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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 169588. October 7, 2013]

JADEWELL PARKING SYSTEMS CORPORATION represented by its manager and authorized representative Norma Tan, *petitioner, vs.* **HON. JUDGE NELSON F. LIDUA SR., Presiding Judge of the Municipal Trial Court Branch 3, Baguio City, BENEDICTO BALAJADIA, EDWIN ANG, "JOHN DOES" and "PETER DOES",** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; ACT NO. 3326, AS AMENDED, ON PRESCRIPTIVE PERIOD FOR VIOLATION OF SPECIAL LAWS AND MUNICIPAL ORDINANCES; PARAMETERS OF PRESCRIPTION.— The resolution of this case requires an examination of both the substantive law and the procedural rules governing the prosecution of the offense. With regard to the prescription period, Act No. 3326, as amended, is the only statute that provides for any prescriptive period for the violation of special laws and municipal ordinances. No other special law provides any other prescriptive period, and the law does not provide any other distinction. Petitioner may not argue that Act No. 3326 as amended does not apply. In *Romualdez v. Hon. Marcelo*, this Court defined the parameters of prescription: [I]n resolving

the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.

2. CRIMINAL LAW; PRESCRIPTION OF OFFENSES; COMPUTATION.— The commencement of the prescription period is also governed by statute. Article 91 of the Revised Penal Code reads: Art. 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.

3. REMEDIAL LAW; RULES ON SUMMARY PROCEDURE; INCLUDES VIOLATION OF CITY ORDINANCES WHICH IN CHARTERED CITIES, SHALL BE COMMENCED ONLY BY "INFORMATION" AND THUS, EFFECTIVELY TOLLS THE PRESCRIPTIVE PERIOD; ELUCIDATED.— The procedural rules that govern this case are the 1991 Revised Rules on Summary Procedure. **SECTION 1.** Scope – This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction: x x x **B. Criminal Cases:** (1) Violations of traffic laws, rules and regulations; (2) Violations of the rental law; (3) Violations of municipal or **city ordinances.** Section 11 of the Rules provides that: **Sec. 11. How commenced.** — The filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: **Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de oficio*.** x x x As provided in the Revised Rules on Summary Procedure, only the filing of an Information tolls the prescriptive period where the crime charged is involved in an ordinance. x x x Jurisprudence exists showing that when the Complaint is filed with the Office of the Prosecutor who then files the Information

in court, this already has the effect of tolling the prescription period. x x x There is no distinction between the filing of the Information contemplated in the Rules of Criminal Procedure and in the Rules of Summary Procedure. When the representatives of the petitioner filed the Complaint before the Provincial Prosecutor of Baguio, the prescription period was running. It continued to run until the filing of the Information.

4. POLITICAL LAW; LOCAL GOVERNMENT CODE; CLASSIFICATION OF CITIES.— The Local Government Code provides for the classification of cities. Section 451 reads: SEC. 451. *Cities, Classified.* — A city may either be component or highly urbanized: *Provided, however*, that the criteria established in this Code shall not affect the classification and corporate status of existing cities. Independent component cities are those component cities whose charters prohibit their voters from voting for provincial elective officials. Independent component cities shall be independent of the province. Cities in the Philippines that were created by law can either be highly urbanized cities or component cities. An independent component city has a charter that proscribes its voters from voting for provincial elective officials. It stands that all cities as defined by Congress are chartered cities.

APPEARANCES OF COUNSEL

Balgos & Perez Law Offices for petitioner.
Paterno Aquino for respondents.

D E C I S I O N

LEONEN, *J.*:

We are asked to rule on this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the assailed Decision of Branch 7 of the Regional Trial Court of Baguio City and Order dated August 15, 2005 be reversed and that Criminal Case Nos. 112934 and 112935 be ordered reinstated and prosecuted before the Municipal Trial Court of Baguio City.

Petitioner Jadewell Parking Systems Corporation is a private parking operator duly authorized to operate and manage the parking spaces in Baguio City pursuant to City Ordinance 003-2000. It is also authorized under Section 13 of the City Ordinance to render any motor vehicle immobile by placing its wheels in a clamp if the vehicle is illegally parked.[1]

According to the Resolution of the Office of the Provincial Prosecutor, San Fernando City, La Union, the facts leading to the filing of the Informations are the following:

> Jadewell Parking Systems Corporation (Jadewell), thru [sic] its General Manager Norma Tan and Jadewell personnel Januario S. Ulpindo and Renato B. Dulay alleged in their affidavit-complaint that on May 17, 2003, the respondents in I.S No. 2003-1996 Edwin Ang, Benedicto Balajadia and John Doe dismantled, took and carried away the clamp attached to the left front wheel of a Mitsubishi Adventure with Plate No. WRK 624 owned by Edwin Ang. Accordingly, the car was then illegally parked and [left] unattended at a Loading and Unloading Zone. The value of the clamp belonging to Jadewell which was allegedly forcibly removed with a piece of metal is ₱26,250.00. The fines of ₱500.00 for illegal parking and the declamping fee of ₱500.00 were also not paid by the respondents herein.
>
> In I.S. No., 2003-1997, Jadewell thru [sic] its General Manager Norina C. Tan, Renato B. Dulay and Ringo Sacliwan alleged in their affidavit-complaint that on May 7, 2003, along Upper Mabini Street, Baguio City, herein respondents Benedicto Balajadia, Jeffrey Walan and two (2) John Does forcibly removed the clamp on the wheel of a Nissan Cefiro car with Plate No. UTD 933, belonging to Jeffrey Walan which was then considered illegally parked for failure to pay the prescribed parking fee. Such car was earlier rendered immobile by such clamp by Jadewell personnel. After forcibly removing the clamp, respondents took and carried it away depriving its owner, Jadewell[,] its use and value which is ₱26,250.00. According to complainants, the fine of ₱500.00 and the declamping fee of ₱500.00 were not paid by the respondents.[2]

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[1] Baguio City Ordinance Numbered 003, Series of 2000, Sec. 13.

[2] *Rollo*, p. 34.

The incident resulted in two cases filed by petitioner and respondents against each other. Petitioner Jadewell filed two cases against respondents: Robbery under I.S. Nos. 2003-1996 and 2003-1997. Petitioner filed an Affidavit-Complaint against respondents Benedicto Balajadia, Jeffrey Walan, and three (3) John Does, one of whom was eventually identified as respondent Ramon Ang. The Affidavit-Complaint was filed with the Office of the City Prosecutor of Baguio City on May 23, 2003.[3] A preliminary investigation took place on May 28, 2003. Respondent Benedicto Balajadia likewise filed a case charging Jadewell president, Rogelio Tan, and four (4) of Jadewell's employees with Usurpation of Authority/Grave Coercion in I.S. No. 2003-1935.

In his Counter-affidavit for the two cases he filed for himself and on behalf of his co-respondents, respondent Benedicto Balajadia denied that his car was parked illegally. He admitted that he removed the clamp restricting the wheel of his car since he alleged that the placing of a clamp on the wheel of the vehicle was an illegal act. He alleged further that he removed the clamp not to steal it but to remove the vehicle from its clamp so that he and his family could continue using the car. He also confirmed that he had the clamp with him, and he intended to use it as a piece of evidence to support the Complaint he filed against Jadewell.[4]

In the Resolution[5] of the Office of the Provincial Prosecutor of San Fernando City, La Union, Acting City Prosecutor Mario Anacleto Banez found probable cause to file a case of Usurpation of Authority against the petitioner. Regarding the case of Robbery against respondents, Prosecutor Banez stated that:

> We find no probable cause to charge respondents in these two (2) cases for the felony of Robbery. The elements of Robbery, specifically the intent to gain and force upon things are absent in the instant cases, thereby negating the existence of the crime.

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[3] *Id.* at 21-24.

[4] *Id.* at 34.

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

x x x x x x x x x

We, however, respectfully submit that the acts of respondents in removing the wheel clamps on the wheels of the cars involved in these cases and their failure to pay the prescribed fees were in violation of Sec. 21 of Baguio City Ordinance No. 003-2000 which prescribes fines and penalties for violations of the provisions of such ordinance. Certainly, they should not have put the law into their own hands. (Emphasis supplied)

WHEREFORE, premises considered, there is probable cause against all the respondents, except Jeffrey Walan or Joseph Walan (who has been dragged into this controversy only by virtue of the fact that he was still the registered owner of the Nissan Cefiro car) for violation of Section 21 of City Ord. No. 003-2000 in both cases and we hereby file the corresponding informations against them in Court.[6]

Prosecutor Banez issued this Resolution on July 25, 2003.

On October 2, 2003, two criminal Informations were filed with the Municipal Trial Court of Baguio City dated July 25, 2003, stating:

That on May 17, 2003 at Baguio City and within the jurisdiction of this Honorable Court, the above-named accused with unity of action and concerted design, did then and there, with unity of action and concerted design, willfully, unlawfully and feloniously forcibly dismantled [sic] and took [sic] an immobilizing clamp then attached to the left front wheel of a Mitsubishi Adventure vehicle with Plate No. WRK 624 belonging to Edwin Ang which was earlier rendered immobilized by such clamp by Jadewell Personnel's for violation of the Baguio City ordinance No. 003-2600 to the damage and prejudice of private complainant Jadewell Parking System Corporation (Jadewell) which owns such clamp worth ₱26,250.00 and other consequential damages.

CONTRARY TO LAW.

San Fernando City, La Union for Baguio City, this 25th day of July 2003.[7]

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[6] *Id.* at 34-35.

[7] *Id.* at 37.

The cases were docketed as Criminal Case Nos. 112934 and 112935 with the Municipal Trial Court of Baguio City, Branch 3. Respondent Benedicto Balajadia and the other accused through their counsel Paterno Aquino filed a January 20, 2004 Motion to Quash and/or Manifestation[8] on February 2, 2004. The Motion to Quash and/or Manifestation sought the quashal of the two Informations on the following grounds: extinguishment of criminal action or liability due to prescription; failure of the Information to state facts that charged an offense; and the imposition of charges on respondents with more than one offense.

In their Motion to Quash, respondents argued that:

1. The accused in this case are charged with violation of Baguio City Ordinance No. 003-2000.

2. Article 89 of the Revised Penal [sic] provides that criminal liability is totally extinguished by prescription of the crime.

3. Act No. 3326, as amended by Act No. 3763, provides:

"Section 1. x x x Violations penalized by municipal ordinances shall prescribed [sic] after two months."

4. As alleged in the Information, the offense charged in this case was committed on May 7, 2003.

5. As can be seen from the right hand corner of the Information, the latter was filed with this Honorable Court on October 2, 2003, almost five (5) months after the alleged commission of the offense charged. Hence, criminal liability of the accused in this case, if any, was already extinguished by prescription when the Information was filed.[9]

In an Order[10] dated February 10, 2004, respondent Judge Nelson F. Lidua, Sr., Presiding Judge of the Municipal Trial Court of Baguio City, Branch 3, granted the accused's Motion to Quash and dismissed the cases.

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[8] *Id.* at 38.

[9] *Id.* at 39.

[10] *Id.* at 43.

Petitioner filed a Motion for Reconsideration on February 27, 2004 responding to the February 10, 2004 Order[11] to argue among other points that:

6.b. For another, the offenses charged have not yet prescribed. Under the law, the period of prescription of offenses shall be interrupted by the filing of the complaint or information. While it may be true that the **Informations** in these cases have been filed only on October 2, 2003, the private complainant has, however, filed its criminal complaint on May 23, 2003, well within the prescribed period.[12]

Respondents filed their Opposition[13] on March 24, 2004, and petitioner filed a Reply[14] on April 1, 2004.

The respondent judge released a Resolution[15] dated April 16, 2004 upholding the Order granting respondents' Motion to Quash. The Resolution held that:

For the guidance of the parties, the Court will make an extended resolution on one of the ground [sic] for the motion to quash, which is that the criminal action has been extinguished on grounds of prescription.

These offenses are covered by the Rules on Summary Procedure being alleged violations of City Ordinances.

Under Section 9 of the Rule [sic] on Summary Procedure, the running of the prescriptive period shall be halted on the date the case is filed in Court and not on any date before that (**Zaldivia *vs.* Reyes, Jr.** G.R. No. 102342, July 3, 1992, *En Banc*).

In case of conflict, the Rule on Summary Procedure as the special law prevails over Sec. 1 of Rule 110 of the Rules on Criminal Procedure and also Rule 110 of the Rules of Criminal Procedure must yield to Act No. 3326 or "AN ACT TO ESTABLISH PERIODS OF

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[11] *Id.* at 44.

[12] *Id.* at 46.

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

[14] *Id.* at 50-52.

[15] *Id.* at 53-54.

PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN" (*Ibid.*).

Petitioner then filed a Petition[16] for *Certiorari* under Rule 65 with the Regional Trial Court of Baguio City. The case was raffled to Branch 7 of the Regional Trial Court of Baguio City. Petitioners contended that the respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing Criminal Case Nos. 112934 and 112935 on the ground of prescription. Petitioners argued that the respondent judge ruled erroneously saying that the prescriptive period for the offenses charged against the private respondents was halted by the filing of the Complaint/Information in court and not when the Affidavit-Complaints were filed with the Office of the City Prosecutor of Baguio City. Petitioner cited Section 1 of Rule 110 of the Rules on Criminal Procedure:

> x x x "[c]riminal actions shall be instituted x x x [i]n x x x other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charter" and the last paragraph thereof states that "[t]he institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws."[17]

Petitioner contended further that:

> [the] filing of the criminal complaint with the Office of the City Prosecutor of Baguio City, not the filing of the criminal information before this Honorable Court, is the reckoning point in determining whether or not the criminal action in these cases had prescribed.
>
> x x x x x x x x x
>
> The offenses charged in Criminal Case Nos. 112934 and 112935 are covered by the Revised Rules on Summary Procedure, not by the old Rules on Summary Procedure. Considering that the offenses charged are for violations of a City Ordinance, the criminal cases can only be commenced by informations. Thus, it was only legally

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[16] *Id.* at 55-63. The Petition was dated June 18, 2004.

[17] *Id.* at 59.

and procedurally proper for the petitioner to file its complaint with the Office of the City Prosecutor of Baguio City as required by Section 11 of the new Rules on Summary Procedure, these criminal cases "shall be commenced only by information." These criminal cases cannot be commenced in any other way.

Moreover, the ruling of the Supreme Court in **Zaldivia *vs.* Reyes** cited in the assailed Resolution does not apply in this case. The offense charged in **Zaldivia** is [a] violation of **municipal** ordinance in which case, the complaint should have been filed directly in court as required by Section 9 of the old Rules on Summary Procedure. On the other hand, Criminal Case Nos. 112934 and 112935 are for violations of a **city** ordinance and as aforestated, "shall be commenced only by information."[18]

Thus, petitioner contended that the filing of the criminal complaint with the Office of the City Prosecutor stopped the running of the two-month prescriptive period. Hence, the offenses charged have not prescribed.

In their Comment,[19] respondents maintained that the respondent judge did not gravely abuse his discretion. They held that Section 2 of Act No. 3326, as amended, provides that:

Sec. 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 proceeding 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 jeopardy.[20] (Emphasis supplied)

Respondents argued that *Zaldivia v. Reyes*[21] held that the proceedings mentioned in Section 2 of Act No. 3326, as amended,

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[18] *Id.* at 59 and 60.

[19] *Id.* at 64.

[20] *Id.* at 65 citing Act No. 3326.

[21] G.R. No. 102342, July 3, 1992, 211 SCRA 277.

refer to **judicial proceedings**. Thus, this Court, in *Zaldivia*, held that the filing of the Complaint with the Office of the Provincial Prosecutor was not a judicial proceeding. The prescriptive period commenced from the alleged date of the commission of the crime on May 7, 2003 and ended two months after on July 7, 2003. Since the Informations were filed with the Municipal Trial Court on October 2, 2003, the respondent judge did not abuse its discretion in dismissing Criminal Case Nos. 112934 and 112935.

In a Decision dated April 20, 2005, the Regional Trial Court of Baguio City Branch 7, through Judge Clarence F. Villanueva, dismissed the Petition for *Certiorari*. The Regional Trial Court held that, since cases of city ordinance violations may only be commenced by the filing of an Information, then the two-month prescription period may only be interrupted by the filing of Informations (for violation of City Ordinance 003-2000) against the respondents in court. The Regional Trial Court of Baguio City, Branch 7, ruled in favor of the respondents and upheld the respondent judge's Order dated February 10, 2004 and the Resolution dated April 16, 2004.

Petitioners then filed a May 17, 2005 Motion for Reconsideration which was denied by the Regional Trial Court in an August 15, 2005 Order.

Hence, this Petition.

The principal question in this case is whether the filing of the Complaint with the Office of the City Prosecutor on May 23, 2003 tolled the prescription period of the commission of the offense charged against respondents Balajadia, Ang, "John Does," and "Peter Does."

Petitioner contends that the prescription period of the offense in Act No. 3326, as amended by Act No. 3763, does not apply because respondents were charged with the violation of a city ordinance and not a municipal ordinance. In any case, assuming *arguendo* that the prescriptive period is indeed two months, filing a Complaint with the Office of the City Prosecutor tolled the prescription period of two months. This is because Rule 110

of the Rules of Court provides that, in Manila and in other chartered cities, the Complaint shall be filed with the Office of the Prosecutor unless otherwise provided in their charters.

In their Comment,[22] respondents maintain that respondent Judge Lidua did not err in dismissing the cases based on prescription. Also, respondents raise that the other grounds for dismissal they raised in their Motion to Quash, namely, that the facts charged constituted no offense and that respondents were charged with more than one offense, were sustained by the Metropolitan Trial Court. Also, respondents argue that petitioner had no legal personality to assail the Orders, since Jadewell was not assailing the civil liability of the case but the assailed Order and Resolution. This was contrary to the ruling in *People v. Judge Santiago*[23] which held that the private complainant may only appeal the civil aspect of the criminal offense and not the crime itself.

In the Reply,[24] petitioner argues that the respondent judge only dismissed the case on the ground of prescription, since the Resolution dated April 16, 2004 only cited that ground. The Order dated February 10, 2004 merely stated but did not specify the grounds on which the cases were dismissed. Petitioner also maintains that the proceedings contemplated in Section 2 of Act No. 3326 must include the preliminary investigation proceedings before the National Prosecution Service in light of the Rules on Criminal Procedure[25] and Revised Rules on Summary Procedure.

Lastly, petitioner maintains that it did have legal personality, since in a Petition for *Certiorari*, "persons aggrieved x x x may file a verified petition"[26] before the court.

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[22] *Rollo*, p. 92.

[23] 255 Phil. 851 (1989).

[24] *Rollo*, p. 100.

[25] A.M. No. 00-5-03-SC, effective December 1, 2000.

[26] Rules of Civil Procedure (1997), Rule 65, Sec. 1.

The Petition is denied.

The resolution of this case requires an examination of both the substantive law and the procedural rules governing the prosecution of the offense. With regard to the prescription period, Act No. 3326, as amended, is the only statute that provides for any prescriptive period for the violation of special laws and municipal ordinances. No other special law provides any other prescriptive period, and the law does not provide any other distinction. Petitioner may not argue that Act No. 3326 as amended does not apply.

In *Romualdez v. Hon. Marcelo*,[27] this Court defined the parameters of prescription:

> [I]n resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[28] (Citation omitted)

With regard to the period of prescription, it is now without question that it is two months for the offense charged under City Ordinance 003-2000.

The commencement of the prescription period is also governed by statute. Article 91 of the Revised Penal Code reads:

> Art. 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 offense was committed on May 7, 2003 and was discovered by the attendants of the petitioner on the same day. These actions effectively commenced the running of the prescription period.

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[27] 507 Phil. 727 (2005).

[28] *Id.* at 741.

The procedural rules that govern this case are the 1991 Revised Rules on Summary Procedure.

SECTION 1. Scope – This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:

x x x x x x x x x

B. Criminal Cases:

(1) Violations of traffic laws, rules and regulations;
(2) Violations of the rental law;
(3) Violations of municipal or **city ordinances**
(Emphasis supplied)

Section 11 of the Rules provides that:

Sec. 11. How commenced. — The filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: **Provided, however, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de oficio*.**

The Local Government Code provides for the classification of cities. Section 451 reads:

SEC. 451. *Cities, Classified.* — A city may either be component or highly urbanized: *Provided, however*, that the criteria established in this Code shall not affect the classification and corporate status of existing cities. Independent component cities are those component cities whose charters prohibit their voters from voting for provincial elective officials. Independent component cities shall be independent of the province.

Cities in the Philippines that were created by law can either be highly urbanized cities or component cities. An independent component city has a charter that proscribes its voters from voting for provincial elective officials. It stands that all cities as defined by Congress are chartered cities. In cases as early

as *United States v. Pascual Pacis,*[29] this Court recognized the validity of the Baguio Incorporation Act or Act No. 1963 of 1909, otherwise known as the charter of Baguio City.

As provided in the Revised Rules on Summary Procedure, only the filing of an Information tolls the prescriptive period where the crime charged is involved in an ordinance. The respondent judge was correct when he applied the rule in *Zaldivia v. Reyes*.

In *Zaldivia v. Reyes,* the violation of a municipal ordinance in Rodriguez, Rizal also featured similar facts and issues with the present case. In that case, the offense was committed on May 11, 1990. The Complaint was received on May 30, 1990, and the Information was filed with the Metropolitan Trial Court of Rodriguez on October 2, 1990. This Court ruled that:

> As it is clearly provided in the Rule on Summary Procedure that among the offenses it covers are violations of municipal or city ordinances, it should follow that the charge against the petitioner, which is for violation of a municipal ordinance of Rodriguez, is governed by that rule and not Section 1 of Rule 110.
>
> Where paragraph (b) of the section does speak of "offenses falling under the jurisdiction of the Municipal Trial Courts and Municipal Circuit Trial Courts," the obvious reference is to Section 32(2) of B.P. No. 129, vesting in such courts:
>
> > (2) Exclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than four thousand pesos, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof; Provided, however, That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction where the imposable fine does not exceed twenty thousand pesos.
>
> These offenses are not covered by the Rules on Summary Procedure.

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[29] 31 Phil. 524 (1915).

Under Section 9 of the Rules on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.

This interpretation is in consonance with the afore-quoted Act No. 3326 which says that the period of prescription shall be suspended "when proceedings are instituted against the guilty party." The proceedings referred to in Section 2 thereof are "judicial proceedings," contrary to the submission of the Solicitor General that they include administrative proceedings. His contention is that we must not distinguish as the law does not distinguish. As a matter of fact, it does.

At any rate, the Court feels that if there be a conflict between the Rule on Summary Procedure and Section 1 of Rule 110 of the Rules on Criminal Procedure, the former should prevail as the special law. And if there be a conflict between Act No. 3326 and Rule 110 of the Rules on Criminal Procedure, the latter must again yield because this Court, in the exercise of its rule-making power, is not allowed to "diminish, increase or modify substantive rights" under Article VIII, Section 5(5) of the Constitution. Prescription in criminal cases is a substantive right.[30]

Jurisprudence exists showing that when the Complaint is filed with the Office of the Prosecutor who then files the Information in court, this already has the effect of tolling the prescription period. The recent *People v. Pangilinan*[31] categorically stated that *Zaldivia v. Reyes* is not controlling as far as special laws are concerned. *Pangilinan* referred to other cases that upheld this principle as well. However, the doctrine of *Pangilinan* pertains to violations of special laws but *not* to ordinances.

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[30] *Zaldivia v. Reyes*, *supra* note 21, at 282-284.

[31] G.R. No. 152662, June 13, 2012, 672 SCRA 105.

There is no distinction between the filing of the Information contemplated in the Rules of Criminal Procedure and in the Rules of Summary Procedure. When the representatives of the petitioner filed the Complaint before the Provincial Prosecutor of Baguio, the prescription period was running. It continued to run until the filing of the Information. They had two months to file the Information and institute the judicial proceedings by filing the Information with the Municipal Trial Court. The conduct of the preliminary investigation, the original charge of Robbery, and the subsequent finding of the violation of the ordinance did not alter the period within which to file the Information. Respondents were correct in arguing that the petitioner only had two months from the discovery and commission of the offense before it prescribed within which to file the Information with the Municipal Trial Court.

Unfortunately, when the Office of the Prosecutor filed the Informations on October 5, 2003, the period had already prescribed. Thus, respondent Judge Nestor Lidua, Sr. did not err when he ordered the dismissal of the case against respondents. According to the Department of Justice – National Prosecutors Service Manual for Prosecutors, an Information is defined under Part I, Section 5 as:

SEC. 5. Information. — An information is the accusation in writing charging a person with an offense, subscribed by the prosecutor, and filed with the court. The information need not be placed under oath by the prosecutor signing the same.

The prosecutor must, however, certify under oath that —

a) he has examined the complainant and his witnesses;

b) there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof;

c) the accused was informed of the complaint and of the evidence submitted against him; and

d) the accused was given an opportunity to submit controverting evidence.

As for the place of the filing of the Information, the Manual also provides that:

SEC. 12. Place of the commission of offense. — The complaint or information is sufficient if it states that the crime charged was committed or some of the ingredients thereof occurred at some place within the jurisdiction of the court, unless the particular place in which the crime was committed is an essential element of the crime [,] *e.g.* in a prosecution for violation of the provision of the Election Code which punishes the carrying of a deadly weapon in a "polling place," or if it is necessary to identify the offense charged [,] *e.g.*, the domicile in the offense of "violation of domicile."

Finally, as for the prescription period, the Manual provides that:

SEC. 20. How Period of Prescription Computed and Interrupted. - For an offense penalized under the Revised Penal Code, the period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted:

a) by the filing of the complaint with the Office of the City/ Provincial Prosecutor; or wit[h] the Office of the Ombudsman; or

b) by the filing of the complaint or information with the court even if it is merely for purposes of preliminary examination or investigation, or even if the court where the complaint or information is filed cannot try the case on its merits.

