 1997.

4. The very disposition in the *fallo* in G.R. Case Nos. 167274-75 that "the petition is denied" and that the "Decision of the Court of Appeals x x x dated 28 September 2004 and its Resolution dated 1 March 2005 are affirmed" reflects an intention that CA G.R. SP No. 83165 should have been stated therein, being one of the cases subject of the September 28, 2004 CA Decision.

The legality of Revenue Regulation No. 17-99 is the only determinative issue resolved by the July 21, 2008 Decision which was the very same issue resolved by the CA in the consolidated

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[12] *Rollo* (G.R. Nos. 167274-75), pp. 500-522.

CA-G.R. SP Nos. 80675 and 83165 and exactly the same issue in CTA Nos. 6365, 6383 and 6612.

From the foregoing cogent reasons, We conclude that CA-G.R. SP No. 83165 should be included in the *fallo* of the July 21, 2008 decision.

It is established jurisprudence that "the only portion of the decision which becomes the subject of execution and determines what is ordained is the dispositive part, the body of the decision being considered as the reasons or conclusions of the Court, rather than its adjudication."[13]

In the case of *Ong Ching Kian Chung v. China National Cereals Oil and Foodstuffs Import and Export Corporation*, the Court noted two (2) exceptions to the rule that the *fallo* prevails over the body of the opinion, *viz*:

(a) where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment because the dispositive part of a decision must find support from the decision's *ratio decidendi*;

(b) where extensive and explicit discussion and settlement of the issue is found in the body of the decision.[14]

Both exceptions obtain in the present case. We find that there is an ambiguity in the *fallo* of Our July 21, 2008 Decision in G.R. Nos. 167274-75 considering that the propriety of the CA holding in CA-G.R. SP No. 83165 formed part of the core issues raised in G.R. Case Nos. 167274-75, but unfortunately was left out in the all-important decretal portion of the judgment. The *fallo* of Our July 21, 2008 Decision should, therefore, be correspondingly corrected.

For sure, the CTA cannot, as the Commissioner argues, be faulted for denying petitioner FTC's Motion for Additional Writ of Execution filed in CTA Case Nos. 6365, 6383 and 6612 and for denying petitioner's Motion for Reconsideration for it has

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[13] *Edward v. Arce*, G.R. No. L-6932, March 26, 1956.

[14] G.R. No. 131502. June 8, 2000, 333 SCRA 390, 401.

no power nor authority to deviate from the wording of the dispositive portion of Our July 21, 2008 Decision in G.R. Nos. 167274-75. To reiterate, the CTA simply followed the all too familiar doctrine that "when there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of what appears in the body of the decision."[15] Veering away from the *fallo* might even be viewed as irregular and may give rise to a charge of breach of the Code of Judicial Conduct. Nevertheless, it behooves this Court for reasons articulated earlier to grant relief to petitioner FTC by way of clarifying Our July 21, 2008 Decision. This corrective step constitutes, in the final analysis, a continuation of the proceedings in G.R. Case Nos. 167274-75. And it is the right thing to do under the premises. If the BIR, or other government taxing agencies for that matter, expects taxpayers to observe fairness, honesty, transparency and accountability in paying their taxes, it must, to borrow from *BPI Family Savings Bank, Inc. v Court of Appeals*[16] hold itself against the same standard in refunding excess payments or illegal exactions. As a necessary corollary, when the taxpayer's entitlement to a refund stands undisputed, the State should not misuse technicalities and legalisms, however exalted, to keep money not belonging to it.[17] As we stressed in G.R. Nos. 167274-75, the government is not exempt from the application of *solutio indebiti*, a basic postulate proscribing one, including the State, from enriching himself or herself at the expense of another.[18] So it must be here.

WHEREFORE, the petition is **GRANTED**. The dispositive portion of the Court's July 21, 2008 Decision in G.R. Nos. 167274-75 is corrected to reflect the inclusion of CA G.R. SP No. 83165 therein. As amended, the *fallo* of the aforesaid decision shall read:

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[15] *Aguirre v. Aguirre,* G.R. No. L-33080, August 15, 1974, 58 SCRA 461.

[16] G.R. No. 122480, April 12, 2000, 330 SCRA 507.

[17] *Id.*; see also *State Land Investment Corporation v. Commissioner of Internal Revenue*, G.R. No. 171956, January 18, 2008, 542 SCRA 114.

[18] *Id.*

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in the consolidated cases of CA- G.R. SP No. 80675 and 83165 dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.

The Decision of the Court of Tax Appeals (CTA) *En Banc* dated March 12, 2010 and the Resolution dated June 11, 2010 in CTA EB No. 530 entitled "*Fortune Tobacco Corporation vs. Commissioner of Internal Revenue*" as well as the Resolutions dated June 4, 2009 and August 10, 2009 which denied the Motion for Issuance of Additional Writ of Execution of the CTA First Division in CTA Cases Nos. 6365, 6383 and 6612 are SET ASIDE. The CTA is ORDERED to issue a writ of execution directing the respondent CIR to pay petitioner Fortune Tobacco Corporation the amount of tax refund of ₱355,385,920.00 as adjudged in CTA Case No. 6612.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 169823-24. September 11, 2013]

HERMINIO T. DISINI, *petitioner, vs.* **THE HON. SANDIGANBAYAN, FIRST DIVISION, and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. Nos. 174764-65. September 11, 2013]

HERMINIO T. DISINI, *petitioner, vs.* **SANDIGANBAYAN, FIRST DIVISION, and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; SANDIGANBAYAN; JURISDICTION; REPUBLIC ACT NO. 8249, (AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN); THE SANDIGANBAYAN HAS JURISDICTION OVER CIVIL AND CRIMINAL CASES FILED PURSUANT TO AND IN CONNECTION WITH EXECUTIVE ORDER NOS. 1, 2, 14 AND 14-A.—** We hold that the Sandiganbayan has jurisdiction over Criminal Case No. 28001 and Criminal Case No. 28002. Presidential Decree (P.D.) No. 1606 was the law that established the Sandiganbayan and defined its jurisdiction. The law was amended by R.A. No. 7975 and R.A. No. 8249. Under Section 4 of R.A. No. 8249, the Sandiganbayan was vested with original and exclusive jurisdiction over all cases involving: x x x **c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.** x x x. It is underscored that it was the PCGG that had initially filed the criminal complaints in the Sandiganbayan, with the Office of the Ombudsman taking over the investigation of Disini only after the Court issued in *Cojuangco, Jr.* the directive to the PCGG to refer the criminal cases to the Office of the Ombudsman on the ground that the PCGG would not be an impartial office following its finding of a *prima facie* case being established against Disini to sustain the institution of Civil Case No. 0013. Also underscored is that the complaint in Civil Case No. 0013 and the informations in Criminal Case No. 28001 and Criminal Case No. 28002 involved the same transaction, specifically the contracts awarded through the intervention of Disini and President Marcos in favor of Burns & Roe to do the engineering and architectural design, and Westinghouse to do the construction of the Philippine Nuclear Power Plant Project (PNPPP). Given their sameness in subject matter, to still expressly aver in Criminal Case No. 28001 and Criminal Case No. 28002 that the charges involved the recovery of ill-gotten wealth was no longer necessary. With Criminal Case No. 28001 and Criminal Case No. 28002 being intertwined with Civil Case No. 0013, the PCGG had the authority to institute the criminal prosecutions against Disini pursuant to E.O. Nos. 1, 2, 14 and 14-A.

2. ID.; ID.; ID.; ID.; ID.; THE SANDIGANBAYAN HAS JURISDICTION OVER CRIMINAL ACTION INVOLVING THE PETITIONER NOT WITHSTANDING THAT HE IS A PRIVATE INDIVIDUAL SINCE THE CRIMINAL PROSECUTION THEREOF IS INTIMATELY RELATED TO THE RECOVERY OF ILL-GOTTEN WEALTH OF MARCOSES, HIS FAMILY, SUBORDINATES AND CLOSE ASSOCIATES.— That Disini was a private individual did not remove the offenses charged from the jurisdiction of the Sandiganbayan. Section 2 of E.O. No. 1, which tasked the PCGG with assisting the President in "[t]he recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship," expressly granted the authority of the PCGG to recover ill-gotten wealth covered President Marcos' immediate family, relatives, subordinates and close associates, *without distinction as to their private or public status.*

3. ID.; ID.; ID.; ID.; ID.; THE QUALIFYING CLAUSE FOUND IN SECTION 4 OF R.A. NO. 8249 APPLIES ONLY TO THE CASES LISTED IN SUBSECTION 4A AND SUBSECTION 4B THEREOF AND ONLY TO PUBLIC OFFICIALS OCCUPYING POSITIONS CLASSIFIED AS GRADE 27 OR HIGHER.— Contrary to Disini's argument, too, the qualifying clause found in Section 4 of R.A. No. 8249 applied only to the cases listed in Subsection 4a and Subsection 4b of R.A. No. 8249, the full text of which follows: x x x a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense: (1) **Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher**, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically

including: x x x. (2) **Members of Congress and officials thereof classified as Grade '27' and up** under the Compensation and Position Classification Act of 1989; x x x (5) **All other national and local officials classified as Grade '27' and higher** under the Compensation and Position Classification Act of 1989. b. Other offenses or felonies whether simple or complexed with other crimes **committed by the public officials and employees mentioned in subsection a of this section** in relation to their office. x x x Unquestionably, public officials occupying positions classified as Grade 27 or higher are mentioned only in Subsection 4a and Subsection 4b, signifying the plain legislative intent of limiting the qualifying clause to *such* public officials. To include within the ambit of the qualifying clause the persons covered by Subsection 4c would contravene the exclusive mandate of the PCGG to bring the civil and criminal cases pursuant to and in connection with E.O. Nos. 1, 2, 14 and 14-A. In view of this, the Sandiganbayan properly took cognizance of Criminal Case No. 28001 and Criminal Case No. 28002 despite Disini's being a private individual, and despite the lack of any allegation of his being the co-principal, accomplice or accessory of a public official in the commission of the offenses charged.

4. CRIMINAL LAW; PRESCRIPTION OF OFFENSES; THE PERIOD OF PRESCRIPTION FOR THE OFFENSE CHARGED, THE TIME WHEN THE PERIOD OF PRESCRIPTION STARTS TO RUN, AND THE TIME WHEN THE PRESCRIPTIVE PERIOD IS INTERRUPTED, MUST BE CONSIDERED IN RESOLVING THE ISSUE OF PRESCRIPTION; CRIME OF CORRUPTION OF PUBLIC OFFICIALS, PRESCRIPTIVE PERIOD.— In resolving the issue of prescription, the following must be considered, namely: (1) the period of prescription for the offense charged; (2) the time when the period of prescription starts to run; and (3) the time when the prescriptive period is interrupted. The information in Criminal Case No. 28001 alleged that Disini had offered, promised and given gifts and presents to Ferdinand E. Marcos; that said gifts were in consideration of Disini obtaining for Burns & Roe and Westinghouse Electrical Corporation (Westinghouse) the contracts, respectively, to do the engineering and architectural design of and to construct the PNPPP; and that President Marcos did award or cause to be awarded the respective contracts to Burns & Roe and

Westinghouse, which acts constituted the crime of *corruption of public officials.* The crime of *corruption of public officials* charged in Criminal Case No. 28001 is punished by Article 212 of the *Revised Penal Code* with the "same penalties imposed upon the officer corrupted." Under the second paragraph of Article 210 of the *Revised Penal Code* (*direct bribery*), if the gift was accepted by the officer in consideration of the execution of an act that does not constitute a crime, and the officer executes the act, he shall suffer the penalty of *prision mayor* in its medium and minimum periods and a fine of not less than three times the value of the gift. Conformably with Article 90 of the *Revised Penal Code*, the period of prescription for this specie of *corruption of public officials* charged against Disini is 15 years. As for Criminal Case No. 28002, Disini was charged with a violation of Section 4(a) of R.A. No. 3019. By express provision of Section 11 of R.A. No. 3019, as amended by *Batas Pambansa Blg*. 195, the offenses committed under R.A. No. 3019 shall prescribe in 15 years. Prior to the amendment, the prescriptive period was only 10 years. It became settled in *People v. Pacificador*, however, that the longer prescriptive period of 15 years would not apply to crimes committed prior to the effectivity of *Batas Pambansa Blg*. 195, which was approved on March 16, 1982, because the longer period could not be given retroactive effect for not being favorable to the accused. With the information alleging the period from 1974 to February 1986 as the time of the commission of the crime charged, the applicable prescriptive period is 10 years in order to accord with *People v. Pacificador*.

5. ID.; ID.; REPUBLIC ACT NO. 3326 (AN ACT ESTABLISHING PRESCRIPTIVE PERIODS FOR VIOLATIONS OF SPECIAL LAWS AND MUNICIPAL ORDINANCES); PRESCRIPTION SHALL START TO RUN ON THE DAY OF THE COMMISSION OF THE CRIME; THE FACT THAT AN AGGRIEVED PERSON ENTITLED TO AN ACTION HAS NO KNOWLEDGE OF HIS RIGHT TO SUE OR OF THE FACTS OUT OF WHICH HIS RIGHT ARISES, DOES NOT PREVENT THE RUNNING OF THE PRESCRIPTIVE PERIOD; DOCTRINE OF BLAMELESS IGNORANCE, AN EXCEPTION THERETO; EXPOUNDED.— For crimes punishable by the *Revised Penal Code*, Article 91 thereof provides that prescription starts to run from the day on which the crime is discovered by the offended party, the

authorities, or their agents. As to offenses punishable by R.A. No. 3019, Section 2 of R.A. No. 3326 states: Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy. The ruling on the issue of prescription in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* is also enlightening, *viz*: Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "*blameless ignorance*" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action."

6. ID.; ID.; ID.; PRESCRIPTION BEGINS TO RUN ONLY FROM THE DISCOVERY OF THE UNLAWFUL TRANSACTIONS BY THE PCGG, NOT FROM THE TIME THE CONTRACTS WERE ENTERED INTO.— [W]e are not persuaded to hold here that the prescriptive period began to run from 1974, the time when the contracts for the PNPP Project were awarded to Burns & Roe and Westinghouse. Although the criminal cases were the offshoot of the sequestration case to recover ill-gotten wealth instead of behest loans like in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, the connivance and conspiracy among the public officials involved and the beneficiaries of the favors illegally extended rendered it similarly well-nigh impossible for the State, as the aggrieved party, to have known of the commission of the crimes charged prior to the EDSA Revolution in 1986. Notwithstanding the highly publicized and widely-known nature of the PNPPP, the unlawful acts or transactions in relation to it were discovered only through the PCGG's exhaustive investigation, resulting in the

establishment of a *prima facie* case sufficient for the PCGG to institute Civil Case No. 0013 against Disini. Before the discovery, the PNPPP contracts, which partook of a public character, enjoyed the presumption of their execution having been regularly done in the course of official functions. Considering further that during the Marcos regime, no person would have dared to assail the legality of the transactions, it would be unreasonable to expect that the discovery of the unlawful transactions was possible prior to 1986.

7. ID.; ID.; IRRESPECTIVE OF WHETHER THE OFFENSE CHARGED IS PUNISHABLE BY THE REVISED PENAL CODE OR BY A SPECIAL LAW, IT IS THE FILING OF THE COMPLAINT OR INFORMATION IN THE OFFICE OF THE PUBLIC PROSECUTOR FOR PURPOSES OF THE PRELIMINARY INVESTIGATION THAT INTERRUPTS THE PERIOD OF PRESCRIPTION.— We note, too, that the criminal complaints were filed and their records transmitted by the PCGG to the Office of the Ombudsman on April 8, 1991 for the conduct the preliminary investigation. In accordance with Article 91 of the *Revised Penal Code* and the ruling in *Panaguiton, Jr. v. Department of Justice*, the filing of the criminal complaints in the Office of the Ombudsman effectively interrupted the running of the period of prescription. According to *Panaguiton*: In *Ingco v. Sandiganbayan* and *Sanrio Company Limited v. Lim*, which involved violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and the Intellectual Property Code (R.A. No. 8293), which are both special laws, the Court ruled that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused. x x x. The prevailing rule is, therefore, that irrespective of whether the offense charged is punishable by the *Revised Penal Code* or by a special law, it is the filing of the complaint or information in the office of the public prosecutor for purposes of the preliminary investigation that interrupts the period of prescription. Consequently, prescription did not yet set in because only five years elapsed from 1986, the time of the discovery of the offenses charged, up to April 1991, the time of the filing of the criminal complaints in the Office of the Ombudsman.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; SUFFICIENCY OF A COMPLAINT OR

INFORMATION MUST STATE EVERY SINGLE FACT NECESSARY TO CONSTITUTE THE OFFENSE CHARGED; OTHERWISE, A MOTION TO DISMISS OR TO QUASH ON THE GROUND THAT THE COMPLAINT OR INFORMATION CHARGES NO OFFENSE MAY BE PROPERLY SUSTAINED.— It is axiomatic that a complaint or information must state every single fact necessary to constitute the offense charged; otherwise, a motion to dismiss or to quash on the ground that the complaint or information charges no offense may be properly sustained. The fundamental test in determining whether a motion to quash may be sustained based on this ground is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined in the law. Extrinsic matters or evidence *aliunde* are not considered. The test does not require absolute certainty as to the presence of the elements of the offense; otherwise, there would no longer be any need for the Prosecution to proceed to trial. The informations in Criminal Case No. 28001 (*corruption of public officials*) and Criminal Case No. 28002 (*violation of Section 4(a) of RA No. 3019*) have sufficiently complied with the requirements of Section 6, Rule 110 of the *Rules of Court*.

9. CRIMINAL LAW; REVISED PENAL CODE; CORRUPTION OF PUBLIC OFFICIALS; ELEMENTS; PRESENT.— The elements of *corruption of public officials* under Article 212 of the *Revised Penal Code* are: 1. That the offender makes offers or promises, or gives gifts or presents to a public officer; and 2. That the offers or promises are made or the gifts or presents are given to a public officer under circumstances that will make the public officer liable for *direct bribery* or *indirect bribery*. The allegations in the information for *corruption of public officials*, if hypothetically admitted, would establish the essential elements of the crime. The information stated that: (1) Disini made an offer and promise, and gave gifts to President Marcos, a public officer; and (2) in consideration of the offers, promises and gifts, President Marcos, in causing the award of the contracts to Burns & Roe and Westinghouse by taking advantage of his position and in committing said act in relation to his office, was placed under circumstances that would make him liable for *direct bribery*. The second element of *corruption of public officers* simply required the public officer to be placed under circumstances, not absolute certainty, that would make him liable for *direct* or *indirect bribery*. Thus, even without alleging that

President Marcos received or accepted Disini's offers, promises and gifts – an essential element in *direct bribery* – the allegation that President Marcos caused the award of the contracts to Burns & Roe and Westinghouse sufficed to place him under circumstances of being liable for *direct bribery*.

10. ID.; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019), SECTION 4(A) THEREOF; ELEMENTS; PRESENT.— The sufficiency of the allegations in the information charging the violation of Section 4(a) of R.A. No. 3019 is similarly upheld. The elements of the offense under Section 4(a) of R.A. No. 3019 are: 1. That the offender has family or close personal relation with a public official; 2. That he capitalizes or exploits or takes advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift, material or pecuniary advantage from any person having some business, transaction, application, request, or contract with the government; 3. That the public official with whom the offender has family or close personal relation has to intervene in the business transaction, application, request, or contract with the government. The allegations in the information charging the violation of Section 4(a) of R.A. No. 3019, if hypothetically admitted, would establish the elements of the offense, considering that: (1) Disini, being the husband of Paciencia Escolin-Disini, the first cousin of First Lady Imelda Romualdez-Marcos, and at the same time the family physician of the Marcoses, had close personal relations and intimacy with and free access to President Marcos, a public official; (2) Disini, taking advantage of such family and close personal relations, requested and received $1,000,000.00 from Burns & Roe and $17,000,000.00 from Westinghouse, the entities then having business, transaction, and application with the Government in connection with the PNPPP; (3) President Marcos, the public officer with whom Disini had family or close personal relations, intervened to secure and obtain for Burns & Roe the engineering and architectural contract, and for Westinghouse the construction of the PNPPP.

APPEARANCES OF COUNSEL

Bernas Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The Sandiganbayan has exclusive original jurisdiction over the criminal action involving petitioner notwithstanding that he is a private individual considering that his criminal prosecution is intimately related to the recovery of ill-gotten wealth of the Marcoses, their immediate family, subordinates and close associates.

The Case

Petitioner Herminio T. Disini assails *via* petition for *certiorari* the resolutions promulgated by the Sandiganbayan in Criminal Case No. 28001 and Criminal Case No. 28002, both entitled *People v. Herminio T. Disini*, on January 17, 2005 (denying his motion to quash the informations)[1] and August 10, 2005 (denying his motion for reconsideration of the denial of his motion to quash),[2] alleging that the Sandiganbayan (First Division) thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

Antecedents

The Office of the Ombudsman filed two informations dated June 30, 2004 charging Disini in the Sandiganbayan with *corruption of public officials*, penalized under Article 212 in relation to Article 210 of the *Revised Penal Code* (Criminal Case No. 28001), and with a violation of Section 4(a) of Republic Act 3019 (R.A. No. 3019), also known as the *Anti-Graft and Corrupt Practices Act* (Criminal Case No. 28002).

The accusatory portions of the informations read as follows:

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[1] *Rollo*, pp. 51-55; penned by Associate Justice Diosdado M. Peralta (now a Member of the Court), and concurred in by Associate Justice Teresita J. Leonardo-de Castro (now a Member of the Court) and Associate Justice Efren N. De la Cruz.

[2] *Id.* at 57-73; penned by Associate Justice Peralta, and still joined by Associate Justice Leonardo-de Castro and Associate Justice De la Cruz.

Criminal Case No. 28001

That during the period from 1974 to February 1986, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused HERMINIO T. DISINI, conspiring together and confederating with the then President of the Philippines Ferdinand E. Marcos, did then and there, wil[l]fully, unlawfully and feloniously offer, promise and give gifts and presents to said Ferdinand E. Marcos, consisting of accused DISINI's ownership of two billion and five hundred (2.5 billion) shares of stock in Vulcan Industrial and Mining Corporation and four billion (4 billion) shares of stock in The Energy Corporation, with both shares of stock having then a book value of ₱100.00 per share of stock, and subcontracts, to Engineering and Construction Company of Asia, owned and controlled by said Ferdinand E. Marcos, on the mechanical and electrical construction work on the Philippine Nuclear Power Plant Project ("Project") of the National Power Corporation at Morong, Bataan, all for and in consideration of accused Disini seeking and obtaining for Burns and Roe and Westinghouse Electrical Corporation (Westinghouse), the contracts to do the engineering and architectural design and to construct, respectively, the Project, as in fact said Ferdinand E. Marcos, taking undue advantage of his position and committing the offense in relation to his office and in consideration of the aforesaid gifts and presents, did award or cause to be awarded to said Burns and Roe and Westinghouse, the contracts to do the engineering and architectural design and to construct the Project, respectively, which acts constitute the crime of corruption of public officials.

CONTRARY TO LAW.[3]

Criminal Case No. 28002

That during the period 1974 to February 1986, in Manila, Philippines, and within the jurisdiction of the Honorable Court, accused HERMINIO T. DISINI, conspiring together and confederating with the then President of the Philippines, Ferdinand E. Marcos, being then the close personal friend and golfing partner of said Ferdinand E. Marcos, and being further the husband of Paciencia Escolin-Disini who was the first cousin of then First Lady Imelda Romualdez-Marcos and family physician of the Marcos family, taking advantage of such close personal relation, intimacy and free access, did then and there,

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[3] *Id.* at 104-105.

willfully, unlawfully and criminally, in connection with the Philippine Nuclear Power Plant (PNPP) Project ("PROJECT") of the National Power Corporation (NPC) at Morong, Bataan, request and receive from Burns and Roe, a foreign consultant, the total amount of One Million U.S. Dollars ($1,000,000.00), more or less, and also from Westinghouse Electric Corporation (WESTINGHOUSE), the total amount of Seventeen Million U.S. Dollars ($17,000,000.00), more or less, both of which entities were then having business, transaction, and application with the Government of the Republic of the Philippines, all for and in consideration of accused DISINI securing and obtaining, as accused Disini did secure and obtain, the contract for the said Burns and Roe and Westinghouse to do the engineering and architectural design, and construct, respectively, the said PROJECT, and subsequently, request and receive subcontracts for Power Contractors, Inc. owned by accused DISINI, and Engineering and Construction Company of Asia (ECCO-Asia), owned and controlled by said Ferdinand E. Marcos, which stated amounts and subcontracts constituted kickbacks, commissions and gifts as material or pecuniary advantages, for securing and obtaining, as accused DISINI did secure and obtain, through the direct intervention of said Ferdinand E. Marcos, for Burns and Roe the engineering and architectural contract, and for Westinghouse the construction contract, for the PROJECT.

CONTRARY TO LAW. [4]

On August 2, 2004, Disini filed a motion to quash,[5] alleging that the criminal actions had been extinguished by prescription, and that the informations did not conform to the prescribed form. The Prosecution opposed the motion to quash.[6]

On September 16, 2004, Disini voluntarily submitted himself for arraignment to obtain the Sandiganbayan's favorable action on his motion for permission to travel abroad.[7] He then entered a plea of *not guilty* to both informations.

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[4] *Id.* at 108-109.

[5] *Id.* at 111-116.

[6] *Id.* at 117-128.

[7] *Id.* at 129-130.

As stated, on January 17, 2005, the Sandiganbayan (First Division) promulgated its first assailed resolution denying the motion to quash.[8]

Disini moved for the reconsideration of the resolution dated January 17, 2005,[9] but the Sandiganbayan (First Division) denied his motion on August 10, 2005 through the second assailed resolution.[10]

Issues

Undaunted, Disini commenced this special civil action for *certiorari*, alleging that:

A. THE RESPONDENT COURT HAS NO JURISDICTION OVER THE OFFENSES CHARGED.

   1. THE RESPONDENT COURT GRAVELY ERRED WHEN IT RULED THAT SECTION 4, PARAGRAPHS (A) AND (B) OF REPUBLIC ACT NO. 8249 DO NOT APPLY SINCE THE INFORMATIONS WERE "FILED PURSUANT TO E.O. NOS. 1, 2, 14 AND 14-A."

   2. THE RESPONDENT COURT GRAVELY ERRED WHEN IT ASSUMED JURISDICTION WITHOUT HAVING MET THE REQUISITE UNDER SECTION 4 OF R.A. 8249 THAT THE ACCUSED MUST BE A PUBLIC OFFICER.

B. THE RESPONDENT COURT ACTED WITH SUCH GRAVE ABUSE OF DISCRETION WHEN IT EFFECTIVELY IGNORED, DISREGARDED, AND DENIED PETITIONER'S CONSTITUTIONAL AND STATUTORY RIGHT TO PRESCRIPTION.

   1. THE RESPONDENT COURT GRAVELY ERRED IN DETERMINING THE APPLICABLE PRESCRIPTIVE PERIOD.

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[8] *Supra* note 1.

[9] *Rollo*, pp. 74-103.

[10] *Supra* note 2.

2. THE RESPONDENT COURT GRAVELY ERRED IN DETERMINING THE COMMENCEMENT OF THE PRESCRIPTIVE PERIOD.

3. THE RESPONDENT COURT GRAVELY ERRED IN DETERMINING THE POINT OF INTERRUPTION OF THE PRESCRIPTIVE PERIOD.

C. BY MERELY ASSUMING THE PRESENCE OF GLARINGLY ABSENT ELEMENTS IN THE OFFENSES CHARGED TO UPHOLD THE 'SUFFICIENCY' OF THE INFORMATIONS IN CRIMINAL CASE NOS. 28001 AND 28002, THE RESPONDENT COURT DEMONSTRATED ITS PREJUDGMENT OVER THE SUBJECT CASES AND ACTED WITH GRAVE ABUSE OF ITS DISCRETION.

D. THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN REFUSING TO QUASH THE INFORMATIONS DESPITE THEIR UTTER FAILURE TO COMPLY WITH THE PRESCRIBED FORM, THUS EFFECTIVELY DENYING THE ACCUSED HIS CONSTITUTIONAL AND STATUTORY RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM.[11]

Ruling

The petition for *certiorari* has no merit.

1.
Preliminary Considerations

To properly resolve this case, reference is made to the ruling of the Court in G.R. No. 175730 entitled *Herminio Disini v. Sandiganbayan*,[12] which involved the civil action for reconveyance, reversion, accounting, restitution, and damages (Civil Case No. 0013 entitled *Republic v. Herminio T. Disini, et al.*) filed by the Presidential Commission on Good Government (PCGG) against Disini and others.[13] The amended complaint

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[11] *Rollo*, pp. 10-11.

[12] G.R. No. 175730, July 5, 2010, 623 SCRA 354.

[13] *Id.* at 358.

in Civil Case No. 0013 alleged that Disini had acted in unlawful concert with his co-defendants in acquiring and accumulating ill-gotten wealth through the misappropriation of public funds, plunder of the nation's wealth, extortion, embezzlement, and other acts of corruption,[14] as follows:

> 4. Defendant HERMINIO T. DISINI is a close associate of defendant Ferdinand E. Marcos and the husband of the first cousin of Defendant Imelda R. Marcos. By reason of this relationship x xx defendant Herminio Disini obtained staggering commissions from the Westinghouse in exchange for securing the nuclear power plant contract from the Philippine government.
>
> x x x x x x x x x
>
> 13.Defendants Herminio T. Disini and Rodolfo Jacob, by themselves and/or in unlawful concert, active collaboration and willing participation of defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their association and influence with the latter defendant spouses in order to prevent disclosure and recovery of ill-gotten assets, engaged in devices, schemes, and stratagems such as:
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> x x x x x x x x x
>
> (c) unlawfully utilizing the Herdis Group of Companies and Asia Industries, Inc. as conduits through which defendants received, kept, and/or invested improper payments such as unconscionably large commissions from foreign corporations like the Westinghouse Corporation;
>
> (d) secured special concessions, privileges and/or benefits from defendants Ferdinand E. Marcos and Imelda R. Marcos, such as a contract awarded to Westinghouse Corporation which built an inoperable nuclear facility in the country for a scandalously exorbitant amount that included defendant's staggering commissions – defendant Rodolfo Jacob executed for HGI the contract for the aforesaid nuclear plant;[15]

Through its letter dated April 8, 1991,[16] the PCGG transmitted the records of Criminal Case No. 28001 and Criminal Case

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[14] *Id.* at 359.

[15] *Id.* at 359-360.

[16] Sandiganbayan, *rollo,* Vol. 1, pp. 164-165.

No. 28002 to then Ombudsman Conrado M. Vasquez for appropriate action, to wit:

In line with the decision of the Supreme Court in the case of *Eduardo M. Cojuangco, Jr. versus the PCGG* (G.R. Nos. 92319–92320) dated October 2, 1990, we are hereby transmitting to your Office for appropriate action the records of the attached criminal case which we believe is similar to the said Cojuangco case in certain aspects, such as: (i) some parts or elements are also parts of the causes of action in the civil complaints[-] filed with the Sandiganbayan; (ii) some properties or assets of the respondents have been sequestered; (iii) some of the respondents are also party defendants in the civil cases.

Although the authority of the PCGG has been upheld by the Supreme Court, we are constrained to refer to you for proper action the herein-attached case in view of the suspicion that the PCGG cannot conduct an impartial investigation in cases similar to that of the Cojuangco case. x x x

Ostensibly, the PCGG's letter of transmittal was adverting to the ruling in *Cojuangco, Jr. v. Presidential Commission on Good Government* (*Cojuangco, Jr.*),[17] *viz*:

x x x [T]he PCGG and the Solicitor General finding a *prima facie* basis filed a civil complaint against petitioner and intervenors alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints the Solicitor General filed with the PCGG for preliminary investigation. x x x.

Moreover, when the PCGG issued the sequestration and freeze orders against petitioner's properties, it was on the basis of a *prima facie* finding that the same were ill-gotten and/or were acquired in relation to the illegal disposition of coconut levy funds. **Thus, the Court finds that the PCGG cannot possibly conduct the preliminary investigation of said criminal complaints with the "cold neutrality of an impartial judge,"as it has prejudged the matter**. x x x[18]

x x x x x x x x x

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[17] G.R. Nos. 92319-20, October 2, 1991, 190 SCRA 226.

[18] *Id.* at 254-255.

The Court finds that under the circumstances of the case, the PCGG cannot inspire belief that it could be impartial in the conduct of the preliminary investigation of the aforesaid complaints against petitioner and intervenors. It cannot possibly preside in the said preliminary investigation with an even hand.

The Court holds that a just and fair administration of justice can be promoted if the PCGG would be prohibited from conducting the preliminary investigation of the complaints subject of this petition and the petition for intervention and that the records of the same should be forwarded to the Ombudsman, who as an independent constitutional officer has primary jurisdiction over cases of this nature, to conduct such preliminary investigation and take appropriate action.[19] (Bold emphasis supplied)

It appears that the resolutions of the Office of the Ombudsman, following its conduct of the preliminary investigation on the criminal complaints thus transmitted by the PCGG, were reversed and set aside by the Court in *Presidential Commission on Good Government v. Desierto*,[20] with the Court requiring the Office of the Ombudsman to file the informations that became the subject of Disini's motion to quash in Criminal Case No. 28001 and Criminal Case No. 28002.

2.
Sandiganbayan has exclusive and original jurisdiction over the offenses charged

Disini challenges the jurisdiction of the Sandiganbayan over the offenses charged in Criminal Case No. 28001 and Criminal Case No. 28002. He contends that: (1) the informations did not allege that the charges were being filed pursuant to and in connection with Executive Order (E.O.) Nos. 1, 2, 14 and 14-A; (2) the offenses charged were not of the nature contemplated by E.O. Nos. 1, 2, 14 and 14-A because the allegations in the informations neither pertained to the recovery of ill-gotten wealth, nor involved sequestration cases; (3) the cases were filed by the Office of the Ombudsman instead of by the PCGG; and

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[19] *Id.* at 256-257.

[20] G.R. No. 132120, February 10, 2003, 397 SCRA 171.

(4) being a private individual not charged as a co-principal, accomplice or accessory of a public officer, he should be prosecuted in the regular courts instead of in the Sandiganbayan.

The Office of the Solicitor General (OSG) counters that the Sandiganbayan has jurisdiction over the offenses charged because Criminal Case No. 28001 and Criminal Case No. 28002 were filed within the purview of Section 4*(c)* of R.A. No. 8249; and that both cases stemmed from the criminal complaints initially filed by the PCGG pursuant to its mandate under E.O. Nos. 1, 2, 14 and 14-A to investigate and file the appropriate civil or criminal cases to recover ill-gotten wealth not only of the Marcoses and their immediately family but also of their relatives, subordinates and close associates.

We hold that the Sandiganbayan has jurisdiction over Criminal Case No. 28001 and Criminal Case No. 28002.

Presidential Decree (P.D.) No. 1606 was the law that established the Sandiganbayan and defined its jurisdiction. The law was amended by R.A. No. 7975 and R.A. No. 8249. Under Section 4 of R.A. No. 8249, the Sandiganbayan was vested with original and exclusive jurisdiction over all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

xxx x x x xxx

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986. (Bold emphasis supplied)

In cases where none of the accused are occupying positions corresponding to salary grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military or PNP officers mentioned

above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court and municipal circuit trial court, as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129, as amended.

xxx x x x xxx

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

xxx x x x xxx

It is underscored that it was the PCGG that had initially filed the criminal complaints in the Sandiganbayan, with the Office of the Ombudsman taking over the investigation of Disini only after the Court issued in *Cojuangco, Jr.* the directive to the PCGG to refer the criminal cases to the Office of the Ombudsman on the ground that the PCGG would not be an impartial office following its finding of a *prima facie* case being established against Disini to sustain the institution of Civil Case No. 0013.

Also underscored is that the complaint in Civil Case No. 0013 and the informations in Criminal Case No. 28001 and Criminal Case No. 28002 involved the same transaction, specifically the contracts awarded through the intervention of Disini and President Marcos in favor of Burns & Roe to do the engineering and architectural design, and Westinghouse to do the construction of the Philippine Nuclear Power Plant Project (PNPPP). Given their sameness in subject matter, to still expressly aver in Criminal Case No. 28001 and Criminal Case No. 28002 that the charges involved the recovery of ill-gotten wealth was no longer necessary.[21] With Criminal Case No. 28001 and Criminal

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[21] See the Section 1(A), Rules and Regulations of the PCGG, to wit:

Section 1.Definition. – (A) "Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders 1 and 2, acquired by him directly

Case No. 28002 being intertwined with Civil Case No. 0013, the PCGG had the authority to institute the criminal prosecutions against Disini pursuant to E.O. Nos. 1, 2, 14 and 14-A.

That Disini was a private individual did not remove the offenses charged from the jurisdiction of the Sandiganbayan. Section 2 of E.O. No. 1, which tasked the PCGG with assisting the President in "[t]he recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship," expressly granted the authority of the PCGG to recover ill-gotten wealth covered President Marcos' immediate family, relatives, subordinates and close associates, *without distinction as to their private or public status.*

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or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

(1) Through misappropriation, conversion, or misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by the reason of the office or position of the official concerned;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit. (Bold emphasis supplied)

Contrary to Disini's argument, too, the qualifying clause found in Section 4 of R.A. No. 8249[22] applied only to the cases listed in Subsection 4a and Subsection 4b of R.A. No. 8249, the full text of which follows:

x x x x x x x x x

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) **Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher**, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan and provincial treasurers, assessors, engineers and other provincial department heads;

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors engineers and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

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[22] "In cases where none of the accused are occupying positions corresponding to salary grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military or PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court and municipal circuit trial court as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129, as amended."