However, for an offense covered by the Rules on Summary Procedure, the period of prescription is interrupted only by the filing of the complaint or information in court.

x x x x x x x x x

For violation of a special law or ordinance, the period of prescription shall commence to run from the day of the commission of the violation, and if the same is not known at the time, from the discovery and the institution of judicial proceedings for its investigation and punishment. The prescription shall be interrupted only by the filing of the complaint or information in court and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy. (Emphasis supplied).

Presidential Decree No. 1275[32] reorganized the Department of Justice's Prosecution Staff and established Regional State Prosecution Offices. These Regional State Prosecution Offices were assigned centers for particular regions where the Informations will be filed. Section 6 provides that the area of responsibility of the Region 1 Center located in San Fernando, La Union includes Abra, Benguet, Ilocos Norte, Ilocos Sur, La Union, Mt. Province, Pangasinan, and the cities of Baguio, Dagupan, Laoag, and San Carlos.

The Regional Prosecutor for Region 1 or his/her duly assigned prosecutor was designated to file the Information within the two-month period provided for in Act No. 3326, as amended.

The failure of the prosecutor to seasonably file the Information is unfortunate as it resulted in the dismissal of the case against the private respondents. It stands that the doctrine of *Zaldivia* is applicable to ordinances and their prescription period. It also upholds the necessity of filing the Information in court in order to toll the period. *Zaldivia* also has this to say concerning the effects of its ruling:

> The Court realizes that under the above interpretation, a crime may prescribe even if the complaint is filed seasonably with the prosecutor's office if, intentionally or not, he delays the institution of the necessary judicial proceedings until it is too late. However, that possibility should not justify a misreading of the applicable rules beyond their obvious intent as reasonably deduced from their plain language. The remedy is not a distortion of the meaning of the rules but a rewording thereof to prevent the problem here sought to be corrected.[33]

WHEREFORE, the Petition is **DENIED.**

SO ORDERED.

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[32] Presidential Decree No. 1275, "Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, And Creating the National Prosecution Service" (1978), Sec. 6.

[33] *Id.*, per note 18, 284.

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

SECOND DIVISION

[G.R. No. 183110. October 7, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **AZUCENA SAAVEDRA BATUIGAS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; NATURALIZATION; PHILIPPINE CITIZENSHIP MAY BE ACQUIRED BY JUDICIAL NATURALIZATION, ADMINISTRATIVE NATURALIZATION OR DERIVATIVE NATURALIZATION.— Under existing laws, an alien may acquire Philippine citizenship through either judicial naturalization under CA 473 or administrative naturalization under Republic Act No. 9139 (the "Administrative Naturalization Law of 2000"). A third option, called derivative naturalization, which is available to alien women married to Filipino husbands is found under Section 15 of CA 473, which provides that: "[a]ny woman who is now or may hereafter be married to a citizen of the Philippines and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines." Under this provision, foreign women who are married to Philippine citizens may be deemed *ipso facto* Philippine citizens and it is neither necessary for them to prove that they possess other qualifications for naturalization at the time of their marriage nor do they have to submit themselves to judicial naturalization. Copying from similar laws in the United States which has since been amended,

the Philippine legislature retained Section 15 of CA 473, which then reflects its intent to confer Filipino citizenship to the alien wife thru derivative naturalization.

2. ID.; NATURALIZATION UNDER CA 473; PETITION FOR JUDICIAL NATURALIZATION ALLOWED AFTER DENIAL OF APPLICATION FOR DERIVATIVE NATURALIZATION.— The choice of what option to take in order to acquire Philippine citizenship rests with the applicant. In this case, Azucena has chosen to file a Petition for judicial naturalization under CA 473. The fact that her application for derivative naturalization under Section 15 of CA 473 was denied should not prevent her from seeking judicial naturalization under the same law. It is to be remembered that her application at the CID was denied not because she was found to be disqualified, but because her husband's citizenship was not proven. Even if the denial was based on other grounds, it is proper, in a judicial naturalization proceeding, for the courts to determine whether there are in fact grounds to deny her of Philippine citizenship based on regular judicial naturalization proceedings.

3. ID.; ID.; QUALIFICATIONS; THAT APPLICANT MUST HAVE KNOWN LUCRATIVE TRADE; PROFESSION OR LAWFUL OCCUPATION; COMPLIED WITH IN CASE AT BAR.— No. 4, Section 2 of CA 473 provides as qualification to become a Philippine citizen: He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, **or** must have known lucrative trade, **profession,** or lawful occupation. Azucena is a teacher by profession and has actually exercised her profession before she had to quit her teaching job to assume her family duties and take on her role as joint provider, together with her husband, in order to support her family. Together, husband and wife were able to raise all their five children, provided them with education, and have all become professionals and responsible citizens of this country. Certainly, this is proof enough of both husband and wife's lucrative trade. Azucena herself is a professional and can resume teaching at any time. Her profession never leaves her, and this is more than sufficient guarantee that she will not be a charge to the only country she has known since birth. Moreover, the Court acknowledged that the main

objective of extending the citizenship privilege to an alien wife is to maintain a unity of allegiance among family members.

4. ID.; ID.; JUDICIAL DECLARATION OF CITIZENSHIP; DISTINGUISHED FROM JUDICIAL NATURALIZATION.— We are not unmindful of precedents to the effect that there is no proceeding authorized by the law or by the Rules of Court, for the judicial declaration of the citizenship of an individual. "Such judicial declaration of citizenship cannot even be decreed pursuant to an alternative prayer therefor in a naturalization proceeding." This case however is not a Petition for judicial declaration of Philippine citizenship but rather a Petition for judicial naturalization under CA 473. In the first, the petitioner believes he is a Filipino citizen and asks a court to declare or confirm his status as a Philippine citizen. In the second, the petitioner acknowledges he is an alien, and seeks judicial approval to acquire the privilege of becoming a Philippine citizen based on requirements required under CA 473. Azucena has clearly proven, under strict judicial scrutiny, that she is qualified for the grant of that privilege, and this Court will not stand in the way of making her a part of a truly Filipino family.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ceniza Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"It is universally accepted that a State, in extending the privilege of citizenship to an alien wife of one of its citizens could have had no other objective than to maintain a unity of allegiance among the members of the family."[1]

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[1] *Moy Ya Lim Yao v. Commissioner of Immigration*, 148-B Phil. 773, 837 (1971). Citation omitted.

This Petition for Review on *Certiorari*[2] assails the May 23, 2008 Decision[3] of the Court of Appeals (CA) in CA G.R. CV No. 00523, which affirmed the January 31, 2005 Decision[4] of the Regional Trial Court (RTC), Branch 29, Zamboanga del Sur that granted the Petition for Naturalization[5] of respondent Azucena Saavedra Batuigas (Azucena).

Factual Antecedents

On December 2, 2002, Azucena filed a Petition for Naturalization before the RTC of Zamboanga del Sur. The case was docketed as Naturalization Case No. 03-001 and raffled to Branch 29 of said court.

Azucena alleged in her Petition that she believes in the principles underlying the Philippine Constitution; that she has conducted herself in a proper and irreproachable manner during the period of her stay in the Philippines, as well as in her relations with the constituted Government and with the community in which she is living; that she has mingled socially with the Filipinos and has evinced a sincere desire to learn and embrace their customs, traditions, and ideals; that she has all the qualifications required under Section 2 and none of the disqualifications enumerated in Section 4 of Commonwealth Act No. 473 (CA 473);[6] that she is not opposed to organized government nor is affiliated with any association or group of persons that uphold and teach doctrines opposing all organized governments; that she is not defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of men's ideas; that she is neither a polygamist nor believes in polygamy; that the nation of which she is a subject

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[2] *Rollo*, pp. 2-15.

[3] CA *rollo*, pp. 56-68; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Michael P. Elbinias and Edgardo T. Lloren.

[4] Records, pp. 174-176; penned by Judge Edilberto G. Absin.

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

[6] THE REVISED NATURALIZATION LAW. Approved June 17, 1939.

is not at war with the Philippines; that she intends in good faith to become a citizen of the Philippines and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to China; and that she will reside continuously in the Philippines from the time of the filing of her Petition up to the time of her naturalization.

After all the jurisdictional requirements mandated by Section 9[7] of CA 473 had been complied with, the Office of the Solicitor General (OSG) filed its Motion to Dismiss[8] on the ground that Azucena failed to allege that she is engaged in a lawful occupation or in some known lucrative trade. Finding the grounds relied upon by the OSG to be evidentiary in nature, the RTC denied said Motion.[9] Thereafter, the hearing for the reception of Azucena's evidence was then set on May 18, 2004.[10]

Neither the OSG nor the Office of the Provincial Prosecutor appeared on the day of the hearing. Hence, Azucena's counsel moved that the evidence be presented *ex-parte*, which the RTC

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[7] Sec. 9. *Notification and appearance.* — Immediately upon the filing of a petition, it shall be the duty of the clerk of court to publish the same at the petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newspapers of general circulation in the province where the petitioner resides, and to have copies of said petition and a general notice of the hearing posted in a public and conspicuous place in his office or in the building where said office is located, setting forth in such notice the name, birthplace, and residence of the petitioner, the date and place of his arrival in the Philippines, the names of the witnesses whom the petitioner proposes to introduce in support of his petition, and the date of the hearing of the petition, which hearing shall not be held within ninety days from the date of the last publication of the notice. The clerk shall, as soon as possible, forward copies of the petition, the sentence, the naturalization certificate, and other pertinent data to the Department of the Interior (now Office of the President), the Bureau of Justice (now Solicitor General), the Provincial Inspector of the Philippine Constabulary of the province (now Provincial Commander) and the Justice of the Peace of the municipality wherein the petitioner resides (now the RTC).

[8] Records, pp. 24-28.

[9] See Order dated November 19, 2003, *id.* at 33-34.

[10] See Order dated March 9, 2004, *id.* at 39-40.

granted. Accordingly, the RTC designated its Clerk of Court as Commissioner to receive Azucena's evidence.[11] During the November 5, 2004 *ex-parte* hearing, no representative from the OSG appeared despite due notice.[12]

Born in Malangas, Zamboanga del Sur on September 28, 1941 to Chinese parents,[13] Azucena has never departed the Philippines since birth. She has resided in Malangas, Zamboanga del Sur from 1941-1942; in Margosatubig, Zamboanga del Sur from 1942-1968; in Bogo City for nine months; in Ipil, Zamboanga del Sur from 1969-1972; in Talisayan, Misamis Oriental from 1972-1976; and, in Margosatubig, Zamboanga del Sur, thereafter, up to the filing of her Petition.

Azucena can speak English, Tagalog, Visayan, and Chavacano. Her primary, secondary, and tertiary education were taken in Philippine schools, *i.e.*, Margosatubig Central Elementary School in 1955,[14] Margosatubig Academy in 1959,[15] and the Ateneo de Zamboanga in 1963,[16] graduating with a degree in Bachelor of Science in Education. She then practiced her teaching profession at the Pax High School for five years, in the Marian Academy in Ipil for two years, and in Talisayan High School in Misamis Oriental for another two years.[17]

In 1968, at the age of 26, Azucena married Santiago Batuigas[18] (Santiago), a natural-born Filipino citizen.[19] They have five children, namely Cynthia, Brenda, Aileen, Dennis Emmanuel,

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[11] See Order dated May 18, 2004, *id.* at 43.

[12] *Id.* at 51.

[13] *Id.* at 21.

[14] *Id.* at 61. Azucena testified that she has no elementary school records as the school was already burned down in the 80s.

[15] *Id.* at 101-102.

[16] *Id.* at 103-107.

[17] *Id.* at 70.

[18] *Id.* at 95.

[19] *Id.* at 140-142.

and Edsel James.[20] All of them studied in Philippine public and private schools and are all professionals, three of whom are now working abroad.[21]

After her stint in Talisayan High School, Azucena and her husband, as conjugal partners, engaged in the retail business of and later on in milling/ distributing rice, corn, and copra. As proof of their income, Azucena submitted their joint annual tax returns and balance sheets from 2000-2002[22] and from 2004-2005.[23] The business name and the business permits issued to the spouses' store, 'Azucena's General Merchandising,' are registered in Santiago's name,[24] and he is also the National Food Authority licensee for their rice and corn business.[25] During their marital union, the Batuigas spouses bought parcels of land in Barrio Lombog, Margosatubig.[26]

To prove that she has no criminal record, Azucena submitted clearances issued by the Philippine National Police of Zamboanga

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[20] *Id.* at 96-100.

[21] Except for Cynthia, who studied elementary in Talisayan Central Elementary School, the Batuigas children studied in Margosatubig Central Elementary School. The female children all went to Pax High School in Margosatubig, while Edsel went to San Carlos Boy's School. Dennis's first two years of high school were in Pax High School, while the last two were in San Carlos Boy's School. All of them are graduates of University of San Carlos. Cynthia graduated with a degree in BS Commerce in 1988, Aileen graduated with a degree in BS Nursing in 1993, while Dennis graduated with a degree in BS Architecture in 1995. As of the time of the filing of the petition, Cynthia was residing in the Netherlands, Aileen was working in Texas, USA, while Dennis, who then worked in Singapore, was already working in Michigan, USA. On the other hand, the remaining children remained in the Philippines, Brenda obtained her BS Pharmacy degree in 1992 and BS Physical Therapy in 1994, and Edsel got his BS Computer Engineering degree in 1998.

[22] Records, pp. 144-159.

[23] CA *rollo*, pp. 35-49.

[24] Records, pp. 119-121.

[25] *Id.* at 122-124.

[26] *Id.* at 125, 127 and 129. One certificate of title is registered in Santiago's name, while the other two lots are separately titled in their sons Edsel and Dennis.

del Sur Provincial Office and by the National Bureau of Investigation.[27] She also presented her Health Examination Record[28] declaring her as physically and mentally fit.

To further support Azucena's Petition, Santiago and witnesses Eufemio Miniao and Irineo Alfaro testified.

Ruling of the Regional Trial Court

On January 31, 2005, the RTC found that Azucena has amply supported the allegations in her Petition. Among these are her lack of a derogatory record, her support for an organized government, that she is in perfect health, that she has mingled with Filipinos since birth and can speak their language, that she has never had any transgressions and has been a law abiding citizen, that she has complied with her obligations to the government involving her business operations, and that the business and real properties she and Santiago own provide sufficient income for her and her family. Thus, the RTC ruled:

> x x x In sum, the petitioner has all the qualifications and none of the disqualifications to be admitted as citizen of the Philippines in accordance with the provisions of the Naturalization Law.
>
> WHEREFORE, premises considered, the petition is hereby granted.
>
> SO ORDERED.[29]

In its Omnibus Motion,[30] the OSG argued that the *ex-parte* presentation of evidence before the Branch Clerk of Court violates Section 10 of CA 473,[31] as the law mandates public hearing in naturalization cases.

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[27] *Id.* at 135 and 137.

[28] *Id.* at 136.

[29] *Id.* at 176.

[30] *Id.* at 177-181.

[31] Section 10. *Hearing of the petition.*—No petition shall be heard within the thirty days preceding any election. The hearing shall be public, and the Solicitor-General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth of the Philippines at

Rejecting this argument in its March 21, 2005 Order,[32] the RTC held that the public has been fully apprised of the naturalization proceedings and was free to intervene. The OSG and its delegate, the Provincial Prosecutor, are the only officers authorized by law to appear on behalf of the State, which represents the public. Thus, when the OSG was furnished with a copy of the notice of hearing for the reception of evidence *ex-parte*, there was already a sufficient compliance with the requirement of a public hearing.

The OSG then appealed the RTC judgment to the CA,[33] contending that Azucena failed to comply with the income requirement under CA 473. The OSG maintained that Azucena is not allowed under the Retail Trade Law (Republic Act No. 1180) to engage directly or indirectly in the retail trade. Hence, she cannot possibly meet the income requirement. And even if she is allowed, her business is not a "lucrative trade" within the contemplation of the law or that which has an appreciable margin of income over expenses in order to provide for adequate support in the event of unemployment, sickness, or disability to work. The OSG likewise disputed Azucena's claim that she owns real property because aliens are precluded from owning lands in the country.

The OSG further asserted that the *ex-parte* proceeding before the commissioner is not a "public hearing" as *ex-parte* hearings are usually done in chambers, without the public in attendance. It claimed that the State was denied its day in court because the RTC, during the May 18, 2004 initial hearing, immediately

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all the proceedings and at the hearing. If, after the hearing, the court believes, in view of the evidence taken, that the petitioner has all the qualifications required by, and none of the disqualifications specified in this Act and has complied with all requisites herein established, it shall order the proper naturalization certificate to be issued and the registration of the said naturalization certificate in the proper civil registry as required in section ten of Act Numbered Three thousand seven hundred and fifty-three.

[32] Records, pp. 182-183.

[33] CA *rollo*, pp. 15-22.

allowed the proceeding to be conducted *ex-parte* without even giving the State ample opportunity to be present.

Azucena countered that although she is a teacher by profession, she had to quit to help in the retail business of her husband, and they were able to send all their children to school.[34] It is highly unlikely that she will become a public charge as she and her spouse have enough savings and could even be given sufficient support by their children. She contended that the definition of "lucrative trade/income" should not be strictly applied to her. Being the wife and following Filipino tradition, she should not be treated like male applicants for naturalization who are required to have their own "lucrative trade."

Azucena denied that the hearing for her Petition was not made public, as the hearing before the Clerk of Court was conducted in the court's session hall. Besides, the OSG cannot claim that it was denied its day in court as notices have always been sent to it. Hence, its failure to attend is not the fault of the RTC.

Ruling of the Court of Appeals

In dismissing the OSG's appeal,[35] the CA found that Azucena's financial condition permits her and her family to live with reasonable comfort in accordance with the prevailing standard of living and consistent with the demands of human dignity. It said:

> Considering the present high cost of living, which cost of living tends to increase rather than decrease, and the low purchasing power of the Philippine currency, petitioner-appellee, together with her Filipino husband, nonetheless, was able to send all her children to college, pursue a lucrative business and maintain a decent existence. The Supreme Court, in recent decisions, adopted a higher standard in determining whether a petitioner for Philippine citizenship has a lucrative trade or profession that would qualify him/her for admission to Philippine citizenship and to which petitioner has successfully convinced this Court of her ability to provide for herself

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[34] *Id.* at 31-33.

[35] *Supra* note 3.

and avoid becoming a public charge or a financial burden to her community. x x x[36]

As for the other issue the OSG raised, the CA held that the RTC had complied with the mandate of the law requiring notice to the OSG and the Provincial Prosecutor of its scheduled hearing for the Petition.

Thus, the instant Petition wherein the OSG recapitulates the same arguments it raised before the CA, *i.e.*, the alleged failure of Azucena to meet the income and public hearing requirements of CA 473.

Our Ruling

The Petition lacks merit.

Under existing laws, an alien may acquire Philippine citizenship through either judicial naturalization under CA 473 or administrative naturalization under Republic Act No. 9139 (the "Administrative Naturalization Law of 2000"). A third option, called derivative naturalization, which is available to alien women married to Filipino husbands is found under Section 15 of CA 473, which provides that:

"[a]ny woman who is now or may hereafter be married to a citizen of the Philippines and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

Under this provision, foreign women who are married to Philippine citizens may be deemed *ipso facto* Philippine citizens and it is neither necessary for them to prove that they possess other qualifications for naturalization at the time of their marriage nor do they have to submit themselves to judicial naturalization. Copying from similar laws in the United States which has since been amended, the Philippine legislature retained Section 15 of CA 473, which then reflects its intent to confer Filipino citizenship to the alien wife thru derivative naturalization.[37]

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[36] *Id.* at 65.

[37] *Moy Ya Lim Yao v. Commissioner of Immigration, supra* note 1 at 829.

Thus, the Court categorically declared in *Moy Ya Lim Yao v. Commissioner of Immigration*:[38]

> Accordingly, We now hold, all previous decisions of this Court indicating otherwise notwithstanding, that under Section 15 of Commonwealth Act 473, an alien woman marrying a Filipino, native born or naturalized, becomes *ipso facto* a Filipina provided she is not disqualified to be a citizen of the Philippines under Section 4 of the same law. Likewise, an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as Filipino citizen, provided that she does not suffer from any of the disqualifications under said Section 4.[39]

As stated in *Moy Ya Lim Yao*, the procedure for an alien wife to formalize the conferment of Filipino citizenship is as follows:

> Regarding the steps that should be taken by an alien woman married to a Filipino citizen in order to acquire Philippine citizenship, the procedure followed in the Bureau of Immigration is as follows: The alien woman must file a petition for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to Section 4 of Commonwealth Act No. 473, as amended. Upon the filing of said petition, which should be accompanied or supported by the joint affidavit of the petitioner and her Filipino husband to the effect that the petitioner does not belong to any of the groups disqualified by the cited section from becoming naturalized Filipino citizen x x x, the Bureau of Immigration conducts an investigation and thereafter promulgates its order or decision granting or denying the petition.[40]

Records however show that in February 1980, Azucena applied before the then Commission on Immigration and Deportation (CID) for the cancellation of her Alien Certificate of Registration

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[38] *Id.*

[39] *Id.* at 839.

[40] *Id.* at 855-856. Citations omitted.

(ACR) No. 030705[41] by reason of her marriage to a Filipino citizen. The CID granted her application. However, the Ministry of Justice set aside the ruling of the CID as it found no sufficient evidence that Azucena's husband is a Filipino citizen[42] as only their marriage certificate was presented to establish his citizenship.

Having been denied of the process in the CID, Azucena was constrained to file a Petition for judicial naturalization based on CA 473. While this would have been unnecessary if the process at the CID was granted in her favor, there is nothing that prevents her from seeking acquisition of Philippine citizenship through regular naturalization proceedings available to all qualified foreign nationals. The choice of what option to take in order to acquire Philippine citizenship rests with the applicant. In this case, Azucena has chosen to file a Petition for judicial naturalization under CA 473. The fact that her application for derivative naturalization under Section 15 of CA 473 was denied should not prevent her from seeking judicial naturalization under the same law. It is to be remembered that her application at the CID was denied not because she was found to be disqualified, but because her husband's citizenship was not proven. Even if the denial was based on other grounds, it is proper, in a judicial naturalization proceeding, for the courts to determine whether there are in fact grounds to deny her of Philippine citizenship based on regular judicial naturalization proceedings.

As the records before this Court show, Santiago's Filipino citizenship has been adequately proven. Under judicial proceeding, Santiago submitted his birth certificate indicating therein that he and his parents are Filipinos. He also submitted voter's registration, land titles, and business registrations/licenses, all of which are public records. He has always comported himself as a Filipino citizen, an operative fact that should have enabled Azucena to avail of Section 15 of CA 473. On the submitted evidence, nothing would show that Azucena suffers from any of the disqualifications under Section 4 of the same Act.

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[41] Records, pp. 138-139.

[42] *Id.* at 133-134.

However, the case before us is a Petition for judicial naturalization and is not based on Section 15 of CA 473 which was denied by the then Ministry of Justice. The lower court which heard the petition and received evidence of her qualifications and absence of disqualifications to acquire Philippine citizenship, has granted the Petition, which was affirmed by the CA. We will not disturb the findings of the lower court which had the opportunity to hear and scrutinize the evidence presented during the hearings on the Petition, as well as determine, based on Azucena's testimony and deportment during the hearings, that she indeed possesses all the qualifications and none of the disqualifications for acquisition of Philippine citizenship.

The OSG has filed this instant Petition on the ground that Azucena does not have the qualification required in no. 4 of Section 2 of CA 473 as she does not have any lucrative income, and that the proceeding in the lower court was not in the nature of a public hearing. The OSG had the opportunity to contest the qualifications of Azucena during the initial hearing scheduled on May 18, 2004. However, the OSG or the Office of the Provincial Prosecutor failed to appear in said hearing, prompting the lower court to order *ex parte* presentation of evidence before the Clerk of Court on November 5, 2004. The OSG was also notified of the *ex parte* proceeding, but despite notice, again failed to appear. The OSG had raised this same issue at the CA and was denied for the reasons stated in its Decision. We find no reason to disturb the findings of the CA on this issue. Neither should this issue further delay the grant of Philippine citizenship to a woman who was born and lived all her life, in the Philippines, and devoted all her life to the care of her Filipino family. She has more than demonstrated, under judicial scrutiny, her being a qualified Philippine citizen. On the second issue, we also affirm the findings of the CA that since the government who has an interest in, and the only one who can contest, the citizenship of a person, was duly notified through the OSG and the Provincial Prosecutor's office, the proceedings have complied with the public hearing requirement under CA 473.

No. 4, Section 2 of CA 473 provides as qualification to become a Philippine citizen:

> 4. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, **or** must have known lucrative trade, **profession,** or lawful occupation.

Azucena is a teacher by profession and has actually exercised her profession before she had to quit her teaching job to assume her family duties and take on her role as joint provider, together with her husband, in order to support her family. Together, husband and wife were able to raise all their five children, provided them with education, and have all become professionals and responsible citizens of this country. Certainly, this is proof enough of both husband and wife's lucrative trade. Azucena herself is a professional and can resume teaching at any time. Her profession never leaves her, and this is more than sufficient guarantee that she will not be a charge to the only country she has known since birth.