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations;

(2) **Members of Congress and officials thereof classified as Grade '27' and up** under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) **All other national and local officials classified as Grade '27' and higher** under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes **committed by the public officials and employees mentioned in subsection a of this section** in relation to their office. (bold emphasis supplied)

x x x x x x x x x

Unquestionably, public officials occupying positions classified as Grade 27 or higher are mentioned only in Subsection 4a and Subsection 4b, signifying the plain legislative intent of limiting the qualifying clause to *such* public officials. To include within the ambit of the qualifying clause the persons covered by Subsection 4c would contravene the exclusive mandate of the PCGG to bring the civil and criminal cases pursuant to and in connection with E.O. Nos. 1, 2, 14 and 14-A. In view of this, the Sandiganbayan properly took cognizance of Criminal Case No. 28001 and Criminal Case No. 28002 despite Disini's being a private individual, and despite the lack of any allegation of his being the co-principal, accomplice or accessory of a public official in the commission of the offenses charged.

3.
The offenses charged in the informations have not yet prescribed

In resolving the issue of prescription, the following must be considered, namely: (1) the period of prescription for the offense charged; (2) the time when the period of prescription starts to run; and (3) the time when the prescriptive period is interrupted.[23]

The information in Criminal Case No. 28001 alleged that Disini had offered, promised and given gifts and presents to Ferdinand E. Marcos; that said gifts were in consideration of Disini obtaining for Burns & Roe and Westinghouse Electrical Corporation (Westinghouse) the contracts, respectively, to do the engineering and architectural design of and to construct the PNPPP; and that President Marcos did award or cause to be awarded the respective contracts to Burns & Roe and Westinghouse, which acts constituted the crime of *corruption of public officials*.[24]

The crime of *corruption of public officials* charged in Criminal Case No. 28001 is punished by Article 212 of the *Revised Penal Code* with the "same penalties imposed upon the officer corrupted."[25] Under the second paragraph of Article 210 of the *Revised Penal Code* (*direct bribery*),[26] if the gift

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[23] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130817, August 22, 2001, 363 SCRA 489, 493.

[24] *Supra,* Note 3.

[25] Article 212. *Corruption of public officials*. — The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given gifts or presents described in the preceding articles."

[26] Article 210. *Direct bribery*. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of this official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine [of not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

was accepted by the officer in consideration of the execution of an act that does not constitute a crime, and the officer executes the act, he shall suffer the penalty of *prision mayor* in its medium and minimum periods and a fine of not less than three times the value of the gift. Conformably with Article 90 of the *Revised Penal Code*,[27] the period of prescription for this specie of *corruption of public officials* charged against Disini is 15 years.

As for Criminal Case No. 28002, Disini was charged with a violation of Section 4(a) of R.A. No. 3019. By express provision

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If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period and a fine [of not less than the value of the gift and] not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

[27] Article 90. *Prescription of crime.* — Crimes punishable by death, *reclusion perpetua* or *reclusion temporal* shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by *arresto mayor*, which shall prescribe in five years.

The crime of libel or other similar offenses shall prescribe in one year.

The crime of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article.

of Section 11 of R.A. No. 3019, as amended by *Batas Pambansa Blg*. 195, the offenses committed under R.A. No. 3019 shall prescribe in 15 years. Prior to the amendment, the prescriptive period was only 10 years. It became settled in *People v. Pacificador*,[28] however, that the longer prescriptive period of 15 years would not apply to crimes committed prior to the effectivity of *Batas Pambansa Blg*. 195, which was approved on March 16, 1982, because the longer period could not be given retroactive effect for not being favorable to the accused. With the information alleging the period from 1974 to February 1986 as the time of the commission of the crime charged, the applicable prescriptive period is 10 years in order to accord with *People v. Pacificador*.

For crimes punishable by the *Revised Penal Code*, Article 91 thereof provides that prescription starts to run from the day on which the crime is discovered by the offended party, the authorities, or their agents. As to offenses punishable by R.A. No. 3019, Section 2 of R.A. No. 3326[29] states:

> Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy.

The ruling on the issue of prescription in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*[30] is also enlightening, *viz*:

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[28] G.R. No. 139405, March 13, 2001, 354 SCRA 310, 318.

[29] *An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances And to Provide When Prescription Shall Begin to Run*.

[30] G.R. No. 135715, April 13, 2011, 648 SCRA 586.

Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "*blameless ignorance*" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action." It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque* which became the cornerstone of our 1999 Decision in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130149), and the subsequent cases which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases, that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.

Corollary, it is safe to conclude that the prescriptive period for the crime which is the subject herein, commenced from the date of its discovery in 1992 after the Committee made an exhaustive investigation. When the complaint was filed in 1997, only five years have elapsed, and, hence, prescription has not yet set in. The rationale for this was succinctly discussed in the 1999 Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans, that "it was well-high impossible for the State, the aggrieved party, to have known these crimes committed prior to the 1986 EDSA Revolution, because of the alleged connivance and conspiracy among involved public officials and the beneficiaries of the loans." In yet another pronouncement, in the 2001 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130817), the Court held that during the Marcos regime, no person would have dared to question the legality of these transactions. (Citations omitted)[31]

Accordingly, we are not persuaded to hold here that the prescriptive period began to run from 1974, the time when the contracts for the PNPP Project were awarded to Burns &

[31] *Id.* at 596-597.

Roe and Westinghouse. Although the criminal cases were the offshoot of the sequestration case to recover ill-gotten wealth instead of behest loans like in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, the connivance and conspiracy among the public officials involved and the beneficiaries of the favors illegally extended rendered it similarly well-nigh impossible for the State, as the aggrieved party, to have known of the commission of the crimes charged prior to the EDSA Revolution in 1986. Notwithstanding the highly publicized and widely-known nature of the PNPPP, the unlawful acts or transactions in relation to it were discovered only through the PCGG's exhaustive investigation, resulting in the establishment of a *prima facie* case sufficient for the PCGG to institute Civil Case No. 0013 against Disini. Before the discovery, the PNPPP contracts, which partook of a public character, enjoyed the presumption of their execution having been regularly done in the course of official functions.[32] Considering further that during the Marcos regime, no person would have dared to assail the legality of the transactions, it would be unreasonable to expect that the discovery of the unlawful transactions was possible prior to 1986.

We note, too, that the criminal complaints were filed and their records transmitted by the PCGG to the Office of the Ombudsman on April 8, 1991 for the conduct the preliminary investigation.[33] In accordance with Article 91 of the *Revised Penal Code*[34] and the ruling in *Panaguiton, Jr. v. Department*

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[32] Section 3(m), Rule 131, *Rules of Court*.

[33] Records, Vol. 1, p. 164.

[34] Article 91. *Computation of prescription of offenses.* — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

of Justice,[35] the filing of the criminal complaints in the Office of the Ombudsman effectively interrupted the running of the period of prescription. According to *Panaguiton*:[36]

> In *Ingco v. Sandiganbayan* and *Sanrio Company Limited v. Lim*, which involved violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and the Intellectual Property Code (R.A. No. 8293), which are both special laws, the Court ruled that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused. In the more recent case of *Securities and Exchange Commission v. Interport Resources Corporation,* the Court ruled that the nature and purpose of the investigation conducted by the Securities and Exchange Commission on violations of the Revised Securities Act, another special law, is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, and thus effectively interrupts the prescriptive period.
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> The following disquisition in the *Interport Resources* case is instructive, thus:
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> > While it may be observed that the term "judicial proceedings" in Sec. 2 of Act No. 3326 appears before "investigation and punishment" in the old law, with the subsequent change in set-up whereby the investigation of the charge for purposes of prosecution has become the exclusive function of the executive branch, the term "proceedings" should now be understood either executive or judicial in character: executive when it involves the investigation phase and judicial when it refers to the trial and judgment stage. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription.
>
> Indeed, to rule otherwise would deprive the injured party the right to obtain vindication on account of delays that are not under his control.

The prevailing rule is, therefore, that irrespective of whether the offense charged is punishable by the *Revised Penal Code* or by a special law, it is the filing of the complaint or information

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[35] G.R. No. 167571, November 25, 2008, 571 SCRA 549.

[36] *Id.* at 560-561.

in the office of the public prosecutor for purposes of the preliminary investigation that interrupts the period of prescription. Consequently, prescription did not yet set in because only five years elapsed from 1986, the time of the discovery of the offenses charged, up to April 1991, the time of the filing of the criminal complaints in the Office of the Ombudsman.

4.
The informations were sufficient in form and substance

It is axiomatic that a complaint or information must state every single fact necessary to constitute the offense charged; otherwise, a motion to dismiss or to quash on the ground that the complaint or information charges no offense may be properly sustained. The fundamental test in determining whether a motion to quash may be sustained based on this ground is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined in the law.[37] Extrinsic matters or evidence *aliunde* are not considered.[38] The test does not require absolute certainty as to the presence of the elements of the offense; otherwise, there would no longer be any need for the Prosecution to proceed to trial.

The informations in Criminal Case No. 28001 (*corruption of public officials*) and Criminal Case No. 28002 (*violation of Section 4(a) of RA No. 3019*) have sufficiently complied with the requirements of Section 6, Rule 110 of the *Rules of Court, viz*:

> Section 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

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[37] *Cruz, Jr. v. Court of Appeals*, G.R. No. 83754, February 18, 1991, 194 SCRA 145, 150.

[38] *People v. Balao*, G.R. No. 176819, January 26, 2011, 640 SCRA 565, 573.

When the offense is committed by more than one person, all of them shall be included in the complaint or information.

The information in Criminal Case No. 28001 alleging *corruption of public officers* specifically put forth that Disini, in the period from 1974 to February 1986 in Manila, Philippines, conspiring and confederating with then President Marcos, willfully, unlawfully and feloniously offered, promised and gave gifts and presents to President Marcos, who, by taking undue advantage of his position as President, committed the offense in relation to his office, and in consideration of the gifts and presents offered, promised and given by Disini, President Marcos caused to be awarded to Burns & Roe and Westinghouse the respective contracts to do the engineering and architectural design of and to construct the PNPPP. The felonious act consisted of causing the contracts for the PNPPP to be awarded to Burns & Roe and Westinghouse by reason of the gifts and promises offered by Disini to President Marcos.

The elements of *corruption of public officials* under Article 212 of the *Revised Penal Code* are:

1. That the offender makes offers or promises, or gives gifts or presents to a public officer; and
2. That the offers or promises are made or the gifts or presents are given to a public officer under circumstances that will make the public officer liable for *direct bribery* or *indirect bribery*.

The allegations in the information for *corruption of public officials*, if hypothetically admitted, would establish the essential elements of the crime. The information stated that: (1) Disini made an offer and promise, and gave gifts to President Marcos, a public officer; and (2) in consideration of the offers, promises and gifts, President Marcos, in causing the award of the contracts to Burns & Roe and Westinghouse by taking advantage of his position and in committing said act in relation to his office, was placed under circumstances that would make him liable for

direct bribery.[39] The second element of *corruption of public officers* simply required the public officer to be placed under circumstances, not absolute certainty, that would make him liable for *direct* or *indirect bribery*. Thus, even without alleging that President Marcos received or accepted Disini's offers, promises and gifts – an essential element in *direct bribery* – the allegation that President Marcos caused the award of the contracts to Burns & Roe and Westinghouse sufficed to place him under circumstances of being liable for *direct bribery*.

The sufficiency of the allegations in the information charging the violation of Section 4(a) of R.A. No. 3019 is similarly upheld. The elements of the offense under Section 4(a) of R.A. No. 3019 are:

1. That the offender has family or close personal relation with a public official;
2. That he capitalizes or exploits or takes advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift, material or pecuniary advantage from any person having some business, transaction, application, request, or contract with the government;
3. That the public official with whom the offender has family or close personal relation has to intervene in the business transaction, application, request, or contract with the government.

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[39] The elements of *direct bribery* are:

1. The offender is a public officer;

2. The offender accepts an offer or promise or receives a gift or present by himself or through another;

3. That such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and

4. The act which the offender agrees to perform or which he executes is connected with the performance of his official duties (*Magno v. Commission on Elections*, G.R. No. 147904, October 4, 2002, 390 SCRA 495, 499).

The allegations in the information charging the violation of Section 4(a) of R.A. No. 3019, if hypothetically admitted, would establish the elements of the offense, considering that: (1) Disini, being the husband of Paciencia Escolin-Disini, the first cousin of First Lady Imelda Romualdez-Marcos, and at the same time the family physician of the Marcoses, had close personal relations and intimacy with and free access to President Marcos, a public official; (2) Disini, taking advantage of such family and close personal relations, requested and received $1,000,000.00 from Burns & Roe and $17,000,000.00 from Westinghouse, the entities then having business, transaction, and application with the Government in connection with the PNPPP; (3) President Marcos, the public officer with whom Disini had family or close personal relations, intervened to secure and obtain for Burns & Roe the engineering and architectural contract, and for Westinghouse the construction of the PNPPP.

WHEREFORE, the Court **DISMISSES** the petition for *certiorari*; **AFFIRMS** the resolutions promulgated on January 17, 2005 and August 16, 2005 by the Sandiganbayan (First Division) in Criminal Case No. 28001 and Criminal Case No. 28002; and **DIRECTS** petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Villarama, Jr., Perez,[*] and *Reyes, JJ.*, concur.

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[*] In lieu of Associate Justice Teresita J. Leonardo-de Castro, who took part in the Sandiganbayan, per the raffle of October 3, 2011.

SECOND DIVISION

[G.R. No. 174461. September 11, 2013]

LETICIA I. KUMMER, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ; CREDIBILITY OF WITNESSES; INCONSISTENCIES BETWEEN TESTIMONY OF A WITNESS IN OPEN COURT AND IN HIS SWORN AFFIDAVIT REFERRING ONLY TO MINOR AND COLLATERAL MATTERS DO NOT AFFECT HIS CREDIBILITY AND THE VERACITY AND WEIGHT OF HIS TESTIMONY; RATIONALE.— The Court has consistently held that inconsistencies between the testimony of a witness in open court, on one hand, and the statements in his sworn affidavit, on the other hand, referring only to minor and collateral matters, do not affect his credibility and the veracity and weight of his testimony as they do not touch upon the commission of the crime itself. Slight contradictions, in fact, even serve to strengthen the credibility of the witnesses, as these may be considered as badges of truth rather than indicia of bad faith; they tend to prove that their testimonies have not been rehearsed. Nor are such inconsistencies, and even improbabilities, unusual, for no person has perfect faculties of senses or recall. x x x It is oft repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them. Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context. The court is not unmindful of these on-the-ground realities. In fact, we have ruled that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since *ex parte* affidavits are generally

incomplete. As between the joint affidavit and the testimony given in open court, the latter prevails because affidavits taken *ex-parte* are generally considered to be inferior to the testimony given in court.

2. ID.; CRIMINAL PROCEDURE; JUDGMENTS; VALIDITY OF JUDGMENT IS NOT RENDERED ERRONEOUS SOLELY BECAUSE A JUDGE WHO HEARD THE CASE WAS NOT THE SAME JUDGE WHO RENDERED THE DECISION; EXPLAINED.— The rule is settled that the validity of a judgment is not rendered erroneous solely because the judge who heard the case was not the same judge who rendered the decision. In fact, it is not necessary for the validity of a judgment that the judge who penned the decision should actually hear the case in its entirety, for he can merely rely on the transcribed stenographic notes taken during the trial as the basis for his decision. x x x It is sufficient that the judge, in deciding the case, must base her ruling completely on the records before her, in the way that appellate courts do when they review the evidence of the case raised on appeal. Thus, a judgment of conviction penned by a different trial judge is not erroneous if she relied on the records available to her.

3. ID.; EVIDENCE; MOTIVE IS IRRELEVANT WHEN THE ACCUSED HAS BEEN POSITIVELY IDENTIFIED BY AN EYEWITNESS; APPLICATION IN CASE AT BAR.— As held in a long line of cases, the prosecution does not need to prove the motive of the accused when the latter has been identified as the author of the crime. x x x Thus, in light of the direct and positive identification of the petitioner as one of the perpetrators of the crime by not one but two prosecution eyewitnesses, the failure to cite the motive of the petitioner is of no moment. At any rate, we find it noteworthy that the lack or absence of motive for committing the crime does not preclude conviction where there are reliable witnesses who fully and satisfactorily identified the petitioner as the perpetrator of the felony, such as in this case.

4. ID.; ID.; CREDIBILITY OF WITNESSES; WITNESSES TO A CRIME CANNOT BE EXPECTED TO DEMONSTRATE AN ABSOLUTE UNIFORMITY AND CONFORMITY IN ACTION AND REACTION.— Human nature suggests that people may react differently when confronted with a given situation.

Witnesses to a crime cannot be expected to demonstrate an absolute uniformity and conformity in action and reaction. People may act contrary to the accepted norm, react differently and act contrary to the expectation of mankind. There is no standard human behavioral response when one is confronted with an unusual, strange, startling or frightful experience.

5. ID.; ID.; DOCUMENTARY EVIDENCE; PUBLIC DOCUMENTS ARE ADMISSIBLE IN COURT WITHOUT FURTHER PROOF OF THEIR DUE EXECUTION AND AUTHENTICITY; PRESENT IN CASE AT BAR.— A public document is defined in Section 19, Rule 132 of the Rules of Court. x x x The chemistry report showing a positive result of the paraffin test is a public document. As a public document, the rule on authentication does not apply. It is admissible in evidence without further proof of its due execution and genuineness; the person who made the report need not be presented in court to identify, describe and testify how the report was conducted. Moreover, documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. In the present case, notwithstanding the fact that it was Captain Benjamin Rubio who was presented in court to identify the chemistry report and not the forensic chemist who actually conducted the paraffin test on the petitioner, the report may still be admitted because the requirement for authentication does not apply to public documents.

6. ID.; ID.; DISPUTABLE PRESUMPTIONS; THE COURT WILL NOT PRESUME IRREGULARITY OR NEGLIGENCE IN THE PERFORMANCE OF ONE'S DUTIES UNLESS FACTS ARE SHOWN DICTATING A CONTRARY CONCLUSION.— On the issue of the normal process versus the actual process conducted during the test raised by the petitioner, suffice it to say that in the absence of proof to the contrary, it is presumed that the forensic chemist who conducted the report observed the regular procedure. Stated otherwise, the courts will not presume irregularity or negligence in the performance of one's duties unless facts are shown dictating a contrary conclusion. The presumption of regularity in favor of the forensic chemist compels us to reject the petitioner's contention that an explanation has to be given on how the actual process was conducted. Since the petitioner presented no evidence of

fabrication or irregularity, we presume that the standard operating procedure has been observed.

7. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE RULES OF COURT PERMITS A FORMAL AMENDMENT OF A COMPLAINT EVEN AFTER THE PLEA BUT ONLY IF IT IS MADE WITH LEAVE OF COURT AND PROVIDED THAT IT CAN BE DONE WITHOUT CAUSING PREJUDICE TO THE RIGHTS OF THE ACCUSED; APPLICATION IN CASE AT BAR.— Section 14, Rule 110 of the Rules of Court permits a formal amendment of a complaint even after the plea but only if it is made with leave of court and provided that it can be done without causing prejudice to the rights of the accused. x x x A mere change in the date of the commission of the crime, if the disparity of time is not great, is more formal than substantial. Such an amendment would not prejudice the rights of the accused since the proposed amendment would not alter the nature of the offense. The test as to when the rights of an accused are prejudiced by the amendment of a complaint or information is when a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, when any evidence the accused might have would no longer be available after the amendment is made, and when any evidence the accused might have would be inapplicable to the complaint or information, as amended.

8. ID.; ID.; ARRAIGNMENT, CONSTRUED; ARRAIGNMENT FOR AN AMENDED INFORMATION OR COMPLAINT BECOMES IMPERATIVE ONLY IF IT PERTAINS TO SUBSTANTIAL AMENDMENTS AND NOT TO FORMAL AMENDMENTS; EXPLAINED.— Arraignment is indispensable in bringing the accused to court and in notifying him of the nature and cause of the accusations against him. The importance of arraignment is based on the constitutional right of the accused to be informed. Procedural due process requires that the accused be arraigned so that he may be informed of the reason for his indictment, the specific charges he is bound to face, and the corresponding penalty that could be possibly meted against him. It is at this stage that the accused, for the first time, is given the opportunity to know the precise charge that confronts him. It is only imperative that he is thus made fully aware of the possible loss of freedom, even of his life, depending on the nature of the imputed crime. The need for arraignment is

equally imperative in an amended information or complaint. This however, we hastily clarify, pertains only to substantial amendments and not to formal amendments that, by their very nature, do not charge an offense different from that charged in the original complaint or information; do not alter the theory of the prosecution; do not cause any surprise and affect the line of defense; and do not adversely affect the substantial rights of the accused, such as an amendment in the date of the commission of the offense.

APPEARANCES OF COUNSEL

Divina Manzanal Reyes Salvado Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We decide the appeal filed by petitioner Leticia I. Kummer assailing the April 28, 2006 decision[1] of the Court of Appeals (*CA*) in CA – G.R. CR No. 27609. The CA decision affirmed the July 27, 2000 judgment[2] of the Regional Trial Court (*RTC*), Branch 4, Tuguegarao City, Cagayan, finding the petitioner and her co-accused Freiderich Johan I. Kummer guilty beyond reasonable doubt of the crime of homicide in Criminal Case No. 1130.

The Facts

The prosecution's evidence revealed that on June 19, 1988, between 9:00 and 10:00 p.m., Jesus Mallo, Jr., accompanied by Amiel Malana, went to the house of the petitioner. Mallo knocked at the front door with a stone and identified himself by saying, "Auntie, *ako si* Boy Mallo."

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[1] *Rollo*, pp. 11-28; penned by Associate Justice Vicente S. E. Veloso, and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Amelita G. Tolentino.

[2] *Id.* at 85-94; penned by Judge Lyliha L. Abella-Aquino.

The petitioner opened the door and at this point, her son and co-accused, Johan, using his left hand, shot Mallo twice using a gun about six (6) inches long.[3] Malana, who was with Mallo and who witnessed the shooting, immediately ran towards the west, followed by Mallo. When Malana turned his back, he saw the petitioner leveling and firing her long gun at Mallo, hitting the latter's back and causing him to fall flat on the ground.[4]

Thereafter, the petitioner went inside the house and came out with a flashlight. Together with her co-accused, she scoured the pathway up to the place where Mallo was lying flat.[5] At that point, the petitioner uttered, "Johan, *patay na*," in a loud voice.[6] The petitioner and her co-accused put down the guns and the flashlight they were holding, held Mallo's feet and pulled him to about three (3) to four (4) meters away from the house. Thereafter, they returned to the house and turned off all the lights.[7]

The following morning, policeman Danilo Pelovello went to the petitioner's house and informed her that Mallo had been found dead in front of her house. Pelovello conducted an investigation through inquiries among the neighbors, including the petitioner, who all denied having any knowledge of the incident.

The prosecution filed an information[8] for homicide on January 12, 1989 against the petitioner and Johan, docketed as Criminal Case No. 1130. Both accused were arraigned and pleaded not guilty to the crime charged. They waived the pre-trial, and the trial on the merits accordingly followed.

The petitioner denied the charge and claimed in her defense that she and her children, Johan, Melanie and Erika, were already

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[3] TSN, November 21, 1989, p. 6.

[4] *Id.* at 11.

[5] *Id.* at 12.

[6] *Id.* at 13.

[7] *Ibid.*

[8] *Rollo*, p. 82.

asleep in the evening of June 19, 1988. She claimed that they were awakened by the sound of stones being thrown at their house, a gun report, and the banging at their door.

Believing that the noise was caused by the members of the New People's Army prevalent in their area, and sensing the possible harm that might be inflicted on them, Johan got a .38 cal. gun from the drawer and fired it twice outside to scare the people causing the disturbance. The noise continued, however, with a stone hitting the window and breaking the glass; another stone hit Melanie who was then sick. This prompted Johan to get the shotgun placed beside the door and to fire it. The noise thereafter stopped and they all went back to sleep.

In its judgment dated July 27, 2000, the RTC found the prosecution's evidence persuasive based on the testimonies of prosecution eyewitnesses Ramon Cuntapay and Malana who both testified that the petitioner shot Mallo. The testimonial evidence, coupled by the positive findings of gunpowder nitrates on the left hand of Johan and on the petitioner's right hand, as well as the corroborative testimony of the other prosecution witnesses, led the RTC to find both the petitioner and Johan guilty beyond reasonable doubt of the crime charged.

Johan, still a minor at the time of the commission of the crime, was released on the recognizance of his father, Moises Kummer. Johan subsequently left the country without notifying the court; hence, only the petitioner appealed the judgment of conviction with the CA.

She contended before the CA that the RTC committed reversible errors in its appreciation of the evidence, namely: (1) in giving credence to the testimonial evidence of Cuntapay and of Malana despite the discrepancies between their sworn statements and direct testimonies; (2) in not considering the failure of the prosecution to cite the petitioner's motive in killing the victim; (3) in failing to consider that the writer of the decision, Judge Lyliha L. Abella-Aquino, was not the judge who heard the testimonies; and (4) in considering the paraffin test results finding the petitioner positive for gunpowder residue.

The CA rejected the petitioner's arguments and affirmed the RTC judgment, holding that the discrepancies between the sworn statement and the direct testimony of the witnesses do not necessarily discredit them because the contradictions are minimal and reconcilable. The CA also ruled that the inconsistencies are minor lapses and are therefore not substantial. The petitioner's positive identification by the eyewitnesses as one of the assailants remained unrefuted. The CA, moreover, held that proof of motive is only necessary when a serious doubt arises on the identity of the accused. That the writer of the decision was not the judge who heard the testimonies of the witnesses does not necessarily make the decision erroneous.

In sum, the CA found Malana and Cuntapay's positive identification and the corroborative evidence presented by the prosecution more than sufficient to convict the petitioner of the crime charged.

On further appeal to this Court, the petitioner submits the issue of whether the CA committed a reversible error in affirming the RTC's decision convicting her of the crime of homicide.

In essence, the case involves the credibility of the prosecution eyewitnesses and the sufficiency of the prosecution's evidence.

Our Ruling

We find the petition devoid of merit.

The petitioner's conviction is anchored on the positive and direct testimonies of the prosecution eyewitnesses, which testimonies the petitioner submits to be both inconsistent and illogical. The petitioner essentially impugns the credibility of the witnesses on these grounds. The petitioner moreover claims that her conviction was based on doctrinal precepts that should not apply to her case.

Variance between the eyewitnesses' testimonies in open court and their affidavits does not affect their credibility

In her attempt to impugn the credibility of prosecution eyewitnesses Malana and Cuntapay, the petitioner pointed to the following inconsistencies: *First*, in paragraph 7 of Malana's July 21, 1988 affidavit, he stated that after hearing two gunshots, he dived to the ground for cover and heard another shot louder than the first two. This statement is allegedly inconsistent with his declaration during the direct examination that he saw the petitioner and Johan fire their guns at Mallo. *Second*, the July 22, 1988 affidavit of Cuntapay likewise stated that he heard two burst of gunfire coming from the direction of the petitioner's house and heard another burst from the same direction, which statement is allegedly inconsistent with his direct testimony where he claimed that he saw the petitioner shoot Mallo. *Third*, in his affidavit, Malana declared that he ran away as he felt the door being opened and heard two shots, while in his testimony in court, he stated that he ran away after Mallo was already hit. According to the petitioner, these and some other trivial and minor inconsistencies in the testimony of the two witnesses effectively destroyed their credibility.

We find these claims far from convincing. The Court has consistently held that inconsistencies between the testimony of a witness in open court, on one hand, and the statements in his sworn affidavit, on the other hand, referring only to minor and collateral matters, do not affect his credibility and the veracity and weight of his testimony as they do not touch upon the commission of the crime itself. Slight contradictions, in fact, even serve to strengthen the credibility of the witnesses, as these may be considered as badges of truth rather than indicia of bad faith; they tend to prove that their testimonies have not been rehearsed. Nor are such inconsistencies, and even improbabilities, unusual, for no person has perfect faculties of senses or recall.[9]

A close scrutiny of the records reveals that Malana and Cuntapay positively and firmly declared in open court that they **saw** the petitioner and Johan shoot Mallo. The inconsistencies in their affidavit, they reasoned, were due to the oversight of

[9] *People v. Perreras*, 414 Phil. 480, 488 (2001).

the administering official in typing the exact details of their narration.

It is oft repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them.[10] Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context.

The court is not unmindful of these on-the-ground realities. In fact, we have ruled that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since *ex parte* affidavits are generally incomplete.[11] As between the joint affidavit and the testimony given in open court, the latter prevails because affidavits taken *ex-parte* are generally considered to be inferior to the testimony given in court.[12]

In the present case, we find it undeniable that Malana and Cuntapay positively identified the petitioner as one of the assailants. This is the critical point, not the inconsistencies that the petitioner repeatedly refers to, which carry no direct bearing on the crucial issue of the identity of the perpetrator of the crime. Indeed, the inconsistencies refer only to minor details that are not critical to the main outcome of the case. Moreover, the basic rule is that the Supreme Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case.[13] We find no reason to break this rule and thus find that both the

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[10] *People v. Quiming*, G.R. No. 92847, May 21, 1993, 222 SCRA 371, 376.

[11] *People v. Dumpe*, G.R. Nos. 80110-11, March 22, 1990, 183 SCRA 547, 552.

[12] *People v. Marcelo*, G.R. No. 105005, June 2, 1993, 223 SCRA 24, 36.

[13] *People v. Lucero*, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 540.

RTC and the CA were correct in giving credence to the testimonies of Malana and Cuntapay.

It is not necessary for the validity of the judgment that it be rendered by the judge who heard the case

The petitioner contends that the CA, in affirming the judgment of the RTC, failed to recognize that the trial court that heard the testimonies of Malana and Cuntapay was not the same court that rendered the decision.[14]

We do not share this view.

The rule is settled that the validity of a judgment is not rendered erroneous solely because the judge who heard the case was not the same judge who rendered the decision. In fact, it is not necessary for the validity of a judgment that the judge who penned the decision should actually hear the case in its entirety, for he can merely rely on the transcribed stenographic notes taken during the trial as the basis for his decision.[15]

Thus, the contention - that since Judge Lyliha L. Abella-Aquino was not the one who heard the evidence and thereby did not have the opportunity to observe the demeanor of the witnesses - must fail. It is sufficient that the judge, in deciding the case, must base her ruling completely on the records before her, in the way that appellate courts do when they review the evidence of the case raised on appeal.[16] Thus, a judgment of conviction penned by a different trial judge is not erroneous if she relied on the records available to her.

Motive is irrelevant when the accused has been positively identified by an eyewitness

We agree with the CA's ruling that motive gains importance only when the identity of the assailant is in doubt. As held in

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[14] *Rollo,* p. 351.

[15] *People v. Cadley,* 469 Phil. 515, 524 (2004).

[16] *Villanueva v. Judge Estenzo*, 159-A Phil. 674, 681 (1975).

a long line of cases, the prosecution does not need to prove the motive of the accused when the latter has been identified as the author of the crime.[17]

Once again, we point out that the petitioner was positively identified by Malana and Cuntapay. Thus, the prosecution did not have to identify and prove the motive for the killing. It is a matter of judicial knowledge that persons have been killed for no apparent reason at all, and that friendship or even relationship is no deterrent to the commission of a crime.[18]

The petitioner attempts to offer the justification that the witnesses did not really witness the shooting as their affidavits merely attested that they heard the shooting of Mallo (and did not state that they actually witnessed it). We find this to be a lame argument whose merit we cannot recognize.

That Malana and Cuntapay have been eyewitnesses to the crime remains unrefuted. They both confirmed in their direct testimony before the RTC that they **saw** the petitioner fire a gun at Mallo. This was again re-affirmed by the witnesses during their cross examination. The fact that their respective affidavits merely stated that they heard the gunshots does not automatically foreclose the possibility that they also saw the actual shooting as this was in fact what the witnesses claimed truly happened. Besides, it has been held that the claim that "whenever a witness discloses in his testimony in court facts which he failed to state in his affidavit taken *ante litem motam,* then an inconsistency exists between the testimony and the affidavit" is **erroneous**. If what were stated in open court are but details or additional facts that serve to supplement the declarations made in the affidavit, these statements cannot be ruled out as inconsistent and may be considered by the court.

Thus, in light of the direct and positive identification of the petitioner as one of the perpetrators of the crime by not one

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[17] *People v. Canceran,* G.R. No. 104866, January 31, 1994, 229 SCRA 581, 587.

[18] *People v. Paragua,* 326 Phil. 923, 929 (1996).

but two prosecution eyewitnesses, the failure to cite the motive of the petitioner is of no moment.

At any rate, we find it noteworthy that the lack or absence of motive for committing the crime does not preclude conviction where there are reliable witnesses who fully and satisfactorily identified the petitioner as the perpetrator of the felony, such as in this case.

There is no absolute uniformity nor a fixed standard form of human behavior

The petitioner imputes error to the CA in giving credence to the testimonies of Malana and Cuntapay on the claim that these are riddled not only by inconsistencies and contradictions, but also by improbabilities and illogical claims. She laboriously pointed out the numerous improbabilities that, taken as a whole, allegedly cast serious doubt on their reliability and credibility.

She alleged, among others: (1) that it was abnormal and contrary to the ways of the farmers in the rural areas for Cuntapay to go home from his corral at about 9:00 p.m., while everybody else goes home from his farm much earlier, as working late in the farm (that is, before and after sunset) is taboo to farming; (2) that the act of the petitioner of putting down her gun in order to pull the victim away does not make any sense because a criminal would not simply part with his weapon in this manner; (3) that it is highly incredible that Malana, who accompanied Mallo, was left unharmed and was allowed to escape if indeed he was just beside the victim; (4) that it is unbelievable that when Malana heard the cocking of guns and the opening of the door, he did not become scared at all; (5) that Malana and Cuntapay did not immediately report the incident to the authorities; (6) that it was highly improbable for Malana to turn his head while running; and (7) that it was unusual that Cuntapay did not run away when he saw the shooting.

We rule, without descending to particulars and going over each and every one of these claims, that without more and stronger indicators, we cannot accord them credit. Human nature

suggests that people may react differently when confronted with a given situation. Witnesses to a crime cannot be expected to demonstrate an absolute uniformity and conformity in action and reaction. People may act contrary to the accepted norm, react differently and act contrary to the expectation of mankind. There is no standard human behavioral response when one is confronted with an unusual, strange, startling or frightful experience.[19]

We thus hold that the CA was correct in brushing aside the improbabilities alleged by the petitioner who, in her present plight, can be overcritical in her attempt to seize every detail that can favor her case. Unfortunately, if at all, her claims refer only to minor and even inconsequential details that do not touch on the core of the crime itself.

Public documents are admissible in court without further proof of their due execution and authenticity

A public document is defined in Section 19, Rule 132 of the Rules of Court as follows:

SEC. 19. *Classes of Documents*. – For the purpose of their presentation [in] evidence, documents are either public or private.

Public documents are:

(a) **The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;**

(b) Documents acknowledge[d] before a notary public except last wills and testaments; and

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

All other writings are private. [emphasis and underscore ours]

The chemistry report showing a positive result of the paraffin test is a public document. As a public document, the rule on

[19] *People v. Roncal*, 338 Phil. 749, 755 (1997).

authentication does not apply. It is admissible in evidence without further proof of its due execution and genuineness; the person who made the report need not be presented in court to identify, describe and testify how the report was conducted. Moreover, documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein.[20]

In the present case, notwithstanding the fact that it was Captain Benjamin Rubio who was presented in court to identify the chemistry report and not the forensic chemist who actually conducted the paraffin test on the petitioner, the report may still be admitted because the requirement for authentication does not apply to public documents. In other words, the forensic chemist does not need to be presented as witness to identify and authenticate the chemistry report. Furthermore, the entries in the chemistry report are *prima facie* evidence of the facts they state, that is, of the presence of gunpowder residue on the left hand of Johan and on the right hand of the petitioner. As a matter of fact, the petitioner herself admitted the presence of gunpowder nitrates on her fingers, albeit ascribing their presence from a match she allegedly lighted.[21] Accordingly, we hold that the chemistry report is admissible as evidence.

On the issue of the normal process versus the actual process conducted during the test raised by the petitioner, suffice it to say that in the absence of proof to the contrary, it is presumed that the forensic chemist who conducted the report observed the regular procedure. Stated otherwise, the courts will not presume irregularity or negligence in the performance of one's duties unless facts are shown dictating a contrary conclusion. The presumption of regularity in favor of the forensic chemist compels us to reject the petitioner's contention that an explanation has to be given on how the actual process was conducted. Since the petitioner presented no evidence of fabrication or irregularity, we presume that the standard operating procedure has been observed.

[20] RULES OF COURT, Rule 132, Section 23.

[21] *Rollo*, p. 50.