Moreover, the Court acknowledged that the main objective of extending the citizenship privilege to an alien wife is to maintain a unity of allegiance among family members, thus:

> It is, therefore, not congruent with our cherished traditions of family unity and identity that a husband should be a citizen and the wife an alien, and that the national treatment of one should be different from that of the other. Thus, it cannot be that the husband's interests in property and business activities reserved by law to citizens should not form part of the conjugal partnership and be denied to the wife, nor that she herself cannot, through her own efforts but for the benefit of the partnership, acquire such interests. Only in rare instances should the identity of husband and wife be refused recognition, and we submit that in respect of our citizenship laws, it should only be in the instances where the wife suffers from the disqualifications stated in Section 4 of the Revised Naturalization Law.[43]

We are not unmindful of precedents to the effect that there is no proceeding authorized by the law or by the Rules of Court,

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[43] *Moy Ya Lim Yao v. Commissioner of Immigration, supra* note 1 at 837-838. Citations omitted.

for the judicial declaration of the citizenship of an individual.[44] "Such judicial declaration of citizenship cannot even be decreed pursuant to an alternative prayer therefor in a naturalization proceeding."[45]

This case however is not a Petition for judicial declaration of Philippine citizenship but rather a Petition for judicial naturalization under CA 473. In the first, the petitioner believes he is a Filipino citizen and asks a court to declare or confirm his status as a Philippine citizen. In the second, the petitioner acknowledges he is an alien, and seeks judicial approval to acquire the privilege of becoming a Philippine citizen based on requirements required under CA 473. Azucena has clearly proven, under strict judicial scrutiny, that she is qualified for the grant of that privilege, and this Court will not stand in the way of making her a part of a truly Filipino family.

WHEREFORE, the Petition is **DENIED.** The May 23, 2008 Decision of the Court of Appeals in CA-G.R. CV No. 00523 which affirmed the January 31, 2005 Decision of the Regional Trial Court, Branch 29, Zamboanga del Sur that granted the Petition for Naturalization, is hereby **AFFIRMED.** Subject to compliance with the period and the requirements under Republic Act No. 530 which supplements the Revised Naturalization Law, let a Certificate of Naturalization be issued to **AZUCENA SAAVEDRA BATUIGAS** after taking an oath of allegiance to the Republic of the Philippines. Thereafter, her Alien Certificate of Registration should be cancelled.

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[44] As mentioned in *Moy Ya Lim Yao*, "x x x what substitute is there for naturalization proceedings to enable the alien wife of a Philippine citizen to have the matter of her own citizenship settled and established so that she may not have to be called upon to prove it everytime she has to perform an act or enter into a transaction or business or exercise a right reserved only to Filipinos? The ready answer to such question is that as the laws of our country, both substantive and procedural, stand today, there is no such procedure x x x.' The ruling that there is no action for judicial declaration of an individual's citizenship has been held in the cases of *Tan v. Republic*, 107 Phil. 632 (1960), *Tan v. Republic*, 113 Phil. 391 (1961), and *Soria v. Commissioner of Immigration*, 147 Phil. 186 (1971).

[45] *Wong Sau Mei v. Republic*, 148 Phil. 26, 31 (1971).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190622. October 7, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO DE JESUS *Y* MENDOZA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ON THE QUESTION OF WHETHER TO BELIEVE THE VERSION OF THE PROSECUTION OR OF THE DEFENSE, THE TRIAL COURT'S CHOICE IS GENERALLY VIEWED AS CORRECT AND ENTITLED TO THE HIGHEST RESPECT BECAUSE IT IS MORE COMPETENT TO CONCLUDE SO, HAVING HAD THE OPPORTUNITY TO OBSERVE THE WITNESSES' DEMEANOR AND DEPORTMENT ON THE WITNESS STAND AS THEY GAVE THEIR TESTIMONY.— The RTC found the testimony of "AAA" to be credible. She positively identified appellant as the malefactor and never wavered in her assertion that it was appellant who raped her. This finding was affirmed by the CA. "Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the [CA], are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the

opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses [are] telling the truth. There is no cogent reason for us to depart from the general rule in this case."

2. ID.; ID.; ID.; WHEN THE OFFENDED PARTY IS OF TENDER AGE AND IMMATURE, COURTS ARE INCLINED TO GIVE CREDIT TO HER ACCOUNT OF WHAT TRANSPIRED, CONSIDERING NOT ONLY HER RELATIVE VULNERABILITY BUT ALSO THE SHAME TO WHICH SHE WOULD BE EXPOSED IF THE MATTER TO WHICH SHE TESTIFIED IS NOT TRUE.— [I]t is worth to note that the victim, "AAA," was a minor. She was only 11 years old when she was raped. When placed on the witness stand to narrate her harrowing experience at the hands of the appellant, "AAA" was only 12 years of age. Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Considering her tender age, AAA could not have invented a horrible story. x x x

3. CRIMINAL LAW; STATUTORY RAPE; THE EXAMINING DOCTOR'S FINDING OF HEALED LACERATIONS DOES NOT NEGATIVELY AFFECT THE CREDIBILITY OF THE VICTIM NOR DISPROVE HER RAPE.— [T]he results of the physical examination on "AAA" did not discount the possibility that "AAA" was raped. x x x The defense, however, insists that appellant could not have raped "AAA" considering that "AAA's" hymenal lacerations were already old and healed. We are not convinced. In *People v. Amistoso* this Court held that the fact that the examining doctor found healed lacerations "does not negatively affect AAA's credibility nor disprove her rape." Citing *People v. Orilla* the Court ruled that – The absence of fresh lacerations in Remilyn's hymen

does not prove that appellant did not rape her. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. The credible disclosure of a minor that the accused raped her is the most important proof of sexual abuse.

4. ID.; ID.; ELEMENTS; ESTABLISHED; PENALTY OF *RECLUSION PERPETUA*, IMPOSED.— Rape of a minor under 12 years of age is statutory rape. "The elements of statutory rape are that: (a) the victim is a female under 12 years or is demented; and (b) the offender has carnal knowledge of the victim. x x x [N]either the use of force, threat or intimidation on the female, nor the female's deprivation of reason or being otherwise unconscious, nor the employment on the female of fraudulent machinations or grave abuse of authority is necessary to commit statutory rape." In statutory rape, there are only two elements that need to be established, to wit: 1) carnal knowledge or sexual intercourse; and 2) that the woman is below 12 years of age. In this case, the prosecution satisfactorily established the fact of carnal knowledge. It is likewise beyond dispute that "AAA" was only 11 years of age at the time she was raped. Her Certificate of Live Birth showed that she was born on November 26, 1992. Both the RTC and the CA therefore correctly held appellant guilty of the crime of statutory rape and imposed upon him the penalty of *reclusion perpetua*.

5. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As regards damages, jurisprudence declares that: x x x There is no longer any debate that the victim in statutory rape is entitled to a civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱30,000.00. The award of civil indemnity of ₱50,000.00 is mandatory upon the finding of the fact of rape. Similarly, the award of moral damages of ₱50,000.00 is mandatory, and made without need of allegation and proof other than that of the fact of rape, for it is logically assumed that the victim suffered moral injuries from her ordeal. In addition, exemplary damages of ₱30,000.00 are justified under Article 2229 of the Civil Code to set an example for the public good and to serve as deterrent to those who abuse the young. In this case, we note that both the RTC and the CA correctly awarded civil indemnity in the amount of ₱50,000.00

and moral damages in the amount of ₱50,000.00. Both courts however failed to award exemplary damages to which "AAA" is entitled. Accordingly, we award exemplary damages to "AAA" in the amount of ₱30,000.00. In addition, all the damages shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid in conformity with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed before this Court is the September 18, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01923 which affirmed the December 29, 2005 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 159 finding appellant Rodolfo de Jesus *y* Mendoza guilty beyond reasonable doubt of the crime of rape.

Records show that on July 29, 2004, appellant was charged with the crime of rape in an Information[3] that reads as follows:

On or about July 24, 2004, in Pasig City and within the jurisdiction of this Honorable Court, the accused, by means of force, threats or intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge [of] "AAA",[4] 11 years old, a minor, against

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[1] CA *rollo*, pp. 100-122; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Josefina Guevara-Salonga and Celia C. Librea-Leagogo.

[2] Records, pp. 104-112; penned by Judge Rodolfo R. Bonifacio.

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

[4] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*)

her will and consent, which is aggravated by the circumstances of treachery and abuse of superior strength, to the damage and prejudice of the said victim.

Contrary to law.[5]

During his arraignment on September 14, 2004, appellant pleaded not guilty.[6] After pre-trial, trial on the merits ensued.

Version of the Prosecution

The prosecution presented the victim, "AAA;" her mother, "BBB;" Michael Boca (Boca), a security guard at Mega Parking Plaza; Dr. Paul Ed dela Cruz Ortiz (Dr. Ortiz), the Medico-Legal Officer who conducted the physical examination of the victim; and SPO2 Nilda Balagot, the police investigator on duty at the Women's and Children Concerned Unit, Pasig City Police Station, as witnesses. Based on their testimonies, the following facts emerged:

"AAA" was born on November 26, 1992.[7] On July 24, 2004, at around 3:00 o'clock in the afternoon, then 11-year old "AAA" went to the Pasig public market to buy a pair of slippers. However, "AAA" was not able to buy her pair of slippers because appellant suddenly grabbed her left arm and pulled her towards the nearby Mega Parking Plaza. "AAA" was surprised and confused. She cried and tried to free herself from the grasp of the appellant, to no avail. Upon reaching the fourth floor of Mega Parking Plaza, appellant pulled "AAA's" shorts and panty down to her knees. Appellant likewise pulled down his pants. Appellant then sat on the stairs, placed "AAA" on his lap, inserted his penis into her vagina and performed push and pull movements. "AAA" was overcome with fear and she felt pain in her vagina.

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and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*)." *People v. Teodoro*, G.R. No. 175876, February 20, 2013.

[5] Records, p. 1.

[6] *Id.* at 18.

[7] *Id.* at 11.

Meanwhile, Boca, the security guard assigned at the Mega Parking Plaza, was conducting a roving patrol when he heard the cry of "AAA." He went to the fourth floor of the building which was at that time unoccupied by any vehicle. He was however surprised to see "AAA" seated on the lap of the appellant. Boca also saw appellant insert his penis into the vagina of "AAA" and then perform sexual movements. Immediately upon seeing the sexual molestations, Boca grabbed appellant's arm, handcuffed him and brought him to the *barangay* hall.

Dr. Ortiz examined the person of "AAA" and found shallow healed lacerations. Although there were no external signs of application of trauma, Dr. Ortiz opined that the lacerations could have been caused by a blunt penetrating force such as a penis and that "AAA" might have been sexually abused.

Version of the Defense

The only witness for the defense is the appellant himself. At the time of the incident, he was 63 years of age and worked as a porter at the Pasig public market. He claimed that even before the July 24, 2004 incident, he already knew "AAA" as the latter used to ask money from him. He denied having raped "AAA." He narrated that on July 24, 2004, he saw "AAA" urinating near the stairs of the second floor of the Mega Parking Plaza while he was just standing nearby. Suddenly, Boca, the security guard, arrived and handcuffed him. He was thereafter brought to the authorities. He could not think of any reason or motive why "AAA" would file a rape charge against him.

Ruling of the Regional Trial Court

On December 29, 2005, the RTC rendered its Decision finding appellant guilty of rape. The dispositive portion of the Decision reads:

> WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime of rape, RODOLFO DE JESUS is hereby sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties prescribed by law, and to indemnify the offended party in the amount of ₱50,000.00 as civil indemnity *ex delicto* and ₱50,000.00 as moral damages.

SO ORDERED.[8]

Ruling of the Court of Appeals

Appellant appealed to the CA. However, in its September 18, 2009 Decision, the appellate court dismissed the appeal and affirmed the Decision of the RTC, *viz*:

WHEREFORE, the instant appeal is DISMISSED. The Decision of the court *a quo* is SUSTAINED.

SO ORDERED.[9]

Hence, this appeal raising the lone assignment of error, *viz*:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PROVE THAT THERE WAS INDEED A SEXUAL INTERCOURSE BETWEEN THE ACCUSED-APPELLANT AND THE PRIVATE COMPLAINANT.[10]

Appellant argues that there is no evidence showing that he inserted his penis into the vagina of "AAA." He claims that if he indeed raped "AAA," then the latter's physical examination should have shown fresh lacerations instead of old healed lacerations considering that "AAA" was examined immediately after the alleged incident.

Our Ruling

The appeal lacks merit.

Contrary to appellant's contention, there is ample proof that his penis penetrated the vagina of the victim. "AAA" categorically testified thus:

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[8] *Id.* at 112.

[9] CA *rollo*, p. 121.

[10] *Id.* at 39.

Q. So when you were pulled to the fourth floor by that person, what happened there?
A. He undressed me, sir.

Q. You said that he undressed you, what [were] your clothes then at the time when he undressed you?
A. I was wearing a garterized short, sir.

Q. Aside from the short, what else?
A. None, sir.

Q. [Were] you not wearing any underwear at that time?
A. No more, sir, except my panty.

Q. Your panty is also garterized?
A. Yes, sir.

Q. You said that he undressed [you], up to what part of your body did he pull down your short and your panty?

Interpreter:

Witness pointing to the portion between her knee and ankle.

Prosec. Obuñgen:

Q. When he was undressing you, what did he tell you, if any?
A. None, sir.

Q. While he was undressing you, what were you doing then?
A. I was crying, sir.

Q. Aside from crying, what else did you do?
A. I shouted, sir.

x x x x x x x x x

Q. When you shouted, what did he do, if any?
A. He was inserting his organ [into] my organ, sir.

x x x x x x x x x

Q. You said that the person tried to insert his private organ [into] your private part. [What] did you feel at that time that he [was] trying to put his private part [into] your private part?
A. I felt nervous, sir.

Q. Aside from feeling nervous, [what] did you feel? Were you hurt?
A. I was afraid, sir.

Q. Aside from feeling afraid, what else?
A. It was painful, sir.

x x x x x x x x x

Q. How painful [was] your vagina when he was inserting his private part x x x?
A. It was painful, sir.

Q. When he was inserting his private part [into] your vagina, how long a time did he [try] to insert his private part [into] your private part?
A. Maybe about fifteen minutes, sir.

Q. [When] he was inserting his private part [into] your private part, how did you act?
A. I was struggling, sir.

x x x x x x x x x

Q. If that person who violated your honor is in the courtroom, can you point to him?
A. Yes, sir.

Interpreter:

Witness [is] pointing to a person seated near the door of the room wearing yellow t-shirt, blue denim pants and red slippers who identified himself as Rodolfo de Jesus.

Q. When he had inserted his private part [into] your private part, what else happened?
A. That was the time when the security guard arrived.[11]

The RTC found the testimony of "AAA" to be credible. She positively identified appellant as the malefactor and never wavered in her assertion that it was appellant who raped her. This finding was affirmed by the CA.[12] "Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when

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[11] TSN, March 1, 2005, pp. 9-13.

[12] CA *rollo*, pp. 111, 116.

affirmed by the [CA], are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses [are] telling the truth. There is no cogent reason for us to depart from the general rule in this case."[13]

Also, it is worth to note that the victim, "AAA," was a minor. She was only 11 years old when she was raped. When placed on the witness stand to narrate her harrowing experience at the hands of the appellant, "AAA" was only 12 years of age.

> Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Considering her tender age, AAA could not have invented a horrible story. x x x[14]

In addition, the foregoing testimony of "AAA" was corroborated by the testimony of Boca. He testified that while he was conducting his roving patrol, he heard a cry emanating from the fourth floor of the parking building. When Boca reached the fourth floor, he saw "AAA" seated on the lap of the appellant. Boca also testified that he saw appellant insert his penis into the vagina of "AAA" and perform sexual movements, *viz*:

Q. Mr. Boca, on July 24, 2004, what was your occupation?
A. I was a security guard, sir.

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[13] *People v. Piosang*, G.R. No. 200329, June 5, 2013.

[14] *Id.*

Q. Where were you assigned as security guard on x x x July 24, 2004?
A. Pasig Mega Parking, Pasig City, Pasig Public Market.

Q. On that day, what was your tour of duty?
A. From 7:00 o'clock in the morning up to 7:00 o'clock in the evening, sir.

Q. At 3:00 o'clock in the afternoon, where were you?
A. I was conducting a roving patrol, sir.

Q. So you were assigned at Mega Parking, how many stories [does] Mega Parking have?
A. It consists of four stories.

Q. So [at] 3:00 o'clock of that day you were a roving guard?
A. Yes, sir.

Q. On that particular hour, do you remember x x x any unusual incident that happened?
A. None except that I heard a child crying.

x x x x x x x x x

Q. At [the] time you heard the child crying, where were you then?
A. I was on the third floor going up to the 4th floor.

Q. Did you reach the 4th floor?
A. Yes, sir.

Q. What happened at the 4th floor?
A. I heard a child shouting "*hwag po*."

x x x x x x x x x

A. When I [heard] the child, I went where they were located, and I saw Rodolfo de Jesus *na naka angkla po si de Jesus kay "AAA."*

Q. You said '*naka angkla,*' could you demonstrate the particular position of "AAA" and de Jesus at that time?

Court Interpreter:

Witness [is] motioning that the accused was holding the child, and the accused sat down with motion of bringing up and down the child towards him.

Pros. Obuñgen:

Q. Besides seeing and observing de Jesus and "AAA" is '*naka angkla'* on de Jesus, what else did you observe of De Jesus, what was his attire at that time.

A. He was wearing pants, but (*nakahubad*) he was undressed.

x x x x x x x x x

Q. So the pants of de Jesus was lowered below the knees?

A. It was lowered and it was on the floor.

Q. How about "AAA" x x x?

A. Her shorts, I saw that it was removed by the accused and the accused forcibly placed his organ [into] her.

x x x x x x x x x

Q. How long a time did you see and observe x x x de Jesus having and performing sexual movements?

A. I saw them for about twenty-five seconds, sir.

Q. So, when you observed de Jesus molesting this "AAA", what did you do next?

A. I grabbed hold of the left arm of the accused and placed a handcuff on his hand.

Pros. Obuñgen-

Q. Will you please point to de Jesus, if he is here?

A. Yes, sir.

Q. Please point to him.

x x x x x x x x x

Court-Interpreter-

Witness tapped the shoulder of a person wearing orange t-shirt and denim pants, wearing slippers, who gave his name as Rodolfo de Jesus.[15]

Notwithstanding the rigorous cross-examination, Boca remained steadfast in his identification of the appellant as the

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[15] TSN, July 18, 2005, pp. 3-7.

rapist. He also categorically declared that he saw appellant insert his penis into the vagina of "AAA," *viz*:

Q. You said that you were on the third floor going to the 4th floor at 3:00 p.m. when you heard a child crying, is that what you said?
A. Yes, ma'am.

Atty. Cabacungan-
Q. And what did you intend to do on the 4th floor when you went up there?
A. To conduct roving patrol.

Q. You said that you saw the accused, and how far was he to you when you first saw him?
A. About six to seven (6-7) meters.

x x x x x x x x x

Q. And what was the child wearing then when you first saw her?
A. Her shorts were lowered below the knee and the shirt was pulled up, ma'am.

Q. And what was the accused sitting on?
A. The accused was seated on the stairs.

Q. Where were you when you first saw the accused?
A. I passed through where the vehicles pass and the accused was seated on the stairs.

Q. What about the child, was she facing you or [was] her back [towards] you?
A. She was facing me and she was crying. I felt that she did not notice me.

x x x x x x x x x

Q. How long did it take you when you went up from the time you heard the crying of the victim to the time you [saw] the accused, how long did it take?
A. About ten (10) seconds, ma'am.

Q. So, when you first saw the accused, you still waited and observed or you ran immediately towards them?
A. I moved closer to them slowly to find out what was happening.

x x x x x x x x x

Q. And x x x the child x x x was sitting on the lap of the accused?
A. Yes, ma'am. And she was being held by Rodolfo de Jesus and forcibly [inserting] his penis [into] the organ of the child.

Q. But you did not see the organ inserted [into] the organ of the girl?
A. I saw it, ma'am.

Q. You saw it?
A. Yes, ma'am.

Q. How big is the organ of the accused? Was it fully inserted[,] half or one-fourth inserted?
A. Probably half of the penis [was] inserted.

Q. Are you sure of that or x x x you did not see actually the organ of the x x x accused inserted [into] the organ of the victim, and what you are saying only is the presumption based on the action of the accused?
A. No, ma'am, because I really saw the penis of the accused x x x inserted [into] the organ of the girl, and I also got rattled when I saw the girl, and I grabbed hold of the left arm of the accused.[16]

Moreover, the results of the physical examination on "AAA" did not discount the possibility that "AAA" was raped. The Initial Medico-Legal Report[17] reads in part:

Hymen: Annular, thin, with single-located centrally orifice. Shallow healed lacerations are noted at 4, 5, 7, and 9'oclock positions. x x x

Conclusion: Findings are suggestive of blunt penetrating force to the hymen. There are no external signs of application of any form of trauma.

Remarks: Sexual abuse cannot be totally ruled out.

When placed on the witness stand, Dr. Ortiz testified:

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

[17] Records, p. 87.

Q. So you found the existence of lacerations on the private part of the victim?
A. Yes, sir.

Q. What could have been the cause of lacerations on the private part of the victim?
A. Any blunt object, sir, blunt solid object, sir.

Q. Like what Doctor?
A. Pencil or finger or erect or half-erect penis, sir.

x x x x x x x x x

Q. Doctor, this kind of injuries on the private part of the victim could have been the result of blunt object like the private part of a man?
A. That would be a possibility, yes, sir.[18]

The defense, however, insists that appellant could not have raped "AAA" considering that "AAA's" hymenal lacerations were already old and healed. We are not convinced. In *People v. Amistoso*[19] this Court held that the fact that the examining doctor found healed lacerations "does not negatively affect AAA's credibility nor disprove her rape." Citing *People v. Orilla*[20] the Court ruled that –

> The absence of fresh lacerations in Remilyn's hymen does not prove that appellant did not rape her. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. The credible disclosure of a minor that the accused raped her is the most important proof of sexual abuse.[21]

Finally, we find appellant's version of the incident highly untenable. Although still a child, "AAA" was already a grade six student at the time she was raped. It is therefore highly

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[18] TSN, June 14, 2005, pp. 9-10.

[19] G.R. No. 201447, January 9, 2013, 688 SCRA 376, 391.

[20] 467 Phil. 253, 274 (2004).

[21] *People v. Amistoso*, *supra* note 19.

improbable for "AAA" to just squat near the stairs of the public market and urinate, much more considering that appellant was supposedly just standing nearby.

Article 266-A of the Revised Penal Code defines rape while Article 266-B provides for its penalties, *viz*:

Art. 266-A. *Rape, When and How Committed.* — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat, or intimidation;

b. When the offended party is deprived of reason or otherwise unconscious;

x x x x x x x x x

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

x x x x x x x x x

Art. 266-B. *Penalties.*— Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Rape of a minor under 12 years of age is statutory rape. "The elements of statutory rape are that: (a) the victim is a female under 12 years or is demented; and (b) the offender has carnal knowledge of the victim. x x x [N]either the use of force, threat or intimidation on the female, nor the female's deprivation of reason or being otherwise unconscious, nor the employment on the female of fraudulent machinations or grave abuse of authority is necessary to commit statutory rape."[22] In statutory rape, there are only two elements that need to be established, to wit: 1) carnal knowledge or sexual intercourse; and 2) that the woman is below 12 years of age. In this case, the prosecution satisfactorily established the fact of carnal knowledge. It is likewise beyond dispute that "AAA" was only 11 years of age

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[22] *People v. Teodoro, supra* note 4.

at the time she was raped. Her Certificate of Live Birth[23] showed that she was born on November 26, 1992. Both the RTC and the CA therefore correctly held appellant guilty of the crime of statutory rape and imposed upon him the penalty of *reclusion perpetua*.

As regards damages, jurisprudence declares that:

> x x x There is no longer any debate that the victim in statutory rape is entitled to a civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱30,000.00. The award of civil indemnity of ₱50,000.00 is mandatory upon the finding of the fact of rape. Similarly, the award of moral damages of ₱50,000.00 is mandatory, and made without need of allegation and proof other than that of the fact of rape, for it is logically assumed that the victim suffered moral injuries from her ordeal. In addition, exemplary damages of ₱30,000.00 are justified under Article 2229 of the Civil Code to set an example for the public good and to serve as deterrent to those who abuse the young.[24]

In this case, we note that both the RTC and the CA correctly awarded civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00. Both courts however failed to award exemplary damages to which "AAA" is entitled. Accordingly, we award exemplary damages to "AAA" in the amount of ₱30,000.00. In addition, all the damages shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid in conformity with prevailing jurisprudence.[25]

WHEREFORE, the September 18, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01923 is **AFFIRMED** with modifications that appellant Rodolfo de Jesus *y* Mendoza is further ordered to pay "AAA" the amount of ₱30,000.00 as exemplary damages, plus interest of 6% *per annum* on all damages awarded from date of finality of this judgment until fully paid.

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[23] Records, p. 11.

[24] *People v. Teodoro, supra* note 4.

[25] *Id.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 198400. October 7, 2013]

FE ABELLA *Y* PERPETUA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS WHICH ARE PATENTLY FACTUAL IN NATURE REQUIRING THE RE-CALIBRATION OF THE EVIDENCE OF THE CONTENDING PARTIES ARE BEYOND THE SCOPE THEREOF; EXCEPTIONS, NOT PRESENT; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— *Century Iron Works, Inc. and Benito Chua v. Eleto B. Bañas* is instructive anent what is the subject of review in a petition filed under Rule 45 of the Rules of Court, *viz*: A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. In the case at bar, the challenge is essentially posed against the findings of the courts *a quo* that the petitioner

had a homicidal intent when he hacked Benigno's neck with a scythe and that the wounds the latter sustained could have caused his death had there been no prompt medical intervention. These questions are patently factual in nature requiring no less than a re-calibration of the contending parties' evidence. It is settled that the general rule enunciated in *Century Iron Works, Inc. and Benito Chua* admits of exceptions, among which is, "when the judgment of the CA is premised on a misapprehension of facts or a failure to notice certain relevant facts that would otherwise justify a different conclusion x x x." However, the factual backdrop and circumstances surrounding the instant petition do not add up to qualify the case as falling within the exceptions.