We note at this point that while the positive finding of gunpowder residue does not conclusively show that the petitioner indeed fired a gun, the finding nevertheless serves to corroborate the prosecution eyewitnesses' testimony that the petitioner shot the victim. Furthermore, while it is true that cigarettes, fertilizers, urine or even a match may leave traces of nitrates, experts confirm that these traces are minimal and may be washed off with tap water, unlike the evidence nitrates left behind by gunpowder.

Change in the date of the commission of the crime, where the disparity is not great, is merely a formal amendment, thus, no arraignment is required

The petitioner claims that she was not arraigned on the amended information for which she was convicted. The petitioner's argument is founded on the flawed understanding of the rules on amendment and misconception on the necessity of arraignment in every case. Thus, we do not see any merit in this claim.

Section 14, Rule 110 of the Rules of Court permits a formal amendment of a complaint even after the plea but only if it is made with leave of court and provided that it can be done without causing prejudice to the rights of the accused. Section 14 provides:

> Section 14. Amendment or substitution. A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. **After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.**
>
> However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused [would] not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. [emphasis and underscore ours]

A mere change in the date of the commission of the crime, if the disparity of time is not great, is more formal than substantial. Such an amendment would not prejudice the rights of the accused since the proposed amendment would not alter the nature of the offense.

The test as to when the rights of an accused are prejudiced by the amendment of a complaint or information is when a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, when any evidence the accused might have would no longer be available after the amendment is made, and when any evidence the accused might have would be inapplicable to the complaint or information, as amended.[22]

In *People, et al. v. Borromeo, et al.*,[23] we ruled that the change of the date of the commission of the crime from June 24, 1981 to August 28, 1981 is a **formal amendment** and would not prejudice the rights of the accused because the nature of the offense of grave coercion would not be altered. In that case, the difference in the date was only about two months and five days, which difference, we ruled, would neither cause substantial prejudice nor cause surprise on the part of the accused.

It is not even necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense.[24] The act

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[22] *People v. Casey*, G.R. No. L-30146, February 24, 1981, 103 SCRA 21, 31-32.

[23] 208 Phil. 234, 237-238 (1983).

[24] RULES OF COURT, Rule 110, Section 11.

may be alleged to have been committed at any time as near as to the actual date at which date the offense was committed, as the information will permit. Under the circumstances, the precise time is not an essential ingredient of the crime of homicide.

Having established that a change of date of the commission of a crime is a formal amendment, we proceed to the next question of whether an arraignment is necessary.

Arraignment is indispensable in bringing the accused to court and in notifying him of the nature and cause of the accusations against him. The importance of arraignment is based on the constitutional right of the accused to be informed.[25] Procedural due process requires that the accused be arraigned so that he may be informed of the reason for his indictment, the specific charges he is bound to face, and the corresponding penalty that could be possibly meted against him. It is at this stage that the accused, for the first time, is given the opportunity to know the precise charge that confronts him. It is only imperative that he is thus made fully aware of the possible loss of freedom, even of his life, depending on the nature of the imputed crime.[26]

The need for arraignment is equally imperative in an amended information or complaint. This however, we hastily clarify, pertains only to substantial amendments and not to formal amendments that, by their very nature, do not charge an offense different from that charged in the original complaint or information; do not alter the theory of the prosecution; do not cause any surprise and affect the line of defense; and do not adversely affect the substantial rights of the accused, such as an amendment in the date of the commission of the offense.

We further stress that an amendment done after the plea and during trial, in accordance with the rules, does not call for a second plea since the amendment is only as to form. The purpose of an arraignment, that is, to inform the accused of the nature and cause of the accusation against him, has already

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[25] *Id.*, Rule 115, Section 1(b).

[26] *Borja v. Judge Mendoza*, 168 Phil. 83, 87 (1977).

been attained when the accused was arraigned the first time. The subsequent amendment could not have conceivably come as a surprise to the accused simply because the amendment did not charge a new offense nor alter the theory of the prosecution.

Applying these rules and principles to the prevailing case, the records of the case evidently show that the amendment in the complaint was from July 19, 1988 to June 19, 1988, or a difference of only one month. It is clear that consistent with the rule on amendments and the jurisprudence cited above, the change in the date of the commission of the crime of homicide is a formal amendment - it does not change the nature of the crime, does not affect the essence of the offense nor deprive the accused of an opportunity to meet the new averment, and is not prejudicial to the accused. Further, the defense under the complaint is still available after the amendment, as this was, in fact, the same line of defenses used by the petitioner. This is also true with respect to the pieces of evidence presented by the petitioner. The effected amendment was of this nature and did not need a second plea.

To sum up, we are satisfied after a review of the records of the case that the prosecution has proven the guilt of the petitioner beyond reasonable doubt. The constitutional presumption of innocence has been successfully overcome.

WHEREFORE, premises considered, the appealed decision dated April 28, 2006, convicting the petitioner of the crime of homicide, is hereby **AFFIRMED**. Costs against petitioner Leticia I. Kummer.

SO ORDERED.

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

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[*] In lieu of Associate Justice Mariano C. del Castillo per Raffle dated September 4, 2013.

SECOND DIVISION

[G.R. Nos. 175277 & 175285. September 11, 2013]

UNICAPITAL, INC., UNICAPITAL REALTY, INC., and JAIME J. MARTIREZ, *petitioners, vs.* **RAFAEL JOSE CONSING, JR. and THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 168,** *respondents.*

[G.R. No. 192073. September 11, 2013]

RAFAEL JOSE CONSING, JR., *petitioner, vs.* **HON. MARISSA MACARAIG-GUILLEN, in her capacity as the Presiding Judge of the Regional Trial Court of Makati City, Branch 60 and UNICAPITAL, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; FAILURE TO STATE A CAUSE OF ACTION AND NOT THAT THE COMPLAINANT HAS NO CAUSE OF ACTION IS THE PROPER GROUND FOR A MOTION TO DISMISS; EXPLAINED.— A cause of action is defined as the act or omission by which a party violates a right of another. It is well-settled that the existence of a cause of action is determined by the allegations in the complaint. In this relation, a complaint is said to sufficiently assert a cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Thus, if the allegations furnish adequate basis by which the complaint can be maintained, then the same should not be dismissed, regardless of the defenses that may be averred by the defendants. x x x Stated otherwise, the resolution on this matter should stem from an analysis on whether or not the complaint is able to convey a cause of action; and not that the complainant has no cause of action. Lest it be misunderstood, failure to state a cause of action is properly a ground for a motion to dismiss under Section 1(g), Rule 16 of the Rules of Court (Rules), while the latter is not a ground for dismissal under the same rule. x x x It is a standing rule

that issues that require the contravention of the allegations of the complaint, as well as the full ventilation, in effect, of the main merits of the case, should not be within the province of a mere motion to dismiss, as in this case. Hence, as what is only required is that the allegations furnish adequate basis by which the complaint can be maintained.

2. ID.; ID.; ID.; MISJOINDER OF CAUSES OF ACTION; FAILURE TO OBSERVE THE CONDITIONS FOR A JOINDER OF ACTION RESULTS IN A MISJOINDER OF CAUSES OF ACTION; REMEDY.— The rule is that a party's failure to observe the following conditions under Section 5, Rule 2 of the Rules results in a misjoinder of causes of action: x x x (a) The party joining the causes of action shall comply with the rules on joinder of parties; (b) The joinder shall not include special civil actions governed by special rules; (c) **Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein**; and (d) Where the claims in all the causes of action are principally for recovery of money the aggregate amount claimed shall be the test of jurisdiction. x x x Section 6, Rule 2 of the Rules explicitly states that a "[m]isjoinder of causes of action is not a ground for dismissal of an action" and that "[a] misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately."

3. ID.; ID.; ACTIONS; DOCKET FEES; NON-PAYMENT OF DOCKET FEES AT THE TIME OF FILING OF THE COMPLAINT DOES NOT AUTOMATICALLY CAUSE THE DISMISSAL OF THE COMPLAINT; APPLICATION IN CASE AT BAR.— It has long been settled that while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its non-payment at the time of the filing of the complaint does not automatically cause the dismissal of the complaint provided that the fees are paid within a reasonable period. Consequently, Unicapital, *et al.*'s insistence that the stringent rule on non-payment of docket fees enunciated in the case of *Manchester Development Corporation v. CA* should be applied in this case cannot be sustained in the absence of proof that Consing, Jr. intended to defraud the government by his failure to pay the correct amount of filing fees.

4. ID.; ID.; ID.; CONSOLIDATION; WHEN PROPER.— It is hornbook principle that when two or more cases involve the same parties and affect closely related subject matters, the same must be consolidated and jointly tried, in order to serve the best interest of the parties and to settle the issues between them promptly, thus, resulting in a speedy and inexpensive determination of cases. In addition, consolidation serves the purpose of avoiding the possibility of conflicting decisions rendered by the courts in two or more cases, which otherwise could be disposed of in a single suit. The governing rule is Section 1, Rule 31 of the Rules.

APPEARANCES OF COUNSEL

Gutierrez Cortes & Partners Law Offices for Rafael Jose Consing, Jr.

Belo Gozon Elma Parel Asuncion and Lucila for Unicapital, Inc., *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 separate issuances of the Court of Appeals (CA) as follows:

(*a*) The petitions in G.R. Nos. 175277 and 175285 filed by Unicapital, Inc., (Unicapital), Unicapital Realty, Inc. (URI), and Unicapital Director and Treasurer Jaime J. Martirez (Martirez) assail the CA's Joint Decision[2] dated October 20, 2005 and Resolution[3] dated October 25, 2006 in CA-G.R. SP Nos.

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[1] *Rollo* (G.R. Nos. 175277 & 175285), pp. 35-76; *rollo* (G.R. No. 192073), pp. 10-34.

[2] *Rollo* (G.R. Nos. 175277 & 175285), pp. 9-29. Penned by Associate Justice Ruben T. Reyes (now retired member of the Supreme Court), with Associate Justices Aurora Santiago Lagman and Sesinando E. Villon, concurring.

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

64019 and 64451 which affirmed the Resolution[4] dated September 14, 1999 and Order[5] dated February 15, 2001 of the Regional Trial Court (RTC) of Pasig City, Branch 68 (RTC-Pasig City) in SCA No. 1759, upholding the denial of their motion to dismiss; and

(*b*) The petition in G.R. No. 192073 filed by Rafael Jose Consing, Jr. (Consing, Jr.) assails the CA's Decision[6] dated September 30, 2009 and Resolution[7] dated April 28, 2010 in CA-G.R. SP No. 101355 which affirmed the Orders dated July 16, 2007[8] and September 4, 2007[9] of the RTC of Makati City, Branch 60 (RTC-Makati City) in Civil Case No. 99-1418, upholding the denial of his motion for consolidation.

The Facts

In 1997, Consing, Jr., an investment banker, and his mother, Cecilia Dela Cruz (Dela Cruz), obtained an ₱18,000,000.00 loan from Unicapital, ₱12,000,000.00 of which was acquired on July 24, 1997 and the remaining ₱6,000,000.00 on August 1, 1997. The said loan was secured by Promissory Notes[10] and a Real Estate Mortgage[11] over a 42,443 square meter-parcel of land located at Imus, Cavite, registered in the name of Dela Cruz as per Transfer Certificate of Title (TCT) No. T-687599 (subject property).[12] Prior to these transactions, Plus Builders, Inc. (PBI), a real estate company, was already interested to develop the subject property

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[4] *Id.* at 191-193. Penned by Judge Santiago G. Estrella.

[5] *Id.* at 279-281. Penned by Acting Presiding Judge Florito S. Macalino.

[6] *Rollo* (G.R. No. 192073), pp. 38-49. Penned by Associate Justice Isaias Dicdican, with Associate Justices Remedios A. Salazar-Fernando and Romeo F. Barza, concurring.

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

[8] *Id.* at 160-162. Penned by Judge Marissa Macaraig-Guillen.

[9] *Id.* at 177-178.

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

[11] *Id.* at 90-93.

[12] *Id.* at 357-358.

into a residential subdivision.[13] In this regard, PBI entered into a joint venture agreement with Unicapital, through its real estate development arm, URI. In view of the foregoing, the loan and mortgage over the subject property was later on modified into an Option to Buy Real Property[14] and, after further negotiations, Dela Cruz decided to sell the same to Unicapital and PBI. For this purpose, Dela Cruz appointed Consing, Jr. as her attorney-in-fact.[15]

Eventually, Unicapital, through URI, purchased one-half of the subject property for a consideration of ₱21,221,500.00 (against which Dela Cruz's outstanding loan obligations were first offset), while PBI bought the remaining half for the price of ₱21,047,000.00.[16] In this relation, Dela Cruz caused TCT No. T-687599 to be divided into three separate titles as follows: (*a*) TCT No. T-851861 for URI;[17] (*b*) TCT No. T-851862 for PBI;[18] and (*c*) TCT No. T-851863 which was designated as a road lot.[19] However, even before URI and PBI were able to have the titles transferred to their names, Juanito Tan Teng (Teng) and Po Willie Yu (Yu) informed Unicapital that they are the lawful owners of the subject property as evidenced by TCT No. T-114708;[20] that they did not sell the subject property; and that Dela Cruz's title, *i.e.*, TCT No. T-687599, thereto was a mere forgery.[21] Prompted by Teng and Yu's assertions, PBI conducted further investigations on the subject property which later revealed that Dela Cruz's title was actually of dubious origin. Based on this finding, PBI and Unicapital sent separate

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[13] *Id.* at 83.

[14] *Id.* at 84-86.

[15] *Id.* at 87.

[16] *Id.* at 42.

[17] *Id.* at 345-346.

[18] *Id.* at 347-348.

[19] *Id.* at 349-350.

[20] *Id.* at 354-356.

[21] *Id.* at 359-360. See Letter dated April 21, 1999.

demand letters[22] to Dela Cruz and Consing, Jr., seeking the return of the purchase price they had paid for the subject property.

From the above-stated incidents stemmed the present controversies as detailed hereunder.

The Proceedings Antecedent to G.R. Nos. 175277 & 175285

On May 3, 1999, Consing, Jr. filed a complaint, denominated as a Complex Action for Declaratory Relief[23] and later amended to Complex Action for Injunctive Relief[24] (Consing, Jr.'s complaint) before the RTC-Pasig City against Unicapital, URI, PBI, Martirez, PBI General Manager Mariano Martinez (Martinez), Dela Cruz and Does 1-20, docketed as **SCA No. 1759**. In his complaint, Consing, Jr. claimed that the incessant demands/ recovery efforts made upon him by Unicapital and PBI to return to them the purchase price they had paid for the subject property constituted harassment and oppression which severely affected his personal and professional life.[25] He also averred that he was coerced to commit a violation of Batas Pambansa Blg. 22[26] as Unicapital and PBI, over threats of filing a case against him, kept on forcing him to issue a post-dated check in the amount sought to be recovered, notwithstanding their knowledge that he had no funds for the same.[27] He further alleged that Unicapital and URI required him to sign blank deeds of sale and transfers without cancelling the old ones in violation of the laws on land registration and real estate development.[28] Likewise, Consing,

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[22] *Rollo* (G.R. Nos. 175277 & 175285), pp. 131-132 (Dated April 27, 1999 of PBI); and *rollo* (G.R. No. 192073), pp. 112-113 (Dated April 26, 1999 of Unicapital).

[23] *Rollo* (G.R. Nos. 175277 & 175285), pp. 114-123.

[24] *Id.* at 149-157. Dated June 16, 1999.

[25] *Id.* at 153.

[26] "AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES, otherwise known as "The Anti-Bouncing Check Law."

[27] *Rollo* (G.R. Nos. 175277 & 175285), pp. 153-154.

[28] *Id.* at 154-155.

Jr. added that Unicapital and PBI's representatives were "speaking of him in a manner that [was] inappropriate and libelous,"[29] and that some John Does "deliberately engaged in a fraudulent scheme to compromise [Consing, Jr.'s] honor, integrity and fortune x x x [consisting of] falsifying or causing to be falsified, or attempting to present as falsified certain transfers of Land Titles and Deeds for profit,"[30] classifying the foregoing as *ultra vires* acts which should warrant sanctions under the corporation law, Revised Securities Act and related laws.[31] Accordingly, Consing, Jr. prayed that: (*a*) he be declared as a mere agent of Dela Cruz, and as such, devoid of any obligation to Unicapital, URI, and PBI for the transactions entered into concerning the subject property; (*b*) Unicapital, URI, and PBI be enjoined from harassing or coercing him, and from speaking about him in a derogatory fashion; and (*c*) Unicapital, URI, and PBI pay him actual and consequential damages in the amount of ₱2,000,000.00, moral damages of at least ₱1,000,000.00, exemplary damages of ₱1,000,000.00, all per month, reckoned from May 1, 1999 and until the controversy is resolved, and attorney's fees and costs of suit.[32]

For their part, Unicapital, URI, and Martirez (Unicapital, *et al*.) filed separate Motions to Dismiss[33] Consing, Jr.'s complaint (Unicapital, *et al.*'s motion to dismiss) on the ground of failure to state a cause of action, considering that: (*a*) no document was attached against which Consing, Jr. supposedly derived his right and against which his rights may be ascertained; (*b*) the demands to pay against Consing, Jr. and for him to tender post-dated checks to cover the amount due were well within the rights of Unicapital as an unpaid creditor, as Consing, Jr. had already admitted his dealings with them; (*c*) the utterances

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[29] *Id.* at 120.

[30] *Id.*

[31] *Ibid.*

[32] *Id.* at 121-122.

[33] *Id.* at 124-127 (Dated May 24, 1999); and *id.* at 159-166 (Dated August 23, 1999).

purportedly constituting libel were not set out in the complaint; and (*d*) the laws supposedly violated were not properly identified. Moreover, Unicapital, *et al.* posited that the RTC-Pasig City did not acquire jurisdiction over the case given that Consing, Jr. failed to pay the proper amount of docket fees. In the same vein, they maintained that the RTC-Pasig City had no jurisdiction over their supposed violations of the Corporation Code and Revised Securities Act, which, discounting its merits, should have been supposedly lodged with the Securities and Exchange Commission. Finally, they pointed out that Consing, Jr.'s complaint suffers from a defective verification and, thus, dismissible.[34]

Similar to Unicapital *et al.*'s course of action, PBI and its General Manager, Martinez (Unicapital and PBI, *et al.*), sought the dismissal of Consing, Jr.'s complaint on the ground that it does not state a cause of action. They also denied having singled out Consing, Jr. because their collection efforts were directed at both Consing, Jr. and Dela Cruz, which should be deemed as valid and, therefore, should not be restrained.[35]

On September 14, 1999, the RTC-Pasig City issued a Resolution[36] denying the abovementioned motions to dismiss, holding that Consing, Jr.'s complaint sufficiently stated a cause of action for tort and damages pursuant to Article 19 of the Civil Code. It ruled that where there is abusive behavior, a complainant, like Consing, Jr., has the right to seek refuge from the courts. It also noted that the elements of libel in a criminal case are not the same as those for a civil action founded on the provisions of the Civil Code, and therefore, necessitates a different treatment. It equally refused to dismiss the action on the ground of non-payment of docket fees, despite Consing, Jr.'s escalated claims for damages therein, as jurisdiction was already vested in it upon the filing of the original complaint. Moreover, it resolved to apply the liberal construction rule as

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[34] *Id.* at 187-188. See Reply dated September 7, 1999.

[35] *Id.* at 128-130 (Dated May 26, 1999); *id.* at 167-168 (Dated August 27, 1999).

[36] *Id.* at 191-193. See also *id.* at 86.

regards the subject complaint's verification and certification, despite its improper wording, considering further that such defect was not raised at the first opportunity. Consequently, it ordered Unicapital and PBI, *et al*. to file their Answer and, in addition, to submit "any Comment or Reaction within five (5) days from receipt hereof on the allegations of [Consing, Jr.] in [his] rejoinder of September 9, 1999 regarding the supposed filing of an identical case in Makati City,"[37] *i.e.*, Civil Case No. 99-1418. Unperturbed, Unicapital and PBI, *et al*. moved for reconsideration therefrom which was, however, denied by the RTC-Pasig City in an Order[38] dated February 15, 2001 for lack of merit. Aggrieved, they elevated the denial of their motions to dismiss before the CA via a petition for *certiorari* and prohibition,[39] docketed as **CA-G.R. SP Nos. 64019** and **64451**.

On October 20, 2005, the CA rendered a Joint Decision[40] holding that no grave abuse of discretion was committed by the RTC-Pasig City in refusing to dismiss Consing, Jr.'s complaint. At the outset, it ruled that while the payment of the prescribed docket fee is a jurisdictional requirement, its non-payment will not automatically cause the dismissal of the case. In this regard, it considered that should there be any deficiency in the payment of such fees, the same shall constitute a lien on the judgment award.[41] It also refused to dismiss the complaint for lack of proper verification upon a finding that the copy of the amended complaint submitted to the RTC-Pasig City was properly notarized.[42] Moreover, it upheld the order of the RTC-Pasig City for Unicapital and PBI, *et al*. to submit their comment due to the alleged existence of a similar case filed before the RTC-Makati City.[43]

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[37] *Id.* at 193.

[38] *Id.* at 279-281.

[39] *Id.* at 282-315. Dated March 28, 2001.

[40] *Id.* at 83-103.

[41] *Id.* at 92-95.

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

[43] *Id.* at 101-102.

Anent the substantive issues of the case, the CA concurred with the RTC-Pasig City that Consing Jr.'s complaint states a cause of action. It found that Unicapital and PBI, *et al.*'s purportedly abusive manner in enforcing their claims against Consing, Jr. was properly constitutive of a cause of action as the same, if sufficiently proven, would have subjected him to "defamation of his name in business circles, the threats and coercion against him to reimburse the purchase price, fraud and falsification and breach of fiduciary obligation." It also found that the fact that Consing Jr.'s complaint contains "nebulous" allegations will not warrant its dismissal as any vagueness therein can be clarified through a motion for a bill of particulars."[44] Furthermore, it noted that Consing, Jr. does not seek to recover his claims against any particular provision of the corporation code or the securities act but against the actions of Unicapital and PBI, *et al.*; hence, Consing, Jr.'s complaint was principally one for damages over which the RTC has jurisdiction, and, in turn, there lies no misjoinder of causes of action.[45]

Dissatisfied, only Unicapital, *et al.* sought reconsideration therefrom but the same was denied by the CA in a Resolution[46] dated October 25, 2006. Hence, the present petitions for review on *certiorari* in **G.R. Nos. 175277** and **175285**.

The Proceedings Antecedent to G.R. No. 192073

On the other hand, on August 4, 1999, Unicapital filed a complaint[47] for sum of money with damages against Consing, Jr. and Dela Cruz before the RTC-Makati City, docketed as **Civil Case No. 99-1418**, seeking to recover (*a*) the amount of ₱42,195,397.16, representing the value of their indebtedness based on the Promissory Notes (subject promissory notes) plus interests; (*b*) ₱5,000,000.00 as exemplary damages; (*c*) attorney's fees; and (*d*) costs of suit.[48]

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

[45] *Id.* at 99-100.

[46] *Id.* at 105-106.

[47] *Rollo* (G.R. No. 192073), pp. 124-135. Dated July 28, 1999.

[48] *Id.* at 133.

PBI also filed a complaint for damages and attachment against Consing, Jr. and Dela Cruz before the RTC of Manila, Branch 12, docketed as Civil Case No. 99-95381, also predicated on the same set of facts as above narrated.[49] In its complaint, PBI prayed that it be allowed to recover the following: (*a*) ₱13,369,641.79, representing the total amount of installment payments made as actual damages plus interests; (*b*) ₱200,000.00 as exemplary damages; (*c*) ₱200,000.00 as moral damages; (*d*) attorney's fees; and (*e*) costs of suit.[50] **Civil Case No. 99-95381** was subsequently consolidated with SCA No. 1759 pending before the RTC-Pasig City.[51]

For his part, Consing, Jr. filed a Motion to Dismiss Civil Case No. 99-1418 which was, however, denied by the RTC-Makati City in an Order[52] dated November 16, 1999. Thereafter, he filed a Motion for Consolidation[53] (motion for consolidation) of Civil Case No. 99-1418 with his own initiated SCA No. 1759 pending before the RTC-Pasig City.

In an Order[54] dated July 16, 2007, the RTC-Makati City dismissed Consing, Jr.'s motion for consolidation and, in so doing, ruled that the cases sought to be consolidated had no identity of rights or causes of action and the reliefs sought for by Consing, Jr. from the RTC-Pasig City will not bar Unicapital from pursuing its money claims against him. Moreover, the RTC-Makati City noted that Consing, Jr. filed his motion only as an afterthought as it was made after the mediation proceedings between him and Unicapital failed. Consing, Jr.'s motion for reconsideration therefrom was denied in an Order[55] dated

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[49] *Id.* at 21-22, and 205.

[50] *Id.* at 207-209.

[51] *Id.* at 146-150. See Order in Civil Case No. 99-95381 dated October 8, 2001. Penned by Judge (now Associate Justice of the CA) Rosmari D. Carandang.

[52] *Id.* at 403-407. Signed by Acting Presiding Judge Bonifacio Sanz Maceda.

[53] *Id.* at 153-159. Dated June 18, 2007.

[54] *Id.* at 160-162. Dated July 16, 2007.

[55] *Id.* at 177-178. Dated September 4, 2007.

September 4, 2007. Hence, he filed a petition for *certiorari* before the CA, docketed as **CA-G.R. SP No. 101355**, ascribing grave abuse of discretion on the part of the RTC-Makati City in refusing to consolidate Civil Case No. 99-1418 with SCA No. 1759 in Pasig City.

On September 30, 2009, the CA rendered a Decision[56] sustaining the Orders dated July 16, 2007 and September 4, 2007 of the RTC-Makati City which denied Consing, Jr.'s motion for consolidation. It held that consolidation is a matter of sound discretion on the part of the trial court which could be gleaned from the use of the word "may" in Section 1, Rule 38 of the Rules of Court. Considering that preliminary steps (such as mediation) have already been undertaken by the parties in Civil Case No. 99-1418 pending before the RTC-Makati City, its consolidation with SCA No. 1759 pending before the RTC-Pasig City "would merely result in complications in the work of the latter court or squander the resources or remedies already utilized in the Makati case."[57] Moreover, it noted that the records of the consolidated Pasig and Manila cases, *i.e.*, SCA No. 1759 and Civil Case No. 99-95381, respectively, had already been elevated to the Court, that joint proceedings have been conducted in those cases and that the pre-trial therein had been terminated as early as October 23, 2007. Therefore, due to these reasons, the consolidation prayed for would be impracticable and would only cause a procedural *faux pas*.

Undaunted, Consing, Jr. filed a motion for reconsideration therefrom but was denied by the CA in a Resolution[58] dated April 28, 2010. Hence, the present petition for review on *certiorari* in **G.R. No. 192073**.

The Proceedings Before the Court

After the filing of the foregoing cases, the parties were required to file their respective comments and replies. Further, considering

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[56] *Id.* at 38-49.

[57] *Id.* at 47.

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

that G.R. No. 192073 (Makati case) involves the same parties and set of facts with those in G.R. Nos. 175277 & 175285 (Pasig case), these cases were ordered consolidated per the Court's Resolution[59] dated November 17, 2010. On March 9, 2011, the Court resolved to give due course to the instant petitions and required the parties to submit their respective memoranda.[60]

The Issues Before the Court

The essential issues in these cases are as follows: (*a*) in G.R. Nos. 175277 and 175285, whether or not the CA erred in upholding the RTC-Pasig City's denial of Unicapital, *et al.*'s motion to dismiss; and (*b*) in G.R. No. 192073, whether or not the CA erred in upholding the RTC-Makati City's denial of Consing, Jr.'s motion for consolidation.

The Court's Ruling

A. Propriety of the denial of Unicapital, et al.'s motion to dismiss and ancillary issues.

A cause of action is defined as the act or omission by which a party violates a right of another.[61] It is well-settled that the existence of a cause of action is determined by the allegations in the complaint.[62] In this relation, a complaint is said to sufficiently assert a cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for.[63] Thus, if the allegations furnish adequate basis by which the complaint can be maintained, then the same should not be dismissed, regardless of the defenses that may

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[59] *Rollo* (G.R. Nos. 175277 & 175285), p. 562; and *rollo* (G.R. No. 192073), p. 495.

[60] *Rollo* (G.R. Nos. 175277 & 175285), pp. 566-567; and *rollo* (G.R. No. 192073), pp. 530-531. Court Resolution dated March 9, 2011.

[61] See Section 2, Rule 2 of the Rules of Court.

[62] *Peltan Dev., Inc. v. CA*, 336 Phil. 824, 833 (1997).

[63] See *Davao Light & Power Co., Inc. v. Judge, Regional Trial Court, Davao City, Br. 8*, G.R. No. 147058, March 10, 2006, 484 SCRA 272, 281.

be averred by the defendants.[64] As edified in the case of *Pioneer Concrete Philippines, Inc. v. Todaro*,[65] citing *Hongkong and Shanghai Banking Corporation, Limited. v. Catalan*[66] (*HSBC*):

> The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein? The inquiry is into the sufficiency, not the veracity of the material allegations. **If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants**.[67] (Emphasis supplied)

Stated otherwise, the resolution on this matter should stem from an analysis on whether or not the complaint is able to convey a cause of action; and not that the complainant has no cause of action. Lest it be misunderstood, failure to state a cause of action is properly a ground for a motion to dismiss under Section 1(g), Rule 16[68] of the Rules of Court (Rules), while the latter is not a ground for dismissal under the same rule.

In this case, the Court finds that Consing, Jr.'s complaint in SCA No. 1759 properly states a cause of action since the allegations therein sufficiently bear out a case for damages under Articles 19 and 26 of the Civil Code.

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[64] *The Consolidated Bank and Trust Corp. v. CA,* 274 Phil. 947, 955 (1991).

[65] G.R. No. 154830, June 8, 2007, 524 SCRA 153.

[66] 483 Phil. 525, 538 (2004).

[67] *Pioneer Concrete Philippines, Inc. v. Todaro, supra* note 65, at 162.

[68] Section 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(g) That the pleading asserting the claim states no cause of action;

x x x x x x x x x

Records disclose that Consing, Jr.'s complaint contains allegations which aim to demonstrate the abusive manner in which Unicapital and PBI, *et al*. enforced their demands against him. Among others, the complaint states that Consing, Jr. "has constantly been harassed and bothered by [Unicapital and PBI, *et al*.;] x x x besieged by phone calls from [them]; x x x has had constant meetings with them variously, and on a continuing basis[,] [s]uch that he is unable to attend to his work as an investment banker."[69] In the same pleading, he also alleged that Unicapital and PBI, *et al*.'s act of "demand[ing] a postdated check knowing fully well [that he] does not have the necessary funds to cover the same, nor is he expecting to have them [is equivalent to] asking him to commit a crime under unlawful coercive force."[70] Accordingly, these specific allegations, if hypothetically admitted, may result into the recovery of damages pursuant to Article 19 of the Civil Code which states that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." As explained in the *HSBC* case:

> **[W]hen a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible**. But a right, though by itself legal because [it is] recognized or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse. There is an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.[71] (Emphasis supplied)

Likewise, Consing, Jr.'s complaint states a cause of action for damages under Article 26 of the Civil Code which provides that:

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[69] *Rollo* (G.R. Nos. 175277 & 175285), p. 153.

[70] *Id.* at 153-a.

[71] *Supra* note 66, at 538-539. (Citation omitted)

Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

(1) Prying into the privacy of another's residence;

(2) Meddling with or disturbing the private life or family relations of another;

(3) Intriguing to cause another to be alienated from his friends;

(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

The rationale therefor was explained in the case of *Manaloto v. Veloso III*,[72] citing *Concepcion v. CA*,[73] to wit:

The philosophy behind Art. 26 underscores the necessity for its inclusion in our civil law. The Code Commission stressed in no uncertain terms that the human personality must be exalted. The sacredness of human personality is a concomitant consideration of every plan for human amelioration. The touchstone of every system of law, of the culture and civilization of every country, is how far it dignifies man. If the statutes insufficiently protect a person from being unjustly humiliated, in short, if human personality is not exalted - then the laws are indeed defective. Thus, under this article, the rights of persons are amply protected, and damages are provided for violations of a person's dignity, personality, privacy and peace of mind.[74]

To add, a violation of Article 26 of the Civil Code may also lead to the payment of moral damages under Article 2219(10)[75] of the Civil Code.

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[72] G.R. No. 171365, October 6, 2010, 632 SCRA 347.

[73] 381 Phil. 90 (2000).

[74] *Supra* note 72, at 365-366.

[75] Article 2219. Moral damages may be recovered in the following and analogous cases:

x x x x x x x x x

Records reveal that Consing, Jr., in his complaint, alleged that "[he] has come to discover that [Unicapital and PBI, *et al*.] are speaking of him in a manner that is inappropriate and libelous[;] [and that] [t]hey have spread their virulent version of events in the business and financial community such that [he] has suffered and continues to suffer injury upon his good name and reputation which, after all, is the most sacred and valuable wealth he possesses - especially considering that he is an investment banker."[76] In similar regard, the hypothetical admission of these allegations may result into the recovery of damages pursuant to Article 26, and even Article 2219(10), of the Civil Code.

Corollary thereto, Unicapital, *et al.*'s contention[77] that the case should be dismissed on the ground that it failed to set out the actual libelous statements complained about cannot be given credence. These incidents, as well as the specific circumstances surrounding the manner in which Unicapital and PBI, *et al.* pursued their claims against Consing, Jr. may be better ventilated during trial. It is a standing rule that issues that require the contravention of the allegations of the complaint, as well as the full ventilation, in effect, of the main merits of the case, should not be within the province of a mere motion to dismiss,[78] as in this case. Hence, as what is only required is that the allegations furnish adequate basis by which the complaint can be maintained, the Court – in view of the above-stated reasons – finds that the RTC-Pasig City's denial of Unicapital, *et al.*'s motion to dismiss on the ground of failure to state a cause of action was not tainted with grave abuse of discretion which would necessitate the reversal of the CA's ruling. Verily, for

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(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

x x x x x x x x x

[76] *Rollo* (G.R. Nos. 175277 & 175285), p. 154.

[77] *Id.* at 61-64.

[78] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328, 347.

grave abuse of discretion to exist, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.[79] This the Court does not perceive in the case at bar.

Further, so as to obviate any confusion on the matter, the Court equally finds that the causes of action in SCA No. 1759 were not – as Unicapital, *et al*. claim – misjoined even if Consing, Jr. averred that Unicapital and PBI, *et al*. violated certain provisions of the Corporation Law and the Revised Securities Act.[80]

The rule is that a party's failure to observe the following conditions under Section 5, Rule 2 of the Rules results in a misjoinder of causes of action:[81]

> SEC. 5. *Joinder of causes of action*. - A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:
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> (a) The party joining the causes of action shall comply with the rules on joinder of parties;
>
> (b) The joinder shall not include special civil actions governed by special rules;
>
> (c) **Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein**; and
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> (d) Where the claims in all the causes of action are principally for recovery of money the aggregate amount claimed shall be the test of jurisdiction. (Emphasis supplied)

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[79] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-515.

[80] *Rollo* (G.R. Nos. 175277 & 175285), pp. 64-68.

[81] See *Perez v. Hermano*, G.R. No. 147417, July 8, 2005, 463 SCRA 90, 104.

A careful perusal of his complaint discloses that Consing, Jr. did not seek to hold Unicapital and PBI, *et al*. liable for any specific violation of the Corporation Code or the Revised Securities Act. Rather, he merely sought damages for Unicapital and PBI, *et al*.'s alleged acts of making him sign numerous documents and their use of the same against him. In this respect, Consing, Jr. actually advances an injunction and damages case[82] which properly falls under the jurisdiction of the RTC-Pasig City.[83] Therefore, there was no violation of Section 5, Rule 2 of the Rules, particularly, paragraph (c) thereof. Besides, even on the assumption that there was a misjoinder of causes of action, still, such defect should not result in the dismissal of Consing, Jr.'s complaint. Section 6, Rule 2 of the Rules explicitly states that a "[m]isjoinder of causes of action is not a ground for dismissal of an action" and that "[a] misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately."

Neither should Consing, Jr.'s failure to pay the required docket fees lead to the dismissal of his complaint. It has long been settled that while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its non-payment at the time of the filing of the complaint does not automatically cause the dismissal of the complaint provided

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[82] *Rollo* (G.R. Nos. 175277 & 175285), p. 156. In his complaint, Consing, Jr. essentially seeks that Unicapital, *et al*.: (*a*) "should be restrained from harassing plaintiff by threats of criminal prosecution, or any other coercive demand, or any other threats by reason of the transactions over the property in question"; (*b*) "should be forever barred from speaking about [him] in a derogatory fashion in so far as the surrounding circumstances of the transfers of property in question"; (*c*) pay him "x x x actual damages and consequential damages in the sum of ₱2,000,000.[00] continuing at the same rate per month for the whole period from May 1, 1999 until the controversy is resolved"; (*d*) pay him "x x x moral damages in the amount of at least [₱1,000,000.00] per month from May 1, 1999 until the controversy is resolved"; (*e*) pay him "x x x exemplary damages punitive in nature in the amount of at least [₱1,000,000.00] per month from May 1, 1999 until the controversy is resolved; and (f) pay him "x x x attorney's fees, costs of suit and any other reliefs that may be equitable in the premises."