2. CRIMINAL LAW; HOMICIDE; ELEMENTS.— To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.

3. ID.; FRUSTRATED HOMICIDE; THE PROSECUTION HAS TO PROVE CLEARLY AND CONVINCINGLY THE ACCUSED'S INTENT TO TAKE HIS VICTIM'S LIFE.— In cases of frustrated homicide, the main element is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.

4. ID.; ID.; ID.; THE USE OF SCYTHE AGAINST THE VICTIM'S NECK IS DETERMINATIVE OF THE ACCUSED'S HOMICIDAL INTENT WHEN THE HACKING BLOW WAS DELIVERED, FOR A SINGLE HACKING BLOW IN THE NECK WITH THE USE OF A SCYTHE COULD BE ENOUGH TO DECAPITATE A

PERSON AND LEAVE HIM DEAD.— In Benigno's case, he sustained an 11-centimeter long hacking wound in the neck and a 4-cm long incised wound in his left hand caused by the unsterile scythe used by the petitioner. Dr. Ardiente testified that "it is possible to have complications [resulting from these] injuries because the wounds [were] extensive and [they were] big and [they were open wounds], so there is a possibility of infection[s] [resulting from these] kind[s] of wounds, and the instrument used [was] not [a] sterile instrument contaminated with other thing[s]." No complications developed from Benigno's wounds which could have caused his death, but he was confined in the hospital for a period of 17 days from September 6, 1998 to September 23, 1998. From the foregoing, this Court concludes and thus agrees with the CA that the use of a scythe against Benigno's neck was determinative of the petitioner's homicidal intent when the hacking blow was delivered. It does not require imagination to figure out that a single hacking blow in the neck with the use of a scythe could be enough to decapitate a person and leave him dead. While no complications actually developed from the gaping wounds in Benigno's neck and left hand, it perplexes logic to conclude that the injuries he sustained were potentially not fatal considering the period of his confinement in the hospital. A mere grazing injury would have necessitated a lesser degree of medical attention.

5. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As to the civil liability of the petitioner, the CA was correct in deleting the payment of the consequential damages awarded by the trial court in the absence of proof thereof. Where the amount of actual damages cannot be determined because of the absence of supporting receipts but entitlement is shown by the facts of the case, temperate damages may be awarded. In the instant case, Benigno certainly suffered injuries, was actually hospitalized and underwent medical treatment. Considering the nature of his injuries, it is prudent to award temperate damages in the amount of ₱25,000.00, in lieu of actual damages. Furthermore, we find that Benigno is entitled to moral damages in the amount of ₱25,000.00. There is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on Benigno would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] from the Decision[2] and Resolution[3] dated October 26, 2010 and August 11, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. CR No. 00336-MIN affirming with modifications the conviction[4] by the Regional Trial Court (RTC) of Misamis Oriental, Cagayan de Oro City, Branch 39 of Fe Abella *y* Perpetua (petitioner) for the crime of frustrated homicide committed against his younger brother, Benigno Abella (Benigno). The RTC sentenced the petitioner to suffer an indeterminate penalty of six (6) years and one (1) day to eight (8) years of *prision mayor* as minimum, to ten (10) years and one (1) day to twelve (12) years of *prision mayor* as maximum, and to pay Benigno ₱100,000.00 as consequential damages, ₱10,000.00 for the medical expenses he incurred, plus the costs of suit.[5] The CA concurred with the RTC's factual findings. However, the CA modified the penalty imposed to six (6) months and one (1) day to six (6) years of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period as maximum. The CA also deleted the RTC's award in favor of Benigno of

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[1] *Rollo*, pp. 11-31.

[2] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Edgardo A. Camello and Leoncia R. Dimagiba, concurring; CA *rollo*, pp. 74-82.

[3] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Abraham B. Borreta and Melchor Quirino C. Sadang, concurring; *id.* at 112-116.

[4] Issued by Judge Downey C. Valdevilla, *id.* at 31-43.

[5] *Id.* at 43.

(a) ₱10,000.00 as actual damages corresponding to the medical expenses allegedly incurred; and (b) ₱100,000.00 as consequential damages. In lieu of the preceding, the CA ordered the petitioner to pay Benigno ₱30,000.00 as moral damages and ₱10,000.00 as temperate damages.[6]

Antecedent Facts

On October 7, 1998, the petitioner, who at times worked as a farmer, baker and *trisicad* driver, was charged with frustrated homicide in an Information[7] which reads:

> That on or about September 6, 1998, at 11:00 o'clock in the evening, more or less, at Sitio Puli, Canitoan, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, did then and there wilfully, unlawfully and feloniously and with intent to kill, attack, assault, harm and hack one, BENIGNO ABELLA *y* PERPETUA, with the use of a scythe, hitting the latter's neck, thereby inflicting the injury described below, to wit:
>
> - hacking wound left lateral aspect neck; and
> - incised wound left hand dorsal aspect
>
> thus performing all the acts of exe[cu]tion which would produce the crime of homicide as a consequence, but nevertheless, did not produce it by reason of some cause or causes independent of the will of the accused, that is the timely and able intervention of the medical attendance rendered to the said victim.
>
> Contrary to Article 249 in relation to 250 of the RPC.[8]

After the Information was filed, the petitioner remained at large and was only arrested by agents of the National Bureau of Investigation on October 7, 2002.[9]

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[6] *Id.* at 81.

[7] Original Records, pp. 1-2.

[8] *Id.* at 1.

[9] *Id.* at 10.

During the arraignment, the petitioner pleaded not guilty to the crime charged. Pre-trial and trial thus proceeded.

The Prosecution offered the testimonies of: (a) Benigno;[10] (b) Amelita Abella[11] (Amelita), Benigno's wife; (c) Alejandro Tayrus[12] (Alejandro), with whom the petitioner had a quarrel; and (d) Dr. Roberto Ardiente[13] (Dr. Ardiente), a surgeon from J.R. Borja Memorial Hospital, Cagayan de Oro City, who rendered medical assistance to Benigno after the latter was hacked by the petitioner.

The Prosecution evidence established that on September 6, 1998, at around 11:00 p.m., Benigno was watching television in his house. A certain Roger Laranjo arrived and asked Benigno to pacify the petitioner, who was stirring trouble in a nearby store. Benigno and Amelita found the petitioner fighting with Alejandro and a certain Dionisio Ybañes (Dionisio). Benigno was able to convince the petitioner to go home. Benigno and Amelita followed suit and along the way, they dropped by the houses of Alejandro and Dionisio to apologize for the petitioner's conduct.

Benigno and Amelita were in Alejandro's house when the petitioner arrived bringing with him two scythes, one in each of his hands. Benigno instructed Alejandro and Dionisio to run away and the latter two complied. The petitioner wanted to enter Alejandro's house, but Benigno blocked his way and asked him not to proceed. The petitioner then pointed the scythe, which he held in his left hand, in the direction of Benigno's stomach, while the scythe in the right hand was used to hack the latter's neck once.[14] Benigno fell to the ground and was immediately

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[10] TSN, February 20, 2003, pp. 2-20.

[11] TSN, January 23, 2003, pp. 2-21.

[12] *Id.* at 21-35.

[13] TSN, May 12, 2003, pp. 3-12.

[14] TSN, January 23, 2003, pp. 9, 17.

taken to the hospital[15] while the petitioner ran to chase Alejandro.[16] Benigno incurred an expense of more than ₱10,000.00 for hospitalization, but lost the receipts of his bills.[17] He further claimed that after the hacking incident, he could no longer move his left hand and was thus deprived of his capacity to earn a living as a carpenter.[18]

Dr. Ardiente testified that Benigno sustained: (a) a "hacking wound left lateral aspect neck 11 cm"; and (b) an "incised wound left hand dorsal aspect 4 cm".[19] Benigno was initially confined in the hospital on September 6, 1998 and was discharged on September 23, 1998.[20] From Dr. Ardiente's recollection, since the scythe used in the hacking was not sterile, complications and infections could have developed from the big and open wounds sustained by Benigno, but fortunately did not.[21]

The defense offered the testimonies of: (a) the petitioner;[22] (b) Fernando Fernandez[23] (Fernando), a friend of the petitioner; and (c) Urbano Cabag[24] (Urbano).

The petitioner relied on denial and *alibi* as defenses. He claimed that from September 2, 1998 to October 2002, he and his family resided in Buenavista, Agusan del Norte. *Sitio* Puli, Canitoan, Cagayan de Oro City, where the hacking incident occurred, is about four (4) hours drive away.

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

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

[17] CA *rollo*, p. 33.

[18] *Id.*

[19] TSN, May 12, 2003, p. 7; see also Medical Certificate and Clinical Cover Sheet, Original Records, pp. 69-70.

[20] Original Records, p. 70; TSN, May 12, 2003, p. 9.

[21] TSN, May 12, 2003, pp. 9-11.

[22] TSN, April 26, 2004, pp. 1-26.

[23] TSN, January 22, 2004, pp. 1-32.

[24] TSN, October 27, 2004, pp. 1-27.

Fernando testified that on September 6, 1998, he saw the petitioner gathering woods to make a hut.[25] Later in the evening, at around 5:00 p.m., Urbano spotted the petitioner drinking *tuba* in the store of Clarita Perpetua.[26]

The RTC Ruling

On July 13, 2006, the RTC convicted the petitioner of the crime charged. The *fallo* of the Judgment[27] reads:

> **WHEREFORE,** in view of the foregoing and finding the evidence presented by the prosecution sufficient to prove the guilt of the [petitioner] beyond reasonable doubt, judgment is rendered finding [petitioner] Fe Abella **GUILTY** beyond reasonable doubt of the crime of Frustrated Homicide as defined and penalized by Article 249 in relation to Article 50 and Art. 6 of the Revised Penal Code. Accordingly, [petitioner] Fe Abella is hereby sentenced to suffer an indeterminate penalty of Six (6) years and One (1) day to Eight (8) years of *prision mayor* as minimum to Ten (10) years and One (1) day to Twelve (12) years of *prision mayor* as maximum; to indemnify offended-party complainant Benigno Abella the sum of Ten Thousand ([₱]10,000.00) Pesos for the medical expenses incurred; to pay the sum of ONE HUNDRED THOUSAND ([₱]100,000.00) PESOS as consequential damages and to pay the costs.
>
> SO ORDERED.[28]

The RTC found the petitioner's defenses of *alibi* and denial as weak. No disinterested witnesses were presented to corroborate the petitioner's claim that he was nowhere at the scene of the hacking incident on September 6, 1998. Fernando and Urbano's testimonies were riddled with inconsistencies. The RTC accorded more credence to the averments of the prosecution witnesses, who, without any ill motives to testify against the petitioner, positively, categorically and consistently pointed at the latter

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[25] TSN, January 22, 2004, p. 13.

[26] TSN, October 27, 2004, pp. 5-6.

[27] CA *rollo*, pp. 31-43.

[28] *Id.* at 43.

as the perpetrator of the crime. Besides, medical records show that Benigno sustained a wound in his neck and his scar was visible when he testified during the trial.

The RTC awarded ₱10,000.00 as actual damages to Benigno for the medical expenses he incurred despite the prosecution's failure to offer receipts as evidence. The petitioner was likewise ordered to pay ₱100,000.00 as consequential damages, but the RTC did not explicitly lay down the basis for the award.

The petitioner then filed an appeal[29] before the CA primarily anchored on the claim that the prosecution failed to prove by clear and convincing evidence the existence of intent to kill which accompanied the single hacking blow made on Benigno's neck. The petitioner argued that the hacking was merely accidental especially since he had no motive whatsoever which could have impelled him to hurt Benigno, and that the infliction of merely one wound negates intent to kill.

The CA Ruling

On October 26, 2010, the CA rendered the herein assailed Decision[30] affirming the petitioner's conviction for the crime of frustrated homicide ratiocinating that:

> Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; **(c) the nature and number of wounds inflicted on the victim**; (d) the manner the crime was committed; and (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim.
>
> Here, the intent to kill was sufficiently proven by the Prosecution. The [petitioner] attacked [Benigno] with deadly weapons, two scythes. [The petitioner's] blow was directed to the neck of Benigno. The attack on the unarmed and unsuspecting Benigno was swift and sudden. The latter had no means, and no time, to defend himself.
>
> Dr. Roberto Ardiente, Jr., who attended and issued the Medical Certificate, testified that Benigno suffered from a hack wound on

[29] *Id.* at 19-30.

[30] *Id.* at 74-82.

the left neck, and an incised wound on the left hand palm. He said that the wounds might have been caused by a sharp, pointed and sharp-edged instrument, and may have resulted to death without proper medical attendance. Benigno was hospitalized for about a month because of the injuries. The location of the wound (on the neck) shows the nature and seriousness of the wound suffered by Benigno. It would have caused his death, had it not been for the timely intervention of medical science.[31] (Citations omitted and emphasis supplied)

However, the CA modified the sentence to "imprisonment of six (6) months and one (1) day to six (6) years of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum."[32] The CA explained that:

Article 249 of the *Revised Penal Code* provides that the penalty for the crime of consummated homicide is *reclusion temporal*, or twelve (12) years and one (1) day to twenty (20) years. Under Article 50 of the same Code, the penalty for a frustrated crime is one degree lower than that prescribed by law. Thus, frustrated homicide is punishable by *prision mayor*, or six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, absent any mitigating or aggravating circumstances, the maximum of the indeterminate penalty should be taken from the medium period of *prision mayor*. To determine the minimum of the indeterminate penalty, *prision mayor* should be reduced by one degree, which is *prision correccional*, with a range of six (6) months and one (1) day to six (6) years. The minimum of the indeterminate penalty may be taken from the full range of *prision correccional*.[33] (Citation omitted)

The CA also deleted the RTC's order for the payment of actual and consequential damages as there were no competent proofs to justify the awards. The CA instead ruled that Benigno is entitled to ₱30,000.00 as moral damages and ₱10,000.00 as

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[31] *Id.* at 79-80.

[32] *Id.* at 81.

[33] *Id.* at 80.

temperate damages,[34] the latter being awarded when some pecuniary loss has been incurred, but the amount cannot be proven with certainty.[35]

Issue

Hence, the instant Petition for Review on *Certiorari*[36] anchored on the issue of whether or not the RTC and the CA erred in rendering judgments which are not in accordance with law and applicable jurisprudence and which if not corrected, will cause grave injustice and irreparable damage to the petitioner.[37]

In support thereof, the petitioner avers that the courts *a quo* failed to appreciate relevant facts, which if considered, would justify either his acquittal or the downgrading of his conviction to less serious physical injuries. The petitioner points out that after the single hacking blow was delivered, he ran after Alejandro and Dionisio leaving Benigno behind. Had there been an intent to kill on his part, the petitioner could have inflicted more wounds since at that time, he had two scythes in his hands. Further, the CA erred in finding that the hacking blow was sudden and unexpected, providing Benigno with no opportunity to defend himself. Benigno saw the petitioner arriving with weapons on hand. Benigno could not have been unaware of the danger facing him, but he knew that the petitioner had no intent to hurt him. Benigno thus approached the petitioner, but in the process, the former was accidentally hit with the latter's scythe.

The petitioner also cites *Pentecostes, Jr. v. People*[38] where this Court found the downgrading of a conviction from attempted murder to physical injuries as proper considering that homicidal

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[34] *Id.* at 81.

[35] *Id.*, citing *Premiere Development Bank v. Court of Appeals*, 471 Phil. 704, 719 (2004).

[36] *Rollo*, pp. 11-31.

[37] *Id.* at 19.

[38] G.R. No. 167766, April 7, 2010, 617 SCRA 504.

intent was absent when the accused shot the victim once and did not hit a vital part of the latter's body.[39]

Further, as per Dr. Ardiente's testimony, no complications resulted from Benigno's hacking wound in the neck and incised wound in the hand. Such being the case, death could not have resulted. The neck wound was not "so extensive because it [did] not involve [a] big blood vessel on its vital structure" while the incised wound in the hand, which only required cleansing and suturing, merely left a slight scarring.[40] Besides, Benigno was only confined for seventeen (17) days at the hospital and the injuries he sustained were in the nature of less serious ones.

In its Comment,[41] the Office of the Solicitor General (OSG) seeks the dismissal of the instant petition. The OSG stresses that the petitioner raises factual issues, which call for a re-calibration of evidence, hence, outside the ambit of a petition filed under Rule 45 of the Rules of Court.

Moreover, the petitioner's argument that the development of infections or complications on the wounds is a necessary factor to determine the crime committed is specious. The petitioner's intent to kill Benigno can be clearly inferred from the nature of the weapon used, the extent of injuries inflicted and the circumstances of the aggression. Benigno could have died had there been no timely medical assistance rendered to him.

If it were the petitioner's wish to merely get Benigno out of the way to be able to chase Alejandro and Dionisio, a kick, fist blow, push, or the use of a less lethal weapon directed against a non-vital part of the body would have been sufficient. However, the petitioner hacked Benigno's neck with an unsterile scythe, leaving behind a big, open and gaping wound.

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[39] *Id.* at 516-517.

[40] *Rollo,* pp. 25-27.

[41] CA *rollo,* pp. 129-150.

This Court's Ruling

The instant petition raises factual issues which are beyond the scope of a petition filed under Rule 45 of the Rules of Court.

Century Iron Works, Inc. and Benito Chua v. Eleto B. Bañas[42] is instructive anent what is the subject of review in a petition filed under Rule 45 of the Rules of Court, *viz*:

> A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact.
>
> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[43] (Citations omitted)

In the case at bar, the challenge is essentially posed against the findings of the courts *a quo* that the petitioner had a homicidal intent when he hacked Benigno's neck with a scythe and that the wounds the latter sustained could have caused his death had there been no prompt medical intervention. These questions are patently factual in nature requiring no less than a re-calibration of the contending parties' evidence.

It is settled that the general rule enunciated in *Century Iron Works, Inc. and Benito Chua* admits of exceptions, among which is, "when the judgment of the CA is premised on a misapprehension of facts or a failure to notice certain relevant

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[42] G.R. No. 184116, June 19, 2013.

[43] *Id.*

facts that would otherwise justify a different conclusion x x x."[44] However, the factual backdrop and circumstances surrounding the instant petition do not add up to qualify the case as falling within the exceptions.

Even if this Court were to be exceptionally liberal and allow a review of factual issues, still, the instant petition is susceptible to denial.

To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.[45]

In cases of frustrated homicide, the main element is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.[46]

The petitioner now wants to impress upon this Court that he had no motive to attack, much less kill Benigno. The petitioner

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[44] *Rollo*, p. 20, citing *Fuentes v. CA*, 335 Phil. 1163, 1168 (1997).

[45] *People v. Badriago*, G.R. No. 183566, May 8, 2009, 587 SCRA 820, 832, citing *SPO1 Nerpio v. People*, 555 Phil. 87, 94 (2007); *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 695.

[46] *Colinares v. People*, G.R. No. 182748, December 13, 2011, 662 SCRA 266, 275-276, citing *People v. Pagador*, 409 Phil. 338, 351 (2001); *Rivera v. People*, 515 Phil. 824, 832 (2006).

likewise invokes the doctrine in *Pentecostes, Jr.*[47] to argue that homicidal intent is absent in a case where the accused shot the victim only once when there was an opportunity to do otherwise. The petitioner belabors his claim that had he intended to kill Benigno, he could have repeatedly hacked him to ensure the latter's death, and not leave right after the blow to chase Alejandro instead.

The analogy is flawed.

In *Pentecostes, Jr.*, the victim was shot only once in the arm, a non vital part of the body. The attending physician certified that the injury would require medical attendance for ten days, but the victim was in fact promptly discharged from the hospital the following day.

In Benigno's case, he sustained an 11-centimeter long hacking wound in the neck and a 4-cm long incised wound in his left hand caused by the unsterile scythe used by the petitioner. Dr. Ardiente testified that "it is possible to have complications [resulting from these] injuries because the wounds [were] extensive and [they were] big and [they were open wounds], so there is a possibility of infection[s] [resulting from these] kind[s] of wounds, and the instrument used [was] not [a] sterile instrument contaminated with other thing[s]."[48] No complications developed from Benigno's wounds which could have caused his death, but he was confined in the hospital for a period of 17 days from September 6, 1998 to September 23, 1998.

From the foregoing, this Court concludes and thus agrees with the CA that the use of a scythe against Benigno's neck was determinative of the petitioner's homicidal intent when the hacking blow was delivered. It does not require imagination to figure out that a single hacking blow in the neck with the use of a scythe could be enough to decapitate a person and leave him dead. While no complications actually developed from the gaping wounds in Benigno's neck and left hand, it perplexes

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[47] *Supra* note 38.

[48] TSN, May 12, 2003, p. 9.

logic to conclude that the injuries he sustained were potentially not fatal considering the period of his confinement in the hospital. A mere grazing injury would have necessitated a lesser degree of medical attention.

This Court likewise finds wanting in merit the petitioner's claim that an intent to kill is negated by the fact that he pursued Alejandro instead and refrained from further hacking Benigno. What could have been a fatal blow was already delivered and there was no more desistance to speak of. Benigno did not die from the hacking incident by reason of a timely medical intervention provided to him, which is a cause independent of the petitioner's will.

All told, this Court finds no reversible error committed by the CA in affirming the RTC's conviction of the petitioner of the crime charged.

The Court modifies the award of damages.

As to the civil liability of the petitioner, the CA was correct in deleting the payment of the consequential damages awarded by the trial court in the absence of proof thereof. Where the amount of actual damages cannot be determined because of the absence of supporting receipts but entitlement is shown by the facts of the case, temperate damages may be awarded.[49] In the instant case, Benigno certainly suffered injuries, was actually hospitalized and underwent medical treatment. Considering the nature of his injuries, it is prudent to award temperate damages in the amount of ₱25,000.00, in lieu of actual damages.[50]

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[49] *Esqueda v. People*, G.R. No. 170222, June 18, 2009, 589 SCRA 489, 512-513; Article 2224 of the CIVIL CODE OF THE PHILIPPINES provides: "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the Court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty."

[50] *Esqueda v. People*, *id*; *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 341.

Furthermore, we find that Benigno is entitled to moral damages in the amount of ₱25,000.00.[51] There is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on Benigno would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.[52]

WHEREFORE, the instant petition is **DENIED.** The Decision and Resolution, dated October 26, 2010 and August 11, 2011, respectively, of the Court of Appeals in CA-G.R. CR No. 00336-MIN are **AFFIRMED with MODIFICATIONS**. The petitioner, Fe Abella *y* Perpetua is **ORDERED TO PAY** the offended party moral damages in the amount of ₱25,000.00 and temperate damages in the amount of ₱25,000.00. Further, the monetary awards for damages shall be subject to interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[53]

SO ORDERED.

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

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[51] *People of the Philippines v. Rodel Lanuza y Bagaoisan*, G.R. No. 188562, August 17, 2011; *People of the Philippines v. Jesus Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436.

[52] *Esqueda v. People, supra* note 49, at 513.

[53] Please see *People of the Philippines v. Jonathan "Uto" Veloso y Rama*, G.R. No. 188849, February 13, 2013.

[*] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

EN BANC

[A.C. No. 4945. October 8, 2013]

MA. JENNIFER TRIA-SAMONTE, *complainant*, *vs*. **EPIFANIA "FANNY" OBIAS,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CLIENT-LAWYER RELATIONSHIP; IF A PERSON, IN RESPECT TO BUSINESS AFFAIRS OR TROUBLES OF ANY KIND, CONSULTS A LAWYER WITH A VIEW TO OBTAINING PROFESSIONAL ADVICE OR ASSISTANCE, AND THE ATTORNEY VOLUNTARILY PERMITS OR ACQUIESCES WITH THE CONSULTATION, THEN THE PROFESSIONAL EMPLOYMENT IS ESTABLISHED.— Indeed, respondent, in her Comment, already admitted that she rendered legal services to Sps. Tria, which necessarily gave rise to a lawyer-client relationship between them. The complete turnaround made by respondent in her motion for reconsideration from the IBP Board of Governors' Resolution No. XX-2012-109, where she contended that there was no lawyer-client relationship between her and Sps. Tria, cannot thus be given any credence. Since respondent publicly held herself out as lawyer, the mere fact that she also donned the hat of a real estate broker did not divest her of the responsibilities attendant to the legal profession. In this regard, the legal advice and/or legal documentation that she offered and/or rendered regarding the real estate transaction subject of this case should not be deemed removed from the category of legal services. Case law instructs that if a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces with the consultation, then the professional employment is established. Thus, in view of the fact that Sps. Tria knew respondent to be, and transacted with her as, a lawyer, her belated and unilateral classification of her own acts as being limited to those of a real estate broker cannot be upheld. In any case, the lawyer-client relationship between Sps. Tria

and respondent was confirmed by the latter's admission that she rendered legal services to the former.