[83] See Section 19 of Batas Pambansa Bilang 129.

that the fees are paid within a reasonable period.[84] Consequently, Unicapital, *et al.*'s insistence that the stringent rule on non-payment of docket fees enunciated in the case of *Manchester Development Corporation v. CA*[85] should be applied in this case cannot be sustained in the absence of proof that Consing, Jr. intended to defraud the government by his failure to pay the correct amount of filing fees. As pronounced in the case of *Heirs of Bertuldo Hinog v. Hon. Melicor:*[86]

> Plainly, while the payment of the prescribed docket fee is a jurisdictional requirement, even its *non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period*, more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment. **Thus, when insufficient filing fees were initially paid by the plaintiffs and *there was no intention to defraud the government, the Manchester rule does not apply***.[87] (Emphasis and italics in the original)

Indeed, while the Court acknowledges Unicapital, *et al.*'s apprehension that Consing, Jr.'s "metered" claim for damages to the tune of around ₱2,000,000.00 per month[88] may balloon to a rather huge amount by the time that this case is finally disposed of, still, any amount that may by then fall due shall be subject to assessment and any additional fees determined shall constitute as a lien against the judgment as explicitly provided under Section 2,[89] Rule 141 of the Rules.

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[84] See *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto*, G.R. No. 169108, April 18, 2006, 487 SCRA 339, 347.

[85] G.R. No. 75919, May 7, 1987, 149 SCRA 562.

[86] 495 Phil. 422 (2005).

[87] *Id.* at 436.

[88] *Rollo* (G.R. Nos. 175277 & 175285), p. 69.

[89] SEC. 2. *Fees in lien*. – Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees.

Finally, on the question of whether or not Consing, Jr.'s complaint was properly verified, suffice it to state that since the copy submitted to the trial court was duly notarized by one Atty. Allan B. Gepty and that it was only Unicapital, *et al.*'s copy which lacks the notarization, then there was sufficient compliance with the requirements of the rules on pleadings.[90]

In fine, the Court finds no reversible error on the part of the CA in sustaining the RTC-Pasig City's denial of Unicapital, *et al.*'s motion to dismiss. As such, the petitions in G.R. Nos. 175277 and 175285 must be denied.

B. Propriety of the denial of Consing, Jr.'s motion for consolidation.

The crux of G.R. No. 192073 is the propriety of the RTC-Makati City's denial of Consing, Jr.'s motion for the consolidation of the Pasig case, *i.e.*, SCA No. 1759, and the Makati case, *i.e.*, Civil Case No. 99-1418. Records show that the CA upheld the RTC-Makati City's denial of the foregoing motion, finding that the consolidation of these cases was merely discretionary on the part of the trial court. It added that it was "impracticable and would cause a procedural *faux pas*" if it were to "allow the [RTC-Pasig City] to preside over the Makati case."[91]

The CA's ruling is proper.

It is hornbook principle that when two or more cases involve the same parties and affect closely related subject matters, the same must be consolidated and jointly tried, in order to serve the best interest of the parties and to settle the issues between them promptly, thus, resulting in a speedy and inexpensive determination of cases. In addition, consolidation serves the purpose of avoiding the possibility of conflicting decisions rendered by the courts in two or more cases, which

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[90] See *rollo* (G.R. Nos. 175277 & 175285), pp. 100-101.

[91] *Rollo* (G.R. No. 192073), pp. 47-48.

otherwise could be disposed of in a single suit.[92] The governing rule is Section 1, Rule 31 of the Rules which provides:

> SEC. 1. *Consolidation*. - When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In the present case, the Court observes that the subject cases, *i.e.*, SCA No. 1759 and Civil Case No. 99-1418, although involving the same parties and proceeding from a similar factual milieu, should remain unconsolidated since they proceed from different sources of obligations and, hence, would not yield conflicting dispositions. SCA No. 1759 is an injunction and damages case based on the Civil Code provisions on abuse of right and defamation, while Civil Case No. 99-1418 is a collection and damages suit based on actionable documents, *i.e.*, the subject promissory notes. In particular, SCA No. 1759 deals with whether or not Unicapital and PBI, *et al*. abused the manner in which they demanded payment from Consing, Jr., while Civil Case No. 99-1418 deals with whether or not Unicapital may demand payment from Consing, Jr. based on the subject promissory notes. Clearly, a resolution in one case would have no practical effect as the core issues and reliefs sought in each case are separate and distinct from the other.

Likewise, as the CA correctly pointed out, the RTC-Makati City could not have been faulted in retaining Civil Case No. 99-1418 in its dockets since pre-trial procedures have already been undertaken therein and, thus, its consolidation with SCA No. 1759 pending before the RTC-Pasig City would merely result in complications on the part of the latter court or squander the resources or remedies already utilized in Civil Case No. 99-1418.[93] In this light, aside from the perceived improbability

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[92] See *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*, G.R. Nos. 190462 and 190538, November 17, 2010, 635 SCRA 403, 415-416.

[93] *Rollo* (G.R. No. 192073), p. 47.

of having conflicting decisions, the consolidation of SCA No. 1759 and Civil Case No. 99-1418 would, contrary to its objective, only delay the proceedings and entail unnecessary costs.

All told, the Court finds the consolidation of SCA No. 1759 and Civil Case No. 99-1418 to be improper, impelling the affirmance of the CA's ruling. Consequently, the petition in G.R. No. 192073 must also be denied.

WHEREFORE, the petitions in G.R. Nos. 175277, 175285 and 192073 are **DENIED**. Accordingly, the Court of Appeals' Joint Decision dated October 20, 2005 and Resolution dated October 25, 2006 in CA-G.R. SP Nos. 64019 and 64451 and the Decision dated September 30, 2009 and Resolution dated April 28, 2010 in CA-G.R. SP No. 101355 are hereby **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179594. September 11, 2013]

MANUEL UY & SONS, INC., *petitioner, vs.* **VALBUECO, INCORPORATED,** *respondent.*

SYLLABUS

1. CIVIL LAW; REPUBLIC ACT NO. 6552 (REALTY INSTALLMENT BUYER ACT); CONDITIONAL SALE; THE LAW RECOGNIZES THE RIGHT OF THE SELLER TO CANCEL THE CONTRACT UPON NON-PAYMENT OF AN INSTALLMENT BY THE BUYER.— In a conditional sale, as in a contract to sell, ownership remains with the vendor and

does not pass to the vendee until full payment of the purchase price. The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising. To differentiate, a deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. ***Ramos v. Heruela*** held that Articles 1191 and 1592 of the Civil Code are applicable to contracts of sale, while R.A. No. 6552 applies to contracts to sell. The Court of Appeals correctly held that R.A. No. 6552, otherwise known as the *Realty Installment Buyer Act*, applies to the subject contracts to sell. R.A. No. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. It also provides the right of the buyer on installments in case he defaults in the payment of succeeding installments.

2. ID.; ID.; ID.; THE RIGHT OF THE BUYER TO REFUND ACCRUES ONLY UPON PAYMENT OF AT LEAST TWO YEARS OF INSTALLMENT.— Under R.A. No. 6552, the right of the buyer to refund accrues only when he has paid at least two years of installments. In this case, respondent has paid less than two years of installments; hence, it is not entitled to a refund.

3. ID.; PRESCRIPTION; ACTIONS BASED UPON A WRITTEN CONTRACT MUST BE BROUGHT WITHIN TEN YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES; CASE AT BAR.— Article 1144 of the Civil Code provides that actions based upon a written contract must be brought within ten years from the time the right of action accrues. Non-fulfillment of the obligation to pay on the last due date, that is, on November 15, 1974, would give rise to an action by the vendor, which date of reckoning may also apply to any action by the vendee to determine his right under R.A. No. 6552. The vendee, respondent herein, filed this case on March 16, 2001, which is clearly beyond the I0-year prescriptive period; hence, the action has prescribed.

APPEARANCES OF COUNSEL

Abundio D. Bello for petitioner.
Jaso Dorillo & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision[2] dated December 11, 2006 in CA-G.R. CV No. 85877, and its Resolution dated September 4, 2007, denying petitioner's motion for reconsideration.

The Court of Appeals reversed and set aside the Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 1, dismissing the Complaint for specific performance and damages. The Court of Appeals reinstated the Complaint and directed petitioner to execute deeds of absolute sale in favor of respondent after payment of the purchase price of the subject lots.

The facts, as stated by the Court of Appeals, are as follows:

Petitioner Manuel Uy & Sons, Inc. is the registered owner of parcels of land located in Teresa, Rizal covered by Transfer Certificate of Title (TCT) No. 59534, covering an area of about 6,119 square meters; TCT No. 59445, covering an area of about 6,838 square meters; TCT No. 59446, covering an area of about 12,389 square meters; and TCT No. 59444, covering an area of about 32,047 square meters.

On November 29, 1973, two Conditional Deeds of Sale were executed by petitioner, as vendor, in favor of respondent Valbueco, Incorporated, as vendee. The first Conditional Deed of Sale[4] covered TCT Nos. 59534, 59445 and 59446, and contained the following terms and conditions:

That for and in consideration of the sum of ONE HUNDRED SIXTY-FOUR THOUSAND SEVEN HUNDRED FORTY-NINE

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

[2] Penned by Associate Justice Vicente Q. Roxas of the Sixteenth Division, with Associate Justice Josefina Guevara-Salonga as Chairman and Associate Justice Apolinario D. Bruselas, Jr. as member, concurring.

[3] In Civil Case No. 01-100411.

[4] *Rollo*, pp. 351-354.

(Php164,749.00) PESOS, Philippine currency, the VENDOR hereby agrees to SELL, CEDE, TRANSFER and CONVEY unto the VENDEE x x x the aforementioned properties, payable under the following terms and conditions:

1. The sum of FORTY-ONE THOUSAND ONE HUNDRED EIGHTY-SEVEN and 25/100 (Php 41,187.25) PESOS shall be paid upon signing of this conditional deed of sale; and

2. The balance of ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED SIXTY-ONE and 75/100 (Php 123,561.75) PESOS shall be paid within a period of one (1) year from November 15, 1973, with interest of 12% per annum based on the balance, in the mode and manner specified below:

a) January 4, 1974 – ₱16,474.90 plus interest
b) On or before May 15, 1974 – ₱53,543.43 plus interest
c) On or before November 15, 1974 – ₱53,543.32 plus interest

3. That the vendee shall be given a grace period of thirty (30) days from the due date of any installment with corresponding interest to be added, but should the VENDEE fail to make such payment within the grace period this contract shall be deemed rescinded and without force and effect after notice in writing by VENDOR to VENDEE.

4. That the VENDOR agrees to have the existing Mortgages on the properties subject of this sale released on or before May 20, 1974.

5. That the VENDOR agrees to have the above-described properties freed and cleared of all lessees, tenants, adverse occupants or squatters within 100 days from the execution of this conditional deed of sale. In case of failure by the VENDOR to comply with the undertaking provided in this paragraph and the VENDEE shall find it necessary to file a case or cases in court to eject the said lessees, tenants, occupants and/or squatters from the land, subject of this sale, the VENDOR agrees to answer and pay for all the expenses incurred and to be incurred in connection with said cases until the same are fully and finally terminated.

6. That the VENDOR and the VENDEE agree that during the existence of this Contract and without previous expressed written permission from the other, they shall not sell, cede, assign, transfer or mortgage, or in any way encumber unto another person or party

any right, interest or equity that they may have in and to said parcels of land.

x x x x x x x x x

8. That it is understood that ownership of the properties herein conveyed shall not pass to the VENDEE until after payment of the full purchase price; provided, however, that [the] VENDOR shall allow the annotation of this Conditional Deed of Sale at the back of the titles of the above-described parcels of land in the corresponding Registry of Deeds x x x.

9. That upon full payment of the total purchase price, a Deed of Absolute Sale shall be executed in favor of the VENDEE and the VENDOR agrees to pay the documentary stamps and the science stamp tax of the Deed of Sale; while the VENDEE agrees to pay the registration and other expenses for the issuance of a new title.

10. That it is mutually agreed that in case of litigation, the venue of the case shall be in the courts of Manila, having competent jurisdiction, any other venue being expressly waived.[5]

On the other hand, the second Conditional Deed of Sale[6] covering Lot No. 59444 provides, thus:

1. The sum of FIFTY-TWO THOUSAND SEVENTY-SIX AND 37/100 (Php 52,076.37) PESOS, shall be paid upon signing of this conditional deed of sale; and

2. The balance of ONE HUNDRED FIFTY-SIX THOUSAND TWO HUNDRED TWENTY-NINE and 13/100 (Php 156,229.13) PESOS shall be paid within a period of one (1) year from November 15, 1973, with interest of 12% per annum based on the balance, in the mode and manner specified below:

a) January 4, 1974 – ₱20,830.55 plus interest
b) On or before May 15, 1974 – ₱67,699.29 plus interest
c) On or before November 15, 1974, ₱67,699.29 plus interest

3. That the VENDEE shall be given a grace period of thirty (30) days from the due date of any installment with corresponding interest to be added, but should the VENDEE fail to make such payment within

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[5] *Id.* at 352-353.

[6] *Id.* at 355-358.

the grace period, this contract shall be deemed rescinded and without force and effect after notice in writing by VENDOR to VENDEE.

4. That the VENDOR agrees and acknowledges that any and all payments to be made by the VENDEE by reason of this presents unless hereafter advised by VENDOR to the contrary, shall be made in favor of and to the Philippine Trust Company by way of liquidation and payment of the existing mortgage on the property subject of this sale.

5. That after each payment adverted to above the VENDOR shall issue the corresponding receipt for the amount paid by the VENDOR to the Philippine Trust Company.

6. That the VENDOR agrees to have the above-described property freed and cleared of all lessees, tenants, adverse occupants or squatters within 100 days from the execution of this conditional deed of sale. In case of failure by the VENDOR to comply with this undertaking provided in this paragraph and the VENDEE shall find it necessary to file a case or cases in court to eject the said lessees, tenants, occupants and/or squatters from the land, subject of this sale, the VENDOR agrees to answer and pay for all the expenses incurred and to be incurred in connection with said cases until the same are fully and finally terminated.

7. That the VENDOR and the VENDEE agree that during the existence of this Contract and without previous expressed written permission from the other, they shall not sell, cede, assign, transfer or mortgage, or in any way encumber unto another person or party any right, interest or equity that they may have in and to said parcel of land.

x x x x x x x x x

9. That it is understood that ownership of the property herein conveyed shall not pass to the VENDEE until after payment of the full purchase price, provided, however, that [the] VENDOR shall allow the annotation of the Conditional Deed of Sale at the back of the Title of the above-described parcel of land in the corresponding Registry of Deeds; x x x.

10. That upon full payment of the total purchase price, a Deed of Absolute Sale shall be executed in favor of the VENDEE and the VENDOR agrees to pay the documentary stamps and the science

stamp tax of the Deed of Sale; while the VENDEE agrees to pay the registration and other expenses for the issuance of a new title.

11. That it is mutually agreed that in case of litigation, the venue of the case shall be in the courts of Manila, having competent jurisdiction, any other venue being expressly waived.[7]

Respondent was able to pay petitioner the amount of ₱275,055.55[8] as partial payment for the two properties corresponding to the initial payments and the first installments of the said properties.

At the same time, petitioner complied with its obligation under the conditional deeds of sale, as follows: (1) the mortgage for TCT No. 59446 was released on May 18, 1984, while the mortgages for TCT Nos. 59445 and 59534 were released on July 19, 1974; (2) the unlawful occupants of the lots covered by TCT Nos. 59444, 59534, 59445 and 59446 surrendered their possession and use of the said lots in consideration of the amount of ₱6,000.00 in a document[9] dated November 19, 1973, and they agreed to demolish their shanties on or before December 7, 1973; and (3) the mortgage with Philippine Trust Company covering TCT No. 59444 was discharged[10] in 1984.

However, respondent suspended further payment as it was not satisfied with the manner petitioner complied with its obligations under the conditional deeds of sale. Consequently, on March 17, 1978, petitioner sent respondent a letter[11] informing respondent of its intention to rescind the conditional deeds of sale and attaching therewith the original copy of the respective notarial rescission.

On November 28, 1994, respondent filed a Complaint[12] for specific performance and damages against petitioner with the

[7] *Id.* at 356-357.

[8] Records, pp. 117-123; Decision of the Court of Appeals, *id.* at 73.

[9] Records, pp. 294-295.

[10] *Id.* at 256.

[11] *Id.* at 52.

[12] Docketed as Civil Case No. 94-3426.

RTC of Antipolo City. However, on January 15, 1996, the case was dismissed without prejudice[13] for lack of interest, as respondent's counsel failed to attend the pre-trial conference.

Five years later, or on March 16, 2001, respondent again filed with the RTC of Manila, Branch 1 (trial court) a Complaint[14] for specific performance and damages, seeking to compel petitioner to accept the balance of the purchase price for the two conditional deeds of sale and to execute the corresponding deeds of absolute sale. Respondent contended that its non-payment of the installments was due to the following reasons: (1) Petitioner refused to receive the balance of the purchase price as the properties were mortgaged and had to be redeemed first before a deed of absolute sale could be executed; (2) Petitioner assured that the existing mortgages on the properties would be discharged on or before May 20, 1974, or that petitioner did not inform it (respondent) that the mortgages on the properties were already released; and (3) Petitioner failed to fully eject the unlawful occupants in the area.

In its Answer,[15] petitioner argued that the case should be dismissed, as it was barred by prior judgment. Moreover, petitioner contended that it could not be compelled to execute any deed of absolute sale, because respondent failed to pay in full the purchase price of the subject lots. Petitioner claimed that it gave respondent a notice of notarial rescission of both conditional deeds of sale that would take effect 30 days from receipt thereof. The notice of notarial rescission was allegedly received by respondent on March 17, 1978. Petitioner asserted that since respondent failed to pay the full purchase price of the subject lots, both conditional deeds of sale were rescinded as of April 16, 1978; hence, respondent had no cause of action against it.

In its Reply,[16] respondent denied that it received the alleged notice of notarial rescission. Respondent also denied that the

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[13] Records, p. 89.

[14] Docketed as Civil Case No. 01-100411.

[15] Records, pp. 43-46.

[16] *Id.* at 69-75.

alleged recipient (one Wenna Laurenciana)[17] of the letter dated March 17, 1978, which was attached to the notice of notarial rescission, was its employee. Respondent stated that assuming *arguendo* that the notice was sent to it, the address (6th Floor, SGC Bldg., Salcedo Street, Legaspi Village, Makati, Metro Manila) was not the given address of respondent. Respondent contended that its address on the conditional deeds of sale and the receipts issued by it and petitioner showed that its principal business address was the 7th Floor, Bank of P.I. Bldg., Ayala Avenue, Makati, Rizal.

On August 1, 2005, the trial court rendered a Decision,[18] dismissing the complaint, as petitioner had exercised its right to rescind the contracts. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the complaint is DISMISSED for lack of merit.
>
> Claims and counterclaims for damages are also dismissed.[19]

The trial court stated that the issues before it were: (1) Did petitioner unlawfully evade its obligation to execute the final deed of sale and to eject the squatters/occupants on the properties; (2) Is the case barred by prior judgment; and (3) Does respondent have a cause of action against petitioner.

The trial court said that both conditional deeds of sale clearly provided that "ownership x x x shall not pass to the VENDEE until after full payment of the purchase price." Respondent admitted that it has not yet fully paid the purchase price. The trial court held that the conditions in the conditional deeds of sale being suspensive, that is, its fulfillment gives rise to the obligation, the reasons for the inability of respondent to fulfill its own obligations is material, in order that the obligation of petitioner to execute the final deeds of absolute sale will arise.

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[17] Also mentioned as "Wilma" Laurenciana in the TSN dated April 24, 2003.

[18] *Rollo*, pp. 53-62.

[19] *Id.* at 62.

The trial court stated that the evidence showed that petitioner had exercised its right to rescind the contract by a written notice dated March 17, 1978 and notarial acts both dated March 15, 1978. The trial court noted that respondent denied having received the notice and disclaimed knowing the recipient, Wenna Laurenciana. However, on cross-examination, respondent's witness, Gaudencio Juan, who used to be respondent's Personnel Manager and Forester at the same time, admitted knowing Laurenciana because she was the secretary of Mr. Valeriano Bueno, respondent's president at that time, although Laurenciana was not employed by respondent, but she was employed by Mahogany Products Corporation, presumably one of the 14 other companies being controlled by Mr. Bueno.[20]

The trial court held that the conditional deeds of sale were executed on November 29, 1973 and were already covered by Republic Act (R.A.) No. 6552, otherwise known as the *Realty Installment Buyer Act*. Under Section 4 of the law, if the buyer fails to pay the installments due at the expiration of the grace period, which is not less than 60 days from the date the installment became due, the seller may cancel the contract after 30 days from receipt of the buyer of the notice of cancellation or the demand for rescission of the contracts by notarial act. The trial court found no lawful ground to grant the relief prayed for and dismissed the complaint for lack of merit.

Respondent appealed the decision of the trial court to the Court of Appeals, and made these assignments of error: (1) the trial court erred in holding that petitioner did not unlawfully evade executing a final deed of sale, since respondent's failure to fulfill its own obligation is material; (2) the trial court erred in holding that it is unbelievable and a self-contradiction that respondent was informed of the mortgage only when it was paying the balance of the properties; and (3) the trial court erred in holding that as early as November 19, 1973, petitioner had already taken necessary steps to evict the squatters/ occupants through the intercession of the agrarian reform officer.

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[20] RTC Decision, *id.* at 61, citing TSN, April 24, 2003, p. 17; TSN, October 16, 2001, p. 22.

On December 11, 2006, the Court of Appeals rendered a Decision, reversing and setting aside the Decision of the trial court. It reinstated the complaint of respondent, and directed petitioner to execute deeds of absolute sale in favor of respondent after payment of the balance of the purchase price of the subject lots. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the August 1, 2005 Decision of the Regional Trial Court of Manila, Branch 1, in Civil Case No. 01-100411, is hereby **REVERSED** and **SET ASIDE**.
>
> A new one is hereby entered: **REINSTATING** the complaint and defendant-appellee MANUEL UY & SONS INC. is hereby **DIRECTED**, pursuant to Sec. 4, R. A. No. 6552, otherwise known as the Maceda Law, to **EXECUTE** and **DELIVER**:
>
> (1) Deeds of Absolute Sale in favor of VALBUECO, INC.; and
> (2) Transfer Certificates of Title pertaining to Nos. 59534, 59445, 59446 and 59444, in the name of plaintiff-appellant VALBUECO, INC.,
>
> after VALBUECO pays MANUEL UY & SONS, without additional interest, within thirty days from finality of this judgment, the balance of the contract price.
>
> If MANUEL UY & SONS refuses to deliver the Deeds of Absolute Sale and the co-owner's copy of the TCTs, the Register of Deeds of Antipolo, Rizal is hereby **DIRECTED** to **CANCEL** the latest TCTs issued derived from TCT Nos. 59534, 59445, 59446 and 59444, and to **ISSUE** new TCTS in the name of VALBUECO.
>
> Only if VALBUECO fails in the payment directed above, then defendant-appellee MANUEL UY & SONS INC. has the opportunity to serve a valid notice of notarial rescission.
>
> SO ORDERED.[21]

The Court of Appeals held that the two conditional deeds of sale in this case are contracts to sell. It stated that the law applicable to the said contracts to sell on installments is R.A. No. 6552, specifically Section 4 thereof, as respondent paid less than two years in installments. It held that upon repeated defaults in payment by respondent, petitioner had the right to

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[21] *Rollo*, pp. 84-85. (Emphasis in the original)

cancel the said contracts, but subject to the proper receipt of respondent of the notice of cancellation or the demand for the rescission of the contracts by notarial act.

However, the Court of Appeals found that petitioner sent the notice of notarial rescission to the wrong address. The business address of respondent, as used in all its transactions with petitioner, was the 7th Floor, Bank of the Philippine Islands Building, Ayala Avenue, Makati City, but the notice of notarial rescission was sent to the wrong address at the 6th Floor, SGC Building, Salcedo Street, Legaspi Village, Makati, Metro Manila. Petitioner served the notice to the address of Mahogany Products Corporation. It was established that the person who received the notice, one Wenna Laurenciana, was an employee of Mahogany Products Corporation and not an employee of respondent or Mr. Valeriano Bueno, the alleged president of Mahogany Products Corporation and respondent company.[22] The appellate court stated that this cannot be construed as to have been constructively received by respondent as the two corporations are two separate entities with a distinct personality independent from each other. Thus, the Court of Appeals held that the notarial rescission was invalidly served. It stated that it is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service by a preponderance of evidence. In this case, the Court of Appeals held that there was no evidence that the notice of cancellation by notarial act was actually received by respondent. Thus, for petitioner's failure to cancel the contract in accordance with the procedure provided by law, the Court of Appeals held that the contracts to sell on installment were valid and subsisting, and respondent has the right to offer to pay for the balance of the purchase price before actual cancellation.

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution[23] dated September 4, 2007.

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[22] TSN, April 24, 2003, pp. 17-19, Cross-examination and Re-direct examination of witness Gaudencio Juan.

[23] *Rollo*, p. 89.

Petitioner filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE RTC DECISION AND REINSTATING THE COMPLAINT WHEN ON ITS FACE IT HAS LONG BEEN PRESCRIBED, AS IT WAS FILED AFTER 27 YEARS AND HAS NO JURISDICTION (SIC).

II

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN COMPELLING PETITIONER TO EXECUTE A FINAL DEED OF ABSOLUTE [SALE] EVEN IF RESPONDENT JUDICIALLY ADMITTED ITS NON-PAYMENT OF THE BALANCE OF THE DEEDS OF CONDITIONAL SALE DUE SINCE 1974.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE RELIEFS PRAYED BY RESPONDENT IN ITS COMPLAINT FOR SPECIFIC PERFORMANCE WHEN IT WAS RESPONDENT WHO BREACHED THE CONTRACT.

IV

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE INJUSTICE WHEN IT PENALIZED PETITIONER FOR EXERCISING ITS LEGAL RIGHT AND DID NOT COMMIT AN ACTIONABLE WRONG WHILE IT HEFTILY REWARDED RESPONDENT, WHO BREACHED THE CONTRACT, AND ORDERED TO PAY WITHOUT INTEREST PHP 97,998.95, WHICH IS DUE SINCE 1974 UNDER THE CONTRACT, FOR FOUR (4) PARCELS OF LAND (57,393 SQUARE METERS), NOW WORTH HUNDRED MILLIONS.

V

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ANNULLING THE NOTARIAL RESCISSION WHEN THE COMPLAINT IS ONLY FOR SPECIFIC PERFORMANCE AND WAS NOT AN ISSUE RAISED IN THE PLEADINGS OR DURING THE TRIAL.[24]

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

The main issue is whether respondent is entitled to the relief granted by the Court of Appeals. Petitioner contends that the Court of Appeals erred in directing it to execute deeds of absolute sale over the subject lots even if respondent admitted non-payment of the balance of the purchase price.

As found by the Court of Appeals, the two conditional deeds of sale entered into by the parties are contracts to sell, as they both contained a stipulation that ownership of the properties shall not pass to the vendee until after full payment of the purchase price. In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price.[25] The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.[26] To differentiate, a deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. ***Ramos v. Heruela***[27] held that Articles 1191 and 1592 of the Civil Code[28] are applicable to contracts of sale, while R.A. No. 6552 applies to contracts to sell.

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[25] *Ramos v. Heruela*, 509 Phil. 658, 665 (2005).

[26] *Id.*

[27] *Id.* at 667.

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

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

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

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for

The Court of Appeals correctly held that R.A. No. 6552, otherwise known as the *Realty Installment Buyer Act*, applies to the subject contracts to sell. R.A. No. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force.[29] It also provides the right of the buyer on installments in case he defaults in the payment of succeeding installments[30] as follows:

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

(b) If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand

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rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

[29] *Rillo v. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461, 467-468.

[30] *Id.* at 468.

> for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

Sec. 4. In case where ***less than two years of installments were paid***, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.

If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the ***notice of cancellation or the demand for rescission of the contract by a notarial act***.[31]

In this case, respondent has paid less than two years of installments; therefore, Section 4 of R.A. No. 6552 applies.

The Court of Appeals held that even if respondent defaulted in its full payment of the purchase price of the subject lots, the conditional deeds of sale remain valid and subsisting, because there was no valid notice of notarial rescission to respondent, as the notice was sent to the wrong address, that is, to Mahogany Products Corporation, and it was received by a person employed by Mahogany Products Corporation and not the respondent. The Court of Appeals stated that the allegation that Mahogany Products Corporation and respondent have the same President, one Valeriano Bueno, is irrelevant and has not been actually proven or borne by evidence. The appellate court held that there was insufficient proof that respondent actually received the notice of notarial rescission of the conditional deeds of sale; hence, the unilateral rescission of the conditional deeds of sale cannot be given credence.

However, upon review of the records of this case, the Court finds that respondent had been served a notice of the notarial rescission of the conditional deeds of sale when it was furnished with the petitioner's Answer, dated February 16, 1995, to its first Complaint filed on November 28, 1994 with the RTC of Antipolo City, which case was docketed as Civil Case No. 94-

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[31] Emphasis supplied.

3426, but the complaint was later dismissed without prejudice on January 15, 1996.[32]

It appears that after respondent filed its *first* Complaint for specific performance and damages with the RTC of Antipolo City on November 28, 1994, petitioner filed an Answer and attached thereto a copy of the written notice dated March 17, 1978 and copies of the notarial acts of rescission dated March 15, 1978, and that respondent received a copy of the said Answer with the attached notices of notarial rescission. However, to reiterate, the *first* Complaint was dismissed without prejudice.

Five years after the dismissal of the first Complaint, respondent again filed this case for specific performance and damages, this time, with the RTC of Manila. Petitioner filed an Answer, and alleged, among others, that the case was barred by prior judgment, since respondent filed a complaint on November 28, 1994 before the RTC of Antipolo City, Branch 73, against it (petitioner) involving the same issues and that the case, docketed as Civil Case No. 94-3426, was dismissed on January 15, 1996 for lack of interest. Respondent filed a Reply[33] dated July 18, 2001, asserting that petitioner prayed for the dismissal of the first case filed on November 28, 1994 (Civil Case No. 94-3426) on the ground of improper venue as the parties agreed in the deeds of conditional sale that in case of litigation, the venue shall be in the courts of Manila. To prove its assertion, respondent attached to its Reply a copy of petitioner's Answer to the *first* Complaint in Civil Case No. 94-3426, which Answer included the written notice dated March 17, 1978 and two notarial acts of rescission, both dated March 15, 1978, of the two conditional deeds of sale. Hence, respondent is deemed to have had notice of the notarial rescission of the two conditional deeds of sale when it received petitioner's Answer to its *first* complaint filed with the RTC of Antipolo, since petitioner's Answer included notices of notarial rescission of the two conditional deeds of sale. The first complaint was filed six years earlier before this

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[32] Records, p. 89.

[33] *Id.* at 69.

complaint was filed. As stated earlier, the first complaint was dismissed without prejudice, because respondent's counsel failed to appear at the pre-trial. Since respondent already received notices of the notarial rescission of the conditional deeds of sale, together with petitioner's Answer to the first Complaint five years before it filed this case, it can no longer deny having received notices of the notarial rescission in this case, as respondent admitted the same when it attached the notices of notarial rescission to its Reply in this case. Consequently, respondent is not entitled to the relief granted by the Court of Appeals.

Under R.A. No. 6552, the right of the buyer to refund accrues only when he has paid at least two years of installments.[34] In this case, respondent has paid less than two years of installments; hence, it is not entitled to a refund.[35]

Moreover, petitioner raises the issue of improper venue and lack of jurisdiction of the RTC of Manila over the case. It contends that the complaint involved real properties in Antipolo City and cancellation of titles; hence, it was improperly filed in the RTC of Manila.

Petitioner's contention lacks merit, as petitioner and respondent stipulated in both Conditional Deeds of Sale that they mutually agreed that in case of litigation, the case shall be filed in the courts of Manila.[36]

Further, petitioner contends that the action has prescribed. Petitioner points out that the cause of action is based on a written contract; hence, the complaint should have been brought within 10 years from the time the right of action accrues under Article 1144 of the Civil Code. Petitioner argues that it is evident on the face of the complaint and the two contracts of conditional sale that the cause of action accrued in 1974; yet,

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[34] *Rillo v. Court of Appeals*, *supra* note 29, at 469.

[35] *Id.*

[36] See Rules of Court, Rule 5, Sec. 4.

the complaint for specific performance was filed after 27 years. Petitioner asserts that the action has prescribed.

The contention is meritorious.

Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

> Section 1. ***Defense and objections not pleaded***. - Defenses and objections not pleaded whether in a motion to dismiss or in the answer are deemed waived. However, ***when it appears from the pleadings*** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or ***that the action is barred*** by a prior judgment or ***by statute of limitations***, ***the court shall dismiss the claim***.[37]

In ***Gicano v. Gegato***,[38] the Court held:

> x x x (T)rial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; (*Francisco v. Robles*, Feb, 15, 1954; *Sison v. McQuaid*, 50 O.G. 97; *Bambao v. Lednicky*, Jan. 28, 1961; *Cordova v. Cordova*, Jan. 14, 1958; *Convets, Inc. v. NDC*, Feb. 28, 1958; 32 SCRA 529; *Sinaon v. Sorongan*, 136 SCRA 408); and it may do so on the basis of a motion to dismiss (Sec. 1,f, Rule 16, Rules of Court), or an answer which sets up such ground as an affirmative defense (Sec. 5, Rule 16), **or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration (*Ferrer v. Ericta*, 84 SCRA 705); or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings (*Garcia v. Mathis*, 100 SCRA 250; *PNB v. Pacific Commission House*, 27 SCRA 766; *Chua Lamco v. Dioso, et al.*, 97 Phil. 821);** or where a defendant has been declared in default (*PNB v. Perez*, 16 SCRA 270). **What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.**[39]

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[37] Emphasis supplied.

[38] 241 Phil. 139, 145-146 (1988), cited in *Dino v. Court of Appeals*, 411 Phil. 594, 603-604 (2001).

[39] Emphasis supplied.

Moreover, ***Dino v. Court of Appeals***[40] held:

> Even if the defense of prescription was raised for the first time on appeal in respondent's Supplemental Motion for Reconsideration of the appellate court's decision, this does not militate against the due process right of the petitioners. On appeal, there was no new issue of fact that arose in connection with the question of prescription, thus it cannot be said that petitioners were not given the opportunity to present evidence in the trial court to meet a factual issue. Equally important, petitioners had the opportunity to oppose the defense of prescription in their Opposition to the Supplemental Motion for Reconsideration filed in the appellate court and in their Petition for Review in this Court.[41]

In this case, petitioner raised the defense of prescription for the first time before this Court, and respondent had the opportunity to oppose the defense of prescription in its Comment to the petition. Hence, the Court can resolve the issue of prescription as both parties were afforded the opportunity to ventilate their respective positions on the matter. The Complaint shows that the Conditional Deeds of Sale were executed on November 29, 1973, and payments were due on both Conditional Deeds of Sale on November 15, 1974. Article 1144[42] of the Civil Code provides that actions based upon a written contract must be brought within ten years from the time the right of action accrues. Non-fulfillment of the obligation to pay on the last due date, that is, on November 15, 1974, would give rise to an action by the vendor, which date of reckoning may also apply to any action by the vendee to determine his right under R.A. No. 6552. The vendee, respondent herein, filed this case on March 16, 2001, which is clearly beyond the 10-year prescriptive period; hence, the action has prescribed.

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[40] *Supra* note 38.

[41] *Dino v. Court of Appeals, supra,* at 605.

[42] Civil Code, Art. 1144. The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; and (3) Upon a judgment.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals, dated December 11, 2006, in CA-G.R. CV No. 85877 and its Resolution dated September 4, 2007 are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Manila, Branch 1, dated August 1, 2005 in Civil Case No. 01-100411, dismissing the case for lack of merit, is **REINSTATED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180284. September 11, 2013]

NARCISO SALAS, *petitioner, vs.* **ANNABELLE MATUSALEM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; VENUE; OBJECTION ON VENUE MUST BE TIMELY RAISED, OTHERWISE, IT IS DEEMED WAIVED; CASE AT BAR.— It is a legal truism that the rules on the venue of personal actions are fixed for the convenience of the plaintiffs and their witnesses. Equally settled, however, is the principle that choosing the venue of an action is not left to a plaintiff's caprice; the matter is regulated by the Rules of Court. In personal actions such as the instant case, the Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides, or (2) where the defendant or any of the defendants resides or may be found. The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is

commenced. However, petitioner raised the issue of improper venue for the first time in the Answer itself and no prior motion to dismiss based on such ground was filed. Under the Rules of Court before the 1997 amendments, an objection to an improper venue must be made before a responsive pleading is filed. Otherwise, it will be deemed waived. Not having been timely raised, petitioner's objection on venue is therefore deemed waived.

2. ID.; ID.; ID.; MOTION FOR CONTINUANCE OR POSTPONEMENT; PARTIES ASKING FOR POSTPONEMENT HAVE ABSOLUTELY NO RIGHT TO ASSUME THAT THEIR MOTION WILL BE GRANTED; RATIONALE.— A motion for continuance or postponement is not a matter of right, but a request addressed to the sound discretion of the court. Parties asking for postponement have absolutely no right to assume that their motions would be granted. Thus, they must be prepared on the day of the hearing. Indeed, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party. Atty. Villarosa's plea for liberality was correctly rejected by the trial court in view of his own negligence in failing to ensure there will be no conflict in his trial schedules.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; WHERE A PARTY WAS AFFORDED AN OPPORTUNITY TO PARTICIPATE IN THE PROCEEDINGS BUT FAILED TO DO SO, HE CANNOT COMPLAIN OF DEPRIVATION OF DUE PROCESS.— The essence of due process is that a party is given a reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. If the opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.

4. CIVIL LAW; FAMILY CODE; PATERNITY; IF THE FATHER DID NOT SIGN IN THE BIRTH CERTIFICATE OF THE CHILD, THE PLACING OF HIS NAME IS INCOMPETENT EVIDENCE OF PATERNITY.— We have held that a certificate of live birth

purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of the certificate. Thus, if the father did not sign in the birth certificate, the placing of his name by the mother, doctor, registrar, or other person is incompetent evidence of paternity. Neither can such birth certificate be taken as a recognition in a public instrument and it has no probative value to establish filiation to the alleged father.

5. **ID.; ID.; ID.; BAPTISMAL CERTIFICATE IS NOT A COMPETENT EVIDENCE OF THE CHILD'S PATERNITY.—** As to the Baptismal Certificate of Christian Paulo Salas also indicating petitioner as the father, we have ruled that while baptismal certificates may be considered public documents, they can only serve as evidence of the administration of the sacraments on the dates so specified. They are not necessarily competent evidence of the veracity of entries therein with respect to the child's paternity.

6. **ID.; ID.; ID.; PICTURES TAKEN OF THE MOTHER AND HER CHILD TOGETHER WITH THE ALLEGED FATHER ARE INCONCLUSIVE EVIDENCE TO PROVE PATERNITY.—** Pictures taken of the mother and her child together with the alleged father are inconclusive evidence to prove paternity. Exhibits "E" and "F" showing petitioner and respondent inside the rented apartment unit thus have scant evidentiary value. The Statement of Account from the Good Samaritan General Hospital where respondent herself was indicated as the payee is likewise incompetent to prove that petitioner is the father of her child notwithstanding petitioner's admission in his answer that he shouldered the expenses in the delivery of respondent's child as an act of charity.

7. **ID.; ID.; ID.; UNSIGNED HANDWRITTEN NOTES WHICH CONTAINED NO STATEMENT OF ADMISSION TO BE THE FATHER OF THE CHILD ARE NOT SUFFICIENT TO PROVE PATERNITY.—** As to the handwritten notes of petitioner and respondent showing their exchange of affectionate words and romantic trysts, these, too, are not sufficient to establish Christian Paulo's filiation to petitioner as they were not signed by petitioner and contained no statement of admission by petitioner that he is the father of said child. Thus, even if these

notes were authentic, they do not qualify under Article 172 (2) *vis-à-vis* Article 175 of the Family Code which admits as competent evidence of illegitimate filiation an admission of filiation in a private handwritten instrument signed by the parent concerned. x x x An illegitimate child is now also allowed to establish his claimed filiation by "any other means allowed by the Rules of Court and special laws," like his baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, *the testimonies of witnesses*, and other kinds of proof admissible under Rule 130 of the Rules of Court. Reviewing the records, we find the totality of respondent's evidence insufficient to establish that petitioner is the father of Christian Paulo.

8. ID.; ID.; ID.; HIGH STANDARD OF PROOF IS REQUIRED TO ESTABLISH PATERNITY AND FILIATION; RATIONALE.— Time and again, this Court has ruled that a high standard of proof is required to establish paternity and filiation. An order for recognition and support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence.

9. ID.; ID.; ID.; THE DEATH OF THE PUTATIVE FATHER IS NOT A BAR TO AN ACTION COMMENCED DURING HIS LIFETIME BY ONE CLAIMING TO BE AN ILLEGITIMATE CHILD.— The action for support having been filed in the trial court when petitioner was still alive, it is not barred under Article 175 (2) of the Family Code. We have also held that the death of the putative father is not a bar to the action commenced during his lifetime by one claiming to be his illegitimate child. The rule on substitution of parties provided in Section 16, Rule 3 of the 1997 Rules of Civil Procedure, thus applies.

APPEARANCES OF COUNSEL

Jenifer Patacsil-Arceo for petitioner.
Oscar C. Sahagun for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* which seeks to reverse and set aside the Decision[1] dated July 18, 2006 and Resolution[2] dated October 19, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 64379.

The factual antecedents:

On May 26, 1995, Annabelle Matusalem (respondent) filed a complaint[3] for Support/Damages against Narciso Salas (petitioner) in the Regional Trial Court (RTC) of Cabanatuan City (Civil Case No. 2124-AF).

Respondent claimed that petitioner is the father of her son Christian Paulo Salas who was born on December 28, 1994. Petitioner, already 56 years old at the time, enticed her as she was then only 24 years old, making her believe that he is a widower. Petitioner rented an apartment where respondent stayed and shouldered all expenses in the delivery of their child, including the cost of caesarian operation and hospital confinement. However, when respondent refused the offer of petitioner's family to take the child from her, petitioner abandoned respondent and her child and left them to the mercy of relatives and friends. Respondent further alleged that she attempted suicide due to depression but still petitioner refused to support her and their child.

Respondent thus prayed for support *pendente lite* and monthly support in the amount of ₱20,000.00, as well as actual, moral and exemplary damages, and attorney's fees.

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[1] *Rollo*, pp. 75-84. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Roberto A. Barrios and Mario L. Guariña III concurring.

[2] *Id*. at 93. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mario L. Guariña III and Lucenito N. Tagle.

[3] Records, pp. 1-6.

Petitioner filed his answer[4] with special and affirmative defenses and counterclaims. He described respondent as a woman of loose morals, having borne her first child also out of wedlock when she went to work in Italy. Jobless upon her return to the country, respondent spent time riding on petitioner's jeepney which was then being utilized by a female real estate agent named Felicisima de Guzman. Respondent had seduced a senior police officer in San Isidro and her charge of sexual abuse against said police officer was later withdrawn in exchange for the quashing of drug charges against respondent's brother-in-law who was then detained at the municipal jail. It was at that time respondent introduced herself to petitioner whom she pleaded for charity as she was pregnant with another child. Petitioner denied paternity of the child Christian Paulo; he was motivated by no other reason except genuine altruism when he agreed to shoulder the expenses for the delivery of said child, unaware of respondent's chicanery and deceit designed to "scandalize" him in exchange for financial favor.

At the trial, respondent and her witness Grace Murillo testified. Petitioner was declared to have waived his right to present evidence and the case was considered submitted for decision based on respondent's evidence.

Respondent testified that she first met petitioner at the house of his *"kumadre"* Felicisima de Guzman at Bgy. Malapit, San Isidro, Nueva Ecija. During their subsequent meeting, petitioner told her he is already a widower and he has no more companion in life because his children are all grown-up. She also learned that petitioner owns a rice mill, a construction business and a housing subdivision (petitioner offered her a job at their family-owned Ma. Cristina Village). Petitioner at the time already knows that she is a single mother as she had a child by her former boyfriend in Italy. He then brought her to a motel, promising that he will take care of her and marry her. She believed him and yielded to his advances, with the thought that she and her child will have a better life. Thereafter, they saw

[4] *Id*. at 24-26.

each other weekly and petitioner gave her money for her child. When she became pregnant with petitioner's child, it was only then she learned that he is in fact not a widower. She wanted to abort the baby but petitioner opposed it because he wanted to have another child.[5]

On the fourth month of her pregnancy, petitioner rented an apartment where she stayed with a housemaid; he also provided for all their expenses. She gave birth to their child on December 28, 1994 at the Good Samaritan Hospital in Cabanatuan City. Before delivery, petitioner even walked her at the hospital room and massaged her stomach, saying he had not done this to his wife. She filled out the form for the child's birth certificate and wrote all the information supplied by petitioner himself. It was also petitioner who paid the hospital bills and drove her baby home. He was excited and happy to have a son at his advanced age who is his "look-alike," and this was witnessed by other boarders, visitors and Grace Murillo, the owner of the apartment unit petitioner rented. However, on the 18th day after the baby's birth, petitioner went to Baguio City for a medical check-up. He confessed to her daughter and eventually his wife was also informed about his having sired an illegitimate child. His family then decided to adopt the baby and just give respondent money so she can go abroad. When she refused this offer, petitioner stopped seeing her and sending money to her. She and her baby survived through the help of relatives and friends. Depressed, she tried to commit suicide by drug overdose and was brought to the hospital by Murillo who paid the bill. Murillo sought the help of the Cabanatuan City Police Station which set their meeting with petitioner. However, it was only petitioner's wife who showed up and she was very mad, uttering unsavory words against respondent.[6]

Murillo corroborated respondent's testimony as to the payment by petitioner of apartment rental, his weekly visits to respondent

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[5] TSN, October 6, 1995, p. 21; TSN, November 17, 1995, pp. 4-7, 13; TSN, March 22, 1996, pp. 14-25; TSN, June 3, 1996, pp. 19-29, 33-37.

[6] *Id*. at 8-21; *id*. at 10-12; *id*. at 7-11; *id*. at 9-10, 14-18, 43-46; TSN, February 19, 1996, pp. 6, 10-12.

and financial support to her, his presence during and after delivery of respondent's baby, respondent's attempted suicide through sleeping pills overdose and hospitalization for which she paid the bill, her complaint before the police authorities and meeting with petitioner's wife at the headquarters.[7]

On April 5, 1999, the trial court rendered its decision[8] in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:
>
> 1. Ordering the defendant to give as monthly support of TWO THOUSAND (₱2,000.00) PESOS for the child Christian Paulo through the mother;
> 2. Directing the defendant to pay the plaintiff the sum of ₱20,000.00 by way of litigation expenses; and
> 3. To pay the costs of suit.
>
> SO ORDERED.[9]

Petitioner appealed to the CA arguing that: (1) the trial court decided the case without affording him the right to introduce evidence on his defense; and (2) the trial court erred in finding that petitioner is the putative father of Christian Paulo and ordering him to give monthly support.

By Decision dated July 18, 2006, the CA dismissed petitioner's appeal. The appellate court found no reason to disturb the trial court's exercise of discretion in denying petitioner's motion for postponement on April 17, 1998, the scheduled hearing for the initial presentation of defendant's evidence, and the motion for reconsideration of the said order denying the motion for postponement and submitting the case for decision.

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[7] TSN, July 8, 1996, pp. 5-11; TSN, November 29, 1996, pp. 4-9, 15-26.

[8] *Rollo*, pp. 65-73. Penned by Acting Presiding Judge Johnson L. Ballutay.

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

On the paternity issue, the CA affirmed the trial court's ruling that respondent satisfactorily established the illegitimate filiation of her son Christian Paulo, and consequently no error was committed by the trial court in granting respondent's prayer for support. The appellate court thus held:

> Christian Paulo, in instant case, does not enjoy the benefit of a record of birth in the civil registry which bears acknowledgment signed by Narciso Salas. He cannot claim open and continuous possession of the status of an illegitimate child.
>
> It had been established by plaintiff's evidence, however, that during her pregnancy, Annabelle was provided by Narciso Salas with an apartment at a rental of ₱1,500.00 which he paid for (*TSN, October 6, 1995, p. 18*). Narciso provided her with a household help with a salary of ₱1,500.00 a month (*TSN, October 6, 1995, ibid*). He also provided her a monthly food allowance of ₱1,500.00 (*Ibid, p. 18*). Narciso was with Annabelle at the hospital while the latter was in labor, "walking" her around and massaging her belly (*Ibid, p. 11*). Narciso brought home Christian Paulo to the rented apartment after Annabelle's discharge from the hospital. People living in the same apartment units were witnesses to Narciso's delight to father a son at his age which was his "look alike." It was only after the 18th day when Annabelle refused to give him Christian Paulo that Narciso withdrew his support to him and his mother.
>
> Said testimony of Annabelle aside from having been corroborated by Grace Murillo, the owner of the apartment which Narciso rented, was never rebutted on record. Narciso did not present any evidence, verbal or documentary, to repudiate plaintiff's evidence.
>
> In the cases of *Lim vs. CA* (270 SCRA 1) and *Rodriguez vs. CA* (245 SCRA 150), the Supreme Court made it clear that Article 172 of the Family Code is an adaptation of Article 283 of the Civil Code. Said legal provision provides that the father is obliged to recognize the child as his natural child x x x "3) when the child has in his favor any evidence or proof that the defendant is his father."
>
> In fact, in *Ilano vs. CA* (230 SCRA 242, 258-259), it was held that–
>
> "The last paragraph of Article 283 contains a blanket provision that practically covers all the other cases in the preceding paragraphs. 'Any other evidence or proof' that the defendant

> is the father is broad enough to render unnecessary the other paragraphs of this article. When the evidence submitted in the action for compulsory recognition is not sufficient to meet [the] requirements of the first three paragraphs, it may still be enough under the last paragraph. This paragraph permits hearsay and reputation evidence, as provided in the Rules of Court, with respect to illegitimate filiation."

As a necessary consequence of the finding that Christian Paulo is the son of defendant Narciso Salas, he is entitled to support from the latter (*Ilano vs. CA, supra*).

It "shall be demandable from the time the person who has the right to recover the same needs it for maintenance x x x." (*Art. 203, Family Code of the Philippines*).[10]

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition submitting the following arguments:

1.THE VENUE OF THE CASE WAS IMPROPERLY LAID BEFORE THE REGIONAL TRIAL COURT OF CABANATUAN CITY CONSIDERING THAT BOTH PETITIONER AND RESPONDENT ARE ACTUAL RESIDENTS OF BRGY. MALAPIT, SAN ISIDRO, NUEVA ECIJA.

2.THE HONORABLE COURT OF APPEALS ERRED IN PRONOUNCING THAT PETITIONER WAS AFFORDED THE FULL MEASURE OF HIS RIGHT TO DUE PROCESS OF LAW AND IN UPHOLDING THAT THE TRIAL COURT DID NOT GRAVELY ABUSE ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECIDED THE INSTANT CASE WITHOUT AFFORDING PETITIONER THE RIGHT TO INTRODUCE EVIDENCE IN HIS DEFENSE.

3. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE FILIATION OF CHRISTIAN PAULO WAS DULY ESTABLISHED PURSUANT TO ARTICLE 175 IN RELATION TO ARTICLE 172 OF THE FAMILY CODE AND EXISTING JURISPRUDENCE AND THEREFORE ENTITLED TO SUPPORT FROM THE PETITIONER.[11]

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

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

We grant the petition.

It is a legal truism that the rules on the venue of personal actions are fixed for the convenience of the plaintiffs and their witnesses. Equally settled, however, is the principle that choosing the venue of an action is not left to a plaintiff's caprice; the matter is regulated by the Rules of Court.[12]

In personal actions such as the instant case, the Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides, or (2) where the defendant or any of the defendants resides or may be found.[13] The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is commenced.[14]

However, petitioner raised the issue of improper venue for the first time in the Answer itself and no prior motion to dismiss based on such ground was filed. Under the Rules of Court before the 1997 amendments, an objection to an improper venue must be made before a responsive pleading is filed. Otherwise, it will be deemed waived.[15] Not having been timely raised, petitioner's objection on venue is therefore deemed waived.

As to the denial of the motion for postponement filed by his counsel for the resetting of the initial presentation of defense evidence on April 17, 1998, we find that it was not the first time petitioner's motion for postponement was denied by the trial court.

Records disclosed that after the termination of the testimony of respondent's last witness on November 29, 1996, the trial

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[12] *Ang v. Ang*, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 705, citing *Hyatt Elevators and Escalators Corp. v. Goldstar Elevators, Phils., Inc.*, 510 Phil. 467, 476 (2005).

[13] 1997 RULES OF CIVIL PROCEDURE, Rule 4, Section 2.

[14] *Ang v. Ang*, *supra* note 12, at 705-706, citing *Baritua v. Court of Appeals*, 335 Phil. 12, 15-16 (1997).

[15] *Fernandez v. International Corporate Bank*, 374 Phil. 668, 677 (1999), citing Rule 14, Section 4 of the pre-1997 Rules of Court which provides

court as prayed for by the parties, set the continuation of hearing for the reception of evidence for the defendant (petitioner) on January 27, February 3, and February 10, 1997. In the Order dated December 17, 1996, petitioner was advised to be ready with his evidence at those hearing dates earlier scheduled. At the hearing on January 27, 1997, petitioner's former counsel, Atty. Rolando S. Bala, requested for the cancellation of the February 3 and 10, 1997 hearings in order to give him time to prepare for his defense, which request was granted by the trial court which thus reset the hearing dates to March 3, 14 and 17, 1997. On March 3, 1997, upon oral manifestation by Atty. Bala and without objection from respondent's counsel, Atty. Feliciano Wycoco, the trial court again reset the hearing to March 14 and 17, 1997. With the non-appearance of both petitioner and Atty. Bala on March 14, 1997, the trial court upon oral manifestation by Atty. Wycoco declared their absence as a waiver of their right to present evidence and accordingly deemed the case submitted for decision.[16]

On July 4, 1997, Atty. Bala withdrew as counsel for petitioner and Atty. Rafael E. Villarosa filed his appearance as his new counsel on July 21, 1997. On the same date he filed entry of appearance, Atty. Villarosa filed a motion for reconsideration of the March 14, 1997 Order pleading for liberality and magnanimity of the trial court, without offering any explanation for Atty. Bala's failure to appear for the initial presentation of their evidence. The trial court thereupon reconsidered its March 14, 1997 Order, finding it better to give petitioner a chance to present his evidence. On August 26, 1997, Atty. Villarosa received a notice of hearing for the presentation of their evidence scheduled on September 22, 1997. On August 29, 1997, the trial court received his motion requesting that the said hearing be re-set to October 10, 1997 for the reason that he had requested the postponement of a hearing in another case which was

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that "[w]hen improper venue is not objected to in a motion to dismiss, it is deemed waived." The Complaint in this case was filed on May 26, 1995 and the Answer was filed on July 3, 1995.

[16] Records, pp. 81-83, 109, 111 and 113.

incidentally scheduled on September 22, 23 and 24, 1997. As prayed for, the trial court reset the hearing to October 10, 1997. On said date, however, the hearing was again moved to December 15, 1997. On February 16, 1998, the trial court itself reset the hearing to April 17, 1998 since it was unclear whether Atty. Wycoco received a copy of the motion.[17]

On April 17, 1998, petitioner and his counsel failed to appear but the trial court received on April 16, 1998 an urgent motion to cancel hearing filed by Atty. Villarosa. The reason given by the latter was the scheduled hearing on the issuance of writ of preliminary injunction in another case under the April 8, 1998 Order issued by the RTC of Gapan, Nueva Ecija, Branch 36 in Civil Case No. 1946. But as clearly stated in the said order, it was the plaintiffs therein who requested the postponement of the hearing and it behoved Atty. Villarosa to inform the RTC of Gapan that he had a previous commitment considering that the April 17, 1998 hearing was scheduled as early as *February 16, 1998*. Acting on the motion for postponement, the trial court denied *for the second time* petitioner's motion for postponement. Even at the hearing of their motion for reconsideration of the April 17, 1998 Order on September 21, 1998, Atty. Villarosa failed to appear and instead filed another motion for postponement. The trial court thus ordered that the case be submitted for decision stressing that the case had long been pending and that petitioner and his counsel have been given opportunities to present their evidence. It likewise denied a second motion for reconsideration filed by Atty. Villarosa, who arrived late during the hearing thereof on December 4, 1998.[18]

A motion for continuance or postponement is not a matter of right, but a request addressed to the sound discretion of the court. Parties asking for postponement have absolutely no right to assume that their motions would be granted. Thus, they must be prepared on the day of the hearing.[19] Indeed, an order

[17] *Id*. at 115-126, 128 and 130.

[18] *Id*. at 131-138, 140 and 142-146.

[19] *Gochan v. Gochan*, 446 Phil. 433, 454 (2003), citing *Tiomico v. Court of Appeals*, 363 Phil. 558, 571 (1999); *Pepsi-Cola Products Phils., Inc. v.*

declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party.[20]

Atty. Villarosa's plea for liberality was correctly rejected by the trial court in view of his own negligence in failing to ensure there will be no conflict in his trial schedules. As we held in *Tiomico v. Court of Appeals*[21]:

> Motions for postponement are generally frowned upon by Courts if there is evidence of bad faith, malice or inexcusable negligence on the part of the movant. The inadvertence of the defense counsel in failing to take note of the trial dates and in belatedly informing the trial court of any conflict in his schedules of trial or court appearances, constitutes inexcusable negligence. It should be borne in mind that a client is bound by his counsel's conduct, negligence and mistakes in handling the case.[22]

With our finding that there was no abuse of discretion in the trial court's denial of the motion for postponement filed by petitioner's counsel, petitioner's contention that he was deprived of his day in court must likewise fail. The essence of due process is that a party is given a reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. If the opportunity is not availed of,

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Court of Appeals, 359 Phil. 859, 867 (1998); *Republic of the Philippines v. Sandiganbayan*, 361 Phil. 186, 196 (1999) and *Iriga Telephone Co., Inc. v. NLRC*, 350 Phil. 245, 252 (1998).

[20] *Memita v. Masongsong*, G.R. No. 150912, May 28, 2007, 523 SCRA 244, 254, citing *Rockwell Perfecto Gohu v. Spouses Gohu*, 397 Phil. 126, 135 (2000).

[21] *Supra* note 19.

[22] *Id.* at 572, citing *Cing Hong So v. Tan Boon Kong*, 53 Phil. 437 (1929) and *Suarez v. Court of Appeals*, G.R. No. 91133, March 22, 1993, 220 SCRA 274, 279.

it is deemed waived or forfeited without violating the constitutional guarantee.[23]

We now proceed to the main issue of whether the trial and appellate courts erred in ruling that respondent's evidence sufficiently proved that her son Christian Paulo is the illegitimate child of petitioner.

Under Article 175 of the Family Code of the Philippines, illegitimate filiation may be established in the same way and on the same evidence as legitimate children.

Article 172 of the Family Code of the Philippines states:

> The filiation of legitimate children is established by any of the following:
>
> (1) The record of birth appearing in the civil register or a final judgment; or
>
> (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.
>
> In the absence of the foregoing evidence, the legitimate filiation shall be proved by:
>
> (1) The open and continuous possession of the status of a legitimate child; or
>
> (2) Any other means allowed by the Rules of Court and special laws. (Underscoring supplied.)

Respondent presented the Certificate of Live Birth[24] (Exhibit "A-1") of Christian Paulo Salas in which the name of petitioner appears as his father but which is not signed by him. Admittedly, it was only respondent who filled up the entries and signed the said document though she claims it was petitioner who supplied the information she wrote therein.

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[23] *Memita v. Masongsong, supra* note 20, at 253, citing *Air Phils. Corp. v. International Business Aviation Services Phils., Inc.*, 481 Phil. 366, 386 (2004) and *Tiomico v. Court of Appeals, supra* note 19, at 570-571.

[24] Records, p. 88.

We have held that a certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of the certificate.[25] Thus, if the father did not sign in the birth certificate, the placing of his name by the mother, doctor, registrar, or other person is incompetent evidence of paternity.[26] Neither can such birth certificate be taken as a recognition in a public instrument[27] and it has no probative value to establish filiation to the alleged father.[28]

As to the Baptismal Certificate[29] (Exhibit "B") of Christian Paulo Salas also indicating petitioner as the father, we have ruled that while baptismal certificates may be considered public documents, they can only serve as evidence of the administration of the sacraments on the dates so specified. They are not necessarily competent evidence of the veracity of entries therein with respect to the child's paternity.[30]

The rest of respondent's documentary evidence consists of handwritten notes and letters, hospital bill and photographs taken of petitioner and respondent inside their rented apartment unit.

Pictures taken of the mother and her child together with the alleged father are inconclusive evidence to prove paternity.[31]

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[25] *Cabatania v. Court of Appeals,* 484 Phil. 42, 51 (2004).

[26] *Berciles, et al. v. GSIS, et al.*, 213 Phil. 48, 71 (1984); *Roces v. Local Civil Registrar of Manila,* 102 Phil. 1050, 1054 (1958).

[27] *Reyes, et al. v. Court of Appeals, et al.*, 220 Phil. 116, 128 (1985), citing *Intestate Estate of Pareja v. Pareja,* 95 Phil. 167, 172 (1954).

[28] See *Nepomuceno v. Lopez,* G.R. No. 181258, March 18, 2010, 616 SCRA 145, 153 and *Puno v. Puno Enterprises, Inc.*, G.R. No. 177066, September 11, 2009, 599 SCRA 585, 590-591.

[29] Records, p. 90.

[30] *Fernandez v. Fernandez,* 416 Phil. 322, 339 (2001); *Fernandez v. Court of Appeals,* G.R. No. 108366, February 16, 1994, 230 SCRA 130, 136; *Reyes, et al. v. Court of Appeals, et al., supra* note 27; *Macadangdang v. Court of Appeals,* G.R.No. L-49542, September 12, 1980, 100 SCRA 73, 84.

[31] *Fernandez v. Court of Appeals, id.* at 135-136, citing *Tan v. Trocio,* A.C. No. 2115, November 27, 1990, 191 SCRA 764, 769.

Exhibits "E" and "F"[32] showing petitioner and respondent inside the rented apartment unit thus have scant evidentiary value. The Statement of Account[33] (Exhibit "C") from the Good Samaritan General Hospital where respondent herself was indicated as the payee is likewise incompetent to prove that petitioner is the father of her child notwithstanding petitioner's admission in his answer that he shouldered the expenses in the delivery of respondent's child as an act of charity.

As to the handwritten notes[34] (Exhibits "D" to "D-13") of petitioner and respondent showing their exchange of affectionate words and romantic trysts, these, too, are not sufficient to establish Christian Paulo's filiation to petitioner as they were not signed by petitioner and contained no statement of admission by petitioner that he is the father of said child. Thus, even if these notes were authentic, they do not qualify under Article 172 (2) *vis-à-vis* Article 175 of the Family Code which admits as competent evidence of illegitimate filiation an admission of filiation in a private handwritten instrument signed by the parent concerned.[35]

Petitioner's reliance on our ruling in *Lim v. Court of Appeals*[36] is misplaced. In the said case, the handwritten letters of petitioner contained a clear admission that he is the father of private respondent's daughter and were signed by him. The Court therein considered the totality of evidence which established beyond reasonable doubt that petitioner was indeed the father of private respondent's daughter. On the other hand, in *Ilano v. Court of Appeals*,[37] the Court sustained the appellate court's finding that private respondent's evidence to establish her filiation with and paternity of petitioner was overwhelming, particularly

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[32] Records, pp. 103-104.

[33] *Id.* at 92.

[34] *Id.* at 93-102.

[35] *Nepomuceno v. Lopez*, *supra* note 28.

[36] G.R. No. 112229, March 18, 1997, 270 SCRA 1, 5-7.

[37] G.R. No. 104376, February 23, 1994, 230 SCRA 242.

the latter's public acknowledgment of his amorous relationship with private respondent's mother, and private respondent as his own child through acts and words, her testimonial evidence to that effect was fully supported by documentary evidence. The Court thus ruled that respondent had adduced sufficient proof of continuous possession of status of a spurious child.

Here, while the CA held that Christian Paulo Salas could not claim open and continuous possession of status of an illegitimate child, it nevertheless considered the testimonial evidence sufficient proof to establish his filiation to petitioner.

An illegitimate child is now also allowed to establish his claimed filiation by "any other means allowed by the Rules of Court and special laws," like his baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, *the testimonies of witnesses,* and other kinds of proof admissible under Rule 130 of the Rules of Court.[38] Reviewing the records, we find the totality of respondent's evidence insufficient to establish that petitioner is the father of Christian Paulo.

The testimonies of respondent and Murillo as to the circumstances of the birth of Christian Paulo, petitioner's financial support while respondent lived in Murillo's apartment and his regular visits to her at the said apartment, though replete with details, do not approximate the "overwhelming evidence, documentary and testimonial" presented in *Ilano.* In that case, we sustained the appellate court's ruling anchored on the following factual findings by the appellate court which was quoted at length in the *ponencia*:

It was Artemio who made arrangement for the delivery of Merceditas (sic) at the Manila Sanitarium and Hospital. Prior to the delivery, Leoncia underwent prenatal examination accompanied by Artemio

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[38] *Gotardo v. Buling*, G.R. No. 165166, August 15, 2012, 678 SCRA 436, 443, citing *Cruz v. Cristobal,* 529 Phil. 695, 710-711 (2006), *Heirs of Ignacio Conti v. Court of Appeals,* 360 Phil. 536, 548-549 (1998) and *Trinidad v. Court of Appeals,* 352 Phil. 12, 32-33 (1998); *Uyguangco v. Court of Appeals,* 258-A Phil. 467, 472-473 (1989).

(TSN, p. 33, 5/17/74). After delivery, they went home to their residence at EDSA in a car owned and driven by Artemio himself (*id*. p. 36).

Merceditas (sic) bore the surname of "Ilano" since birth without any objection on the part of Artemio, the fact that since Merceditas (sic) had her discernment she had always known and called Artemio as her "Daddy" (TSN, pp. 28-29, 10/18/74); the fact that each time Artemio was at home, he would play with Merceditas (sic), take her for a ride or restaurants to eat, and sometimes sleeping with Merceditas (sic) (*id*. p. 34) and does all what a father should do for his child — bringing home goodies, candies, toys and whatever he can bring her which a child enjoys which Artemio gives to Merceditas (sic) (TSN, pp. 38-39, 5/17/74) are positive evidence that Merceditas (sic) is the child of Artemio and recognized by Artemio as such. Special attention is called to Exh. "E-7" where Artemio was telling Leoncia the need for a "frog test" to know the status of Leoncia.

Plaintiff pointed out that the support by Artemio for Leoncia and Merceditas (sic) was sometimes in the form of cash personally delivered to her by Artemio, thru Melencio, thru Elynia (Exhs. "E-2" and "E-3", and "D-6"), or thru Merceditas (sic) herself (TSN, p. 40, 5/17/74) and sometimes in the form of a check as the Manila Banking Corporation Check No. 81532 (Exh. "G") and the signature appearing therein which was identified by Leoncia as that of Artemio because Artemio often gives her checks and Artemio would write the check at home and saw Artemio sign the check (TSN, p. 49, 7/18/73). Both Artemio and Nilda admitted that the check and signature were those of Artemio (TSN, p. 53, 10/17/77; TSN, p. 19, 10/9/78).

During the time that Artemio and Leoncia were living as husband and wife, Artemio has shown concern as the father of Merceditas (sic). When Merceditas (sic) was in Grade 1 at the St. Joseph Parochial School, Artemio signed the Report Card of Merceditas (sic) (Exh. "H") for the fourth and fifth grading period(s) (Exh. "H-1" and "H-2") as the parent of Merceditas (sic). Those signatures of Artemio [were] both identified by Leoncia and Merceditas (sic) because Artemio signed Exh. "H-1" and ""H-2" at their residence in the presence of Leoncia, Merceditas (sic) and of Elynia (TSN, p. 57, 7/18/73; TSN, p. 28, 10/1/73). x x x.

x x x x x x x x x

When Artemio run as a candidate in the Provincial Board of Cavite[,] Artemio gave Leoncia his picture with the following

dedication: "To Nene, with best regards, Temiong." (Exh. "I"). (pp. 19-20, Appellant's Brief)

The mere denial by defendant of his signature is not sufficient to offset the totality of the evidence indubitably showing that the signature thereon belongs to him. The entry in the Certificate of Live Birth that Leoncia and Artemio was falsely stated therein as married does not mean that Leoncia is not appellee's daughter. This particular entry was caused to be made by Artemio himself in order to avoid embarrassment.[39]

In sum, we hold that the testimonies of respondent and Murillo, by themselves are not competent proof of paternity and the totality of respondent's evidence failed to establish Christian Paulo's filiation to petitioner.

Time and again, this Court has ruled that a high standard of proof is required to establish paternity and filiation. An order for recognition and support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence.[40]

Finally, we note the Manifestation and Motion[41] filed by petitioner's counsel informing this Court that petitioner had died on May 6, 2010.

The action for support having been filed in the trial court when petitioner was still alive, it is not barred under Article 175 (2)[42] of the Family Code. We have also held that the death

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[39] *Supra* note 37, at 255-256.

[40] *Cabatania v. Court of Appeals, supra* note 25, at 50, citing *Baluyut v. Baluyut,* G.R. No. 33659, June 14, 1990, 186 SCRA 506, 513 and *Constantino v. Mendez,* G.R. No. 57227, May 14, 1992, 209 SCRA 18, 23-24.

[41] *Rollo,* pp. 212-213.

[42] ART. 175. x x x

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

of the putative father is not a bar to the action commenced during his lifetime by one claiming to be his illegitimate child.[43] The rule on substitution of parties provided in Section 16, Rule 3 of the 1997 Rules of Civil Procedure, thus applies.

> SEC. 16. *Death of party*; *duty of counsel*. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated July 18, 2006 and Resolution dated October 19, 2007 of the Court of Appeals in CA-G.R. CV No. 64379 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 2124-AF of the Regional Trial Court of Cabanatuan City, Branch 26 is **DISMISSED**.

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[43] *Mendoza v. Court of Appeals*, 278 Phil. 687, 694 (1991), citing *Masecampo v. Masecampo*, 11 Phil. 1, 3 (1908).

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183804. September 11, 2013]

S.C. MEGAWORLD CONSTRUCTION and DEVELOPMENT CORPORATION, *petitioner, vs.* **ENGR. LUIS U. PARADA, represented by ENGR. LEONARDO A. PARADA of GENLITE INDUSTRIES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING IN THE COMPLAINT IS NOT JURISDICTIONAL BUT A FORMAL REQUIREMENT, AND ANY OBJECTION AS TO NON-COMPLIANCE THEREWITH SHOULD BE RAISED IN THE PROCEEDINGS BELOW AND NOT FOR THE FIRST TIME ON APPEAL.— "It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*." x x x The petitioner failed to reckon that any objection as to compliance with the requirement of verification in the complaint should have been

raised in the proceedings below, and not in the appellate court for the first time. In *KILUSAN-OLALIA v. CA*, it was held that verification is a formal, not a jurisdictional requisite: x x x In *Young v. John Keng Seng*, it was also held that the question of forum shopping cannot be raised in the CA and in the Supreme Court, since such an issue must be raised at the earliest opportunity in a motion to dismiss or a similar pleading. The high court even warned that "[i]nvoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action x x x."

2. ID.; ID.; PARTIES; A SOLE PROPRIETORSHIP HAS NO JURIDICAL PERSONALITY SEPARATE AND DISTINCT FROM THAT OF ITS OWNER, AND NEED NOT BE IMPLEADED AS A PARTY-PLAINTIFF IN A CIVIL CASE.— Genlite Industries is merely the DTI-registered trade name or style of the respondent by which he conducted his business. As such, it does not exist as a separate entity apart from its owner, and therefore it has no separate juridical personality to sue or be sued. As the sole proprietor of Genlite Industries, there is no question that the respondent is the real party in interest who stood to be directly benefited or injured by the judgment in the complaint below. There is then no necessity for Genlite Industries to be impleaded as a party-plaintiff, since the complaint was already filed in the name of its proprietor, Engr. Luis U. Parada. To heed the petitioner's sophistic reasoning is to permit a dubious technicality to frustrate the ends of substantial justice.

3. CIVIL LAW; CONTRACTS; NOVATION; NOVATION IS NEVER PRESUMED BUT MUST BE CLEARLY AND UNEQUIVOCALLY SHOWN.— Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. It is "the substitution of a new contract, debt, or obligation for an existing one between the same or different parties." x x x In order to change the person of the debtor, the former debtor must be expressly released from the obligation, and the third person or new debtor must assume the former's place in the contractual relation. Article 1293 speaks of substitution of the debtor, which may either be in the form of *expromision* or *delegacion*, as seems to be the case here. In

both cases, the old debtor must be released from the obligation, otherwise, there is no valid novation. x x x The settled rule is that novation is never presumed, but must be clearly and unequivocally shown. In order for a new agreement to supersede the old one, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one. Thus, the mere substitution of debtors will not result in novation, and the fact that the creditor accepts payments from a third person, who has assumed the obligation, will result merely in the addition of debtors and not novation, and the creditor may enforce the obligation against both debtors. If there is no agreement as to solidarity, the first and new debtors are considered obligated jointly.

4. COMMERCIAL LAW; BSP CIRCULAR NO. 799; EFFECTIVE JULY 1, 2013, 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 BE SIX PERCENT (6%) PER ANNUM.— As further clarified in the case of *Sunga-Chan v. CA*, a loan or forbearance of money, goods or credit describes a contractual obligation whereby a lender or creditor has refrained during a given period from requiring the borrower or debtor to repay the loan or debt then due and payable. x x x Pursuant, then, to Central Bank Circular No. 416, issued on July 29, 1974, in the absence of a written stipulation, the interest rate to be imposed in judgments involving a forbearance of credit shall be 12% *per annum*, up from 6% under Article 2209 of the Civil Code. This was reiterated in Central Bank Circular No. 905, which suspended the effectivity of the Usury Law from January 1, 1983. But if the judgment refers to payment of interest as damages arising from a breach or delay in general, the applicable interest rate is 6% *per annum*, following Article 2209 of the Civil Code. Both interest rates apply from judicial or extrajudicial demand until finality of the judgment. But from the finality of the judgment awarding a sum of money until it is satisfied, the award shall be considered a forbearance of credit, regardless of whether the award in fact pertained to one, and therefore during this period, the interest rate of 12% *per annum* for forbearance of money shall apply. But notice must be taken that in Resolution No. 796 dated May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas approved the revision

of the interest rate to be imposed 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. Thus, under BSP Circular No. 799, issued on June 21, 2013 and effective on July 1, 2013, the said rate of interest is now back at six percent (6%), *viz*: x x x **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.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; THE TRIAL COURT MUST STATE THE FACTUAL, LEGAL OR EQUITABLE JUSTIFICATION FOR ITS AWARD OF ATTORNEY'S FEES.— The rule is settled that the trial court must state the factual, legal or equitable justification for its award of attorney's fees. Indeed, the matter of attorney's fees cannot be stated only in the dispositive portion, but the reasons must be stated in the body of the court's decision. This failure or oversight of the trial court cannot even be supplied by the CA.