2. **ID.; ID.; ID.; LAWYERS ARE DUTY BOUND TO OBSERVE CANDOR, FAIRNESS, AND LOYALTY IN ALL THEIR DEALINGS AND TRANSACTIONS WITH THEIR CLIENTS, AND AN ABSOLUTE ABDICATION OF EVERY PERSONAL ADVANTAGE CONFLICTING IN ANY WAY WITH THE INTERESTS OF THEIR CLIENTS IS DEMANDED FROM THEM; CANONS 17 AND 18 AND RULE 1.01, CANON 1 OF THE CODE OF PROFESSIONAL RESPONSIBILITY, VIOLATED BY THE RESPONDENT-LAWYER.—** It is a core ethical principle that lawyers owe fidelity to their clients' cause and must always be mindful of the trust and confidence reposed in them. They are duty-bound to observe candor, fairness, and loyalty in all their dealings and transactions with their clients. Irrefragably, the legal profession demands of attorneys an absolute abdication of every personal advantage conflicting in any way, directly or indirectly, with the interests of their clients. As enshrined in Canons 17 and 18 of the Code: Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him. Canon 18 — A lawyer shall serve his client with competence and diligence. In the present case, respondent clearly transgressed the above-mentioned rules as her actions were evidently prejudicial to her clients' interests. Records disclose that instead of delivering the deed of sale covering the subject property to her clients, she wilfully notarized a deed of sale over the same property in favor of another person. Accordingly, far removed from protecting the interest of her clients, Sps. Tria, who had, in fact, already fully paid the purchase price of the subject property, respondent participated and was even instrumental in bringing about the defeat of their rights over the said property. Hence, respondent grossly violated the trust and confidence reposed in her by her clients, in contravention of Canons 17 and 18 of the Code. To add, by turning against her own clients, respondent also violated Rule 1.01, Canon 1 of the Code which provides that a lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct. Lest it be forgotten, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality,

honesty, integrity, and fair dealing. These unyielding standards respondent evidently failed to adhere to.

3. ID.; ID.; THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP) MUST EXPLAIN THE BASES FOR THE MODIFICATION OF THE PENALTY RECOMMENDED BY THE INVESTIGATING COMMISSIONER.— Anent the proper penalty to be imposed, records bear out that the penalty of suspension from the practice of law recommended by the Investigating Commissioner was decreased from a period of five years to just one year by the IBP Board of Governors in Resolution No. XVIII-2007-185. However, the Court observes that the said resolution is bereft of any explanation showing the bases for such modification in contravention of Section 12(a), Rule 139-B of the Rules of Court which 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 frowns on the unexplained change made by the IBP Board of Governors in the recommended penalty. Be that as it may, the Court proceeds to correct the same.

4. ID.; ID.; DISBARMENT; PENALTY OF DISBARMENT METED OUT AGAINST A LAWYER WHO DELIBERATELY VIOLATED THE CODE OF PROFESSIONAL RESPONSIBILITY WHEN SHE DISHONESTLY DEALT WITH HER OWN CLIENTS, AND ADVANCED THE INTERESTS OF ANOTHER AGAINST HER CLIENTS, RESULTING TO THEIR LOSS.— Jurisprudence reveals that in similar cases where lawyers abused the trust and confidence reposed in them by their clients as well as committed unlawful, dishonest, and immoral or deceitful conduct, as in this case, the Court found them guilty of gross misconduct and disbarred them. In *Chua v. Mesina, Jr.*, the Court disbarred the lawyer who, upon his misrepresentations, breached his promise to his clients to transfer to them the property subject of that case, but instead, offered the same for sale to the public. Also, in *Tabang v. Gacott*, the penalty of disbarment was meted out against the lawyer who, among others, actively sought to sell the properties subject of that case contrary to the interests of his own clients. As the infractions in the foregoing cases are akin to those committed

by respondent in the case at bar, the Court deems that the same penalty of disbarment be imposed against her. Clearly, as herein discussed, respondent committed deliberate violations of the Code as she dishonestly dealt with her own clients and advanced the interests of another against them resulting to their loss. For such violations, respondent deserves the ultimate punishment of disbarment consistent with existing jurisprudence.

5. ID.; ID.; ID.; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS ARE ONLY CONFINED TO THE ISSUE OF WHETHER OR NOT THE RESPONDENT-LAWYER IS STILL FIT TO BE ALLOWED TO CONTINUE AS A MEMBER OF THE BAR, AND THAT THE ONLY CONCERN IS HIS ADMINISTRATIVE LIABILITY; LIABILITIES WHICH ARE PURELY CIVIL IN NATURE OR THOSE WHICH HAVE NO INTRINSIC LINK TO THE LAWYER'S PROFESSIONAL ENGAGEMENT SHOULD BE THRESHED OUT IN A PROPER PROCEEDING OF SUCH NATURE.— [I]t bears to note that the foregoing resolution does not – as it should not – include an order for the return of the ₱2,800,000.00 purchase price and the amount of ₱115,000.00 for expenses allegedly received by respondent, albeit the Investigating Commissioner's findings on the same. In *Roa v. Moreno*, it has been held that disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar and that the only concern is his administrative liability. Thus, the Court's findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature – meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement – as the same should be threshed out in a proper proceeding of such nature.

APPEARANCES OF COUNSEL

Samonte Felicen Tria Samonte Law Offices for complainant.
David C. Naval for respondent.

R E S O L U T I O N

***PER CURIAM*:**

For the Court's resolution is an administrative Complaint-affidavit[1] filed by Ma. Jennifer Tria-Samonte (complainant) against Epifania "Fanny" Obias (respondent) charging her for grave misconduct and/or gross malpractice.

The Facts

In 1997, spouses Prudencio and Loreta Jeremias (Sps. Jeremias), through respondent, offered for sale a parcel of agricultural land covered by Transfer Certificate of Title No. 597 (subject property) to the late Nestor Tria (Nestor) and Pura S. Tria (Sps. Tria), for a consideration of ₱2,800,000.00 and payable in installments.[2] Respondent, who was to receive the payment from Sps. Tria and transmit the same to Sps. Jeremias, undertook to deliver the deed of sale and owner's copy of the title to her clients (Sps. Tria) upon full payment of the purchase price.[3] She further undertook to cause the conversion of the subject property from agricultural to residential, and the transfer of the title to the names of Sps. Tria as part of the package agreement.[4] Respondent received all the installment payments made by Sps. Tria and issued receipts therefor.[5] After full payment of the purchase price on July 11, 1997,[6] and after giving an additional ₱115,000.00 for capital gains tax and other expenses,[7]

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[1] *Rollo,* pp. 1-5.

[2] *Id.* at 1.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 2. See also various attached receipts issued by respondent; *id.* at 12-16.

[6] *Id.* See also receipt issued by respondent for the additional expenses; *id.* at 16.

[7] *Id.* at 17.

Sps. Tria requested from respondent the delivery of the deed of sale and the owner's copy of the title to them but respondent failed to comply explaining that the Department of Agrarian Reform clearance for conversion of the subject property from agricultural to residential was taking time.[8] Despite several subsequent demands, respondent still failed to fulfill her undertakings under the package agreement.[9]

On May 22, 1998, Nestor was fatally shot and died.[10] Thereafter, complainant, daughter of Sps. Tria, again demanded from respondent and Sps. Jeremias the delivery of the deed of sale and the certificate of title of the subject property to them, but to no avail. For their part, Sps. Jeremias informed complainant that they had received the consideration of ₱2,200,000.00 and they had executed and turned-over the sale documents to respondent.[11]

Complainant later discovered that a deed of sale over the subject property was executed by Sps. Jeremias and notarized by respondent in favor of someone else, a certain Dennis Tan, on May 26, 1998 for a consideration of ₱200,000.00.[12]

In defense, respondent, in her Comment,[13] claimed that Nestor instructed her in November 1997 not to proceed with the processing of the deed of sale and, instead, to just look for another buyer.[14] She further averred that Nestor also demanded

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[8] See TSN, March 17, 2005, *id.* at 554.

[9] See TSN, March 17, 2005, *id.* at 554-555 and 576.

[10] *Id.* at 2. The Court takes judicial notice of the fact that respondent was charged with the murder of Nestor. In its November 24, 2010 Decision in G.R. No. 175887, entitled "*Heirs of the Late Nestor Tria v. Atty. Epifania Obias*," the Court even sustained the probable cause finding against respondent for the said crime. (See *Heirs of the Late Nestor Tria v. Obias*, G.R. No. 175887, November 24, 2010, 636 SCRA 91.)

[11] *Id.* at 3.

[12] *Id.* at 3-4. See also Deed of Sale dated May 26, 1998; *id.* at 23-24.

[13] *Id.* at 56-59.

[14] *Id.* at 57.

from her the return of the purchase price, and that she complied with the said demand and returned the ₱2,800,000.00 in cash to Nestor sometime during the latter part of January 1998.[15] However, she did not ask for a written receipt therefor. In fact, Nestor told her not to return the ₱115,000.00 intended for capital gains taxes and other expenses, and to just apply the said sum as attorney's fees for the other legal services that she rendered for him.[16]

In the Court's Resolution[17] dated August 30, 1999, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation. After numerous postponements, mostly at the instance of respondent,[18] only the complainant and her witnesses testified before the IBP. Eventually, respondent's right to present evidence was considered waived.[19]

The IBP's Report and Recommendation

On September 25, 2007, the IBP Investigating Commissioner, Wilfredo E.J.E. Reyes (Investigating Commissioner), issued his Report and Recommendation,[20] finding respondent to have violated her oath as a lawyer due to her participation in the second sale of the subject property despite the lack of any lawful termination of the prior sale of the same property to Sps. Tria. The Investigating Commissioner observed that respondent received, and admitted to have received, from Sps. Tria the ₱2,800,000.00 purchase price and the amount of ₱115,000.00 for expenses. He further found the second sale of the same property to Dennis Tan as a clear indication that respondent: (*a*) employed serious deceit or fraud against Sps. Tria and their family; (*b*) violated their proprietary rights; and (*c*) violated

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[15] *Id.*

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

[17] *Id.* at 72.

[18] *Id.* at 628.

[19] *Id.*

[20] *Id.* at 620-639.

the trust and confidence reposed in her.[21] On the other hand, the Investigating Commissioner did not give credence to respondent's defense that she returned the ₱2,800,000.00 purchase price given by Sps. Tria and that the latter caused the cancellation of the sale of the subject property in their favor, absent any receipt or documentation to prove the same.[22] As counsel for Sps. Tria, respondent failed in her obligation to observe honesty and diligence in their transaction and, as such, she was found guilty of grave misconduct and gross malpractice in violation of Canons 17 and 18 of the Code of Professional Responsibility (Code).[23] Accordingly, the Investigating Commissioner recommended that respondent be suspended from the practice of law for a period of five years.[24]

Finding the recommendation to be fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violation of Canons 17 and 18 of the Code, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation in Resolution No. XVIII-2007-185[25] dated October 19, 2007 but reduced the suspension of respondent from the practice of law from five years to one year.

Both complainant and respondent filed their respective motions for reconsideration[26] which were, however, denied in the IBP Board of Governors' Resolution No. XX-2012-109 dated March 10, 2012.[27]

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[21] *Id.* at 638.

[22] *Id.* at 637.

[23] *Id.*

[24] *Id.* at 639.

[25] *Id.* at 619.

[26] *Id.* at 640-646 (for complainant); and *id.* at 669-674 (for respondent).

[27] *Id.* at 697.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating Canons 17 and 18 of the Code.

The Court's Ruling

The Court finds no cogent reason to disturb the findings of the IBP. Indeed, respondent, in her Comment, already admitted that she rendered legal services to Sps. Tria,[28] which necessarily gave rise to a lawyer-client relationship between them. The complete turnaround made by respondent in her motion for reconsideration from the IBP Board of Governors' Resolution No. XX-2012-109, where she contended that there was no lawyer-client relationship between her and Sps. Tria,[29] cannot thus be given any credence.

Since respondent publicly held herself out as lawyer, the mere fact that she also donned the hat of a real estate broker did not divest her of the responsibilities attendant to the legal profession. In this regard, the legal advice and/or legal documentation that she offered and/or rendered regarding the real estate transaction subject of this case should not be deemed removed from the category of legal services.[30] Case law instructs that if a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces

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[28] Paragraph 5 of respondent's comment states: "It is hereby further pointed out that undersigned Respondent had been appearing as counsel for Nestor Tria since 1995 in administrative cases and in investigations by the Office of the Ombudsman for violation of the Anti-Graft and Corrupt Practices Act, **and had rendered legal services by way of documenting, or giving legal advice on, acquisition of many valuable real properties not only in Camarines Sur but in Metro Manila in the names of the spouses Nestor Tria and Pura S. Tria**, or of their children[.]" (*Id.* at 58; emphasis supplied)

[29] *Id.* at 656-657.

[30] See *Barnachea v. Atty. Quiocho*, 447 Phil. 67 (2003).

with the consultation, then the professional employment is established.[31] Thus, in view of the fact that Sps. Tria knew respondent to be, and transacted with her as, a lawyer, her belated and unilateral classification of her own acts as being limited to those of a real estate broker cannot be upheld. In any case, the lawyer-client relationship between Sps. Tria and respondent was confirmed by the latter's admission that she rendered legal services to the former. With this relationship having been established, the Court proceeds to apply the ethical principles pertinent to this case.

It is a core ethical principle that lawyers owe fidelity to their clients' cause and must always be mindful of the trust and confidence reposed in them.[32] They are duty-bound to observe candor, fairness, and loyalty in all their dealings and transactions with their clients.[33] Irrefragably, the legal profession demands of attorneys an absolute abdication of every personal advantage conflicting in any way, directly or indirectly, with the interests of their clients.[34] As enshrined in Canons 17 and 18 of the Code:

Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Canon 18 — A lawyer shall serve his client with competence and diligence.

In the present case, respondent clearly transgressed the above-mentioned rules as her actions were evidently prejudicial to her clients' interests. Records disclose that instead of delivering the deed of sale covering the subject property to her clients, she wilfully notarized a deed of sale over the same property in favor of another person. Accordingly, far removed from protecting the interest of her clients, Sps. Tria, who had, in fact, already fully paid the purchase price of the subject property, respondent

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[31] *Burbe v. Atty. Magulta*, 432 Phil. 840, 848-849 (2002).

[32] *Id.* at 849.

[33] *Barnachea v. Atty. Quiocho*, *supra* note 30, at 75.

[34] *Id.*

participated and was even instrumental in bringing about the defeat of their rights over the said property. Hence, respondent grossly violated the trust and confidence reposed in her by her clients, in contravention of Canons 17 and 18 of the Code. To add, by turning against her own clients, respondent also violated Rule 1.01, Canon 1 of the Code which provides that a lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct. Lest it be forgotten, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[35] These unyielding standards respondent evidently failed to adhere to.

Anent the proper penalty to be imposed, records bear out that the penalty of suspension from the practice of law recommended by the Investigating Commissioner was decreased from a period of five years to just one year by the IBP Board of Governors in Resolution No. XVIII-2007-185. However, the Court observes that the said resolution is bereft of any explanation showing the bases for such modification in contravention of Section 12(a), Rule 139-B of the Rules of Court which 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 frowns on the unexplained change made by the IBP Board of Governors in the recommended penalty. Be that as it may, the Court proceeds to correct the same.

Jurisprudence reveals that in similar cases where lawyers abused the trust and confidence reposed in them by their clients as well as committed unlawful, dishonest, and immoral or deceitful conduct, as in this case, the Court found them guilty of gross misconduct and disbarred them. In *Chua v. Mesina, Jr.*,[36] the Court disbarred the lawyer who, upon his misrepresentations,

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[35] *Tabang v. Gacott*, A.C. No. 6490, July 9, 2013, citing *In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon*, 174 Phil. 55, 62 (1978) and *Ventura v. Samson*, A.C. No. 9608, November 27, 2012, 686 SCRA 430, 433.

[36] 479 Phil. 796 (2004).

breached his promise to his clients to transfer to them the property subject of that case, but instead, offered the same for sale to the public. Also, in *Tabang v. Gacott*,[37] the penalty of disbarment was meted out against the lawyer who, among others, actively sought to sell the properties subject of that case contrary to the interests of his own clients. As the infractions in the foregoing cases are akin to those committed by respondent in the case at bar, the Court deems that the same penalty of disbarment be imposed against her. Clearly, as herein discussed, respondent committed deliberate violations of the Code as she dishonestly dealt with her own clients and advanced the interests of another against them resulting to their loss. For such violations, respondent deserves the ultimate punishment of disbarment consistent with existing jurisprudence.

As a final point, it bears to note that the foregoing resolution does not – as it should not – include an order for the return of the ₱2,800,000.00 purchase price and the amount of ₱115,000.00 for expenses allegedly received by respondent, albeit the Investigating Commissioner's findings on the same. In *Roa v. Moreno*,[38] it has been held that disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar and that the only concern is his administrative liability.[39] Thus, the Court's findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature – meaning, those liabilities which have no intrinsic link to the lawyer's professional

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[37] See *supra* note 35.

[38] A.C. No. 8382, April 21, 2010, 618 SCRA 693.

[39] "[W]e cannot sustain the IBP's recommendation ordering respondent to return the money paid by complainant. In disciplinary proceedings against lawyers, **the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability**. Our findings have no material bearing on other judicial action which the parties may choose to file against each other." (*Roa v. Moreno*, *id.* at 700; emphasis supplied.)

engagement[40] – as the same should be threshed out in a proper proceeding of such nature.

WHEREFORE, respondent Epifania "Fanny" Obias is found guilty of gross misconduct and is accordingly **DISBARRED.**

Let a copy of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

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

Villarama, Jr., J., on official leave.

EN BANC

[A.C. No. 9532. October 8, 2013]

MARIA CRISTINA ZABALJAUREGUI PITCHER, *complainant, vs.* **ATTY. RUSTICO B. GAGATE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE LAWYER IS EXPECTED TO MAINTAIN AT ALL TIMES A HIGH STANDARD OF LEGAL PROFICIENCY, AND TO DEVOTE HIS FULL

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[40] An example of a liability which has an intrinsic link to the professional engagement would be a lawyer's acceptance fees.

ATTENTION, SKILL, AND COMPETENCE TO THE CASE, REGARDLESS OF ITS IMPORTANCE AND WHETHER HE ACCEPTS IT FOR A FEE OR FOR FREE.— The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives. These principles are embodied in Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

2. ID.; ID.; ID.; THE LAWYER'S ACT OF ADVISING HIS CLIENT TO GO INTO HIDING IN ORDER TO EVADE ARREST IS NOT ONLY IMPROPER BUT ALSO ERRONEOUS, AND IS A CLEAR VIOLATION OF THE LAWYER'S DUTY TO HIS CLIENT TO USE PEACEFUL AND LAWFUL METHODS IN SEEKING JUSTICE.— [T]he Court finds that respondent failed to exercise the required diligence in handling complainant's cause since he: ***first***, failed to represent her competently and diligently by acting and proffering professional advice beyond the proper bounds of law; and, ***second***, abandoned his client's cause while the grave coercion case against them was pending. Anent the first infraction, it bears emphasis that complainant's right over the properties of her deceased husband, David, has yet to be sufficiently established. As such, the high-handed action taken by respondent to enforce complainant's claim of ownership over the latter's interest in Consulting Edge – *i.e.*, causing the change of the office door lock which thereby prevented the free ingress and egress of the employees of the said company – was highly improper. Verily, a person cannot take the law into his own hands, regardless of the merits of his theory. In the same light, respondent's act of advising complainant to go into hiding in order to evade arrest in the criminal case can hardly be maintained as proper legal advice since the same constitutes transgression of the ordinary processes of law. By

virtue of the foregoing, respondent clearly violated his duty to his client to use peaceful and lawful methods in seeking justice, in violation of Rule 19.01, Canon 19 of the Code as above-quoted. To note further, since such courses of action were not only improper but also erroneous, respondent equally failed to serve his client with competence and diligence in violation of Canon 18 of the Code. In the same regard, he also remained unmindful of his client's trust in him – in particular, her trust that respondent would only provide her with the proper legal advice in pursuing her interests – thereby violating Canon 17 of the Code.

3. ID.; ID.; ID.; THE LAWYER'S ACT OF LEAVING HIS CLIENT TOTALLY UNREPRESENTED IN A CRIMINAL CASE AMOUNTS TO GROSS AND INEXCUSABLE NEGLECT.— With respect to the second infraction, [r]ecords definitively bear out that respondent completely abandoned complainant during the pendency of the grave coercion case against them; this notwithstanding petitioner's efforts to reach him as well as his receipt of the ₱150,000.00 acceptance fee. It is hornbook principle that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court. Hence, considering respondent's gross and inexcusable neglect by leaving his client totally unrepresented in a criminal case, it cannot be doubted that he violated Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

4. ID.; ID.; ID.; FAILURE OF THE LAWYER-RESPONDENT TO FILE HIS ANSWER TO THE COMPLAINT DESPITE DUE NOTICE DEMONSTRATES NOT ONLY HIS LACK OF RESPONSIBILITY BUT ALSO HIS LACK OF INTEREST IN CLEARING HIS NAME, WHICH IS CONSTITUTIVE OF AN IMPLIED ADMISSION OF THE CHARGES LEVELED AGAINST HIM.— [I]t must be pointed out that respondent failed to file his answer to the complaint despite due notice. This demonstrates not only his lack of responsibility but also his lack of interest in clearing

his name, which, as case law directs, is constitutive of an implied admission of the charges leveled against him.

5. ID.; ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF THREE YEARS IMPOSED UPON THE RESPONDENT-LAWYER FOR IMPROPER AND ERRONEOUS COUNSELING AND ABANDONMENT OF HIS CLIENT DURING THE PROCEEDINGS.— Several cases show that lawyers who have been held liable for gross negligence for infractions similar to those committed of respondent were suspended from the practice of law for a period of two years. In *Jinon v. Jiz*, a lawyer who neglected his client's case, misappropriated the client's funds and disobeyed the IBP's directives to submit his pleadings and attend the hearings was suspended from the practice of law for two years. x x x. However, the Court observes that, in the present case, complainant was subjected to a graver injury as she was prosecuted for the crime of grave coercion largely due to the improper and erroneous advice of respondent. Were it not for respondent's imprudent counseling, not to mention his act of abandoning his client during the proceedings, complainant would not have unduly suffered the harbors of a criminal prosecution. Thus, considering the superior degree of the prejudice caused to complainant, the Court finds it apt to impose against respondent a higher penalty of suspension from the practice of law for a period of three years as recommended by the OBC.

6. ID.; ID.; ID.; DISCIPLINARY PROCEEDINGS SHOULD ONLY REVOLVE AROUND THE DETERMINATION OF THE RESPONDENT-LAWYER'S ADMINISTRATIVE AND NOT HIS CIVIL LIABILITY, EXCEPT WHEN THE CLAIMED LIABILITIES ARE INTRINSICALLY LINKED TO HIS PROFESSIONAL ENGAGEMENT.— [T]he Court sustains the OBC's recommendation for the return of the ₱150,000.00 acceptance fee received by respondent from complainant since the same is intrinsically linked to his professional engagement. While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received

by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement (such as the acceptance fee in this case). Hence, considering further that the fact of respondent's receipt of the ₱150,000.00 acceptance fee from complainant remains undisputed, the Court finds the return of the said fee, as recommended by the OBC, to be in order.

APPEARANCES OF COUNSEL

David Bartido Loste for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] filed by Maria Cristina Zabaljauregui Pitcher (complainant) against Atty. Rustico B. Gagate (respondent), charging him for gross ignorance of the law and unethical practice of law.

The Facts

Complainant claimed to be the legal wife of David B. Pitcher (David),[2] a British national who passed away on June 18, 2004.[3] Prior to his death, David was engaged in business in the Philippines and owned, among others, 40% of the shareholdings in Consulting Edge, Inc.[4] (Consulting Edge), a domestic corporation. In order to settle the affairs of her deceased husband, complainant engaged the services of respondent.[5]

On June 22, 2004, complainant and respondent met with Katherine Moscoso Bantegui (Bantegui),[6] a major stockholder

[1] *Rollo*, pp. 1-5.

[2] *Id.* at 117. As shown in the Marriage Contract.

[3] *Id.* at 1.

[4] *Id.* at 1, 56, and 140.

[5] *Id.* at 1, 52, 72, and 140.

[6] *Id.* at 1. "Katrina Bantigue or Bantique" in some parts of the record.

of Consulting Edge,[7] in order to discuss the settlement of David's interest in the company.[8] They agreed to another meeting which was, however, postponed by Bantegui. Suspecting that the latter was merely stalling for time in order to hide something, respondent insisted that the appointment proceed as scheduled.[9]

Eventually, the parties agreed to meet at the company premises on June 28, 2004. However, prior to the scheduled meeting, complainant was prevailed upon by respondent to put a paper seal on the door of the said premises, assuring her that the same was legal.[10]

On the scheduled meeting, Bantegui expressed disappointment over the actions of complainant and respondent, which impelled her to just leave the matter for the court to settle. She then asked them to leave, locked the office and refused to give them a duplicate key.[11]

Subsequently, however, respondent, without the consent of Bantegui, caused the change in the lock of the Consulting Edge office door,[12] which prevented the employees thereof from entering and carrying on the operations of the company. This prompted Bantegui to file before the Office of the City Prosecutor of Makati (Prosecutor's Office) a complaint for grave coercion against complainant and respondent.[13] In turn, respondent advised complainant that criminal and civil cases should be initiated against Bantegui for the recovery of David's personal records/ business interests in Consulting Edge.[14] Thus, on January 17,

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

[8] *Id.* at 1.

[9] *Id.* at 2.

[10] *Id.* at 2, 110, and 141.

[11] *Id.* at 2-3, 110-111, and 141.

[12] *Id.* at 3, 111, and 141. See also TSN, February 2, 2007 (attached to the *rollo*), *id.* at 80-85.

[13] *Id.* at 3, 111, and 142.

[14] *Id.* at 3 and 111.

2005, the two entered into a Memorandum of Agreement,[15] whereby respondent undertook the filing of the cases against Bantegui, for which complainant paid the amount of ₱150,000.00 as acceptance fee and committed herself to pay respondent ₱1,000.00 for every court hearing.[16]

On November 18, 2004, the Prosecutor's Office issued a Resolution[17] dated October 13, 2004, finding probable cause to charge complainant and respondent for grave coercion. The corresponding Information was filed before the Metropolitan Trial Court of Makati City, Branch 63, docketed as Criminal Case No. 337985 (grave coercion case), and, as a matter of course, warrants of arrest were issued against them.[18] Due to the foregoing, respondent advised complainant to go into hiding until he had filed the necessary motions in court. Eventually, however, respondent abandoned the grave coercion case and stopped communicating with complainant.[19] Failing to reach respondent despite diligent efforts,[20] complainant filed the instant administrative case before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD), docketed as CBD Case No. 06-1689.