APPEARANCES OF COUNSEL

Ramil Joselito B. Tamayo for petitioner.
Sison Q. Jarapa for respondent.

D E C I S I O N

REYES, *J.*:

Before us on appeal by *certiorari*[1] is the Decision[2] dated April 30, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 83811 which upheld the Decision[3] dated May 28, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 100, in Civil Case No. Q-01-45212.

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[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Apolinario D. Bruselas, Jr., concurring; *id.* at 33-44.

[3] Penned by Judge Marie Christine A. Jacob; *id.* at 71-74.

Factual Antecedents

S.C. Megaworld Construction and Development Corporation (petitioner) bought electrical lighting materials from Genlite Industries, a sole proprietorship owned by Engineer Luis U. Parada (respondent), for its Read-Rite project in Canlubang, Laguna. The petitioner was unable to pay for the above purchase on due date, but blamed it on its failure to collect under its sub-contract with the Enviro Kleen Technologies, Inc. (Enviro Kleen). It was however able to persuade Enviro Kleen to agree to settle its above purchase, but after paying the respondent ₱250,000.00 on June 2, 1999,[4] Enviro Kleen stopped making further payments, leaving an outstanding balance of ₱816,627.00. It also ignored the various demands of the respondent, who then filed a suit in the RTC, docketed as Civil Case No. Q-01-45212, to collect from the petitioner the said balance, plus damages, costs and expenses, as summarized in the RTC's decision, as follows:

> According to the statement of account prepared by the [respondent], the total obligation due to the [petitioner] is [₱]816,627.00 as of 31 January 2001 (*Exh[s]. E & E-1*). Despite several demands made by the [respondent] (*Exhs. F & G, inclusive of their submarkings)*, the [petitioner's] obligation remain[s] unpaid. [The respondent] was constrained to file the instant action in which it is claiming the unpaid balance of [₱]816,627.00, two (2) percent thereof as monthly interest, twenty-five (25) percent of the amount due as attorney's fees (*Exhs. C-8 to C-15*), [₱]100,000.00 as litigation expenses and [₱]100,000.00 as exemplary damages.[5]

The petitioner in its answer denied liability, claiming that it was released from its indebtedness to the respondent by reason of the novation of their contract, which, it reasoned, took place when the latter accepted the partial payment of Enviro Kleen in its behalf, and thereby acquiesced to the substitution of Enviro Kleen as the new debtor in the petitioner's place.

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[4] *Id.* at 69.

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

After trial, the RTC rendered judgment[6] on May 28, 2004 in favor of the respondent, the *fallo* of which reads, as follows:

> WHEREFORE, judgment is hereby rendered for the [respondent].
>
> [The petitioner] is hereby ordered to pay the [respondent] the following:
>
> A. the sum of [₱]816,627.00 representing the principal obligation due;
>
> B. the sum equivalent to **twenty percent (20%) per month** of the principal obligation due from date of judicial demand until fully paid as and for interest; and
>
> C. the sum equivalent to twenty[-]five [percent] (25%) of the principal sum due as and for attorney's fees and other costs of suits.
>
> The compulsory counterclaim interposed by the [petitioner] is hereby ordered dismissed for lack of merit.
>
> SO ORDERED.[7] (Emphasis supplied)

On appeal to the CA, the petitioner maintained that the trial court erred in ruling that no novation of the contract took place through the substitution of Enviro Kleen as the new debtor. But for the first time, it further argued that the trial court should have dismissed the complaint for failure of the respondent to implead Genlite Industries as "a proper party in interes," as provided in Section 2 of Rule 3 of the 1997 Rules of Civil Procedure. The said section provides:

> SEC. 2. *Parties in interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

In Section 1(g) of Rule 16 of the Rules of Court, it is also provided that the defendant may move to dismiss the

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[6] *Id.* at 71-74.

[7] *Id.* at 73-74.

suit on the ground that it was not brought in the name of or against the real party in interest, with the effect that the complaint is then deemed to state no cause of action.

In dismissing the appeal, the CA noted that the petitioner in its answer below raised only the defense of novation, and that at no stage in the proceedings did it raise the question of whether the suit was brought in the name of the real party in interest. Moreover, the appellate court found from the sales invoices and receipts that the respondent is the sole proprietor of Genlite Industries, and therefore the real party-plaintiff. Said the CA:

> Settled is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.
>
> In any event, there is no question that [respondent] Engr. Luis U. Parada is the proprietor of Genlite Industries, as shown on the sales invoice and delivery receipts. There is also no question that a special power of attorney was executed by [respondent] Engr. Luis U. Parada in favor of Engr. Leonardo A. Parada authorizing the latter to file a complaint against [the petitioner].[8] (Citations omitted)

The petitioner also contended that a binding novation of the purchase contract between the parties took place when the respondent accepted the partial payment of Enviro Kleen of ₱250,000.00 in its behalf, and thus acquiesced to the substitution by Enviro Kleen of the petitioner as the new debtor. But the CA noted that there is nothing in the two (2) letters of the respondent to Enviro Kleen, dated April 14, 1999 and June 16, 1999, which would imply that he consented to the alleged novation, and, particularly, that he intended to release the petitioner from its primary obligation to pay him for its purchase of lighting materials. The appellate court cited the RTC's finding[9] that the respondent informed Enviro Kleen in his first letter that he had served notice to the petitioner that he would take

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[8] *Id.* at 38.

[9] *Id.* at 73.

legal action against it for its overdue account, and that he retained his option to pull out the lighting materials and charge the petitioner for any damage they might sustain during the pull-out:

> [Respondent] x x x has served notice to the [petitioner] that unless the overdue account is paid, the matter will be referred to its lawyers and there may be a pull-out of the delivered lighting fixtures. It was likewise stated therein that incidental damages that may result to the structure in the course of the pull-out will be to the account of the [petitioner].[10]

The CA concurred with the RTC that by retaining his option to seek satisfaction from the petitioner, any acquiescence which the respondent had made was limited to merely accepting Enviro Kleen as an additional debtor from whom he could demand payment, but without releasing the petitioner as the principal debtor from its debt to him.

On motion for reconsideration,[11] the petitioner raised for the first time the issue of the validity of the verification and certification of non-forum shopping attached to the complaint. On July 18, 2008, the CA denied the said motion for lack of merit.[12]

Petition for Review in the Supreme Court

In this petition, the petitioner insists, firstly, that the complaint should have been dismissed outright by the trial court for an invalid non-forum shopping certification; and, secondly, that the appellate court erred in not declaring that there was a novation of the contract between the parties through substitution of the debtor, which resulted in the release of the petitioner from its obligation to pay the respondent the amount of its purchase.[13]

Our Ruling

The petition is devoid of merit.

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[10] *Id.*

[11] *Id.* at 47-56.

[12] *Id.* at 45.

[13] *Id.* at 17.

The verification and certification of non-forum shopping in the complaint is not a jurisdictional but a formal requirement, and any objection as to non-compliance therewith should be raised in the proceedings below and not for the first time on appeal.

"It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*."[14]

Through a Special Power of Attorney (SPA), the respondent authorized Engr. Leonardo A. Parada (Leonardo), the eldest of his three children, to perform the following acts in his behalf: a) to file a complaint against the petitioner for sum of money with damages; and b) to testify in the trial thereof and sign all papers and documents related thereto, with full powers to enter into stipulation and compromise.[15] Incidentally, the respondent, a widower, died of cardio-pulmonary arrest on January 21, 2009,[16] survived by his legitimate children, namely, Leonardo, Luis, Jr., and Lalaine, all surnamed Parada. They have since substituted him in this petition, per the Resolution of the Supreme Court dated September 2, 2009.[17] Also, on July 23, 2009, Luis, Jr. and Lalaine Parada executed an SPA authorizing their brother Leonardo to represent them in the instant petition.[18]

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[14] *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214, citing *Jacot v. Dal*, G.R. No. 179848, November 27, 2008, 572 SCRA 295, 311, and *Villaranda v. Villaranda*, 467 Phil. 1089, 1098 (2004).

[15] *Rollo*, p. 62.

[16] *Id.* at 119.

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

[18] *Id.* at 120-121.

In the verification and certification of non-forum shopping attached to the complaint in Civil Case No. Q01-45212, Leonardo as attorney-in-fact of his father acknowledged as follows:

x x x x x x x x x

That I/we am/are the Plaintiff in the above-captioned case;

That I/we have caused the preparation of this Complaint;

That I/we have read the same and that all the allegations therein are true and correct to the best of my/our knowledge;

x x x x x x x x x.[19]

In this petition, the petitioner reiterates its argument before the CA that the above verification is invalid, since the SPA executed by the respondent did not specifically include an authority for Leonardo to sign the verification and certification of non-forum shopping, thus rendering the complaint defective for violation of Sections 4 and 5 of Rule 7. The said sections provide, as follows:

Sec. 4. *Verification*. — A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

Sec. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, [or] tribunal x x x and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact x x x to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading

[19] *Id.* at 66.

but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.

The petitioner's argument is untenable. The petitioner failed to reckon that any objection as to compliance with the requirement of verification in the complaint should have been raised in the proceedings below, and not in the appellate court for the first time.[20] In *KILUSAN-OLALIA v. CA*,[21] it was held that verification is a formal, not a jurisdictional requisite:

> We have emphasized, time and again, that verification is a formal, not a jurisdictional requisite, as it is mainly intended to secure an assurance that the allegations therein made are done in good faith or are true and correct and not mere speculation. The Court may order the correction of the pleading, if not verified, or act on the unverified pleading if the attending circumstances are such that a strict compliance with the rule may be dispensed with in order that the ends of justice may be served.
>
> Further, in rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat *vis-à-vis* substantive rights, and not the other way around. x x x.[22] (Citations omitted)

In *Young v. John Keng Seng*,[23] it was also held that the question of forum shopping cannot be raised in the CA and in the Supreme Court, since such an issue must be raised at the earliest opportunity in a motion to dismiss or a similar pleading. The high court even warned that "[i]nvoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action x x x."[24]

Moreover, granting that Leonardo has no personal knowledge of the transaction subject of the complaint below, Section 4 of

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[20] *Gadit v. Atty. Feliciano, Sr., et al.*, 161 Phil. 507, 510 (1976).

[21] 555 Phil. 42 (2007).

[22] *Id.* at 57.

[23] 446 Phil. 823 (2003).

[24] *Id.* at 826.

Rule 7 provides that the verification need not be based on the verifier's personal knowledge but even only on authentic records. Sales invoices, statements of accounts, receipts and collection letters for the balance of the amount still due to the respondent from the petitioner are such records. There is clearly substantial compliance by the respondent's attorney-in-fact with the requirement of verification.

Lastly, it is well-settled that a strict compliance with the rules may be dispensed with in order that the ends of substantial justice may be served.[25] It is clear that the present controversy must be resolved on its merits, lest for a technical oversight the respondent should be deprived of what is justly due him.

A sole proprietorship has no juridical personality separate and distinct from that of its owner, and need not be impleaded as a party-plaintiff in a civil case.

On the question of whether Genlite Industries should have been impleaded as a party-plaintiff, Section 1 of Rule 3 of the Rules of Court provides that only natural or juridical persons or entities authorized by law may be parties in a civil case. Article 44 of the New Civil Code enumerates who are juridical persons:

Art. 44. The following are juridical persons:

(1) The State and its political subdivisions;

(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

Genlite Industries is merely the DTI-registered trade name or style of the respondent by which he conducted his business.

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[25] *Supra* note 21, at 57.

As such, it does not exist as a separate entity apart from its owner, and therefore it has no separate juridical personality to sue or be sued.[26] As the sole proprietor of Genlite Industries, there is no question that the respondent is the real party in interest who stood to be directly benefited or injured by the judgment in the complaint below. There is then no necessity for Genlite Industries to be impleaded as a party-plaintiff, since the complaint was already filed in the name of its proprietor, Engr. Luis U. Parada. To heed the petitioner's sophistic reasoning is to permit a dubious technicality to frustrate the ends of substantial justice.

Novation is never presumed but must be clearly and unequivocally shown.

Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[27] It is "the substitution of a new contract, debt, or obligation for an existing one between the same or different parties."[28] Article 1293 of the Civil Code defines novation as follows:

> Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him rights mentioned in Articles 1236 and 1237.

Thus, in order to change the person of the debtor, the former debtor must be expressly released from the obligation, and the third person or new debtor must assume the former's place in the contractual relation.[29] Article

[26] *Berman Memorial Park, Inc. v. Cheng*, 497 Phil. 441, 451-452 (2005).

[27] *Garcia v. Llamas*, 462 Phil. 779, 788 (2003); *Agro Conglomerates, Inc. v. CA*, 401 Phil. 644, 655 (2000).

[28] *Riser Airconditioning Services Corp., v. Confield Construction Development Corp.,* 481 Phil. 822, 835 (2004).

[29] *Philippine Savings Bank v. Sps. Manalac, Jr.*, 496 Phil. 671, 689 (2005).

1293 speaks of substitution of the debtor, which may either be in the form of *expromision* or *delegacion*, as seems to be the case here. In both cases, the old debtor must be released from the obligation, otherwise, there is no valid novation. As explained in *Garcia*[30]:

> In general, there are two modes of substituting the person of the debtor: (1) *expromision* and (2) *delegacion*. In *expromision*, the initiative for the change does not come from—and may even be made without the knowledge of—the debtor, since it consists of a third person's assumption of the obligation. As such, it logically requires the consent of the third person and the creditor. In *delegacion*, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation; thus, the consent of these three persons are necessary. Both modes of substitution by the debtor require the consent of the creditor.[31] (Citations omitted)

From the circumstances obtaining below, we can infer no clear and unequivocal consent by the respondent to the release of the petitioner from the obligation to pay the cost of the lighting materials. In fact, from the letters of the respondent to Enviro Kleen, it can be said that he retained his option to go after the petitioner if Enviro Kleen failed to settle the petitioner's debt. As the trial court held:

> The fact that Enviro Kleen Technologies, Inc. made payments to the [respondent] and the latter accepted it does not *ipso facto* result in novation. Novation to be given its legal effect requires that the creditor should consent to the substitution of a new debtor and the old debtor be released from its obligation (*Art. 1293, New Civil Code*). A reading of the letters dated 14 April 1999 *(Exh. 1)* and dated 16 June 1999 *(Exh[s]. 4 & 4-a)* sent by the [respondent] to Enviro Kleen Technologies, Inc. clearly shows that there was nothing therein that would evince that the [respondent] has consented to the exchange of the person of the debtor from the [petitioner] to Enviro Kleen Technologies, Inc.
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> x x x x x x x x x

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[30] *Supra* note 27.

[31] *Id.* at 300.

Notably in *Exh. 1*, albeit addressed to Enviro Kleen Technologies, Inc., the [respondent] expressly stated that it has served notice to the [petitioner] that unless the overdue account is paid, the matter will be referred to its lawyers and there may be a pull-out of the delivered lighting fixtures. It was likewise stated therein that incident damages that may result to the structure in the course of the pull-out will be to the account of the [petitioner].

It is evident from the two (2) aforesaid letters that there is no indication of the [respondent's] intention to release the [petitioner] from its obligation to pay and to transfer it to Enviro Kleen Technologies, Inc. The acquiescence of Enviro Kleen Technologies, Inc. to assume the obligation of the [petitioner] to pay the unpaid balance of [₱]816,627.00 to the [respondent] when there is clearly no agreement to release the [petitioner] will result merely to the addition of debtors and not novation. Hence, the creditor can still enforce the obligation against the original debtor x x x. A fact which points strongly to the conclusion that the [respondent] did not assent to the substitution of Enviro Kleen Technologies, Inc. as the new debtor is the present action instituted by [the respondent] against the [petitioner] for the fulfilment of its obligation. A mere recital that the [respondent] has agreed or consented to the substitution of the debtor is not sufficient to establish the fact that there was a novation. x x x.[32]

The settled rule is that novation is never presumed,[33] but must be clearly and unequivocally shown.[34] In order for a new agreement to supersede the old one, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one.[35] Thus, the mere substitution of debtors will not result in novation,[36] and the fact that the creditor accepts payments from a third person,

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[32] *Rollo*, pp. 72-73.

[33] *Ajax Marketing & Development Corporation v. CA*, 318 Phil. 268 (1995); *Goñi v. CA*, 228 Phil. 222, 232 (1986); *California Bus Lines, Inc. v. State Investment House, Inc.*, 463 Phil. 689, 702 (2003).

[34] *Mercantile Insurance Co., Inc., v. CA*, 273 Phil. 415, 423 (1991).

[35] CIVIL CODE OF THE PHILIPPINES, Article 1292; *Idolor v. CA*, 404 Phil. 220, 228 (2001).

[36] *Servicewide Specialists, Inc. v. Intermediate Appellate Court*, 255 Phil. 787, 800 (1989).

who has assumed the obligation, will result merely in the addition of debtors and not novation, and the creditor may enforce the obligation against both debtors.[37] If there is no agreement as to solidarity, the first and new debtors are considered obligated jointly.[38] As explained in *Reyes v. CA*[39]:

> The consent of the creditor to a novation by change of debtor is as indispensable as the creditor's consent in conventional subrogation in order that a novation shall legally take place. The mere circumstance of AFP-MBAI receiving payments from respondent Eleazar who acquiesced to assume the obligation of petitioner under the contract of sale of securities, when there is clearly no agreement to release petitioner from her responsibility, does not constitute novation. At most, it only creates a juridical relation of co-debtorship or suretyship on the part of respondent Eleazar to the contractual obligation of petitioner to AFP-MBAI and the latter can still enforce the obligation against the petitioner. In *Ajax Marketing and Development Corporation vs. Court of Appeals* which is relevant in the instant case, we stated that —
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> > "In the same vein, to effect a subjective novation by a change in the person of the debtor, it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation. There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety. xxx. Novation arising from a purported change in the person of the debtor must be clear and express xxx."
>
> In the civil law setting, *novatio* is literally construed as to make new. So it is deeply rooted in the Roman Law jurisprudence, the principle – *novatio non praesumitur* — that novation is never presumed. At bottom, for novation to be a jural reality, its *animus*

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[37] *Id.*, citing *Staight v. Haskell*, 49 Phil. 614 (1926); *Testate Estate of Mota v. Serra*, 47 Phil. 464 (1925); *E.C. McCullough & Co. v. Veloso and Serna*, 46 Phil. 1 (1924); *Pacific Commercial Co. v. Sotto*, 34 Phil. 237 (1916).

[38] *Id.*, citing *Lopez v. CA, et al*., 200 Phil. 150, 166 (1982); *Duñgo v. Lopena, et al*., 116 Phil. 1305, 1314 (1962).

[39] 332 Phil. 40 (1996).

must be ever present, *debitum pro debito* — basically extinguishing the old obligation for the new one.[40] (Citation omitted)

The trial court found that the respondent never agreed to release the petitioner from its obligation, and this conclusion was upheld by the CA. We generally accord utmost respect and great weight to factual findings of the trial court and the CA, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked, or the significance of which has been misinterpreted, that if considered would have affected the result of the case.[41] We find no such oversight in the appreciation of the facts below, nor such a misinterpretation thereof, as would otherwise provide a clear and unequivocal showing that a novation has occurred in the contract between the parties resulting in the release of the petitioner.

Pursuant to Article 2209 of the Civil Code, except as provided under Central Bank Circular No. 905, and now under Bangko Sentral ng Pilipinas Circular No. 799, which took effect on July 1, 2013, the respondent may be awarded interest of six percent (6%) of the judgment amount by way of actual and compensatory damages.

It appears from the recital of facts in the trial court's decision that the respondent demanded interest of two percent (2%) per month upon the balance of the purchase price of ₱816,627.00, from judicial demand until full payment. There is then an obvious clerical error committed in the *fallo* of the trial court's decision, for it incorrectly ordered the defendant therein to pay "the sum equivalent to **twenty percent (20%) per month** of the principal obligation due from date of judicial demand until fully paid as and for interest."[42]

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

[41] *San Sebastian College v. CA*, 274 Phil. 414, 421 (1991).

[42] *Rollo*, p. 74.

A clerical mistake is one which is visible to the eyes or obvious to the understanding; an error made by a clerk or a transcriber; a mistake in copying or writing.[43] The Latin maxims *Error placitandi aequitatem non tollit* ("A clerical error does not take away equity"), and *Error scribentis nocere non debit* ("An error made by a clerk ought not to injure; a clerical error may be corrected") are apt in this case.[44] Viewed against the landmark case of *Medel v. CA*[45], an award of interest of 20% per month on the amount due is clearly excessive and iniquitous. It could not have been the intention of the trial court, not to mention that it is way beyond what the plaintiff had prayed for below.

It is settled that other than in the case of judgments which are void *ab initio* for lack of jurisdiction, or which are null and void *per se*, and thus may be questioned at any time, when a decision is final, even the court which issued it can no longer alter or modify it, except to correct clerical errors or mistakes.[46]

The foregoing notwithstanding, of more important consideration in the case before us is the fact that it is nowhere stated in the trial court's decision that the parties had in fact stipulated an interest on the amount due to the respondent. Even granting that there was such an agreement, there is no finding by the trial court that the parties stipulated that the outstanding debt of the petitioner would be subject to two percent (2%) monthly interest. The most that the decision discloses is that the respondent demanded a monthly interest of 2% on the amount outstanding.

Article 2209 of the Civil Code provides that "[i]f the obligation consists in the payment of a sum of money, and the debtor

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[43] *Black v. Republic of the Philippines*, 104 Phil. 848, 849 (1958); *Beduya v. Republic*, 120 Phil. 114, 116 (1964).

[44] *Ingson v. Olaybar*, 52 Phil. 395, 398 (1928).

[45] 359 Phil. 820 (1998).

[46] *Heirs of Remigio Tan v. Intermediate Appellate Court*, 246 Phil. 756, 764 (1988); *Vda. de Emnas v. Emnas*, 184 Phil. 419, 424 (1980); *Maramba v. Lozano*, 126 Phil. 833, 837 (1967).

incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent *per annum*." Pursuant to the said provision, then, since there is no finding of a stipulation by the parties as to the imposition of interest, only the amount of 12% *per annum*[47] may be awarded by the court by way of damages in its discretion, not two percent (2%) per month, following the guidelines laid down in the landmark case of *Eastern Shipping Lines v. Court of Appeals*,[48] 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 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

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[47] Now reduced to 6% under BSP Circular No. 799 which took effect on July 1, 2013.

[48] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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.[49] (Citations omitted)

As further clarified in the case of *Sunga-Chan v. CA*,[50] a loan or forbearance of money, goods or credit describes a contractual obligation whereby a lender or creditor has refrained during a given period from requiring the borrower or debtor to repay the loan or debt then due and payable.[51] Thus:

In *Reformina v. Tomol, Jr.*, the Court held that the legal interest at 12% *per annum* under Central Bank (CB) Circular No. 416 shall be adjudged only in cases involving the loan or forbearance of money. And for transactions involving payment of indemnities in the concept of damages arising from default in the performance of obligations in general and/or for money judgment not involving a loan or forbearance of money, goods, or credit, the governing provision is Art. 2209 of the Civil Code prescribing a **yearly 6% interest**. Art. 2209 pertinently provides:

"Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is **six per cent *per annum***."

The term "forbearance," within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable.

Eastern Shipping Lines, Inc. synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows:

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[49] *Id.* at 95-97.

[50] G.R. No. 164401, June 25, 2008, 555 SCRA 275.

[51] *Id.* 287-288.

The 12% *per annum* rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the **6% *per annum*** under Art. 2209 of the Civil Code applies **"when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general**," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."[52] (Citations omitted and emphasis ours)

Pursuant, then, to Central Bank Circular No. 416, issued on July 29, 1974,[53] in the absence of a written stipulation, the interest rate to be imposed in judgments involving a forbearance of credit shall be 12% *per annum*, up from 6% under Article 2209 of the Civil Code. This was reiterated in Central Bank Circular No. 905, which suspended the effectivity of the Usury Law from January 1, 1983.[54] But if the judgment refers to payment of interest as damages arising from a breach or delay

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[52] *Id.*

[53] July 29, 1974

CENTRAL BANK CIRCULAR NO. 416

By virtue of the authority granted to it under Section 1 of Act No. 2655, as amended, otherwise known as the "Usury Law," the Monetary Board, in its Resolution No. 1622 dated July 29, 1974, has prescribed that 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 be twelve per cent (12%) per annum.

This Circular shall take effect immediately.

(SGD.) G. S. LICAROS
Governor

[54] 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 per cent (12%) per annum.

in general, the applicable interest rate is 6% *per annum*, following Article 2209 of the Civil Code.[55] Both interest rates apply from judicial or extrajudicial demand until finality of the judgment. But from the finality of the judgment awarding a sum of money until it is satisfied, the award shall be considered a forbearance of credit, regardless of whether the award in fact pertained to one, and therefore during this period, the interest rate of 12% *per annum* for forbearance of money shall apply.[56]

But notice must be taken that in Resolution No. 796 dated May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas approved the revision of the interest rate to be imposed 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. Thus, under BSP Circular No. 799, issued on June 21, 2013 and effective on July 1, 2013, the said rate of interest is now back at six percent (6%), *viz*:

BANGKO SENTRAL NG PILIPINAS
OFFICE OF THE GOVERNOR

CIRCULAR NO. 799
Series of 2013

Subject: **Rate of interest in the absence of stipulation**

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.

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[55] Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum.

[56] *Penta Capital Finance Corporation v. Bay*, G.R. No. 162100, January 18, 2012, 663 SCRA 192, 213.

Section 2. In view of the above, 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 are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

FOR THE MONETARY BOARD:

DIWA C. GUINIGUNDO
Officer-In-Charge

The award of attorney's fees is not proper.

Other than to say that the petitioner "unjustifiably failed and refused to pay the respondent," the trial court did not state in the body of its decision the factual or legal basis for its award of attorney's fees to the respondent, as required under Article 2208 of the New Civil Code, for which reason we have resolved to delete the same. The rule is settled that the trial court must state the factual, legal or equitable justification for its award of attorney's fees.[57] Indeed, the matter of attorney's fees cannot be stated only in the dispositive portion, but the reasons must be stated in the body of the court's decision.[58] This failure or oversight of the trial court cannot even be supplied by the CA. As concisely explained in *Frias v. San Diego-Sison*[59]:

Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in all cases, it must be reasonable, just and equitable if the same were to be granted. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of facts and law that would bring

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[57] *Philippine Airlines, Incorporated v. CA*, G.R. No. 123238, September 22, 2008, 566 SCRA 124, 138.

[58] *Buñing v. Santos*, 533 Phil. 610, 617 (2006).

[59] 549 Phil. 49 (2007).

the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its Decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted.[60] (Citations omitted)

WHEREFORE, premises considered, the Decision dated April 30, 2008 of the Court of Appeals in CA-G.R. CV No. 83811 is **AFFIRMED** with **MODIFICATION**. Petitioner S.C. Megaworld Construction and Development Corporation is ordered to pay respondent Engr. Luis A. Parada, represented by Engr. Leonardo A. Parada, the principal amount due of ₱816,627.00, plus interest at twelve percent (12%) *per annum*, reckoned from judicial demand until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until finality hereof, by way of actual and compensatory damages. Thereafter, the principal amount due as adjusted by interest shall likewise earn interest at six percent (6%) *per annum* until fully paid. The award of attorney's fees is **DELETED**.

SO ORDERED.

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

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[60] *Id.* at 63-65.

THIRD DIVISION

[G.R. No. 196200. September 11, 2013]

ERNESTO DY, *petitioner, vs.* **HON. GINA M. BIBAT-PALAMOS, in her capacity as Presiding Judge of the Regional Trial Court, Branch 64, Makati City, and ORIX METRO LEASING AND FINANCE CORPORATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DIRECT RESORT TO THE SUPREME COURT; WHEN ALLOWED.—** Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket. Nonetheless, the invocation of this Court's original jurisdiction to issue writs of *certiorari* has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.

2. **ID.; ID.; ID.; PETITION FOR *CERTIORARI* UNDER RULE 65 DISTINGUISHED FROM AN ORDINARY APPEAL.—** There are considerable differences between an ordinary appeal and a petition for *certiorari* which have been exhaustively discussed by this Court in countless cases. The remedy for errors of judgment, whether based on the law or the facts of the case or on the wisdom or legal soundness of a decision, is an ordinary appeal. In contrast, a petition for *certiorari* under Rule 65 is an original action designed to correct errors of jurisdiction,

defined to be those "in which the act complained of was issued by the court, officer, or quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack of in excess of jurisdiction." A court or tribunal can only be considered to have acted with grave abuse of discretion if its exercise of judgment was so whimsical and capricious as to be equivalent to a lack of jurisdiction. The abuse must be extremely patent and gross that it would amount to an "evasion of a positive duty or to 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." Therefore, a misappreciation of evidence on the part of the lower court, as asserted by petitioner, may only be reviewed by appeal and not by *certiorari* because the issue raised by the petitioner does not involve any jurisdictional ground. It is a general rule of procedural law that when a party adopts an inappropriate mode of appeal, his petition may be dismissed outright to prevent the erring party from benefiting from his neglect and mistakes. There are exceptions to this otherwise ironclad rule, however. One is when the strict application of procedural technicalities would hinder the expeditious disposition of this case on the merits, such as in this case.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; EXCEPTION.— This Court is not unaware of the doctrine of immutability of judgments. When a judgment becomes final and executory, it is made immutable and unalterable, meaning it can no longer be modified in any respect either by the court which rendered it or even by this Court. Its purpose is to avoid delay in the orderly administration of justice and to put an end to judicial controversies. Even at the risk of occasional errors, public policy and sound practice dictate that judgments must become final at some point. As with every rule, however, this admits of certain exceptions. When a supervening event renders the execution of a judgment impossible or unjust, the interested party can petition the court to modify the judgment to harmonize it with justice and the facts. A supervening event is a fact which

transpires or a new circumstance which develops after a judgment has become final and executory. This includes matters which the parties were unaware of prior to or during trial because they were not yet in existence at that time.

APPEARANCES OF COUNSEL

Rhett Emmanuel C. Serfino for petitioner.
Poblador Bautista & Reyes for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for *certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure questions the December 13, 2010 and March 7, 2011 Orders[1] of the Regional Trial Court of Makati, Branch 64 (*RTC*), in Civil Case No. 92-2311, granting the motion for execution of petitioner, but denying his prayer for the return of his cargo vessel in the condition when the possession thereof was seized from him.

The Facts

The present controversy finds its roots in the Court's decision in *Orix Metro Leasing and Finance Corporation v. M/V "Pilar-I" and Spouses Ernesto Dy and Lourdes Dy*[2] involving the same parties. The facts, as culled from the Court's decision in the said case and the records, are not disputed by the parties.

Petitioner Ernesto Dy *(petitioner)* and his wife, Lourdes Dy *(Lourdes)*, were the proprietors of Limchia Enterprises which was engaged in the shipping business. In 1990, Limchia

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[1] *Rollo*, pp. 18-21.

[2] G.R. No. 157901, September 11, 2009, 599 SCRA 345; penned by Associate Justice Minita V. Chico-Nazario and concurred in by Associate Justice Consuelo Ynares-Santiago, Associate Justice Presbitero J. Velasco, Jr., Associate Justice Antonio Eduardo B. Nachura and Associate Justice Diosdado M. Peralta of the Third Division.

Enterprises, with Lourdes as co-maker, obtained a loan from Orix Metro Leasing and Finance Corporation *(respondent)* to fund its acquisition of M/V Pilar-I, a cargo vessel. As additional security for the loan, Limchia Enterprises executed the Deed of Chattel Mortgage over M/V Pilar-I.[3]

Due to financial losses suffered when M/V Pilar-I was attacked by pirates, Spouses Dy failed to make the scheduled payments as required in their promissory note. After receiving several demand letters from respondent, Spouses Dy applied for the restructuring of their loan. Meanwhile, Lourdes issued several checks to cover the remainder of their loan but the same were dishonored by the bank, prompting respondent to institute a criminal complaint for violation of the Bouncing Checks Law. Lourdes appealed to respondent with a new proposal to update their outstanding loan obligations.[4]

On August 18, 1992, respondent filed the Complaint and Petition for Extrajudicial Foreclosure of Preferred Ship Mortgage under Presidential Decree No. 1521 with Urgent Prayer for Attachment with the RTC. Following the filing of an affidavit of merit and the posting of bond by respondent, the RTC ordered the seizure of M/V Pilar-I and turned over its possession to respondent. On September 28, 1994, respondent transferred all of its rights, title to and interests, as mortgagee, in M/V Pilar-I to Colorado Shipyard Corporation *(Colorado)*.[5]

On July 31, 1997, the RTC rendered a decision in favor of Spouses Dy, ruling that they had not yet defaulted on their loan because respondent agreed to a restructured schedule of payment. There being no default, the foreclosure of the chattel mortgage on M/V Pilar-I was premature. The RTC ordered that the vessel be returned to Spouses Dy.[6] This was affirmed by the Court of Appeals *(CA)*, with the modification that Spouses

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[3] *Id.* at 347-348; *rollo*, p. 172.

[4] *Id.* at 348-351; *id.* at 5 and 65.

[5] *Id.* at 352-355; *id.* at 143 and 173.

[6] *Id.* at 355; *id.* at 143-144.

Dy be ordered to reimburse the respondent for repair and drydocking expenses while the vessel was in the latter's possession.[7] On appeal, the Court promulgated its Decision, dated September 11, 2009, upholding the findings of the CA but deleting the order requiring Spouses Dy to reimburse respondent.[8]

Consequently, on August 17, 2010, petitioner filed a motion for execution of judgment with the RTC. In the intervening period, Colorado filed its Manifestation/Motion, dated July 29, 2010, informing the RTC that M/V Pilar-I, which was in its possession, had sustained severe damage and deterioration and had sunk in its shipyard because of its exposure to the elements. For this reason, it sought permission from the court to cut the sunken vessel into pieces, sell its parts and deposit the proceeds in escrow.[9] In his Comment/Objection, petitioner insisted that he had the right to require that the vessel be returned to him in the same condition that it had been at the time it was wrongfully seized by respondent or, should it no longer be possible, that another vessel of the same tonnage, length and beam similar to that of M/V Pilar-I be delivered.[10] Colorado, however, responded that the vessel had suffered severe damage and deterioration that refloating or restoring it to its former condition would be futile, impossible and very costly; and should petitioner persist in his demand that the ship be refloated, it should be done at the expense of the party adjudged by the court to pay the same.[11]

The RTC issued its questioned December 13, 2010 Order granting the motion for execution but denying petitioner's prayer for the return of M/V Pilar-I in the same state in which it was taken by respondent. In so resolving, the RTC ratiocinated:

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[7] *Id.* at 358; *id.* at 144-145.

[8] *Id.* at 366; *id.* at 145.

[9] *Id.* at 22-25.

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

[11] *Id.* at 30-33.

First, the judgment of the Supreme Court does not require the delivery of M/V Pilar in the state the defendants wanted it to be. Secondly, said judgment has now become final and it is axiomatic that after judgment has become executory, the court cannot amend the same, except: x x x None of the three circumstances where a final and executory judgment may be amended is present in this case. And third, the present deplorable state of M/V Pilar certainly did not happen overnight, thus, defendants should have brought it to the attention of this Court, the Court of Appeals or the Supreme Court after it became apparent. Their inaction until after the judgment has become final, executory and immutable rendered whatever right they may have to remedy the situation to be nugatory. [Underlining supplied]

Petitioner moved for reconsideration but the motion was denied by the RTC in its March 7, 2011 Order.[12]

Hence, this petition.

The Issues

Petitioner raises the following issues in its Memorandum:

1. Whether or not the rule on hierarchy of courts is applicable to the instant petition?

2. Whether or not the honorable trial court gravely abused its discretion, amounting to lack or excess of jurisdiction, in finding that petitioner is not entitled to the return of M/V Pilar-1 in the condition that it had when it was wrongfully seized by Orix Metro, or in the alternative, to a vessel of similar tonnage, length, beam, and other particulars as M/V Pilar-1;

3. Whether or not petitioner is estopped from asking for the return of the vessel in the condition it had at the time it was seized?

4. Whether or not it was petitioner's duty to look out for the vessel's condition?[13]

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[12] *Id.* at 20-21.

[13] *Id.* at 175-176.

To be succinct, only two central issues need to be resolved: (1) whether petitioner was justified in resorting directly to this Court via a petition for *certiorari* under Rule 65; and (2) whether petitioner is entitled to the return of M/V Pilar-I in the same condition when it was seized by respondent.

The Court's Ruling

The Court finds the petition to be partly meritorious.