Despite a directive[21] from the IBP-CBD, respondent failed to file his answer to the complaint. The case was set for mandatory

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

[16] *Id.* at 3 and 111.

[17] *Id.* at 124-128. Docketed as I.S. No. 2004-G-10680. Issued by 4th Assistant City Prosecutor William C. T. Uy.

[18] *Id.* at 4.

[19] *Id.*

[20] *Ibid.*

[21] *Id.* at 18-19. The Order dated March 15, 2006 issued by Director for Bar Discipline Rogelio A. Vinluan was delivered to respondent on March 27, 2006 as shown in the Quezon City Central Post Office's Certification dated February 19, 2009 issued by Chief of the Records Unit Llewelyn Fallarme.

conference on November 24, 2006,[22] which was reset twice,[23] on January 12, 2007 and February 2, 2007, due to the absence of respondent. The last notice sent to respondent, however, was returned unserved for the reason "moved out."[24] In view thereof, Investigating Commissioner Tranquil S. Salvador III declared the mandatory conference terminated and required the parties to submit their position papers, supporting documents and affidavits.[25]

The IBP's Report and Recommendation

On March 18, 2009, Investigating Commissioner Pedro A. Magpayo, Jr. (Commissioner Magpayo) issued a Report and Recommendation,[26] observing that respondent failed to safeguard complainant's legitimate interest and abandoned her in the grave coercion case. Commissioner Magpayo pointed out that Bantegui is not legally obliged to honor complainant as subrogee of David because complainant has yet to establish her kinship with David and, consequently, her interest in Consulting Edge.[27] Hence, the actions taken by respondent, such as the placing of paper seal on the door of the company premises and the changing of its lock, were all uncalled for. Worse, when faced with the counter legal measures to his actions, he abandoned his client's cause.[28] Commissioner Magpayo found that respondent's acts evinced a lack of adequate preparation and mastery of the applicable laws on his part, in violation of Canon 5[29] of the Code of

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[22] *Id.* at 25. Notice of Mandatory Conference dated September 29, 2006 issued by Commissioner Tranquil S. Salvador III.

[23] *Id.* at 29 and 31.

[24] *Id.* at 32. Per the Postmaster's Letter dated February 18, 2009.

[25] *Id.* at 98.Order dated February 2, 2007.

[26] *Id.* at 138-146.

[27] *Id.* at 145.

[28] *Id.*

[29] CANON 5 — A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve

Professional Responsibity (Code), warranting his suspension from the practice of law for a period of six months.[30]

The IBP Board of Governors adopted and approved the aforementioned Report and Recommendation in Resolution No. XX-2011-261 dated November 19, 2011 (November 19, 2011 Resolution), finding the same to be fully supported by the evidence on record and the applicable laws and rules.[31]

In a Resolution[32] dated October 8, 2012, the Court noted the Notice of the IBP's November 19, 2011 Resolution, and referred the case to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.[33]

The OBC's Report and Recommendation

On February 11, 2013, the OBC submitted a Report and Recommendation[34] dated February 6, 2013, concluding that respondent grossly neglected his duties to his client and failed to safeguard the latter's rights and interests in wanton disregard of his duties as a lawyer.[35] It deemed that the six-month suspension from the practice of law as suggested by the IBP was an insufficient penalty and, in lieu thereof, recommended that respondent be suspended for three years.[36] Likewise, it ordered respondent to return the ₱150,000.00 he received from complainant as acceptance fee.[37]

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high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

[30] *Rollo,* pp. 145-146.

[31] *Id.* at 137.

[32] *Id.* at 147.

[33] *Id.* at 148.

[34] *Id.* at 149-153.

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

[36] *Id.* at 152-153.

[37] *Id.* at 153.

The Court's Ruling

After a careful perusal of the records, the Court concurs with and adopts the findings and conclusions of the OBC.

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.[38] To this end, he is enjoined to employ only fair and honest means to attain lawful objectives.[39] These principles are embodied in Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code which respectively state:

CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

x x x x x x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

x x x x x x x x x

CANON 19 – A lawyer shall represent his client with zeal within the bounds of the law.

Rule 19.01 – A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

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[38] *Vda. de Saldivar v. Cabanes, Jr.*, A.C. No. 7749, July 8, 2013.

[39] *Trinidad v. Villarin*, A.C. No. 9310, February 27, 2013, 692 SCRA 1, 7.

x x x x x x x x x

Keeping with the foregoing rules, the Court finds that respondent failed to exercise the required diligence in handling complainant's cause since he: ***first***, failed to represent her competently and diligently by acting and proffering professional advice beyond the proper bounds of law; and, ***second***, abandoned his client's cause while the grave coercion case against them was pending.

Anent the first infraction, it bears emphasis that complainant's right over the properties of her deceased husband, David, has yet to be sufficiently established. As such, the high-handed action taken by respondent to enforce complainant's claim of ownership over the latter's interest in Consulting Edge – *i.e.*, causing the change of the office door lock which thereby prevented the free ingress and egress of the employees of the said company – was highly improper. Verily, a person cannot take the law into his own hands, regardless of the merits of his theory. In the same light, respondent's act of advising complainant to go into hiding in order to evade arrest in the criminal case can hardly be maintained as proper legal advice since the same constitutes transgression of the ordinary processes of law. By virtue of the foregoing, respondent clearly violated his duty to his client to use peaceful and lawful methods in seeking justice,[40] in violation of Rule 19.01, Canon 19 of the Code as above-quoted. To note further, since such courses of action were not only improper but also erroneous, respondent equally failed to serve his client with competence and diligence in violation of Canon 18 of the Code. In the same regard, he also remained unmindful of his client's trust in him – in particular, her trust that respondent would only provide her with the proper legal advice in pursuing her interests – thereby violating Canon 17 of the Code.

With respect to the second infraction, records definitively bear out that respondent completely abandoned complainant during the pendency of the grave coercion case against them; this notwithstanding petitioner's efforts to reach him as well as

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[40] *Rural Bank of Calape, Inc. (RBCI) Bohol v. Florido*, A.C. No. 5736, June 18, 2010, 621 SCRA 182, 187.

his receipt of the ₱150,000.00 acceptance fee. It is hornbook principle that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court.[41] Hence, considering respondent's gross and inexcusable neglect by leaving his client totally unrepresented in a criminal case, it cannot be doubted that he violated Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

In addition, it must be pointed out that respondent failed to file his answer to the complaint despite due notice. This demonstrates not only his lack of responsibility but also his lack of interest in clearing his name, which, as case law directs, is constitutive of an implied admission of the charges leveled against him.[42] In fine, respondent should be held administratively liable for his infractions as herein discussed. That said, the Court now proceeds to determine the appropriate penalty to be imposed against respondent.

Several cases show that lawyers who have been held liable for gross negligence for infractions similar to those committed of respondent were suspended from the practice of law for a period of two years. In *Jinon v. Jiz*,[43] a lawyer who neglected his client's case, misappropriated the client's funds and disobeyed the IBP's directives to submit his pleadings and attend the hearings was suspended from the practice of law for two years. In *Small v. Banares*,[44] the Court meted a similar penalty against a lawyer who failed to render any legal service even after receiving money from the complainant; to return the money and documents he

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[41] *Vda. De Saldivar v. Cabanes, Jr., supra* note 38.

[42] See *Re: Criminal Case No. MC-02-5637 Against Arturo V. Peralta and Larry C. De Guzman,* 498 Phil. 318, 325 (2005).

[43] See A.C. No. 9615, March 5, 2013, 692 SCRA 348.

[44] See 545 Phil. 226 (2007).

received despite demand; to update his client on the status of her case and respond to her requests for information; and to file an answer and attend the mandatory conference before the IBP. Also, in *Villanueva v. Gonzales*,[45] a lawyer who neglected complainant's cause; refused to immediately account for his client's money and to return the documents received; failed to update his client on the status of her case and to respond to her requests for information; and failed to submit his answer and to attend the mandatory conference before the IBP was suspended from the practice of law for two years. However, the Court observes that, in the present case, complainant was subjected to a graver injury as she was prosecuted for the crime of grave coercion largely due to the improper and erroneous advice of respondent. Were it not for respondent's imprudent counseling, not to mention his act of abandoning his client during the proceedings, complainant would not have unduly suffered the harbors of a criminal prosecution. Thus, considering the superior degree of the prejudice caused to complainant, the Court finds it apt to impose against respondent a higher penalty of suspension from the practice of law for a period of three years as recommended by the OBC.

In the same light, the Court sustains the OBC's recommendation for the return of the ₱150,000.00 aceptance fee received by respondent from complainant since the same is intrinsically linked to his professional engagement. While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability,[46] it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement (such as the acceptance fee in this case). Hence,considering further that the fact of respondent's receipt of the ₱150,000.00 acceptance fee from complainant remains

[45] See 568 Phil. 379 (2008).

[46] See *Roa v. Moreno*, A.C. No. 8382, April 21, 2010, 618 SCRA 693.

undisputed,[47] the Court finds the return of the said fee, as recommended by the OBC, to be in order.

WHEREFORE, respondent Atty. Rustico B. Gagate is found guilty of violating Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of three (3) years, effective upon the finality of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Further, respondent is **ORDERED** to return to complainant Maria Cristina Zabaljauregui Pitcher the ₱150,000.00 acceptance fee he received from the latter within ninety (90) days from the finality of this Decision. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, and *Leonen, JJ.,* concur.

Reyes, J., no part — had been his associate.

Villarama, Jr., J., on official leave.

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[47] The assertion that the ₱150,000.00 acceptance fee was received by respondent – as evidence by a receipt signed by respondent (attached as Annex "C" to the complaint; *rollo*, p. 12) – remains undisputed in view of respondent's default during the administrative proceedings *a quo* (see Order dated February 2, 2007; *id*. at 98) as well as his failure to file any other pleading in his defense despite due notice (see *id*. at 151). To further note, the said receipt was duly submitted to the IBP during the February 2, 2007 mandatory conference (*id*. at 61-64). However, records do not show that complainant's allegation with respect to her payment of appearance fees to respondent at the rate of ₱1,000.00 per hearing (see complainant, *id*. at 3) was duly substantiated; perforce, the return of the same cannot be made by the Court.

EN BANC

[A.M. No. 2013-08-SC. October 8, 2013]

RE: ADMINISTRATIVE CHARGE OF MISCONDUCT RELATIVE TO THE ALLEGED USE OF PROHIBITED DRUG ("*Shabu*") OF REYNARD B. CASTOR, Electrician II, Maintenance Division, Office of Administrative Services.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT; DEFINED; GRAVE MISCONDUCT DISTINGUISHED FROM SIMPLE MISCONDUCT.— There is no doubt that by using prohibited drugs Castor committed misconduct. The Court, however, cannot give its imprimatur to the conclusion of the OAS that the misconduct should only be categorized as simple. Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.

2. ID.; ID.; ID.; ID.; USE OF PROHIBITED DRUGS IS A FLAGRANT VIOLATION OF THE LAW WHICH IS CONSIDERED AS GRAVE MISCONDUCT PUNISHABLE BY DISMISSAL FROM THE SERVICE EVEN FOR THE FIRST OFFENSE.— [S]ubstantial evidence obtained through a random drug test established that Castor was indeed positive for use of *shabu*. This is a flagrant violation of the law which is considered as grave misconduct. Under Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is a *grave offense*

punishable by dismissal even for the first offense. Further, it is provided that under Civil Service Memorandum Circular No. 13, series of 2010, *any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/ administrative proceedings with a penalty of* ***dismissal*** *from the service at* ***first offense*** pursuant to Section 46(19) of Book V of Executive Order 292 and Section 22(c) of its Omnibus Rules.

3. ID.; ID.; ID.; ID.; INDULGING IN THE USE OF ILLEGAL DRUGS CONSTITUTES CONDUCT UNBECOMING OF COURT PERSONNEL; THE CONDUCT OF PERSON SERVING THE JUDICIARY MUST, AT ALL TIMES, BE CHARACTERIZED BY PROPRIETY AND DECORUM AND ABOVE ALL ELSE, BE ABOVE SUSPICION SO AS TO EARN AND KEEP THE RESPECT OF THE PUBLIC FOR THE JUDICIARY.— Undoubtedly, the use of prohibited drugs by Castor violated the norms of conduct for public service. By indulging in the use of illegal drugs, he committed conduct unbecoming of court personnel, which tarnished the very image and integrity of the Judiciary. No less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat. The conduct of a person serving the Judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public for the Judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

D E C I S I O N

***PER CURIAM*:**

For resolution is the Memorandum, dated August 27, 2013, of Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief

Administrative Officer of the Office of Administrative Services *(OAS)*, recommending that Reynard B. Castor *(Castor)*, Electrician II, Maintenance Division, OAS, be held liable for simple misconduct and conduct prejudicial to the best interest of the service.

This administrative matter stemmed from a series of sick leave application of Castor without any medical certificate. Castor incurred absences on the following dates: January 10-11, 14-18, 21-25, 28-31, 2013; February 1, 4-8, 11-13, 16, 2013; and March 6-7, 12, 15, 19-22, 2013. Due to his frequent absences, he was referred to the SC Clinic for medical evaluation to determine his physical fitness to continue with his duties and responsibilities.

In the medical evaluation report on Castor, dated June 27, 2013, Dr. Prudencio R. Banzon, Jr. *(Dr. Banzon)*, SC Senior Staff Officer, Medical and Dental Services, reported that sometime in March, 2013, Castor sought consultation due an to on-and-off dizziness. A chest x-ray was conducted and he was advised to seek pulmonary consultation. A medical certificate was then issued by a pulmonologist declaring him fit for work. According to Dr. Banzon, when Castor reported to him at the SC clinic on April 25, 2013, he was compelled to undergo a random drug test. The drug test, done at the NBI laboratory, yielded positive for methamphetamine *(shabu)*, a prohibited drug. Dr. Banzon remarked that Castor's absences could be attributed to financial distress due to vice rather than illness.

On the basis of the result of the random drug test, the OAS issued its Memorandum, dated July 2, 2013, directing Castor to submit his comment/explanation why he should not be administratively charged with misconduct for the use of prohibited drugs.

In his letter, dated July 9, 2013, Castor explained that during the early months of this year, he was confronted with emotional and financial problems regarding his family. Because of these heavy problems, he incurred repeated absences from office.

According to him, he was so depressed that he even thought of committing suicide. He admitted that it was during those times that he took prohibited drugs unintentionally. He further claimed that the drugs affected his health and well-being as well as his performance at work. He was nonetheless apologetic and asked that he be given another chance. He also promised that this would not happen again.

OAS Evaluation and Recommendation

OAS noted that Castor never questioned the authenticity of the NBI drug test results. Thus, it was of the view that the finding that he was positive for use of *shabu* was unrebutted. It found his claim of unintentional taking of the illegal drug hard to believe. By indulging in *shabu*, he incurred prolonged unauthorized absences from office which greatly affected his efficiency in the performance of his functions.

OAS cited *OCA v. Reyes*[1] where it was written: "The Court is a temple of justice. Its basic duty and responsibility is the dispensation of justice. As dispensers of justice, all members and employees of the Judiciary are expected to adhere strictly to the laws of the land, one of which is Republic Act (R.A.) 9165, which prohibits the use of dangerous drugs." Section 36, paragraph (d) of the said law provides:

> (d) Officers and employees of public and private offices. – Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, which shall be borne by the employer, for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law.

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[1] A.M. No. P-08-2535, June 23, 2010, 621 SCRA 511.

Pursuant thereto, the Court issued Memorandum Order No. 18-2005, dated April 26, 2005, establishing a program to deter the use of dangerous drugs and authorizing the conduct of random drug testing on the personnel of the Judiciary. In A.M. No. 06-1-01-SC, dated January 17, 2006, the Court adopted *guidelines* for its drug prevention program for the purpose of eliminating the hazards of drug abuse in the Judiciary.

OAS believed that by using prohibited drugs, Castor put at risk the very institution which he was serving. His actuation diminished the respect of the public for the men and women in the Judiciary that could not be tolerated. The OAS considered the misconduct as simple as Castor was just coaxed by relatives to sniff *shabu* wrapped in foil when he went to his cousin's wake. Thus, it was *recommended* that Castor be held liable for *simple misconduct* and *conduct prejudicial to the best interest of the service* for his use of prohibited drugs, and that he be *suspended from office for six (6) months*, without pay, with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

The Court's Ruling

There is no doubt that by using prohibited drugs Castor committed misconduct. The Court, however, cannot give its imprimatur to the conclusion of the OAS that the misconduct should only be categorized as simple.

Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior.[2] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or

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[2] *Dalmacio-Joaquin v. Dela Cruz*, A.M. No. P-07-2321, April 24, 2009, 586 SCRA 344, 349.

flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[3]

In this case, substantial evidence obtained through a random drug test established that Castor was indeed positive for use of *shabu*. This is a flagrant violation of the law which is considered as grave misconduct. Under Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is a *grave offense* punishable by dismissal even for the first offense.

Further, it is provided that under Civil Service Memorandum Circular No. 13, series of 2010,[4] *any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of* ***dismissal*** *from the service at* ***first offense*** pursuant to Section 46(19) of Book V of Executive Order 292 and Section 22(c) of its Omnibus Rules.

Undoubtedly, the use of prohibited drugs by Castor violated the norms of conduct for public service. By indulging in the use of illegal drugs, he committed conduct unbecoming of court personnel, which tarnished the very image and integrity of the Judiciary.

No less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat. The conduct of a person serving the Judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public

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[3] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633, 638.

[4] Guidelines for a Drug-Free Workplace in the Bureaucracy.

for the Judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[5]

WHEREFORE, finding Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services, liable for grave misconduct due to his use of a prohibited drug, the Court orders his **DISMISSAL** from the service with **FORFEITURE** of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations. This decision is immediately executory.

SO ORDERED.

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

Villarama, Jr., J., on leave.

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[5] *Office of the Court Administrator v. Reyes, supra* note 1, at 522, citing *Baron v. Anacan,* A.M. No. P-04-1816, June 20, 2006, 491 SCRA 313, 315.

EN BANC

[G.R. No. 184517. October 8, 2013]

SME BANK, INC., ABELARDO P. SAMSON, OLGA SAMSON and AURELIO VILLAFLOR, JR., *petitioners, vs.* **PEREGRIN T. DE GUZMAN, EDUARDO M. AGUSTIN, JR., ELICERIO GASPAR, RICARDO GASPAR, JR., EUFEMIA ROSETE, FIDEL ESPIRITU, SIMEON ESPIRITU, JR., and LIBERATO MANGOBA,** *respondents.*

[G.R. No. 186641. October 8, 2013]

SME BANK, INC., ABELARDO P. SAMSON, OLGA SAMSON and AURELIO VILLAFLOR, JR., *petitioners, vs.* **ELICERIO GASPAR, RICARDO GASPAR, JR., EUFEMIA ROSETE, FIDEL ESPIRITU, SIMEON ESPIRITU, JR., and LIBERATO MANGOBA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESIGNATION; RESIGNATION LETTER CONTAINING WORDS OF GRATITUDE, BY ITSELF, IS NOT CONCLUSIVE PROOF THAT THE EMPLOYEE INTELLIGENTLY, FREELY AND VOLUNTARILY RESIGNED; THE COURT CANNOT MERELY RELY ON THE TENOR OF THE RESIGNATION LETTERS TO DETERMINE WHETHER THE EMPLOYEES TRULY INTEND TO RESIGN FROM THEIR RESPECTIVE POSTS, BUT MUST TAKE INTO CONSIDERATION THE TOTALITY OF CIRCUMSTANCE IN EACH PARTICULAR CASE.— [W]hile resignation letters containing words of gratitude may indicate that the employees were not coerced into resignation, this fact alone is not conclusive proof that they intelligently, freely and voluntarily resigned. To rule that resignation letters couched in terms of gratitude are, by

themselves, conclusive proof that the employees intended to relinquish their posts would open the floodgates to possible abuse. In order to withstand the test of validity, resignations must be made voluntarily and with the intention of relinquishing the office, coupled with an act of relinquishment. Therefore, in order to determine whether the employees truly intended to resign from their respective posts, we cannot merely rely on the tenor of the resignation letters, but must take into consideration the totality of circumstances in each particular case. Here, the records show that Elicerio, Ricardo, Fidel, and Liberato only tendered resignation letters because they were led to believe that, upon reapplication, they would be reemployed by the new management. As it turned out, except for Simeon, Jr., they were not rehired by the new management. Their reliance on the representation that they would be reemployed gives credence to their argument that they merely submitted courtesy resignation letters because it was demanded of them, and that they had no real intention of leaving their posts. We therefore conclude that Elicerio, Ricardo, Fidel, and Liberato did not voluntarily resign from their work; rather, they were terminated from their employment.

2. ID.; ID.; ID.; IF THE INTENT TO RETIRE IS NOT CLEARLY ESTABLISHED OR IF THE RETIREMENT IS INVOLUNTARY, IT IS TO BE TREATED AS A DISCHARGE; INVOLUNTARY RETIREMENT IS TANTAMOUNT TO DISMISSAL, AS EMPLOYEES CAN ONLY CHOOSE THE MEANS AND METHODS OF TERMINATING THEIR EMPLOYMENT, BUT ARE POWERLESS AS TO THE STATUS OF THEIR EMPLOYMENT AND HAVE NO CHOICE BUT TO LEAVE THE COMPANY.— As to Eufemia, both the CA and the NLRC discussed her case together with the cases of the rest of respondent-employees. However, a review of the records shows that, unlike her co-employees, she did not resign; rather, she submitted a letter indicating that she was retiring from her former position. The fact that Eufemia retired and did not resign, however, does not change our conclusion that illegal dismissal took place. Retirement, like resignation, should be an act completely voluntary on the part of the employee. If the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge. In this case,

the facts show that Eufemia's retirement was not of her own volition. The circumstances could not be more telling. The facts show that Eufemia was likewise given the option to resign or retire in order to fulfill the precondition in the Letter Agreements that the seller should "terminate/retire the employees [mutually agreed upon] upon transfer of shares" to the buyers. Thus, like her other co-employees, she first submitted a letter of resignation dated 27 August 2001. For one reason or another, instead of resigning, she chose to retire and submitted a retirement letter to that effect. It was this letter that was subsequently transmitted to the representative of the Samson Group on 11 September 2001. In *San Miguel Corporation v. NLRC*, we have explained that involuntary retirement is tantamount to dismissal, as employees can only choose the means and methods of terminating their employment, but are powerless as to the status of their employment and have no choice but to leave the company. This rule squarely applies to Eufemia's case. Indeed, she could only choose between resignation and retirement, but was made to understand that she had no choice but to leave SME Bank. Thus, we conclude that, similar to her other co-employees, she was illegally dismissed from employment.

3. ID.; ID.; ID.; ID.; EMPLOYEES DISMISSED DUE TO CLOSURE OF THE BUSINESS ESTABLISHMENT ARE ENTITLED TO SEPARATION, EXCEPT IF THE CLOSURE WAS DUE TO SERIOUS BUSINESS LOSSES OR FINANCIAL REVERSES; TO BE EXEMPT FROM PAYMENT OF SEPARATION PAY, THE EMPLOYER MUST JUSTIFY THE CLOSURE BY PRESENTING CONVINCING EVIDENCE THAT IT ACTUALLY SUFFERED SERIOUS FINANCIAL REVERSES.— The law permits an employer to dismiss its employees in the event of closure of the business establishment. However, the employer is required to serve written notices on the worker and the Department of Labor at least one month before the intended date of closure. Moreover, the dismissed employees are entitled to separation pay, except if the closure was due to serious business losses or financial reverses. However, to be exempt from making such payment, the employer must justify the closure by presenting convincing evidence that it actually suffered serious financial reverses. In this case, the records do not support

the contention of SME Bank that it intended to close the business establishment. On the contrary, the intention of the parties to keep it in operation is confirmed by the provisions of the Letter Agreements requiring Agustin and De Guzman to guarantee the "peaceful transition of management of the bank" and to appoint "a manager of [the Samson Group's] choice x x x to oversee bank operations." Even assuming that the parties intended to close the bank, the records do not show that the employees and the Department of Labor were given written notices at least one month before the dismissal took place. Moreover, aside from their bare assertions, the parties failed to substantiate their claim that SME Bank was suffering from serious financial reverses. In fine, the argument that the dismissal was due to an authorized cause holds no water.

4. ID.; ID.; ID.; IN ASSET SALE, THE SELLER IN GOOD FAITH IS AUTHORIZED TO DISMISS THE AFFECTED EMPLOYEES, BUT IS LIABLE FOR THE PAYMENT OF SEPARATION PAY UNDER THE LAW. THE BUYER IN GOOD FAITH, ON THE OTHER HAND, IS NOT OBLIGED TO ABSORB THE EMPLOYEES AFFECTED BY THE SALE, NOR IS IT LIABLE FOR THE PAYMENT OF THEIR CLAIMS. IN CONTRAST WITH ASSET SALE, THE CORPORATION IN STOCK SALE CONTINUES TO BE THE EMPLOYER OF ITS PEOPLE AND CONTINUES TO BE LIABLE FOR THE PAYMENT OF THEIR JUST CLAIMS, AND THE NEW MAJORITY SHAREHOLDERS CANNOT LAWFULLY DISMISS THE EMPLOYEES, ABSENT A JUST OR AUTHORIZED CAUSE.— There are two types of corporate acquisitions: asset sales and stock sales. In asset sales, the corporate entity sells all or substantially all of its assets to another entity. In stock sales, the individual or corporate shareholders sell a controlling block of stock to new or existing shareholders. In asset sales, the rule is that the seller in good faith is authorized to dismiss the affected employees, but is liable for the payment of separation pay under the law. The buyer in good faith, on the other hand, is not obliged to absorb the employees affected by the sale, nor is it liable for the payment of their claims. The most that it may do, for reasons of public policy and social justice, is to give preference to the qualified separated personnel of the selling firm. In contrast with asset sales, in which the assets of the

selling corporation are transferred to another entity, the transaction in stock sales takes place at the shareholder level. Because the corporation possesses a personality separate and distinct from that of its shareholders, a shift in the composition of its shareholders will not affect its existence and continuity. Thus, notwithstanding the stock sale, the corporation continues to be the employer of its people and continues to be liable for the payment of their just claims. Furthermore, the corporation or its new majority shareholders are not entitled to lawfully dismiss corporate employees absent a just or authorized cause. In the case at bar, the Letter Agreements show that their main object is the acquisition by the Samson Group of 86.365% of the shares of stock of SME Bank. Hence, this case involves a stock sale, whereby the transferee acquires the controlling shares of stock of the corporation. Thus, following the rule in stock sales, respondent employees may not be dismissed except for just or authorized causes under the Labor Code.