Hierarchy of Courts; Direct Resort To The Supreme Court Justified

Petitioner argues that his situation calls for the direct invocation of this Court's jurisdiction in the interest of justice. Moreover, as pointed out by the RTC, what is involved is a judgment of the Court which the lower courts cannot modify. Hence, petitioner deemed it proper to bring this case immediately to the attention of this Court. Lastly, petitioner claims that the present case involves a novel issue of law – that is, whether in an action to recover, a defendant in wrongful possession of the subject matter in litigation may be allowed to return the same in a deteriorated condition without any liability.[14]

Respondent, on the other hand, contends that the petition should have been filed with the CA, following the doctrine of hierarchy of courts. It pointed out that petitioner failed to state any special or important reason or any exceptional and compelling circumstance which would warrant a direct recourse to this Court.[15]

Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket.[16]

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[14] *Id.* at 176-177.

[15] *Id.* at 150.

[16] *Cabarles v. Judge Maceda*, 545 Phil. 210, 223 (2007).

Nonetheless, the invocation of this Court's original jurisdiction to issue writs of *certiorari* has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.[17]

This case falls under one of the exceptions to the principle of hierarchy of courts. Justice demands that this Court take cognizance of this case to put an end to the controversy and resolve the matter which has been dragging on for more than twenty (20) years. Moreover, in light of the fact that what is involved is a final judgment promulgated by this Court, it is but proper for petitioner to call upon its original jurisdiction and seek final clarification.

Wrong Mode of Appeal; Exception

Petitioner asserts that the RTC committed grave abuse of discretion when it failed to rule in his favor despite the fact that he had been deprived by respondent of his property rights over M/V Pilar-I for the past eighteen (18) years. Moreover, the change in the situation of the parties calls for a relaxation of the rules which would make the execution of the earlier decision of this Court inequitable or unjust. According to petitioner, for the RTC to allow respondent to return the ship to him in its severely damaged and deteriorated condition without any liability would be to reward bad faith.[18]

Conversely, respondent submits that there was no grave abuse of discretion on the part of the RTC as the latter merely observed due process and followed the principle that an execution order may not vary or go beyond the terms of the judgment it seeks

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[17] *Republic of the Philippines v. Caguioa*, G.R. No. 174385, February 20, 2013.

[18] *Rollo*, pp. 180-182.

to enforce.[19] Respondent adds that the proper remedy should have been an ordinary appeal, where a factual review of the records can be made to determine the condition of the ship at the time it was taken from petitioner, and not a special civil action for *certiorari*.[20]

There are considerable differences between an ordinary appeal and a petition for *certiorari* which have been exhaustively discussed by this Court in countless cases. The remedy for errors of judgment, whether based on the law or the facts of the case or on the wisdom or legal soundness of a decision, is an ordinary appeal.[21] In contrast, a petition for *certiorari* under Rule 65 is an original action designed to correct errors of jurisdiction, defined to be those "in which the act complained of was issued by the court, officer, or quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack of in excess of jurisdiction."[22] A court or tribunal can only be considered to have acted with grave abuse of discretion if its exercise of judgment was so whimsical and capricious as to be equivalent to a lack of jurisdiction. The abuse must be extremely patent and gross that it would amount to an "evasion of a positive duty or to 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."[23]

Therefore, a misappreciation of evidence on the part of the lower court, as asserted by petitioner, may only be reviewed by appeal and not by *certiorari* because the issue raised by

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[19] *Id.* at 154 and 156.

[20] *Id.* at 151.

[21] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 780.

[22] *Agrarian Reform Beneficiaries Association (ARBA) v. Nicolas*, G.R. No. 168394, October 6, 2008, 567 SCRA 540, 550.

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

the petitioner does not involve any jurisdictional ground.[24] It is a general rule of procedural law that when a party adopts an inappropriate mode of appeal, his petition may be dismissed outright to prevent the erring party from benefiting from his neglect and mistakes.[25] There are exceptions to this otherwise ironclad rule, however. One is when the strict application of procedural technicalities would hinder the expeditious disposition of this case on the merits,[26] such as in this case.

Petitioner Not Barred from Demanding Return of the Vessel in its Former Condition

Petitioner insists that it is respondent who should bear the responsibility for the deterioration of the vessel because the latter, despite having in its possession the vessel M/V Pilar-I during the pendency of the foreclosure proceedings, failed to inform the court and petitioner himself about the actual condition of the ship. For estoppel to take effect, there must be knowledge of the real facts by the party sought to be estopped and reliance by the party claiming estoppel on the representation made by the former. In this case, petitioner cannot be estopped from asking for the return of the vessel in the condition that it had been at the time it was seized by respondent because he had not known of the deteriorated condition of the ship.[27]

On the contrary, respondent argues that petitioner is barred from asking for a modification of the judgment since he never prayed for the return of M/V Pilar-I in the same condition that it had been at the time it was seized.[28] Petitioner could have

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[24] *Agrarian Reform Beneficiaries Association (ARBA) v. Nicolas, supra* note 22.

[25] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 659 citing *Almelor v. RTC of Las Piñas, et al.*, G.R. No. 179620, August 26, 2008, 563 SCRA 447.

[26] *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, 428 Phil. 783, 791 (2002).

[27] *Rollo*, pp. 182-184.

[28] *Id.* at 156.

prayed for such relief in his prior pleadings and presented evidence thereon before the judgment became final and executory. During the course of the trial, and even at the appellate phase of the case, petitioner failed to ask the courts to look into the naturally foreseeable depreciation of M/V Pilar-I and to determine who should pay for the wear and tear of the vessel. Consequently, petitioner can no longer pursue such relief for the first time at this very late stage.[29] Moreover, respondent posits that it can only be held liable for the restoration and replacement of the vessel if it can be proven that M/V Pilar-I deteriorated through the fault of respondent. Nowhere in the prior decision of this Court, however, does it appear that respondent was found to have been negligent in its care of the vessel. In fact, respondent points out that, for a certain period, it even paid for the repair and maintenance of the vessel and engaged the services of security guards to watch over the vessel. It reasons that the vessel's deterioration was necessarily due to its exposure to sea water and the natural elements for the almost twenty years that it was docked in the Colorado shipyard.[30]

On this matter, the Court finds for petitioner.

This Court is not unaware of the doctrine of immutability of judgments. When a judgment becomes final and executory, it is made immutable and unalterable, meaning it can no longer be modified in any respect either by the court which rendered it or even by this Court. Its purpose is to avoid delay in the orderly administration of justice and to put an end to judicial controversies. Even at the risk of occasional errors, public policy and sound practice dictate that judgments must become final at some point.[31]

As with every rule, however, this admits of certain exceptions. When a supervening event renders the execution of a judgment

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[29] *Id.* at 160.

[30] *Id.* at 166.

[31] *PCI Leasing and Finance, Inc. v. Milan*, G.R. No. 151215, April 5, 2010, 617 SCRA 258, 278, citing *Social Security System v. Isip*, 549 Phil. 112, 116 (2007).

impossible or unjust, the interested party can petition the court to modify the judgment to harmonize it with justice and the facts.[32] A supervening event is a fact which transpires or a new circumstance which develops after a judgment has become final and executory. This includes matters which the parties were unaware of prior to or during trial because they were not yet in existence at that time.[33]

In this case, the sinking of M/V Pilar-I can be considered a supervening event. Petitioner, who did not have possession of the ship, was only informed of its destruction when Colorado filed its Manifestation, dated July 29, 2010, long after the September 11, 2009 Decision of this Court in *Orix Metro Leasing and Finance Corporation v. M/V "Pilar-I" and Spouses Ernesto Dy and Lourdes Dy* attained finality on January 19, 2010. During the course of the proceedings in the RTC, the CA and this Court, petitioner could not have known of the worsened condition of the vessel because it was in the possession of Colorado.

It could be argued that petitioner and his lawyer should have had the foresight to ask for the return of the vessel in its former condition at the time respondent took possession of the same during the proceedings in the earlier case. Nonetheless, the modification of the Court's decision is warranted by the superseding circumstances, that is, the severe damage to the vessel subject of the case and the belated delivery of this information to the courts by the party in possession of the same.

Having declared that a modification of our earlier judgment is permissible in light of the exceptional incident present in this case, the Court further rules that petitioner is entitled to the return of M/V Pilar-I in the same condition in which respondent took possession of it. Considering, however, that this is no longer possible, then respondent should pay petitioner the value of the ship at such time.

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[32] *Sampaguita Garments Corporation v. National Labor Relations Commission*, G.R. No. 102406, June 17, 1994, 233 SCRA 260, 263.

[33] *Natalia Realty Inc. v. Court of Appeals*, 440 Phil. 1, 23 (2002).

This disposition is not without precedent. In the case of *Metro Manila Transit Corporation v. D.M. Consortium, Inc.*,[34] D.M. Consortium, Inc. *(DMCI)* acquired 228 buses under a lease purchase agreement with Metro Manila Transit Corporation *(MMTC)*. MMTC later alleged that DMCI was in default of its amortization, as a result of which, MMTC took possession of all the buses. This Court upheld the right of DMCI, after having been unjustly denied of its right of possession to several buses, to have them returned by MMTC. Considering, however, that the buses could no longer be returned in their original state, the Court sustained the resolution of the CA ordering MMTC to pay DMCI the value of the buses at the time of repossession.

The aforecited case finds application to the present situation of petitioner. After having been deprived of his vessel for almost two decades, through no fault of his own, it would be the height of injustice to permit the return of M/V Pilar-I to petitioner in pieces, especially after a judgment by this very same Court ordering respondent to restore possession of the vessel to petitioner. To do so would leave petitioner with nothing but a hollow and illusory victory for although the Court ruled in his favor and declared that respondent wrongfully took possession of his vessel, he could no longer enjoy the beneficial use of his extremely deteriorated vessel that it is no longer seaworthy and has no other commercial value but for the sale of its parts as scrap.

Moreover, the incongruity only becomes more palpable when consideration is taken of the fact that petitioner's obligation to respondent, for which the now practically worthless vessel serves as security, is still outstanding.[35] The Court cannot countenance such an absurd outcome. It could not have been the intention of this Court to perpetrate an injustice in the guise of a favorable decision. As the court of last resort, this Court is the final bastion of justice where litigants can hope to correct any error made in the lower courts.

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[34] 546 Phil. 461 (2007).

[35] *Rollo*, p. 176.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Respondent is ordered to pay petitioner the value of M/V Pilar-I at the time it was wrongfully seized by it. The case is hereby **REMANDED** to the Regional Trial Court, Branch 64, Makati City, for the proper determination of the value of the vessel at said time.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197522. September 11, 2013]

ELISEO V. AGUILAR, *petitioner, vs.* **DEPARTMENT OF JUSTICE, PO1 LEO T. DANGUPON, 1ST LT. PHILIP FORTUNO, CPL. EDILBERTO ABORDO, SPO3 GREGARDRO A. VILLAR, SPO1 RAMON M. LARA, SPO1 ALEX L. ACAYLAR, and PO1 JOVANNIE C. BALICOL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; A PUBLIC PROSECUTOR'S DETERMINATION OF PROBABLE CAUSE IS ESSENTIALLY AN EXECUTIVE FUNCTION AND, THEREFORE, GENERALLY LIES BEYOND THE PALE OF JUDICIAL SCRUTINY; EXCEPTION, EXPLAINED.— A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and

perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. x x x In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause.

2. ID.; ID.; ID.; FOR THE PURPOSE OF FILING A CRIMINAL INFORMATION, PROBABLE CAUSE EXISTS WHEN THE FACTS ARE SUFFICIENT TO ENGENDER A WELL-FOUNDED BELIEF THAT A CRIME HAS BEEN COMMITTED AND THAT THE RESPONDENT IS PROBABLY GUILTY THEREOF.— [C]ase law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. x x x Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; THE BURDEN IS UPON THE ACCUSED TO PROVE CLEARLY AND SUFFICIENTLY THE ELEMENTS OF SELF-DEFENSE; APPLICATION IN CASE AT BAR.— Jurisprudence holds that when the accused admits killing the victim, but invokes a justifying circumstance, the constitutional presumption of innocence is effectively waived and the burden of proving the existence of such circumstance shifts to the accused. The rule regarding an accused's admission of the victim's killing has been articulated in *Ortega v. Sandiganbayan*, to wit: x x x **The burden is upon the accused to prove clearly and sufficiently the elements of self-defense, being an affirmative allegation, otherwise the conviction of the accused is inescapable**. Therefore, due to the ostensible presence of the crime charged and considering that Dangupon's theories of self-defense/ defense of a stranger and lawful performance of one's duty and the argument on presumption of innocence are, under the circumstances, not compelling enough to overcome a finding of probable cause, the Court finds that the DOJ gravely abused its discretion in dismissing the case against Dangupon.

4. ID.; MURDER; EXTRALEGAL KILLING; THE COURT SHOULD RESOLVE EXTRALEGAL KILLING CASES WITH A MORE CIRCUMSPECT ANALYSIS OF THE INCIDENTAL FACTORS SURROUNDING THE SAME; APPLICATION IN CASE AT BAR.— [W]hile petitioner has failed to detail the exact participation of Fortuno and Abordo in the death of Tetet, it must be noted that the peculiar nature of an extralegal killing negates the former an opportunity to proffer the same. It is of judicial notice that extralegal killings are ordinarily executed in a clandestine manner, and, as such, its commission is largely concealed from the public view of any witnesses. Notably, unlike in rape cases wherein the victim – albeit ravaged in the dark – may choose to testify, and whose testimony is, in turn, given great weight and credence sufficient enough for a conviction, the victim of an extralegal killing is silenced by death and therefore, the actual participation of his assailants is hardly disclosed. As these legal realities generally mire extralegal killing cases, the Court observes that such cases should be resolved with a more circumspect analysis of the incidental factors surrounding the same, take for instance the actual or likely presence of the persons charged at the place and time when

the killing was committed, the manner in which the victim was executed (of which the location of the place and the time in which the killing was done may be taken into consideration), or the possibility that the victim would have been easily overpowered by his assailants (of which the superior number of the persons detaining the victim and their ability to wield weapons may be taken into consideration). In the present case, the existence of probable cause against Fortuno and Abordo is justified by the circumstances on record which, if threaded together, would lead a reasonably discreet and prudent man to believe that they were also probably guilty of the crime charged. x x x Hence, the dismissal of the charges against them was – similar to Dangupon – improper.

5. ID.; ID.; CONSPIRACY; CONSPIRACY EXISTS WHEN ONE CONCURS WITH THE CRIMINAL DESIGN OF ANOTHER.— It is well-settled that conspiracy exists when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed.

APPEARANCES OF COUNSEL

Ronaldo R. Gutierrez for petitioner.
The Solicitor General for public respondent.
Ernesto S. Dinopol for private respondents.

D E C I S I O N

***PER CURIAM*:**

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110110 which affirmed the Resolution[3] dated November 27, 2008 of the Department of Justice (DOJ) in I.S. No. 2002-414, upholding the provincial prosecutor's

[1] *Rollo*, pp. 9-34.

[2] *Id.* at 38-46. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Apolinario D. Bruselas, Jr. and Agnes Reyes-Carpio, concurring.

[3] *Id.* at 92-97. Penned by Undersecretary Fidel J. Exconde, Jr.

dismissal of the criminal complaint for murder filed by petitioner Eliseo V. Aguilar against respondents.

The Facts

Petitioner is the father of one Francisco M. Aguilar, *alias* Tetet (Tetet). On April 10, 2002, he filed a criminal complaint[4] for murder against the members of a joint team of police and military personnel who purportedly arrested Tetet and later inflicted injuries upon him, resulting to his death. The persons charged to be responsible for Tetet's killing were members of the Sablayan Occidental Mindoro Police Force, identified as respondents SPO3 Gregardro A. Villar (Villar), SPO1 Ramon M. Lara (Lara), SPO1 Alex L. Acaylar (Acaylar), PO1 Leo T. Dangupon (Dangupon), and PO1 Jovannie C. Balicol (Balicol), and members of the Philippine Army, namely, respondents 1st Lt. Philip Fortuno[5] (Fortuno) and Cpl. Edilberto Abordo (Abordo).[6]

In the petitioner's complaint, he averred that on February 1, 2002, between 9:00 and 10:00 in the morning, at Sitio Talipapa, Brgy. Pag-asa, Sablayan, Occidental Mindoro (Sitio Talipapa), Tetet was arrested by respondents for alleged acts of extortion and on the suspicion that he was a member of the Communist Party of the Philippines/National People's Army Revolutionary Movement. Despite his peaceful surrender, he was maltreated by respondents. In particular, Tetet was hit on different parts of the body with the butts of their rifles, and his hands were tied behind his back with a black electric wire. He was then boarded on a military jeep and brought to the Viga River where he was gunned down by respondents.[7] Petitioner's complaint was corroborated by witnesses Adelaida Samillano and Rolando Corcotchea who stated, among others, that they saw Tetet raise his hands as a sign of surrender but was still mauled by armed persons.[8] A certain Dr. Neil Bryan V. Gamilla (Dr. Gamilla)

[4] *Id.* at 47. Captioned as "Sinumpaang Salaysay."

[5] "1st Lt. Philip Paul Fortuno" in some parts of the records.

[6] *Rollo,* pp. 38-39.

[7] *Id.* at 39.

[8] *Id.*

of the San Sebastian District Hospital issued a medical certificate dated February 1, 2002,[9] indicating that Tetet was found to have sustained two lacerated wounds at the frontal area, a linear abrasion in the anterior chest and five gunshot wounds in different parts of his body.[10]

In defense, respondents posited that on February 1, 2002, they were engaged in an operation – headed by Chief of Police Marcos Barte (Barte) and Fortuno – organized to entrap a suspected extortionist (later identified as Tetet) who was allegedly demanding money from a businesswoman named Estelita Macaraig (Macaraig). For this purpose, they devised a plan to apprehend Tetet at Sitio Talipapa which was the place designated in his extortion letters to Macaraig. At about 11:00 in the morning of that same day, Tetet was collared by Sgt. Ferdinand S. Hermoso (Hermoso) while in the act of receiving money from Macaraig's driver, Arnold Magalong. Afterwards, shouts were heard from onlookers that two persons, who were supposed to be Tetet's companions, ran towards the mountains. Some members of the team chased them but they were left uncaught. Meanwhile, Tetet was handcuffed and boarded on a military jeep. Accompanying the latter were Dangupon, Fortuno, Abordo, Barte, and some other members of the Philippine Army (first group). On the other hand, Villar, Lara, Acaylar, and Balicol were left behind at Sitio Talipapa with the instruction to pursue Tetet's two companions. As the first group was passing along the Viga River, Tetet blurted out to the operatives that he would point out to the police where his companions were hiding. Barte stopped the jeep and ordered his men to return to Sitio Talipapa but, while the driver was steering the jeep back, Tetet pulled a hand grenade clutched at the bandolier of Abordo, jumped out of the jeep and, from the ground, turned on his captors by moving to pull the safety pin off of the grenade. Sensing that they were in danger, Dangupon fired upon Tetet, hitting him four times in the body. The first group brought Tetet to the San

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[9] *Id.* at 68. Dated February 4, 2002 in the Final Investigation Report of the Commission on Human Rights.

[10] *Id.* at 39-40 and 68.

Sebastian District Hospital for treatment but he was pronounced dead on arrival.[11]

Among others, the Commission on Human Rights investigated Tetet's death and thereafter issued a Final Investigation Report[12] dated October 3, 2002 and Resolution[13] dated October 8, 2002, recommending that the case, *i.e.*, CHR CASE NR. IV-02-0289, "be closed for lack of sufficient evidence." It found that Tetet's shooter, Dangupon, only shot him in self-defense and added that "Dangupon enjoys the presumption of innocence and regularity in the performance of his official duties, which were not sufficiently rebutted in the instant case."[14]

Likewise, the Office of the Provincial Director of the Occidental Mindoro Police Provincial Command conducted its independent inquiry on the matter and, in a Report dated September 21, 2002, similarly recommended the dismissal of the charges against respondents. Based on its investigation, it concluded that respondents conducted a legitimate entrapment operation and that the killing of Tetet was made in self-defense and/or defense of a stranger.[15]

The Provincial Prosecutor's Ruling

In a Resolution[16] dated March 10, 2003, 1st Asst. Provincial Prosecutor and Officer-in-Charge Levitico B. Salcedo of the Office of the Provincial Prosecutor of Occidental Mindoro (Provincial Prosecutor) dismissed petitioner's complaint against all respondents for lack of probable cause. To note, Barte was dropped from the charge, having died in an ambush pending the investigation of the case.[17]

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

[12] *Id.* at 64-69. Prepared by Anson L. Chumacera.

[13] *Id.* at 63. Signed by Attorney V Dante Santiago M. Rito.

[14] *Id.*

[15] *Id.* at 76.

[16] *Id.* at 70-78.

[17] *Id.* at 40.

The Provincial Prosecutor held that the evidence on record shows that the shooting of Tetet by Dangupon "was done either in an act of self-defense, defense of a stranger, and in the performance of a lawful duty or exercise of a right of office."[18] He further observed that petitioner failed to submit any evidence to rebut Dangupon's claim regarding the circumstances surrounding Tetet's killing.[19]

In the same vein, the Provincial Prosecutor ruled that Villar, Acaylar, Lara, and Balicol could not be faulted for Tetet's death as they were left behind in Sitio Talipapa unaware of what transpired at the Viga River. As to the alleged maltreatment of Tetet after his arrest, the Provincial Prosecutor found that these respondents were not specifically pointed out as the same persons who mauled the former. He added that Hermoso was, in fact, the one who grabbed/collared Tetet during his apprehension. The Provincial Prosecutor similarly absolved Fortuno and Abordo since they were found to have only been in passive stance.[20]

Aggrieved, petitioner elevated the matter *via* a petition for review[21] to the DOJ.

The DOJ Ruling

In a Resolution[22] dated November 27, 2008, the DOJ dismissed petitioner's appeal and thereby, affirmed the Provincial Prosecutor's ruling. It ruled that petitioner failed to show that respondents conspired to kill/murder Tetet. In particular, it was not established that Villar, Lara, Acaylar, and Balicol were with Tetet at the time he was gunned down and, as such, they could not have had any knowledge, much more any responsibility, for what transpired at the Viga River.[23] Neither were Barte,

[18] *Id.* at 76.

[19] *Id.* at 78.

[20] *Id.*

[21] *Id.* at 79-82. Dated March 24, 2003.

[22] *Id.* at 92-97.

[23] *Id.* at 95.

Fortuno, and Abordo found to have conspired with Dangupon to kill Tetet since their presence at the time Tetet was shot does not support a conclusion that they had a common design or purpose in killing him.[24] With respect to Dangupon, the DOJ held that no criminal responsibility may be attached to him since his act was made in the fulfillment of a duty or in the lawful exercise of an office under Article 11(5) of the Revised Penal Code[25] (RPC).[26] Lastly, the DOJ stated that petitioner's suppositions and conjectures that respondents salvaged his son are insufficient to overturn the presumption of innocence in respondents' favor.[27]

Unperturbed, petitioner filed a petition for *certiorari*[28] with the CA.

The CA Ruling

In a Decision[29] dated June 30, 2011, the CA dismissed petitioner's *certiorari* petition, finding no grave abuse of discretion on the part of the DOJ in sustaining the Provincial Prosecutor's ruling. It found no evidence to show that Tetet was deliberately executed by respondents. Also, it echoed the DOJ's observations on respondents' presumption of innocence.[30]

Hence, this petition.

The Issue Before the Court

Petitioner builds up a case of extralegal killing and seeks that the Court resolve the issue as to whether or not the CA erred in finding that the DOJ did not gravely abuse its discretion

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[24] *Id.* at 96.

[25] Act No. 3815. "AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS."

[26] *Rollo*, p. 96.

[27] *Id.* at 97.

[28] *Id.* at 98-109. Dated August 3, 2009.

[29] *Id.* at 38-46.

[30] *Id.* at 45.

in upholding the dismissal of petitioner's complaint against respondents.

The Court's Ruling

The petition is partly granted.

At the outset, it is observed that the Provincial Prosecutor's ruling, as affirmed on appeal by the DOJ and, in turn, upheld on *certiorari* by the CA, may be dissected into three separate disquisitions: ***first***, the lack of probable cause on the part of Dangupon, who despite having admitted killing the victim, was exculpated of the murder charge against him on account of his interposition of the justifying circumstances of self-defense/ defense of a stranger and fulfillment of a duty or lawful exercise of a right of an office under Article 11(5) of the RPC; ***second***, the lack of probable cause on the part of Fortuno and Abordo who, despite their presence during the killing of Tetet, were found to have no direct participation or have not acted in conspiracy with Dangupon in Tetet's killing; and ***third***, the lack of probable cause on the part of Villar, Lara, Acaylar, and Balicol in view of their absence during the said incident. For better elucidation, the Court deems it apt to first lay down the general principles which go into its review process of a public prosecutor's probable cause finding, and thereafter apply these principles to each of the above-mentioned incidents *in seriatim*.

A. General principles; judicial review of a prosecutor's probable cause determination.

A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to

a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.[31] To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. As aptly edified in the recent case of *Alberto v. CA*:[32]

> It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; **while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution** "**to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**." (Emphasis supplied; citations omitted)

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import

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[31] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-515.

[32] G.R. Nos. 182130 and 182132, June 19, 2013.

absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, 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.[33] As pronounced in *Reyes v. Pearlbank Securities, Inc.*:[34]

> **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.[35] (Emphasis supplied)

Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.[36]

With these precepts in mind, the Court proceeds to assess the specific incidents in this case.

B. Existence of probable cause on the part of Dangupon.

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[33] *Id.* (Citation omitted)

[34] G.R. No. 171435, July 30, 2008, 560 SCRA 518.

[35] *Id.* at 534-535.

[36] *Ang-Abaya v. Ang*, G.R. No. 178511, December 4, 2008, 573 SCRA 129, 143.

Records bear out that Dangupon admitted that he was the one who shot Tetet which eventually caused the latter's death. The Provincial Prosecutor, however, relieved him from indictment based mainly on the finding that the aforesaid act was done either in self-defense, defense of a stranger or in the performance of a lawful duty or exercise of a right of office, respectively pursuant to paragraphs 1, 2, and 5, Article 11[37] of the RPC. The DOJ affirmed the Provincial Prosecutor's finding, adding further that Dangupon, as well as the other respondents, enjoys the constitutional presumption of innocence.

These findings are patently and grossly erroneous.

Records bear out facts and circumstances which show that the elements of murder – namely: (*a*) that a person was killed; (*b*) that the accused killed him; (*c*) that the killing was attended by any of the qualifying circumstances mentioned in Article 248[38] of the RPC; and (*d*) that the killing is not parricide or

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[37] Art. 11. *Justifying circumstances*. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

x x x x x x x x x

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

x x x x x x x x x

[38] Art. 248. *Murder*. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be

infanticide[39] – are, in all reasonable likelihood, present in Dangupon's case. As to the first and second elements, Dangupon himself admitted that he shot and killed Tetet. Anent the third element, there lies sufficient basis to suppose that the qualifying circumstance of treachery attended Tetet's killing in view of the undisputed fact that he was restrained by respondents and thereby, rendered defenseless.[40] Finally, with respect to the fourth element, Tetet's killing can neither be considered as parricide nor infanticide as the evidence is bereft of any indication that Tetet is related to Dangupon.

At this juncture, it must be noted that Dangupon's theories of self-defense/defense of a stranger and performance of an official duty are not clear and convincing enough to exculpate him at this stage of the proceedings considering the following circumstances: (*a*) petitioner's version of the facts was

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punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity.

2. In consideration of a price, reward, or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[39] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

[40] In any case, if the said circumstance or any of the qualifying circumstances stated in Article 248 of the RPC are not established during trial, Dangupon may still be convicted for the lesser offense of homicide as its elements are necessarily included in the crime of murder. (See *SSgt. Pacoy v. Hon. Cajigal*, 560 Phil. 598, 614 [2007].)

corroborated by witnesses Adelaida Samillano and Rolando Corcotchea who stated, among others, that they saw Tetet raise his hands as a sign of surrender but was still mauled by armed persons[41] (hence, the presence of unlawful aggression on the part of Tetet and the lack of any sufficient provocation on the part of Dangupon,[42] the actual motive of Tetet's companions,[43] and the lawfulness of the act[44] are put into question); (*b*) it was determined that Tetet was handcuffed[45] when he was boarded on the military jeep (hence, the supposition that Tetet was actually restrained of his movement begs the questions as to how he could have, in this state, possibly stole the grenade from Abordo); and (*c*) petitioner's evidence show that Tetet suffered from lacerations and multiple gunshot wounds,[46] the shots causing which having been fired at a close distance[47](hence,

[41] *Rollo*, p. 39.

[42] "x x x For self-defense to prevail, three (3) requisites must concur, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself." (*People v. De Gracia*, 332 Phil. 226, 235 [1996].)

[43] "x x x [T]he elements of defense of stranger are: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) the person defending be not induced by revenge, resentment, or other evil motive." (*Masipequiña v. CA*, 257 Phil. 710, 719 [1989].)

[44] "x x x [The] x x x case would have fallen under No. 5 of Article 11 [of the RPC, *i.e.*, the justifying circumstance of fulfillment of a duty or in the lawful exercise of a right or office] if the two conditions therefor, *viz.*: (1) that the accused acted in the performance of a duty or in the lawful exercise of a right or office and (2) that the injury or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office, concurred." (*Lacanilao v. CA*, G.R. No. L-34940, June 27, 1988, 162 SCRA 563, 566.)

[45] *Rollo*, p. 41.

[46] See *id.* at 68. Based on the medical certificate dated February 4, 2002 issued by Dr. Gamilla of the San Sebastian District Hospital, Tetet was found to have sustained two lacerated wounds at the frontal area, a linear abrasion in the anterior chest and five gunshot wounds in different parts of his body.

[47] See *id.* at 67. Dangupon himself admitted that the shots were fired at a distance of, more or less, one yard ("*isang dipa*").

the reasonable necessity of the means employed to prevent or repel[48] Tetet's supposed unlawful aggression, and whether the injury committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right[49] are, among others, also put into question). Given the foregoing, Dangupon's defenses are better off scrutinized within the confines of a criminal trial.

To add, neither can the dismissal of the murder charge against Dangupon be sustained in view of his presumption of innocence. Jurisprudence holds that when the accused admits killing the victim, but invokes a justifying circumstance, the constitutional presumption of innocence is effectively waived and the burden of proving the existence of such circumstance shifts to the accused.[50] The rule regarding an accused's admission of the victim's killing has been articulated in *Ortega v. Sandiganbayan*, to wit:[51]

> Well settled is the rule that where the accused had admitted that he is the author of the death of the victim and his defense anchored on self-defense, it is incumbent upon him to prove this justifying circumstance to the satisfaction of the court. To do so, he must rely on the strength of his own evidence and not on the weakness of the prosecution, for the accused himself had admitted the killing. **The burden is upon the accused to prove clearly and sufficiently the elements of self-defense, being an affirmative allegation, otherwise the conviction of the accused is inescapable**.[52] (Emphasis and underscoring supplied)

Therefore, due to the ostensible presence of the crime charged and considering that Dangupon's theories of self-defense/defense of a stranger and lawful performance of one's duty and the

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[48] See *People v. De Gracia, supra* note 42.

[49] See *Lacanilao v. CA, supra* note 44.

[50] See *People v. Spo2. Magnabe, Jr.*, 435 Phil. 374, 391 (2002).

[51] G.R. No. 57664, February 8, 1989, 170 SCRA 38.

[52] *Id.* at 42.

argument on presumption of innocence are, under the circumstances, not compelling enough to overcome a finding of probable cause, the Court finds that the DOJ gravely abused its discretion in dismissing the case against Dangupon. Consequently, the reversal of the CA ruling with respect to the latter is in order.

C. Existence of probable cause on the part of Fortuno and Abordo.

In similar regard, the Court also finds that grave abuse of discretion tainted the dismissal of the charges of murder against Fortuno and Abordo.

To elucidate, while petitioner has failed to detail the exact participation of Fortuno and Abordo in the death of Tetet, it must be noted that the peculiar nature of an extralegal killing negates the former an opportunity to proffer the same. It is of judicial notice that extralegal killings are ordinarily executed in a clandestine manner, and, as such, its commission is largely concealed from the public view of any witnesses. Notably, unlike in rape cases wherein the victim – albeit ravaged in the dark – may choose to testify, and whose testimony is, in turn, given great weight and credence sufficient enough for a conviction,[53] the victim of an extralegal killing is silenced by death and therefore, the actual participation of his assailants is hardly disclosed. As these legal realities generally mire extralegal killing cases, the Court observes that such cases should be resolved with a more circumspect analysis of the incidental factors surrounding the same, take for instance the actual or likely presence of the persons charged at the place and time when the killing was committed, the manner in which the victim was executed (of which the location of the place and the time in

[53] "Rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from prying eyes, and the crime usually commences solely upon the word of the offended woman herself and conviction invariably turns upon her credibility, as the prosecution's single witness of the actual occurrence." (*People v. Molleda*, 462 Phil. 461, 468 [2003].)

which the killing was done may be taken into consideration), or the possibility that the victim would have been easily overpowered by his assailants (of which the superior number of the persons detaining the victim and their ability to wield weapons may be taken into consideration).

In the present case, the existence of probable cause against Fortuno and Abordo is justified by the circumstances on record which, if threaded together, would lead a reasonably discreet and prudent man to believe that they were also probably guilty of the crime charged. These circumstances are as follows: (*a*) Fortuno and Abordo were with Dangupon during the time the latter killed Tetet[54] in an undisclosed place along the Viga River; (*b*) Tetet was apprehended, taken into custody and boarded on a military jeep by the group of armed elements of which Fortuno and Abordo belonged to;[55] (*c*) as earlier mentioned, Tetet was handcuffed[56] when he was boarded on the military jeep and, in effect, restrained of his movement when he supposedly stole the grenade from Abordo; and (*d*) also, as previously mentioned, Tetet suffered from lacerations and multiple gunshot wounds,[57] and that the shots causing the same were fired at a close distance.[58] Evidently, the confluence of the above-stated circumstances and legal realities point out to the presence of probable cause for the crime of murder against Fortuno and Abordo. Hence, the dismissal of the charges against them was – similar to Dangupon – improper. As such, the CA's ruling must also be reversed with respect to Fortuno and Abordo.

D. Lack of probable cause on the part of Villar, Lara, Acaylar, and Balicol.

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[54] *Rollo*, p. 96.

[55] *Id.* at 73.

[56] *Id.* at 41.

[57] See *id.* at 68.

[58] See *id.* at 67.

The Court, however, maintains a contrary view with respect to the determination of lack of probable cause on the part of Villar, Lara, Acaylar and Balicol.

Records are bereft of any showing that the aforementioned respondents – as opposed to Dangupon, Fortuno, and Abordo – directly participated in the killing of Tetet at the Viga River. As observed by the DOJ, Villar, Lara, Acaylar, and Balicol were not with Tetet at the time he was shot; thus, they could not have been responsible for his killing. Neither could they be said to have acted in conspiracy with the other respondents since it was not demonstrated how they concurred in or, in any way, participated towards the unified purpose of consummating the same act. It is well-settled that conspiracy exists when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed.[59] Therefore, finding no direct participation or conspiracy on the part of Villar, Lara, Acaylar, and Balicol, the Court holds that the DOJ did not gravely abuse its discretion in affirming the Provincial Prosecutor's dismissal of the charges against them. In this respect, the CA's Decision must stand.

As a final word, the Court can only bewail the loss of a family member through the unfortunate course of an extralegal killing. The historical prevalence of this deplorable practice has even led to the inception and eventual adoption of the Rules on *Amparo*[60] to better protect the sacrosanct right of every

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[59] *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 605.

[60] A historical exegesis of the present *Amparo* rules is found in the landmark case of *Secretary of National Defense v. Manalo* (G.R. No. 180906, October 7, 2008, 568 SCRA 1, 38-39), the pertinent portions of which read:

> On October 24, 2007, the Court promulgated the *Amparo* Rule "in light of the prevalence of extralegal killing and enforced disappearances." It was an exercise for the first time of the Court's expanded power to promulgate rules to protect our people's constitutional rights, which made its maiden appearance in the 1987 Constitution in response to the Filipino experience of the martial law regime. As the *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances,"

person to his life and liberty and not to be deprived of such without due process of law. Despite the poignancy natural to every case advanced as an extralegal killing, the Court, as in all courts of law, is mandated to operate on institutional impartiality – that is, its every ruling, notwithstanding the sensitivity of the issue involved, must be borne only out of the facts of the case and scrutinized under the lens of the law. It is pursuant to this overarching principle that the Court has dealt with the killing of Tetet and partly grants the present petition. In fine, the case against Dangupon, Fortuno, and Abordo must proceed and stand the muster of a criminal trial. On the other hand, the dismissal of the charges against Villar, Lara, Acaylar, and Balicol is sustained.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated June 30, 2011 of the Court of Appeals in CA-G.R. SP No. 110110 is **REVERSED** and **SET ASIDE**. The Resolution dated March 10, 2003 of the Provincial Prosecutor and the Resolution dated November 27, 2008 of the Department of Justice in I.S. No. 2002-414 are **NULLIFIED** insofar as respondents PO1 Leo T. Dangupon, 1st Lt. Philip Fortuno, and Cpl. Edilberto Abordo are concerned. Accordingly, the Department of Justice is **DIRECTED** to issue the proper resolution in order to charge the above-mentioned respondents in accordance with this Decision.

SO ORDERED.

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

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its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law."

SECOND DIVISION

[G.R. No. 203039. September 11, 2013]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS (BPI),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF JUDGMENTS; JUDGMENTS, FINAL ORDERS OR RESOLUTIONS SHALL BE SERVED EITHER PERSONALLY OR BY REGISTERED MAIL; PROOF OF SERVICE, REQUIRED; EFFECT OF ABSENCE THEREOF IN CASE AT BAR.— Section 9 of Rule 13 of the Rules of Court states that judgments, final orders or resolutions shall be served either personally or by registered mail. Section 13 of the same Rule provides what consists proof of service: x x x A careful review of the record shows the absence of any proof that the Decision of 25 November 1998 was served upon BPI. Hence, the Court of Appeals correctly held that absent any proof of service to BPI of the Decision, the period of 15 days within which to file its motion for partial new trial did not begin to run against BPI. However, BPI's admission that it received a copy of the Decision on 01 December 1998 is binding on it, and was correctly considered by the Court of Appeals as the reckoning date to count the 15-day period.

2. POLITICAL LAW; POWER OF THE STATE; EMINENT DOMAIN; THE STATE'S POWER OF EMINENT DOMAIN IS LIMITED BY THE CONSTITUTIONAL MANDATE THAT PRIVATE PROPERTY SHALL NOT BE TAKEN FOR PUBLIC USE WITHOUT DUE PROCESS.— Eminent domain is the authority and right of the State, as sovereign, to take private property for public use upon observance of due process of law and payment of just compensation. The State's power of eminent domain is limited by the constitutional mandate that private property shall not be taken for public use without just compensation.

3. ID.; ID.; ID.; JUST COMPENSATION; THE GENERAL RULE IS THAT THE JUST COMPENSATION TO WHICH THE OWNER OF THE CONDEMNED PROPERTY IS ENTITLED TO IS THE MARKET VALUE; MODIFICATION THEREOF, SUSTAINED.— Just compensation is the full and fair equivalent of the property sought to be expropriated. The general rule is that the just compensation to which the owner of the condemned property is entitled to is the market value. Market value is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be paid by the buyer and received by the seller. The general rule, however, is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property.

4. ID.; ID.; ID.; ID.; CONSEQUENTIAL DAMAGES; IF AS A RESULT OF THE EXPROPRIATION THE REMAINING PROPERTY OF THE OWNER SUFFERS FROM AN IMPAIRMENT OR DECREASE IN VALUE, THE RULES CLEARLY PROVIDE A LEGAL BASIS FOR THE AWARD OF CONSEQUENTIAL DAMAGES.— No actual taking of the building is necessary to grant consequential damages. Consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. The rules on expropriation clearly provide a legal basis for the award of consequential damages.

5. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS; THE UNIFORM FINDINGS OF THE TRIAL COURT AND THE APPELLATE COURT ARE ENTITLED TO THE GREATEST RESPECT.— The uniform findings of the trial court and the appellate court are entitled to the greatest respect. They are binding on the Court in the absence of a strong showing by petitioner that the courts below erred in appreciating the established facts and in drawing inferences from such facts.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Benedicto & Burkley Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] dated 14 September 2011 and Resolution[3] dated 06 August 2012 of the Court of Appeals in CA-G.R. CV No. 79843, affirming the Order[4] dated 03 February 2003 of the Regional Trial Court of Las Piñas City in Civil Case No. LP 98-0031.

The Antecedent Facts

On 12 February 1998, the Department of Public Works and Highways (DPWH) filed with the Regional Trial Court, National Capital Region, Las Piñas City, Branch 275 (trial court), a case for expropriation against portions of the properties of Bank of the Philippine Islands (BPI) and of Bayani Villanueva (Villanueva) situated in Pamplona, Las Piñas City. DPWH needed 281 square meters of BPI's lot covered by Transfer Certificate of Title (TCT) No. T-59156 and 177 square meters from Villanueva's lot covered by TCT No. T-64556 for the construction of the Zapote-Alabang Fly-Over.[5]

Neither BPI nor Villanueva objected to the propriety of the expropriation;[6] hence, the trial court constituted a Board of Commissioners to determine the just compensation.[7] In their Report dated 29 September 1998,[8] the Board of Commissioners

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[1] Under Rule 45 of the Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 41-52. Penned by Justice Edwin D. Sorongon with Justices Rosalinda Asuncion-Vicente and Jane Aurora C. Lantion.

[3] *Id.* at 54-56.

[4] Records, p. 324.

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

[6] *Id.* at 24.

[7] *Id.* at 50 and 62.

[8] *Id.* at 98-102.

recommended the amount of ₱40,000.00 per square meter as the fair market value. On 25 November 1998, the trial court in its Decision set the fair market value at ₱40,000.00 per square meter:[9]

> The property of BPI, which was affected, consists of 281 square meters and that of Defendant Villanueva consists of 177 square meters. Hence the amount to be awarded to the defendants shall be computed as follows:
>
> BPI – 281 sq. meters x ₱40,000.00 =
> ₱11,240,000.00; and
> Villanueva – 177 sq. meters x ₱40,000.00 =
> ₱7,080,000.00
>
> Considering that the plaintiff has deposited the amount of ₱632,250.00 with respect to the property of BPI, the latter should receive the amount of ₱10,607,750.00.
>
> With respect to Defendant Villanueva, the plaintiff deposited the provisional amount of ₱2,655,000.00, hence, the remaining amount to be paid is ₱4,425,000.00.
>
> WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the plaintiff Republic of the Philippines as represented by the Department of Public Works and Highways to pay defendant Bank of the Philippine Islands the amount of TEN MILLION SIX HUNDRED SEVEN THOUSAND AND SEVEN HUNDRED FIFTY PESOS (₱10,607,750.00) and Defendant Bayani Villanueva the amount of FOUR MILLION FOUR HUNDRED TWENTY FIVE THOUSAND (₱4,425,000.00), as just compensation for their properties which were expropriated.[10]

On 15 December 1998, the acting branch clerk of court issued a Certification[11] stating that:

> x x x the Decision in this case dated November 25, 1998 has become FINAL, EXECUTORY and UNAPPEALABLE as of December 11, 1998 considering that the Office of the Solicitor General failed to file any

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[9] *Id.* at 115-121.

[10] *Id.* at 120-121.

[11] *Id.* at 122.

Notice of Appeal or Motion for Reconsideration despite receipt of a copy thereof on November 26, 1998.

This certification is being issued upon the request of Atty. Jansen Rodriguez for whatever legal purpose it may serve.

Meanwhile, BPI filed on 16 December 1998 a Motion for Partial New Trial[12] to determine the just compensation of its building, which was not included in the Decision dated 25 November 1998 that fixed the just compensation for the parcels of land. In the motion, BPI claimed that its motion was timely filed since it received a copy of the Decision on 01 December 1998.[13] The trial court granted partial new trial in an Order dated 06 January 1999.

Due to the failure of counsel for petitioner, despite notice, to appear during the scheduled hearing for the determination of the just compensation of the building, the trial court allowed BPI to present its evidence *ex-parte*.[14] On 01 September 1999, the trial court admitted the exhibits presented by BPI.[15] On the same day, the trial court also appointed as commissioner the Officer-In-Charge of the trial court, Leticia B. Agbayani (Agbayani), and ordered her to conduct an ocular inspection of the building.[16] Agbayani reported the following findings:

a) That the undersigned found out that a new building was constructed and a picture of said building is hereto attached and made as an integral part hereof as Annex "A" and;

b) That the building was moved back when it was constructed to conform with the requirement of the Building Code; and

c) Improvements were introduced around the building.[17]

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[12] *Id.* at 127-130.

[13] *Id.* at 128.

[14] *Id.* at 150.

[15] *Id.* at 206.

[16] *Id.* at 205.

[17] *Id.* at 208. Manifestation dated 07 September 1999, submitted by Agbayani.

In its Decision dated 10 September 1999,[18] the trial court held that just compensation for the building was due and ordered petitioner to pay BPI the amount of ₱2,633,000.00. The dispositive portion of the Decision reads:

> WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the plaintiff Republic of the Philippines represented by the Department of Public Works and Highways to pay defendant Bank of the Philippine Island (sic) the amount of TWO MILLION SIX HUNDRED THIRTY THREE [THOUSAND] PESOS (PHP2,633,000.00).[19]

Petitioner moved for the reconsideration[20] of the 10 September 1999 Decision on the ground that the proceeding fixing the just compensation of the building is null and void for not complying with the mandatory procedure set forth in Sections 5 to 8 of Rule 67 of the Rules of Court.[21]

After due hearing, the trial court granted on 14 February 2000 petitioner's motion for reconsideration and ordered that the Decision dated 10 September 1999 be set aside and vacated.[22] From this order, BPI filed a motion for reconsideration,[23] on the ground that there was substantial compliance with the Rules. The trial court denied BPI's motion for reconsideration.[24]

On 19 September 2000, the trial court appointed Atty. Edgar Allan C. Morante, the branch clerk of court, as the chairman of the Board of Commissioners, and gave petitioner and BPI ten days to submit their respective nominees and their oaths of office.[25] On 28 September 2000, BPI nominated Roland Savellano (Savellano), and submitted his oath of office.[26]

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

[19] *Id.* at 212.

[20] *Id.* at 216-220.

[21] *Id.* at 218.

[22] *Id.* at 226.

[23] *Id.* at 227-231.

[24] *Id.* at 236.

[25] *Id.* at 244.

[26] *Id.* at 245-246.

Instead of submitting its nominee, petitioner filed on 13 October 2000 a Manifestation and Motion[27] objecting to the propriety of paying just compensation for BPI's building and praying that BPI's claim for additional just compensation be denied. Petitioner claimed that the building was never taken by the government.[28] In support, petitioner attached a letter dated 12 September 2000 from the DPWH, addressed to the Solicitor General. The letter states, in part:

> x x x the original plan affecting the subject property was not implemented. The width of the sidewalk at the premises under consideration was actually reduced from 2.50 m to 2.35 m x x x to avoid the costly structure of that bank.[29]

In its opposition,[30] BPI claimed that it was not aware that the original plan was not implemented. It received no correspondence from the DPWH on the matter, except for the letter dated 12 August 1997 from DPWH addressed to BPI, stating in part that:

> **We regret to inform you that adjustment of the RROW limit of our project along this section is not possible as it will affect the effective width of the sidewalk designated at 2.50 m. wide.**[31] (Emphasis in the original)

BPI also argued that even "if a 3-meter setback is observed, only 75% of the old building could be utilized x x x [and] cutting the support system of the building x x x would affect the building's structural integrity."[32]

On 07 May 2001, the trial court denied[33] petitioner's motion dated 09 October 2000, and ruled that the demolition of the old

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[27] *Id.* at 247-248.

[28] *Id.*

[29] *Id.* at 249.

[30] *Id.* at 253-255.

[31] *Id.* at 256.

[32] *Id.* at 254.

[33] *Id.* at 263-264.

building of BPI can be construed as a consequential damage suffered by BPI as a result of the expropriation. Petitioner was thus ordered to submit its nominee to the Board of Commissioners.

Petitioner nominated Romulo C. Gervacio (Gervacio), the Officer-In-Charge of the City Assessor's Office in Las Piñas City. The Board thus constituted, the trial court ordered the Commissioners to submit their recommendation.

Commissioner for BPI Savellano recommended the amount of ₱2,633,000.00, which was based on the appraisal conducted by an independent professional business and property consultant.[34] On the other hand, Commissioner for petitioner Gervacio recommended the amount of ₱1,905,600.00, which was the market value indicated on the tax declaration of said building. The Commissioner's Report[35] presented both the recommendations of Savellano and Gervacio for the trial court's consideration.

The Trial Court's Ruling

The trial court issued the Order[36] dated 03 February 2003, adopting the recommendation of Gervacio of ₱1,905,600.00, thus:

> The Court approves the Recommendation dated October 22, 2001 of ONE MILLION NINE HUNDRED FIVE THOUSAND SIX HUNDRED PESOS (₱1,905,600.00) by Commissioner ROMULO C. GERVACIO as the just compensation of the building of the Bank of the Philippine Islands (BPI) Zapote affected by the construction of the Zapote-Alabang Fly-over, it appearing that such amount is the existing market value of the property pursuant to the Declaration by BPI as the market value of the building affected by the project as contained in Tax Declaration D-006-02044.
>
> Let the same amount be paid by the Republic of the Philippines through the Department of Public Works and Highways as the just compensation for the property.[37]

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[34] *Id.* at 279.

[35] *Id.* at 322.

[36] *Id.* at 324.

[37] *Id.*

Petitioner filed an appeal with the Court of Appeals docketed as CA-G.R. CV No. 79843.[38]

The Court of Appeals' Ruling

On 14 September 2011, the Court of Appeals dismissed the appeal and affirmed the order of the trial court. The relevant portions of the decision state:

> We cannot sustain plaintiff-appellant's proposition that the decision dated November 25, 1998 has already attained finality there being no appeal filed within the reglementary period as provided in Section 3, Rule 41 of the 1997 Rules of Civil Procedure.
>
> Pursuant to Section 1, Rule 37 of the Rules of Civil Procedure, the period within which an aggrieved party may move the trial court to set aside the judgment or final order and file a motion for new trial is within the period to file an appeal, which is fifteen (15) days from receipt of the judgment or final order. It is explicit from the stated provision that the fifteen day period to file a motion for new trial will start to run from receipt of judgment or final order. A judgment, final order or resolution shall be served upon a party either personally or through registered mail. Moreover, Section 13 of Rule 13 of the Rules of Civil Procedure specifically provides for the proof of service of judgments, final orders or resolution x x x.
>
> x x x x x x x x x
>
> Guided by the foregoing provisions of law, the crucial fact in which the finality of the decision dated November 25, 1998 with respect to defendant-appellee, depends in the determination of the date of its receipt of the copy of the said decision in order to ascertain whether its motion for partial new trial was filed within the 15-day period allowed by law.
>
> In this case, records bear that a copy of the decision dated November 25, 1998, ordering the payment of just compensation for the expropriated land was received in behalf of defendant Bayani Villanueva on the same day of its promulgation. A copy of the said decision was also served upon plaintiff-appellant through the OSG on November 26, 1998. However, there is no showing, that defendant-appellee through its counsel received a copy of the trial court's

[38] CA *rollo*, pp. 40-50.

decision on a definite date. No official return nor affidavit of the party serving the decision was attached to the records of the case. Neither was the presence of a registry receipt issued by the mailing office nor a registry return card containing the date of receipt of the decision be found among its records. Since there was no showing as to the exact date of receipt of defendant-appellee of the said decision, the running of the period of 15 days within which to file a motion for new trial did not begin to run. **Therefore, the filing of defendant-appellee of a motion for partial new trial on December 16, 1998 was never delayed but timely filed thus preventing the decision dated November 25, 1998 from attaining finality as against them.** Moreover, We find **the admission of defendant-appellee in its brief filed on June 2, 2005, that it received a copy of the trial court's decision on December 1, 1998**, sufficient to comply with the requirement of a written admission of a party served with a judgment as provided in Sec. 13 of Rule 13, of the Rules of Civil Procedure. **It should also be noted that the certification issued by Edgar Allan C. Morante, the acting clerk of court, as to the finality of judgment as of December 11, 1998 will not stand against defendant-appellee because the 15-day period to file an appeal will only start to commence upon the receipt of the decision which is on December 1, 1998**. Counting the 15-day period from the first of December, the period within which to file an appeal will expire on December 16, 1998. Thus, the trial court did not err in granting the motion for partial new trial of the defendant-appellee as the same was amply filed with the reglementary period prescribed by law.

Having settled that the motion for partial new trial was timely filed, We now rule that the trial court did not lose its jurisdiction when it conducted subsequent proceedings determining just compensation and later on directed plaintiff-appellant to pay additional just compensation in the amount of ₱1,905,600.00 for the building of defendant-appellee.

Lastly, as to the argument of plaintiff-appellant that the award of additional just compensation for the building of defendant-appellee is erroneous and without legal basis because the building was never taken by the government in the expropriation proceeding conducted by the trial court nor was it affected by the construction of the Zapote-Alabang Flyover, We find the ruling of *Republic of the Philippines through the DPWH vs. CA and Rosario R. Reyes* appropriate to apply in this case, to wit:

Petitioner contends that no consequential damages may be awarded as the remaining lot was not "actually taken" by the DPWH, and to award consquential damages for the lot which was retained by the owner is tantamount to unjust enrichment on the part of the latter.

Petitioner's contention is unmeritorious.

No actual taking of the remaining portion of the real property is necessary to grant consequential damages. If as a result of the expropriation made by petitioner, the remaining lot (i.e., the 297-square meter lot) of private respondent suffers from an impairment or decrease in value, consequential damages may be awarded to private respondent.

WHEREFORE, in view of the foregoing considerations, the instant appeal is hereby **DISMISSED**. The assailed order of the Regional Trial Court of Las Piñas, Branch 275 dated February 3, 2003 is **AFFIRMED** *in toto*.[39] (Emphasis and underscoring supplied; italicization in the original.)

Petitioner filed a Motion for Reconsideration.[40] This was denied by the appellate court in a Resolution dated 06 August 2012.[41]

The Issues

The issues for our resolution are: (1) whether the trial court's Decision dated 25 November 1998 had become final and executory before BPI filed its motion for partial new trial; and (2) whether the award of additional just compensation for BPI's building in the amount fixed therefor is unfounded and without legal basis.

The Court's Ruling

We find the appeal unmeritorious.

On whether BPI's motion for partial new trial was filed out of time

[39] *Rollo*, pp. 48-51.

[40] *Id.* at 8-11.

[41] *Id.* at 54-56.

Petitioner contends that the trial court's Decision dated 25 November 1998 had already become final and executory as of 11 December 1998, as stated in the Certification[42] issued by the acting branch clerk of court. On the other hand, BPI asserts that its motion for partial new trial filed on 16 December 1998 was timely filed because it received a copy of the Decision on 01 December 1998.

Petitioner argues that the Court of Appeals erred in holding that the 25 November 1998 Decision did not become final and executory for BPI on 11 December 1998. It argues that the appellate court erred in reckoning the 15-day reglementary period from a mere admission of the date of receipt by BPI. Petitioner further argues that the Certification issued by the acting branch clerk of the trial court enjoys a presumption of regularity and that BPI had not been able to overcome the presumption. Both the trial and appellate courts found that BPI's motion for partial new trial was filed on time.

A perusal of the Certification reveals that it certifies that the 25 November 1998 Decision had already become final, executory and unappealable as to petitioner:

> x x x the Decision in this case dated November 25, 1998 has become FINAL, EXECUTORY and UNAPPEALABLE as of December 11, 1998 **considering that the Office of the Solicitor General failed to file any Notice of Appeal or Motion for Reconsideration despite receipt of a copy** thereof on November 26, 1998.
>
> This certification is being issued upon the request of Atty. Jansen Rodriguez for whatever legal purpose it may serve.[43] (Emphasis supplied)

There can be no other reading of this certificate that would be supported by the record.

Section 9 of Rule 13 of the Rules of Court states that judgments, final orders or resolutions shall be served either personally or by registered mail. Section 13 of the same Rule provides what consists proof of service:

[42] Records, p. 122.

[43] *Id.*

Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. x x x If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender x x x.

A careful review of the record shows the absence of any proof that the Decision of 25 November 1998 was served upon BPI. Hence, the Court of Appeals correctly held that absent any proof of service to BPI of the Decision, the period of 15 days within which to file its motion for partial new trial did not begin to run against BPI. However, BPI's admission that it received a copy of the Decision on 01 December 1998 is binding on it, and was correctly considered by the Court of Appeals as the reckoning date to count the 15-day period.

On whether the award of additional just compensation and the amount fixed therefor was unfounded and without legal basis

Eminent domain is the authority and right of the State, as sovereign, to take private property for public use upon observance of due process of law and payment of just compensation.[44] The State's power of eminent domain is limited by the constitutional mandate that private property shall not be taken for public use without just compensation.[45]

Just compensation is the full and fair equivalent of the property sought to be expropriated.[46] The general rule is that the just compensation to which the owner of the condemned property is entitled to is the market value.[47] Market value is that sum

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[44] *National Power Corporation v. Court of Appeals*, 479 Phil. 850, 860 (2004), citing *Visayan Refining Co. v. Camus*, 40 Phil. 550 (1919).

[45] Article III, Section 9 of the 1987 Philippine Constitution.

[46] *B.H. Berkenkotter & Co. v. Court of Appeals*, G.R. No. 89980, 14 December 1992, 216 SCRA 584, 586.

[47] *National Power Corporation v. Chiong*, 452 Phil. 649, 663 (2003).

of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be paid by the buyer and received by the seller. The general rule, however, is modified where only a part of a certain property is expropriated.[48] In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property.[49]

In this case, petitioner questions the appellate court's Decision affirming the trial court's Order of 03 February 2003 granting additional just compensation for consequential damages for BPI's building. Petitioner contends that BPI's building was "never taken" by petitioner, and that to award consequential damages for the building was unfounded and without legal basis. In support of its contention, petitioner relies on the letter dated 12 September 2000 of the DPWH to the Office of the Solicitor General[50] stating that the proposed sidewalk of 2.50 meters was reduced to 2.35 meters, thus leaving BPI's building intact.

Petitioner's argument is untenable.

No actual taking of the building is necessary to grant consequential damages. Consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value.[51] The rules on expropriation clearly provide a legal basis for the award of consequential damages. Section 6 of Rule 67 of the Rules of Court provides:

> x x x The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public

[48] *National Power Corporation v. Purefoods Corporation*, G.R. No. 160725, 12 September 2008, 565 SCRA 17, 33, citing *National Power Corporation v. Chiong*, 452 Phil. 649, 663-664 (2003).

[49] *Id.*

[50] Records, p. 249.

[51] *Republic of the Philippines v. Court of Appeals*, G.R. No. 160379, 14 August 2009, 596 SCRA 57, 75.

use or public purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

In *B.H. Berkenkotter & Co. v. Court of Appeals*,[52] we held that:

To determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.

We quote with approval the ruling of the Court of Appeals:

Lastly, as to the argument of plaintiff-appellant that the award of additional just compensation for the building of defendant-appellee is erroneous and without legal basis because the building was never taken by the government in the expropriation proceeding conducted by the trial court nor was it affected by the construction of the Zapote-Alabang Flyover, We find the ruling of *Republic of the Philippines through the DPWH vs. CA and Rosario R. Reyes* appropriate to apply in this case, to wit:

> *Petitioner contends that no consequential damages may be awarded as the remaining lot was not "actually taken" by the DPWH, and to award consquential damages for the lot which was retained by the owner is tantamount to unjust enrichment on the part of the latter.*
>
> *Petitioner's contention is unmeritorious.*
>
> *No actual taking of the remaining portion of the real property is necessary to grant consequential damages. If as a result of the expropriation made by petitioner, the remaining lot (i.e., the 297-square meter lot) of private respondent suffers*

[52] *Supra* note 46 at 586-587.

from an impairment or decrease in value, consquential damages may be awarded to private respondent.[53] (Italicization in the original)

Petitioner would also have us review the bases of the courts below in awarding just compensation for the building for consequential damages. The uniform findings of the trial court and the appellate court are entitled to the greatest respect. They are binding on the Court in the absence of a strong showing by petitioner that the courts below erred in appreciating the established facts and in drawing inferences from such facts.[54] We find no cogent reason to deviate from this.

The Court would like to stress that there is a stark absence in the records of any proof that DPWH communicated its amended plan to BPI or to the trial court. On the other hand, the trial court found that BPI was not notified of the reduction and had relied only on the DPWH letter dated **12 August 1997** saying that it was not possible to reduce the width of the sidewalk. Petitioner had actively participated in the expropriation proceedings of the portion of BPI's lot according to the original plan, the decision for which was promulgated on **25 November 1998**. The trial court had also ruled that additional just compensation for the building was in order in its Decision dated **10 September 1999**, from which petitioner moved for reconsideration but only as to the procedure in the determination of the amount. Further, the records show that by **07 September 1999**, when Officer-In-Charge Agbayani conducted an occular inspection, a new building had already been constructed replacing the old one; whereas the amended plan was communicated by DPWH to the OSG only in **September 2000**, when the trial court was constituting anew the Board of Commissioners to determine the amount of just compensation for the building. The findings of the lower courts are borne by the records.

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[53] *Rollo*, p. 50.

[54] *Republic of the Philippines v. Tan Song Bok*, G.R. No. 191448, 16 November 2011, 660 SCRA 330, 347, citing *Export Processing Zone Authority v. Pulido*, G.R. No. 188995, 24 August 2011, 656 SCRA 315.

Hence, there was proper basis for the determination of just compensation for the building for consequential damages.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Court of Appeals' Decision dated 14 September 2011 and Resolution dated 06 August 2012 in CA-G.R. CV No. 79843.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 204169. September 11, 2013]

YASUO IWASAWA, *petitioner, vs.* **FELISA CUSTODIO GANGAN**[1] **(*a.k.a.* FELISA GANGAN ARAMBULO, and FELISA GANGAN IWASAWA) and the LOCAL CIVIL REGISTRAR OF PASAY CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; PUBLIC DOCUMENTS; PUBLIC DOCUMENTS ARE ADMISSIBLE IN EVIDENCE EVEN WITHOUT FURTHER PROOF OF THEIR DUE EXECUTION AND GENUINENESS; APPLICATION IN CASE AT BAR.— There is no question that the documentary evidence submitted by petitioner are all public documents. x x x As public documents, they are admissible in evidence even without further proof of their due execution and genuineness. Thus, the RTC erred when it disregarded said documents on the sole ground that the petitioner did not present the records custodian of the NSO who issued them to testify

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[1] Also spelled as "Gañgan" in some parts of the records.

on their authenticity and due execution since proof of authenticity and due execution was not anymore necessary. Moreover, not only are said documents admissible, they deserve to be given evidentiary weight because they constitute *prima facie* evidence of the facts stated therein. And in the instant case, the facts stated therein remain unrebutted since neither the private respondent nor the public prosecutor presented evidence to the contrary.

2. CIVIL LAW; MARRIAGE; JUDICIAL DECLARATION OF NULLITY OF MARRIAGE IS REQUIRED BEFORE A VALID SUBSEQUENT MARRIAGE CAN BE CONTRACTED.— This Court has consistently held that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, which is void from the beginning as provided in Article 35(4) of the Family Code of the Philippines. And this is what transpired in the instant case. As correctly pointed out by the OSG, the documentary exhibits taken together concretely establish the nullity of the marriage of petitioner to private respondent on the ground that their marriage is bigamous.

APPEARANCES OF COUNSEL

Lorenzo U. Padilla for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the September 4, 2012 Decision[2] and October 16, 2012 Order[3] of the Regional Trial Court (RTC), Branch 43, of Manila in Civil Case No. 11-126203. The RTC denied the petition for declaration of nullity of the marriage of petitioner Yasuo Iwasawa

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[2] *Rollo*, pp. 38-40. Penned by Presiding Judge Roy G. Gironella.

[3] *Id.* at 41-42.

with private respondent Felisa Custodio Gangan due to insufficient evidence.

The antecedents follow:

Petitioner, a Japanese national, met private respondent sometime in 2002 in one of his visits to the Philippines. Private respondent introduced herself as "single" and "has never married before." Since then, the two became close to each other. Later that year, petitioner came back to the Philippines and married private respondent on November 28, 2002 in Pasay City. After the wedding, the couple resided in Japan.[4]

In July 2009, petitioner noticed his wife become depressed. Suspecting that something might have happened in the Philippines, he confronted his wife about it. To his shock, private respondent confessed to him that she received news that her previous husband passed away.[5]

Petitioner sought to confirm the truth of his wife's confession and discovered that indeed, she was married to one Raymond Maglonzo Arambulo and that their marriage took place on June 20, 1994.[6] This prompted petitioner to file a petition[7] for the declaration of his marriage to private respondent as null and void on the ground that their marriage is a bigamous one, based on Article 35(4) in relation to Article 41 of the Family Code of the Philippines.

During trial, aside from his testimony, petitioner also offered the following pieces of documentary evidence issued by the National Statistics Office (NSO):

(1) Certificate of Marriage[8] between petitioner and private respondent marked as Exhibit "A" to prove the fact of marriage between the parties on November 28, 2002;

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[4] *Id.* at 44.

[5] *Id.* at 45.

[6] *Id.*

[7] *Id.* at 43-47-A.

[8] *Id.* at 58.

(2) Certificate of Marriage[9] between private respondent and Raymond Maglonzo Arambulo marked as Exhibit "B" to prove the fact of marriage between the parties on June 20, 1994;

(3) Certificate of Death[10] of Raymond Maglonzo Arambulo marked as Exhibits "C" and "C-1" to prove the fact of the latter's death on July 14, 2009; and

(4) Certification[11] from the NSO to the effect that there are two entries of marriage recorded by the office pertaining to private respondent marked as Exhibit "D" to prove that private respondent in fact contracted two marriages, the first one was to a Raymond Maglonzo Arambulo on June 20, 1994, and second, to petitioner on November 28, 2002.

The prosecutor appearing on behalf of the Office of the Solicitor General (OSG) admitted the authenticity and due execution of the above documentary exhibits during pre-trial.[12]

On September 4, 2012, the RTC rendered the assailed decision. It ruled that there was insufficient evidence to prove private respondent's prior existing valid marriage to another man. It held that while petitioner offered the certificate of marriage of private respondent to Arambulo, it was only petitioner who testified about said marriage. The RTC ruled that petitioner's testimony is unreliable because he has no personal knowledge of private respondent's prior marriage nor of Arambulo's death which makes him a complete stranger to the marriage certificate between private respondent and Arambulo and the latter's death certificate. It further ruled that petitioner's testimony about the NSO certification is likewise unreliable since he is a stranger to the preparation of said document.

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[9] *Id.* at 59.

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

[11] *Id.* at 62.

[12] *Id.* at 52.

Petitioner filed a motion for reconsideration, but the same was denied by the RTC in an Order dated October 16, 2012.

Hence this petition raising the sole legal issue of whether the testimony of the NSO records custodian certifying the authenticity and due execution of the public documents issued by said office was necessary before they could be accorded evidentiary weight.

Petitioner argues that the documentary evidence he presented are public documents which are considered self-authenticating and thus it was unnecessary to call the NSO Records Custodian as witness. He cites Article 410 of the Civil Code which provides that books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts stated therein. Moreover, the trial prosecutor himself also admitted the authenticity of said documents.

The OSG, in its Comment,[13] submits that the findings of the RTC are not in accord with law and established jurisprudence. It contends that both Republic Act No. 3753, otherwise known as the Law on Registry of Civil Status, and the Civil Code elaborated on the character of documents arising from records and entries made by the civil registrar and categorically declared them as public documents. Being public documents, said documents are admissible in evidence even without further proof of their due execution and genuineness and consequently, there was no need for the court to require petitioner to present the records custodian or officer from the NSO to testify on them. The OSG further contends that public documents have probative value since they are *prima facie* evidence of the facts stated therein as provided in the above-quoted provision of the Civil Code. Thus, the OSG submits that the public documents presented by petitioner, considered together, completely establish the facts in issue.

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[13] *Id.* at 101-111.

In her letter[14] dated March 19, 2013 to this Court, private respondent indicated that she is not against her husband's petition to have their marriage declared null and void. She likewise admitted therein that she contracted marriage with Arambulo on June 20, 1994 and contracted a second marriage with petitioner on November 28, 2002. She further admitted that it was due to poverty and joblessness that she married petitioner without telling the latter that she was previously married. Private respondent also confirmed that it was when she found out that Arambulo passed away on July 14, 2009 that she had the guts to confess to petitioner about her previous marriage. Thereafter, she and petitioner have separated.

We grant the petition.

There is no question that the documentary evidence submitted by petitioner are all public documents. As provided in the Civil Code:

> ART. 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained.

As public documents, they are admissible in evidence even without further proof of their due execution and genuineness.[15] Thus, the RTC erred when it disregarded said documents on the sole ground that the petitioner did not present the records custodian of the NSO who issued them to testify on their authenticity and due execution since proof of authenticity and due execution was not anymore necessary. Moreover, not only are said documents admissible, they deserve to be given evidentiary weight because they constitute *prima facie* evidence of the facts stated therein. And in the instant case, the facts stated therein remain unrebutted since neither the private respondent nor the public prosecutor presented evidence to the contrary.

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[14] *Id.* at 99.

[15] *Salas v. Sta. Mesa Market Corporation*, 554 Phil. 343, 348 (2007). See also RULES OF COURT, Rule 132, Secs. 23, 24, 25, 27 and 30.

This Court has consistently held that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage,[16] which is void from the beginning as provided in Article 35(4) of the Family Code of the Philippines. And this is what transpired in the instant case.

As correctly pointed out by the OSG, the documentary exhibits taken together concretely establish the nullity of the marriage of petitioner to private respondent on the ground that their marriage is bigamous. The exhibits directly prove the following facts: (1) that private respondent married Arambulo on June 20, 1994 in the City of Manila; (2) that private respondent contracted a second marriage this time with petitioner on November 28, 2002 in Pasay City; (3) that there was no judicial declaration of nullity of the marriage of private respondent with Arambulo at the time she married petitioner; (3) that Arambulo died on July 14, 2009 and that it was only on said date that private respondent's marriage with Arambulo was deemed to have been dissolved; and (4) that the second marriage of private respondent to petitioner is bigamous, hence null and void, since the first marriage was still valid and subsisting when the second marriage was contracted.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The September 4, 2012 Decision and October 16, 2012 Order of the Regional Trial Court of Manila, Branch 43, in Civil Case No. 11-126203 are hereby **SET ASIDE**. The marriage of petitioner Yasuo Iwasawa and private respondent Felisa Custodio Gangan is declared **NULL and VOID.**

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[16] *Teves v. People*, G.R. No. 188775, August 24, 2011, 656 SCRA 307, 313-314, citing *Re: Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico*, A.M. No. 2008-20-SC, March 15, 2010, 615 SCRA 186, 198-199, further citing *Morigo v. People*, 466 Phil. 1013, 1024 (2004); *Domingo v. Court of Appeals*, G.R. No. 104818, September 17, 1993, 226 SCRA 572; *Terre v. Terre*, A.C. No. 2349, July 3, 1992, 211 SCRA 6; *Wiegel v. Sempio-Diy*, G.R. No. 53703, August 19, 1986, 143 SCRA 499; *Vda. De Consuegra v. Government Service Insurance System*, G.R. No. L-28093, January 30, 1971, 37 SCRA 315; *Gomez v. Lipana*, G.R. No. L-23214, June 30, 1970, 33 SCRA 615.

The Local Civil Registrar of Pasay City and the National Statistics Office are hereby **ORDERED** to make proper entries into the records of the abovementioned parties in accordance with this Decision.

No pronouncement as to costs.

SO ORDERED.

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

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the causes of action are between the same parties but pertain to different venues or jurisdiction, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and (4) where the claims in all the causes of action are principally for recovery of money the aggregate amount claimed shall be the test of jurisdiction. (Unicapital, Inc. *vs*. Consing, Jr., G.R. Nos. 175277 & 175285, Sept. 11, 2013) p. 689

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. (Plameras *vs*. People, G.R. No. 187268, Sept. 04, 2013) p. 303

— 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. *(Id.)*

— 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. *(Id.)*

— Manifest partiality exists when there is clear, notorious or plain inclination or predeliction to favor one side or person rather than another. *(Id.)*

a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation. *(Id.)*

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. (Heirs of Melencio Yu *vs*. CA, G.R. No. 182371, Sept. 04, 2013) p. 284

— Posting a bond is a condition sine qua non for the issuance of a corresponding writ. *(Id.)*

— Will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law. *(Id.)*

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. (Aguilar *vs*. Dep't. of Justice, G.R. No. 197522, Sept. 11, 2013) p. 789

(Punzalan *vs*. Plata, G.R. No. 160316, Sept. 02, 2013) p. 21

— 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. (Aguilar *vs*. Dep't. of Justice, G.R. No. 197522, Sept. 11, 2013) p. 789

PRESCRIPTION OF ACTIONS

Actions based on written contract — Must be brought within ten (10) years from the time the right of action accrues.

— On the prescriptive period to enforce any liability created under the Code, it refers only to the civil liability in cases of violations of the Code. *(Id.)*

SELF-DEFENSE

As a justifying circumstance — The burden is upon the accused to prove clearly and sufficiently the elements of self-defense. (Aguilar *vs*. Dep't. of Justice, G.R. No. 197522, Sept. 11, 2013) p. 789

SHERIFFS

Duties of — A sheriff has the duty to perform faithfully and accurately what is incumbent upon him, hence, he exercises no discretion as to the manner of executing a final judgment. (Office of the Court Administrator *vs*. Macusi, Jr., A.M. No. P-13-3105, Sept. 11, 2013) p. 562

— Difficulties or obstacles in satisfaction of a final judgment and execution of a writ will not excuse the sheriff from total inaction. *(Id.)*

— In executing a writ, he must observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor. *(Id.)*

— Sheriffs and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish the faith of the people in the judiciary. *(Id.)*

— Sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties; neither will the parties' acquiescence or consent to expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense. *(Id.)*

— Not every witness to or victim of a crime can be expected to act reasonably and conformably to the usual expectations of every one for people may react differently to the same situation. *(Id.)*

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