5. ID.; ID.; ID.; A CHANGE IN THE EQUITY COMPOSITION OF THE CORPORATE SHAREHOLDERS SHOULD NOT RESULT IN THE AUTOMATIC TERMINATION OF THE EMPLOYMENT OF THE EMPLOYEES OF THE CORPORATION. NEITHER SHOULD IT GIVE NEW MAJORITY SHAREHOLDERS THE RIGHT TO LEGALLY DISMISS THE EMPLOYEES, ABSENT JUST OR AUTHORIZED CAUSE.— We take this opportunity to revisit our ruling in *Manlimos* insofar as it applied a doctrine on asset sales to a stock sale case. *Central Azucarera del Danao, San Felipe Neri School of Mandaluyong* and *MDII Supervisors & Confidential Employees Association* all dealt with asset sales, as they involved a sale of all or substantially all of the assets of the corporation. The transactions in those cases were not made at the shareholder level, but at the corporate level. Thus, applicable to those cases were the rules in asset sales: the employees may be separated from their employment, but the seller is liable for the payment of separation pay; on the other hand, the buyer in good faith is not required to retain the affected employees in its service, nor is it liable for the payment of their claims. The rule should be different in *Manlimos*, as this case involves a stock sale. It is error to even discuss transfer of ownership of the business, as the business did not actually change hands. The transfer only involved a change in the equity

composition of the corporation. To reiterate, **the employees are not transferred to a new employer, but remain with the original corporate employer, notwithstanding an equity shift in its majority shareholders.** This being so, the employment status of the employees should not have been affected by the stock sale. A change in the equity composition of the corporate shareholders should not result in the automatic termination of the employment of the corporation's employees. Neither should it give the new majority shareholders the right to legally dismiss the corporation's employees, absent a just or authorized cause.

6. ID.; ID.; ID.; ACCEPTANCE OF SEPARATION PAY DOES NOT BAR THE EMPLOYEES FROM SUBSEQUENTLY CONTESTING THE LEGALITY OF THEIR DISMISSAL, NOR DOES IT ESTOP THEM FROM CHALLENGING THE LEGALITY OF THEIR SEPARATION FROM THE SERVICE; RULING IN MANLIMOS CASE (312 PHIL. 178 (1995), REVERSED.— The right to security of tenure guarantees the right of employees to continue in their employment absent a just or authorized cause for termination. This guarantee proscribes a situation in which the corporation procures the severance of the employment of its employees – who patently still desire to work for the corporation – only because new majority stockholders and a new management have come into the picture. This situation is a clear circumvention of the employees' constitutionally guaranteed right to security of tenure, an act that cannot be countenanced by this Court. It is thus erroneous on the part of the corporation to consider the employees as terminated from their employment when the sole reason for so doing is a change of management by reason of the stock sale. The conformity of the employees to the corporation's act of considering them as terminated and their subsequent acceptance of separation pay does not remove the taint of illegal dismissal. Acceptance of separation pay does not bar the employees from subsequently contesting the legality of their dismissal, nor does it estop them from challenging the legality of their separation from the service. We therefore see it fit to expressly reverse our ruling in *Manlimos* insofar as it upheld that, in a stock sale, the buyer in good faith has no obligation to retain the employees of the selling corporation; and that the dismissal of the affected employees is lawful, even absent a just or authorized cause.

7. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; EXISTS WHERE THERE IS CESSATION OF WORK BECAUSE CONTINUED EMPLOYMENT IS RENDERED IMPOSSIBLE, UNREASONABLE OR UNLIKELY, AS AN OFFER INVOLVING A DEMOTION IN RANK OR A DIMINUTION IN PAY AND OTHER BENEFITS.— We hold that Simeon, Jr. was likewise illegally dismissed from his employment. [W]e find that his first courtesy resignation letter was also executed involuntarily. Thus, it cannot be the basis of a valid resignation; and thus, at that point, he was illegally terminated from his employment. He was, however, rehired by SME Bank under new management, although based on his allegations, he was not reinstated to his former position or to a substantially equivalent one. Rather, he even suffered a reduction in benefits and a demotion in rank. These led to his submission of another resignation letter effective 15 October 2001. We rule that these circumstances show that Simeon, Jr. was constructively dismissed. In *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, we have defined constructive dismissal as follows: Constructive dismissal is an involuntary resignation by the employee due to the harsh, hostile, and unfavorable conditions set by the employer and which arises when a clear discrimination, insensibility, or disdain by an employer exists and has become unbearable to the employee. Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. These circumstances are clearly availing in Simeon, Jr.'s case. He was made to resign, then rehired under conditions that were substantially less than what he was enjoying before the illegal termination occurred. Thus, for the second time, he involuntarily resigned from his employment. Clearly, this case is illustrative of constructive dismissal, an act prohibited under our labor laws.

8. ID.; ID.; ID.; ILLEGAL DISMISSAL; THE EMPLOYER OF THE ILLEGALLY DISMISSED EMPLOYEES BEFORE AND AFTER THE EQUITY TRANSFER IS LIABLE FOR THE SATISFACTION OF THEIR CLAIMS; A CHANGE IN THE COMPOSITION OF THE SHAREHOLDERS OF THE CORPORATION WILL NOT AFFECT THE

EMPLOYER – EMPLOYEE RELATIONSHIP BETWEEN THE EMPLOYEES AND THE CORPORATION BECAUSE AN EQUITY TRANSFER AFFECTS NEITHER THE EXISTENCE NOR THE LIABILITIES OF A CORPORATION.— The settled rule is that an employer who terminates the employment of its employees without lawful cause or due process of law is liable for illegal dismissal. None of the parties dispute that SME Bank was the employer of respondent employees. The fact that there was a change in the composition of its shareholders did not affect the employer-employee relationship between the employees and the corporation, because an equity transfer affects neither the existence nor the liabilities of a corporation. Thus, SME Bank continued to be the employer of respondent employees notwithstanding the equity change in the corporation. This outcome is in line with the rule that a corporation has a personality separate and distinct from that of its individual shareholders or members, such that a change in the composition of its shareholders or members would not affect its corporate liabilities. Therefore, we conclude that, as the employer of the illegally dismissed employees before and after the equity transfer, petitioner SME Bank is liable for the satisfaction of their claims.

9. ID.; ID.; ID.; ID.; CORPORATE DIRECTORS AND OFFICERS ARE SOLIDARILY LIABLE WITH THE CORPORATION FOR ILLEGAL DISMISSAL, WHERE TERMINATIONS OF EMPLOYMENT ARE DONE WITH MALICE OR IN BAD FAITH; APPLIED.— Turning now to the liability of Agustin, De Guzman and the Samson Group for illegal dismissal, at the outset we point out that there is no privity of employment contracts between Agustin, De Guzman and the Samson Group, on the one hand, and respondent employees on the other. Rather, the employment contracts were between SME Bank and the employees. However, this fact does not mean that Agustin, De Guzman and the Samson Group may not be held liable for illegal dismissal as corporate directors or officers. In *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*, we laid down the rule as regards the liability of corporate directors and officers in illegal dismissal cases, as follows: Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their

official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. However, this fictional veil may be pierced whenever the corporate personality is used as a means of perpetuating a fraud or an illegal act, evading an existing obligation, or confusing a legitimate issue. In cases of illegal dismissal, corporate directors and officers are solidarily liable with the corporation, where terminations of employment are done with malice or in bad faith. Thus, in order to determine the respective liabilities of Agustin, De Guzman and the Samson Group under the afore-quoted rule, we must determine, *first*, whether they may be considered as corporate directors or officers; and, *second*, whether the terminations were done maliciously or in bad faith. There is no question that both Agustin and De Guzman were corporate directors of SME Bank. An analysis of the facts likewise reveals that the dismissal of the employees was done in bad faith. Motivated by their desire to dispose of their shares of stock to Samson, they agreed to and later implemented the precondition in the Letter Agreements as to the termination or retirement of SME Bank's employees. However, instead of going through the proper procedure, the bank manager induced respondent employees to resign or retire from their respective employments, while promising that they would be rehired by the new management. Fully relying on that promise, they tendered courtesy resignations or retirements and eventually found themselves jobless. Clearly, this sequence of events constituted a gross circumvention of our labor laws and a violation of the employees' constitutionally guaranteed right to security of tenure. We therefore rule that, as Agustin and De Guzman are corporate directors who have acted in bad faith, they may be held solidarily liable with SME Bank for the satisfaction of the employees' lawful claims.

10. ID.; ID.; ID.; ID.; PARTIES WHO ARE NEITHER CORPORATE OFFICERS NOR DIRECTORS AT THE TIME THE ILLEGAL DISMISSAL OF THE EMPLOYEES TOOK PLACE ARE NOT, IN THEIR PERSONAL CAPACITIES, SOLIDARILY LIABLE WITH THE CORPORATION FOR ILLEGALLY DISMISSING THE EMPLOYEES, WITHOUT PREJUDICE TO ANY LIABILITIES THAT MAY HAVE ATTACHED UNDER OTHER PROVISIONS OF LAW.— As to spouses Samson,

we find that nowhere in the records does it appear that they were either corporate directors or officers of SME Bank at the time the illegal termination occurred, except that the Samson Group had already taken over as new management when Simeon, Jr. was constructively dismissed. Not being corporate directors or officers, spouses Samson were not in legal control of the bank and consequently had no power to dismiss its employees. Respondent employees argue that the Samson Group had already taken over and conducted an inventory before the execution of the share purchase agreement. Agustin and De Guzman likewise argued that it was at Olga Samson's behest that the employees were required to resign from their posts. Even if this statement were true, it cannot amount to a finding that spouses Samson should be treated as corporate directors or officers of SME Bank. The records show that it was Espiritu who asked the employees to tender their resignation and or retirement letters, and that these letters were actually tendered to him. He then transmitted these letters to the representative of the Samson Group. That the spouses Samson had to ask Espiritu to require the employees to resign shows that they were not in control of the corporation, and that the former shareholders – through Espiritu – were still in charge thereof. As the spouses Samson were neither corporate officers nor directors at the time the illegal dismissal took place, we find that there is no legal basis in the present case to hold them in their personal capacities solidarily liable with SME Bank for illegally dismissing respondent employees, without prejudice to any liabilities that may have attached under other provisions of law. Furthermore, even if spouses Samson were already in control of the corporation at the time that Simeon, Jr. was constructively dismissed, we refuse to pierce the corporate veil and find them liable in their individual steads. There is no showing that his constructive dismissal amounted to more than a corporate act by SME Bank, or that spouses Samson acted maliciously or in bad faith in bringing about his constructive dismissal.

11. ID.; ID.; ID.; ID.; ABSENT EVIDENCE OF ACTUAL PARTICIPATION IN THE ILLEGAL DISMISSAL OF THE EMPLOYEES, A CORPORATE OFFICER MAY NOT BE PERSONALLY HELD LIABLE FOR THE SATISFACTION OF THE EMPLOYEES' CLAIMS.— As

regards Aurelio Villaflor, while he may be considered as a corporate officer, being the president of SME Bank, the records are bereft of any evidence that indicates his actual participation in the termination of respondent employees. Not having participated at all in the illegal act, he may not be held individually liable for the satisfaction of their claims.

12. ID.; ID.; ID.; ID.; ILLEGALLY DISMISSED EMPLOYEES ARE ENTITLED TO EITHER REINSTATEMENT, IF VIABLE, OR SEPARATION PAY IF REINSTATEMENT IS NO LONGER VIABLE, AND BACKWAGES; SEPARATION PAY IS A PROPER SUBSTITUTE ONLY FOR REINSTATEMENT, NOT BACKWAGES.— The rule is that illegally dismissed employees are entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and (2) backwages. Courts may grant separation pay in lieu of reinstatement when the relations between the employer and the employee have been so severely strained; when reinstatement is not in the best interest of the parties; when it is no longer advisable or practical to order reinstatement; or when the employee decides not to be reinstated. In this case, respondent employees expressly pray for a grant of separation pay in lieu of reinstatement. Thus, following a finding of illegal dismissal, we rule that they are entitled to the payment of separation pay equivalent to their one-month salary for every year of service as an alternative to reinstatement. Respondent employees are likewise entitled to full backwages notwithstanding the grant of separation pay. In *Santos v. NLRC*, we explained that an award of backwages restores the income that was lost by reason of the unlawful dismissal, while separation pay "provide[s] the employee with 'the wherewithal during the period that he is looking for another employment.'" Thus, separation pay is a proper substitute only for reinstatement; it is not an adequate substitute for both reinstatement and backwages. Hence, respondent employees are entitled to the grant of full backwages in addition to separation pay.

13. ID.; ID.; ID.; ID.; GRANT OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES, UPHELD.— As to moral damages, exemplary damages and attorney's fees, we uphold the appellate court's grant thereof based on our finding that the forced resignations and retirement were fraudulently done and attended by bad faith.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioners.

Jennifer G. Patacsil Arceo for Elicerio Gaspar, Ricardo Gaspar, Jr., Eufemia Rosete, Fidel Espiritu, Simeon Espiritu, Jr., and Liberato Mangoba.

Cesar R. Villar for Peregrin T. De Guzman and Eduardo M. Agustin, Jr.

D E C I S I O N

SERENO, *C.J.*:

Security of tenure is a constitutionally guaranteed right.[1] Employees may not be terminated from their regular employment except for just or authorized causes under the Labor Code[2] and other pertinent laws. A mere change in the equity composition of a corporation is neither a just nor an authorized cause that would legally permit the dismissal of the corporation's employees *en masse.*

Before this Court are consolidated Rule 45 Petitions for Review on *Certiorari*[3] assailing the Decision[4] and Resolution[5] of the Court of Appeals (CA) in CA-G.R. SP No. 97510 and its Decision[6] and Resolution[7] in CA-G.R. SP No. 97942.

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[1] CONSTITUTION, Art. XIII, Sec. 3.

[2] LABOR CODE, Art. 279.

[3] *Rollo* (G.R. No. 184517), pp. 17-53; Petition dated 22 September 2008; *rollo*, (G.R. No. 186641), pp. 3-46; Petition dated 10 March 2009.

[4] *Rollo* (G.R. No. 184517), pp. 58-71; CA Decision dated 13 March 2008, penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok.

[5] *Id.* at 73-74; CA Resolution dated 1 September 2008.

[6] *Rollo* (G.R. No. 186641), pp. 54-66; CA Decision dated 15 January 2008, penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Marina L. Buzon and Mariflor P. Punzalan Castillo.

[7] *Rollo* (G.R. No. 186641), pp. 68-69; CA Resolution dated 19 February 2009, penned by Associate Justice Rosmari D. Carandang and concurred

The facts of the case are as follows:

Respondent employees Elicerio Gaspar (Elicerio), Ricardo Gaspar, Jr. (Ricardo), Eufemia Rosete (Eufemia), Fidel Espiritu (Fidel), Simeon Espiritu, Jr. (Simeon, Jr.), and Liberato Mangoba (Liberato) were employees of Small and Medium Enterprise Bank, Incorporated (SME Bank). Originally, the principal shareholders and corporate directors of the bank were Eduardo M. Agustin, Jr. (Agustin) and Peregrin de Guzman, Jr. (De Guzman).

In June 2001, SME Bank experienced financial difficulties. To remedy the situation, the bank officials proposed its sale to Abelardo Samson (Samson).[8]

Accordingly, negotiations ensued, and a formal offer was made to Samson. Through his attorney-in-fact, Tomas S. Gomez IV, Samson then sent formal letters (Letter Agreements) to Agustin and De Guzman, demanding the following as preconditions for the sale of SME Bank's shares of stock:

> 4. You shall guarantee the peaceful turn over of all assets as well as the peaceful transition of management of the bank and shall terminate/retire the employees we mutually agree upon, upon transfer of shares in favor of our group's nominees;
>
> x x x x x x x x x
>
> 7. All retirement benefits, if any of the above officers/ stockholders/board of directors are hereby waived upon cosummation [sic] of the above sale. The retirement benefits of the rank and file employees including the managers shall be honored by the new management in accordance with B.R. No. 10, S. 1997.[9]

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in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Mariflor P. Punzalan Castillo.

[8] *Rollo* (G.R. No. 186641), pp. 11-12.

[9] *Rollo* (G.R. No. 184517), pp. 120, 122; Letter Agreements.

Agustin and De Guzman accepted the terms and conditions proposed by Samson and signed the *conforme* portion of the Letter Agreements.[10]

Simeon Espiritu (Espiritu), then the general manager of SME Bank, held a meeting with all the employees of the head office and of the Talavera and Muñoz branches of SME Bank and persuaded them to tender their resignations,[11] with the promise that they would be rehired upon reapplication. His directive was allegedly done at the behest of petitioner Olga Samson.[12]

Relying on this representation, Elicerio,[13] Ricardo,[14] Fidel,[15] Simeon, Jr.,[16] and Liberato[17] tendered their resignations dated 27 August 2001. As for Eufemia, the records show that she first tendered a resignation letter dated 27 August 2001,[18] and then a retirement letter dated September 2001.[19]

Elicerio,[20] Ricardo,[21] Fidel,[22] Simeon, Jr.,[23] and

[10] *Id.* at 121, 123.

[11] *Rollo* (G.R. No. 186641), p. 13; Petition dated 10 March 2009.

[12] *Id.* at 126; Position Paper for Complainants dated 20 September 2002.

[13] *Rollo* (G.R. No. 186641), p. 134; Resignation Letter of Elicerio Gaspar.

[14] *Id.* at 135; Resignation Letter of Ricardo M. Gaspar, Jr.

[15] *Id.* at 136; Resignation Letter of Fidel E. Espiritu.

[16] *Id.* at 139; Resignation Letter of Simeon B. Espiritu, Jr. dated 27 August 2001.

[17] *Id.* at 137; Resignation Letter of Liberato B. Mangoba.

[18] *Id.* at 138; Resignation Letter of Eufemia E. Rosete.

[19] *Id.* at 171; Retirement Letter of Eufemia E. Rosete; *rollo* (G.R. No. 186641), p. 141; Letter of Simeon C. Espiritu to Jose A. Reyes transmitting, among others, the Retirement Letter of Eufemia E. Rosete.

[20] *Id.* at 145-146; *Sinumpaang Salaysay* of Elicerio Gaspar dated 20 September 2002.

[21] *Id.* at 147-148; *Sinumpaang Salaysay* of Ricardo Gaspar, Jr. dated 20 September 2002.

[22] *Id.* at 143-144; *Sinumpaang Salaysay* of Fidel E. Espiritu dated 20 September 2002.

[23] *Id.* at 149; Undated *Sinumpaang Salaysay* of Simeon B. Espiritu, Jr.

Liberato[24] submitted application letters on 11 September 2001. Both the resignation letters and copies of respondent employees' application letters were transmitted by Espiritu to Samson's representative on 11 September 2001.[25]

On 11 September 2001, Agustin and De Guzman signified their conformity to the Letter Agreements and sold 86.365% of the shares of stock of SME Bank to spouses Abelardo and Olga Samson. Spouses Samson then became the principal shareholders of SME Bank, while Aurelio Villaflor, Jr. was appointed bank president. As it turned out, respondent employees, except for Simeon, Jr.,[26] were not rehired. After a month in service, Simeon, Jr. again resigned on October 2001.[27]

Respondent-employees demanded the payment of their respective separation pays, but their requests were denied.

Aggrieved by the loss of their jobs, respondent employees filed a Complaint before the National Labor Relations Commission (NLRC)–Regional Arbitration Branch No. III and sued SME Bank, spouses Abelardo and Olga Samson and Aurelio Villaflor (the Samson Group) for unfair labor practice; illegal dismissal; illegal deductions; underpayment; and nonpayment of allowances, separation pay and 13th month pay.[28] Subsequently, they amended their Complaint to include Agustin and De Guzman as respondents to the case.[29]

On 27 October 2004, the labor arbiter ruled that the buyer of an enterprise is not bound to absorb its employees, unless

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[24] *Id.* at 150-151; *Sinumpaang Salaysay* of Liberato B. Mangoba dated 20 September 2002.

[25] *Rollo* (G.R. No. 184517), pp. 543-544; Letters dated 11 September 2001.

[26] *Rollo* (G.R. No. 186641), p. 149; Undated *Sinumpaang Salaysay* of Simeon B. Espiritu, Jr.

[27] *Id.*

[28] *Rollo* (G.R. No. 184517), pp. 200-221; Labor Arbiter's Decision dated 27 October 2004, penned by Labor Arbiter Henry D. Isorena.

[29] *Id.* at 129-140; Amended Complaints dated 23 October 2002.

there is an express stipulation to the contrary. However, he also found that respondent employees were illegally dismissed, because they had involuntarily executed their resignation letters after relying on representations that they would be given their separation benefits and rehired by the new management. Accordingly, the labor arbiter decided the case against Agustin and De Guzman, but dismissed the Complaint against the Samson Group, as follows:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering respondents Eduardo Agustin, Jr. and Peregrin De Guzman to pay complainants' separation pay in the total amount of ***₱339,403.00*** detailed as follows:
>
> | | | |
> |---|---|---|
> | ***Elicerio B. Gaspar*** | = | ***₱ 5,837.00*** |
> | ***Ricardo B. Gaspar, Jr.*** | = | ***₱ 11,674.00*** |
> | ***Liberato B. Mangoba*** | = | ***₱ 64,207.00*** |
> | ***Fidel E. Espiritu*** | = | ***₱ 29,185.00*** |
> | ***Simeon B. Espiritu, Jr.*** | = | ***₱ 26,000.00*** |
> | ***Eufemia E. Rosete*** | = | ***₱202,510.00*** |
>
> All other claims including the complaint against Abelardo Samson, Olga Samson and Aurelio Villaflor are hereby DISMISSED for want of merit.
>
> **SO ORDERED.**[30]

Dissatisfied with the Decision of the labor arbiter, respondent employees, Agustin and De Guzman brought separate appeals to the NLRC. Respondent employees questioned the labor arbiter's failure to award backwages, while Agustin and De Guzman contended that they should not be held liable for the payment of the employees' claims.

The NLRC found that there was only a mere transfer of shares – and therefore, a mere change of management – from Agustin and De Guzman to the Samson Group. As the change of management was not a valid ground to terminate respondent bank employees, the NLRC ruled that they had indeed been illegally dismissed. It further ruled that Agustin, De Guzman

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[30] *Id.* at 221.

and the Samson Group should be held jointly and severally liable for the employees' separation pay and backwages, as follows:

WHEREFORE, premises considered, the Decision appealed from is hereby **MODIFIED.** Respondents are hereby Ordered to jointly and severally pay the complainants backwages from 11 September 2001 until the finality of this Decision, separation pay at one month pay for every year of service, ₱10,000.00 and ₱5,000.00 moral and exemplary damages, and five (5%) percent attorney's fees.

Other dispositions are **AFFIRMED**

SO ORDERED.[31]

On 28 November 2006, the NLRC denied the Motions for Reconsideration filed by Agustin, De Guzman and the Samson Group.[32]

Agustin and De Guzman filed a Rule 65 Petition for *Certiorari* with the CA, docketed as CA-G.R. SP No. 97510. The Samson Group likewise filed a separate Rule 65 Petition for *Certiorari* with the CA, docketed as CA-G.R. SP No. 97942. Motions to consolidate both cases were not acted upon by the appellate court.

On 13 March 2008, the CA rendered a Decision in CA-G.R. SP No. 97510 affirming that of the NLRC. The *fallo* of the CA Decision reads:

WHEREFORE, in view of the foregoing, the petition is **DENIED.** Accordingly, the Decision dated May 8, 2006, and Resolution dated November 28, 2006 of the National Labor Relations Commission in NLRC NCR CA No. 043236-05 (NLRC RAB III-07-4542-02) are hereby **AFFIRMED.**

SO ORDERED.[33]

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[31] *Id*. at 334-342; NLRC Decision dated 8 May 2006, penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino. Commissioner Victoriano R. Calaycay was on leave.

[32] *Rollo* (G.R. No. 186641), pp. 112-113.

[33] *Rollo* (G.R. No. 184517), pp. 70-71; CA Decision dated 13 March 2008.

Subsequently, CA-G.R. SP No. 97942 was disposed of by the appellate court in a Decision dated 15 January 2008, which likewise affirmed that of the NLRC. The dispositive portion of the CA Decision states:

> **WHEREFORE,** premises considered, the instant Petition for *Certiorari* is denied, and the herein assailed May 8, 2006 Decision and November 28, 2006 Resolution of the NLRC are hereby **AFFIRMED.**
>
> **SO ORDERED.**[34]

The appellate court denied the Motions for Reconsideration filed by the parties in Resolutions dated 1 September 2008[35] and 19 February 2009.[36]

The Samson Group then filed two separate Rule 45 Petitions questioning the CA Decisions and Resolutions in CA-G.R. SP No. 97510 and CA-G.R. SP No. 97942. On 17 June 2009, this Court resolved to consolidate both Petitions.[37]

THE ISSUES

Succinctly, the parties are asking this Court to determine whether respondent employees were illegally dismissed and, if so, which of the parties are liable for the claims of the employees and the extent of the reliefs that may be awarded to these employees.

THE COURT'S RULING

The instant Petitions are partly meritorious.

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[34] *Rollo* (G.R. No. 186641), p. 66.

[35] *Rollo* (G.R. No. 184517), pp. 73-74.

[36] *Rollo* (G.R. No. 186641), pp. 68-69.

[37] *Rollo* (G.R. No. 184517), p. 623.

I

Respondent employees were illegally dismissed.

As to Elicerio Gaspar, Ricardo Gaspar, Jr., Fidel Espiritu, Eufemia Rosete and Liberato Mangoba

The Samson Group contends that Elicerio, Ricardo, Fidel, and Liberato voluntarily resigned from their posts, while Eufemia retired from her position. As their resignations and retirements were voluntary, they were not dismissed from their employment.[38] In support of this argument, it presented copies of their resignation and retirement letters,[39] which were couched in terms of gratitude.

We disagree. While resignation letters containing words of gratitude may indicate that the employees were not coerced into resignation,[40] this fact alone is not conclusive proof that they intelligently, freely and voluntarily resigned. To rule that resignation letters couched in terms of gratitude are, by themselves, conclusive proof that the employees intended to relinquish their posts would open the floodgates to possible abuse. In order to withstand the test of validity, resignations must be made voluntarily and with the intention of relinquishing the office, coupled with an act of relinquishment.[41] Therefore, in order to determine whether the employees truly intended to resign from their respective posts, we cannot merely rely on the tenor of the resignation letters, but must take into consideration the totality of circumstances in each particular case.

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[38] *Rollo* (G.R. No. 186641), pp. 39-40; Petition dated 10 March 2009.

[39] *Rollo* (G.R. No. 184517), pp. 545-550; Resignation letters of Elicerio Gaspar, Ricardo M. Gaspar, Jr., Fidel E. Espiritu, and Liberato B. Mangoba, all dated 27 August 2001; Retirement letter of Eufemia E. Rosete dated "September ___ 2001."

[40] *Globe Telecom v. Crisologo*, 556 Phil. 643, 652 (2007); *St. Michael Academy v. NLRC*, 354 Phil. 491, 509 (1998).

[41] *Magtoto v. NLRC*, 224 Phil. 210, 222-223 (1985), citing *Patten v. Miller*, 190 Ga. 123, 8 S.E. 2nd 757, 770; *Sadler v. Jester*, D.C. Tex., 46 F. Supp. 737, 740; and *Black's Law Dictionary* (Revised Fourth Edition, 1968).

Here, the records show that Elicerio, Ricardo, Fidel, and Liberato only tendered resignation letters because they were led to believe that, upon reapplication, they would be reemployed by the new management.[42] As it turned out, except for Simeon, Jr., they were not rehired by the new management. Their reliance on the representation that they would be reemployed gives credence to their argument that they merely submitted courtesy resignation letters because it was demanded of them, and that they had no real intention of leaving their posts. We therefore conclude that Elicerio, Ricardo, Fidel, and Liberato did not voluntarily resign from their work; rather, they were terminated from their employment.

As to Eufemia, both the CA and the NLRC discussed her case together with the cases of the rest of respondent-employees. However, a review of the records shows that, unlike her co-employees, she did not resign; rather, she submitted a letter indicating that she was retiring from her former position.[43]

The fact that Eufemia retired and did not resign, however, does not change our conclusion that illegal dismissal took place.

Retirement, like resignation, should be an act completely voluntary on the part of the employee. If the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge.[44]

In this case, the facts show that Eufemia's retirement was not of her own volition. The circumstances could not be more telling. The facts show that Eufemia was likewise given the option to resign or retire in order to fulfill the precondition in the Letter Agreements that the seller should "terminate/retire the employees [mutually agreed upon] upon transfer of shares"

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[42] *Rollo* (G.R. No. 184517), pp. 202-204; Labor Arbiter's Decision dated 27 October 2004.

[43] *Id*. at 549; Retirement letter of Eufemia E. Rosete dated "September ___ 2001."

[44] *De Leon v. NLRC*, 188 Phil. 666 (1980).

to the buyers.[45] Thus, like her other co-employees, she first submitted a letter of resignation dated 27 August 2001.[46] For one reason or another, instead of resigning, she chose to retire and submitted a retirement letter to that effect.[47] It was this letter that was subsequently transmitted to the representative of the Samson Group on 11 September 2001.[48]

In *San Miguel Corporation v. NLRC*,[49] we have explained that involuntary retirement is tantamount to dismissal, as employees can only choose the means and methods of terminating their employment, but are powerless as to the status of their employment and have no choice but to leave the company. This rule squarely applies to Eufemia's case. Indeed, she could only choose between resignation and retirement, but was made to understand that she had no choice but to leave SME Bank. Thus, we conclude that, similar to her other co-employees, she was illegally dismissed from employment.

The Samson Group further argues[50] that, assuming the employees were dismissed, the dismissal is legal because cessation of operations due to serious business losses is one of the authorized causes of termination under Article 283 of the Labor Code.[51]

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[45] *Rollo* (G.R. No. 184517), pp. 120, 122; Letter Agreements.

[46] *Rollo* (G.R. No. 186641), p. 138; Resignation letter of Eufemia E. Rosete dated 27 August 2001.

[47] *Id*. at 171; Retirement letter of Eufemia E. Rosete dated "September ___, 2001."

[48] *Id.* at 141.

[49] 354 Phil. 815 (1998).

[50] *Rollo* (G.R. No. 186641), p. 37; Petition dated 10 March 2009.

[51] Art. 283. *Closure of Establishment and Reduction of Personnel*. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x.

Again, we disagree.

The law permits an employer to dismiss its employees in the event of closure of the business establishment.[52] However, the employer is required to serve written notices on the worker and the Department of Labor at least one month before the intended date of closure.[53] Moreover, the dismissed employees are entitled to separation pay, except if the closure was due to serious business losses or financial reverses.[54] However, to be exempt from making such payment, the employer must justify the closure by presenting convincing evidence that it actually suffered serious financial reverses.[55]

In this case, the records do not support the contention of SME Bank that it intended to close the business establishment. On the contrary, the intention of the parties to keep it in operation is confirmed by the provisions of the Letter Agreements requiring Agustin and De Guzman to guarantee the "peaceful transition of management of the bank" and to appoint "a manager of [the Samson Group's] choice x x x to oversee bank operations."

Even assuming that the parties intended to close the bank, the records do not show that the employees and the Department of Labor were given written notices at least one month before the dismissal took place. Moreover, aside from their bare assertions, the parties failed to substantiate their claim that SME Bank was suffering from serious financial reverses.

In fine, the argument that the dismissal was due to an authorized cause holds no water.

Petitioner bank also argues that, there being a transfer of the business establishment, the innocent transferees no longer have any obligation to continue employing respondent employees,[56]

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[52] LABOR CODE, Art. 283.

[53] *Id.*

[54] *Id.*; *North Davao Mining Corporation v. NLRC*, 325 Phil. 202, 209 (1996).

[55] *Indino v. NLRC*, 258 Phil. 792, 799 (1989).

[56] *Rollo* (G.R. No. 186641), p. 4; Petition dated 10 March 2009.

and that the most that they can do is to give preference to the qualified separated employees; hence, the employees were validly dismissed.[57]

The argument is misleading and unmeritorious. Contrary to petitioner bank's argument, **there was no transfer of the business establishment to speak of, but merely a change in the new majority shareholders of the corporation.**

There are two types of corporate acquisitions: asset sales and stock sales.[58] In asset sales, the corporate entity[59] sells all or substantially all of its assets[60] to another entity. In stock sales, the individual or corporate shareholders[61] sell a controlling block of stock[62] to new or existing shareholders.

In asset sales, the rule is that the seller in good faith is authorized to dismiss the affected employees, but is liable for the payment of separation pay under the law.[63] The buyer in good faith, on the other hand, is not obliged to absorb the employees affected by the sale, nor is it liable for the payment of their claims.[64] The most that it may do, for reasons of public policy and social justice, is to give preference to the qualified separated personnel of the selling firm.[65]

In contrast with asset sales, in which the assets of the selling corporation are transferred to another entity, the transaction in stock sales takes place at the shareholder level. Because the

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[57] *Id.* at 30.

[58] DALE A. OESTERLE, *THE LAW OF MERGERS, ACQUISITIONS AND REORGANIZATIONS*, 35 (1991).

[59] *Id.*

[60] *Id.* at 39.

[61] *Id.* at 35.

[62] *Id.* at 39.

[63] *Central Azucarera del Danao v. Court of Appeals*, 221 Phil. 647 (1985).

[64] *Id.*

[65] *Id.*

corporation possesses a personality separate and distinct from that of its shareholders, a shift in the composition of its shareholders will not affect its existence and continuity. Thus, notwithstanding the stock sale, the corporation continues to be the employer of its people and continues to be liable for the payment of their just claims. Furthermore, the corporation or its new majority shareholders are not entitled to lawfully dismiss corporate employees absent a just or authorized cause.

In the case at bar, the Letter Agreements show that their main object is the acquisition by the Samson Group of 86.365% of the shares of stock of SME Bank.[66] Hence, this case involves a stock sale, whereby the transferee acquires the controlling shares of stock of the corporation. Thus, following the rule in stock sales, respondent employees may not be dismissed except for just or authorized causes under the Labor Code.

Petitioner bank argues that, following our ruling in *Manlimos v. NLRC*,[67] even in cases of stock sales, the new owners are under no legal duty to absorb the seller's employees, and that the most that the new owners may do is to give preference to the qualified separated employees.[68] Thus, petitioner bank argues that the dismissal was lawful.

We are not persuaded.

Manlimos dealt with a stock sale in which a new owner or management group acquired complete ownership of the corporation at the shareholder level.[69] The employees of the corporation were later "considered terminated, with their conformity"[70] by the new majority shareholders. The employees then re-applied for their jobs and were rehired on a probationary basis. After about six months, the new management dismissed

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[66] *Rollo* (G.R. No. 184517), pp. 120, 122; Letter Agreements.

[67] 312 Phil. 178 (1995).

[68] *Rollo* (G.R. No. 186641), p. 29; Petition dated 10 March 2009.

[69] *Manlimos v. NLRC*, *supra* note 67.

[70] *Id.* at 183.

two of the employees for having abandoned their work, and it dismissed the rest for committing "acts prejudicial to the interest of the new management."[71] Thereafter, the employees sought reinstatement, arguing that their dismissal was illegal, since they "remained regular employees of the corporation regardless of the change of management."[72]

In disposing of the merits of the case, we upheld the validity of the second termination, ruling that "the parties are free to renew the contract or not [upon the expiration of the period provided for in their probationary contract of employment]."[73] Citing our pronouncements in *Central Azucarera del Danao v. Court of Appeals*,[74] *San Felipe Neri School of Mandaluyong, Inc. v. NLRC*,[75] and *MDII Supervisors & Confidential Employees Association v. Presidential Assistant on Legal Affairs*,[76] we likewise upheld the validity of the employees' first separation from employment, pronouncing as follows:

> A change of ownership in a business concern is not proscribed by law. In *Central Azucarera del Danao vs. Court of Appeals*, this Court stated:
>
> > There can be no controversy for it is a principle well-recognized, that it is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their organization or operations that would insure profit to itself or protect the investment of its stockholders. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process. Such dismissal or termination should not however be interpreted in such a manner

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[71] *Id.* at 184.

[72] *Id.* at 185.

[73] *Id.* at 192.

[74] *Supra* note 63, at 190-191.

[75] 278 Phil. 484 (1991).

[76] 169 Phil. 42 (1977).

> as to permit the employer to escape payment of termination pay. For such a situation is not envisioned in the law. It strikes at the very concept of social justice.
>
> In a number of cases on this point, the rule has been laid down that the sale or disposition must be motivated by good faith as an element of exemption from liability. Indeed, an innocent transferee of a business establishment has no liability to the employees of the transfer or to continue employer them. Nor is the transferee liable for past unfair labor practices of the previous owner, except, when the liability therefor is assumed by the new employer under the contract of sale, or when liability arises because of the new owner's participation in thwarting or defeating the rights of the employees.
>
> Where such transfer of ownership is in good faith, the transferee is under no legal duty to absorb the transferor's employees as there is no law compelling such absorption. The most that the transferee may do, for reasons of public policy and social justice, is to give preference to the qualified separated employees in the filling of vacancies in the facilities of the purchaser.
>
> Since the petitioners were effectively separated from work due to a *bona fide* change of ownership and they were accordingly paid their separation pay, which they freely and voluntarily accepted, the private respondent corporation was under no obligation to employ them; it may, however, give them preference in the hiring. x x x. (Citations omitted)

We take this opportunity to revisit our ruling in *Manlimos* insofar as it applied a doctrine on asset sales to a stock sale case. *Central Azucarera del Danao, San Felipe Neri School of Mandaluyong* and *MDII Supervisors & Confidential Employees Association* all dealt with asset sales, as they involved a sale of all or substantially all of the assets of the corporation. The transactions in those cases were not made at the shareholder level, but at the corporate level. Thus, applicable to those cases were the rules in asset sales: the employees may be separated from their employment, but the seller is liable for the payment of separation pay; on the other hand, the buyer in good faith is not required to retain the affected employees in its service, nor is it liable for the payment of their claims.

The rule should be different in *Manlimos*, as this case involves a stock sale. It is error to even discuss transfer of ownership of the business, as the business did not actually change hands. The transfer only involved a change in the equity composition of the corporation. To reiterate, **the employees are not transferred to a new employer, but remain with the original corporate employer, notwithstanding an equity shift in its majority shareholders.** This being so, the employment status of the employees should not have been affected by the stock sale. A change in the equity composition of the corporate shareholders should not result in the automatic termination of the employment of the corporation's employees. Neither should it give the new majority shareholders the right to legally dismiss the corporation's employees, absent a just or authorized cause.

The right to security of tenure guarantees the right of employees to continue in their employment absent a just or authorized cause for termination. This guarantee proscribes a situation in which the corporation procures the severance of the employment of its employees – who patently still desire to work for the corporation – only because new majority stockholders and a new management have come into the picture. This situation is a clear circumvention of the employees' constitutionally guaranteed right to security of tenure, an act that cannot be countenanced by this Court.

It is thus erroneous on the part of the corporation to consider the employees as terminated from their employment when the sole reason for so doing is a change of management by reason of the stock sale. The conformity of the employees to the corporation's act of considering them as terminated and their subsequent acceptance of separation pay does not remove the taint of illegal dismissal. Acceptance of separation pay does not bar the employees from subsequently contesting the legality of their dismissal, nor does it estop them from challenging the legality of their separation from the service.[77]

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[77] *Sari-sari Group of Companies, Inc. v. Piglas Kamao*, G.R. No. 164624, 11 August 2008, 561 SCRA 569.

We therefore see it fit to expressly reverse our ruling in *Manlimos* insofar as it upheld that, in a stock sale, the buyer in good faith has no obligation to retain the employees of the selling corporation; and that the dismissal of the affected employees is lawful, even absent a just or authorized cause.

As to Simeon Espiritu, Jr.

The CA and the NLRC discussed the case of Simeon, Jr. together with that of the rest of respondent-employees. However, a review of the records shows that the conditions leading to his dismissal from employment are different. We thus discuss his circumstance separately.

The Samson Group contends that Simeon, Jr., likewise voluntarily resigned from his post.[78] According to them, he had resigned from SME Bank before the share transfer took place.[79] Upon the change of ownership of the shares and the management of the company, Simeon, Jr. submitted a letter of application to and was rehired by the new management.[80] However, the Samson Group alleged that for purely personal reasons, he again resigned from his employment on 15 October 2001.[81]

Simeon, Jr., on the other hand, contends that while he was reappointed by the new management after his letter of application was transmitted, he was not given a clear position, his benefits were reduced, and he suffered a demotion in rank.[82] These allegations were not refuted by the Samson Group.

We hold that Simeon, Jr. was likewise illegally dismissed from his employment.

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[78] *Rollo* (G.R. No. 186641), p. 11; Petition dated 10 March 2009.

[79] *Id.* at 139; Resignation Letter of Simeon B. Espiritu, Jr. dated 27 August 2001.

[80] *Id.*

[81] *Rollo* (G.R. No. 186641), p. 139; Resignation Letter of Simeon B. Espiritu, Jr. effective 15 October 2001.

[82] *Id.* at 149; Undated *Sinumpaang Salaysay* of Simeon B. Espiritu, Jr.

Similar to our earlier discussion, we find that his first courtesy resignation letter was also executed involuntarily. Thus, it cannot be the basis of a valid resignation; and thus, at that point, he was illegally terminated from his employment. He was, however, rehired by SME Bank under new management, although based on his allegations, he was not reinstated to his former position or to a substantially equivalent one.[83] Rather, he even suffered a reduction in benefits and a demotion in rank.[84] These led to his submission of another resignation letter effective 15 October 2001.[85]

We rule that these circumstances show that Simeon, Jr. was constructively dismissed. In *Peñaflor v. Outdoor Clothing Manufacturing Corporation*,[86] we have defined constructive dismissal as follows:

> Constructive dismissal is an involuntary resignation by the employee due to the harsh, hostile, and unfavorable conditions set by the employer and which arises when a clear discrimination, insensibility, or disdain by an employer exists and has become unbearable to the employee.[87]

Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits.[88]

These circumstances are clearly availing in Simeon, Jr.'s case. He was made to resign, then rehired under conditions that were substantially less than what he was enjoying before the illegal

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[83] *Id.*

[84] *Id.*

[85] *Id.* at 139; Resignation Letter of Simeon B. Espiritu, Jr. effective 15 October 2001.

[86] G.R. No. 177114, 13 April 2010, 618 SCRA 208.

[87] *Id.*

[88] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, 29 August 2012, 679 SCRA 545, 555.

termination occurred. Thus, for the second time, he involuntarily resigned from his employment. Clearly, this case is illustrative of constructive dismissal, an act prohibited under our labor laws.

II

SME Bank, Eduardo M. Agustin, Jr. and Peregrin de Guzman, Jr. are liable for illegal dismissal.

Having ruled on the illegality of the dismissal, we now discuss the issue of liability and determine who among the parties are liable for the claims of the illegally dismissed employees.

The settled rule is that an employer who terminates the employment of its employees without lawful cause or due process of law is liable for illegal dismissal.[89]

None of the parties dispute that SME Bank was the employer of respondent employees. The fact that there was a change in the composition of its shareholders did not affect the employer-employee relationship between the employees and the corporation, because an equity transfer affects neither the existence nor the liabilities of a corporation. Thus, SME Bank continued to be the employer of respondent employees notwithstanding the equity change in the corporation. This outcome is in line with the rule that a corporation has a personality separate and distinct from that of its individual shareholders or members, such that a change in the composition of its shareholders or members would not affect its corporate liabilities.

Therefore, we conclude that, as the employer of the illegally dismissed employees before and after the equity transfer, petitioner SME Bank is liable for the satisfaction of their claims.

Turning now to the liability of Agustin, De Guzman and the Samson Group for illegal dismissal, at the outset we point out that there is no privity of employment contracts between Agustin, De Guzman and the Samson Group, on the one hand, and

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[89] *Lambert Pawnbrokers and Jewelry Corp. v. Binamira*, G.R. No. 170464, 12 July 2010, 624 SCRA 705, 708.

respondent employees on the other. Rather, the employment contracts were between SME Bank and the employees. However, this fact does not mean that Agustin, De Guzman and the Samson Group may not be held liable for illegal dismissal as corporate directors or officers. In *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*,[90] we laid down the rule as regards the liability of corporate directors and officers in illegal dismissal cases, as follows:

> Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. However, this fictional veil may be pierced whenever the corporate personality is used as a means of perpetuating a fraud or an illegal act, evading an existing obligation, or confusing a legitimate issue. In cases of illegal dismissal, corporate directors and officers are solidarily liable with the corporation, where terminations of employment are done with malice or in bad faith.[91] (Citations omitted)

Thus, in order to determine the respective liabilities of Agustin, De Guzman and the Samson Group under the afore-quoted rule, we must determine, *first*, whether they may be considered as corporate directors or officers; and, *second*, whether the terminations were done maliciously or in bad faith.

There is no question that both Agustin and De Guzman were corporate directors of SME Bank. An analysis of the facts likewise reveals that the dismissal of the employees was done in bad faith. Motivated by their desire to dispose of their shares of stock to Samson, they agreed to and later implemented the precondition in the Letter Agreements as to the termination or retirement of SME Bank's employees. However, instead of going through the proper procedure, the bank manager induced respondent employees to resign or retire from their respective employments, while promising that they would be rehired by the new management. Fully relying on that promise, they tendered

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[90] 357 Phil. 110 (1998).

[91] *Id.* at 127.

courtesy resignations or retirements and eventually found themselves jobless. Clearly, this sequence of events constituted a gross circumvention of our labor laws and a violation of the employees' constitutionally guaranteed right to security of tenure. We therefore rule that, as Agustin and De Guzman are corporate directors who have acted in bad faith, they may be held solidarily liable with SME Bank for the satisfaction of the employees' lawful claims.

As to spouses Samson, we find that nowhere in the records does it appear that they were either corporate directors or officers of SME Bank at the time the illegal termination occurred, except that the Samson Group had already taken over as new management when Simeon, Jr. was constructively dismissed. Not being corporate directors or officers, spouses Samson were not in legal control of the bank and consequently had no power to dismiss its employees.

Respondent employees argue that the Samson Group had already taken over and conducted an inventory before the execution of the share purchase agreement.[92] Agustin and De Guzman likewise argued that it was at Olga Samson's behest that the employees were required to resign from their posts.[93] Even if this statement were true, it cannot amount to a finding that spouses Samson should be treated as corporate directors or officers of SME Bank. The records show that it was Espiritu who asked the employees to tender their resignation and or retirement letters, and that these letters were actually tendered to him.[94] He then transmitted these letters to the representative of the Samson Group.[95] That the spouses Samson had to ask Espiritu to require the employees to resign shows that they were not in control of the corporation, and that the former shareholders

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[92] *Rollo* (G.R. No. 184517), p. 441; Comment (To the Petition for *Certiorari* dated 14 February 2007) dated 20 April 2007.

[93] *Id.* at 396; Comment (re: Petition for Review under Rule 45) dated 19 December 2008.

[94] *Rollo* (G.R. No. 186641), pp. 134-140.

[95] *Id.* at 141; Letter dated 11 September 2001.

– through Espiritu – were still in charge thereof. As the spouses Samson were neither corporate officers nor directors at the time the illegal dismissal took place, we find that there is no legal basis in the present case to hold them in their personal capacities solidarily liable with SME Bank for illegally dismissing respondent employees, without prejudice to any liabilities that may have attached under other provisions of law.

Furthermore, even if spouses Samson were already in control of the corporation at the time that Simeon, Jr. was constructively dismissed, we refuse to pierce the corporate veil and find them liable in their individual steads. There is no showing that his constructive dismissal amounted to more than a corporate act by SME Bank, or that spouses Samson acted maliciously or in bad faith in bringing about his constructive dismissal.

Finally, as regards Aurelio Villaflor, while he may be considered as a corporate officer, being the president of SME Bank, the records are bereft of any evidence that indicates his actual participation in the termination of respondent employees. Not having participated at all in the illegal act, he may not be held individually liable for the satisfaction of their claims.

III

Respondent employees are entitled to separation pay, full backwages, moral damages, exemplary damages and attorney's fees.

The rule is that illegally dismissed employees are entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and (2) backwages.[96]

Courts may grant separation pay in lieu of reinstatement when the relations between the employer and the employee have been so severely strained; when reinstatement is not in the best interest of the parties; when it is no longer advisable or practical to order reinstatement; or when the employee decides not to be

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[96] *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, 19 January 2011, 640 SCRA 135, 144.

reinstated.[97] In this case, respondent employees expressly pray for a grant of separation pay in lieu of reinstatement. Thus, following a finding of illegal dismissal, we rule that they are entitled to the payment of separation pay equivalent to their one-month salary for every year of service as an alternative to reinstatement.

Respondent employees are likewise entitled to full backwages notwithstanding the grant of separation pay. In *Santos v. NLRC*,[98] we explained that an award of backwages restores the income that was lost by reason of the unlawful dismissal, while separation pay "provide[s] the employee with 'the wherewithal during the period that he is looking for another employment.'"[99] Thus, separation pay is a proper substitute only for reinstatement; it is not an adequate substitute for both reinstatement and backwages.[100] Hence, respondent employees are entitled to the grant of full backwages in addition to separation pay.

As to moral damages, exemplary damages and attorney's fees, we uphold the appellate court's grant thereof based on our finding that the forced resignations and retirement were fraudulently done and attended by bad faith.

WHEREFORE, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED.**

The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 97510 dated 13 March 2008 and 1 September 2008, respectively, are hereby **REVERSED** and **SET ASIDE** insofar as it held **Abelardo P. Samson, Olga Samson and Aurelio Villaflor, Jr.** solidarily liable for illegal dismissal.

The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 97942 dated 15 January 2008 and 19 February

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[97] *DUP Sound Phils. v. Court of Appeals*, G.R. No. 168317, 21 November 2011, 660 SCRA 461, 473.

[98] 238 Phil. 161 (1987).

[99] *Id.* at 167.

[100] *Id.*

2009, respectively, are likewise **REVERSED** and **SET ASIDE** insofar as it held **Abelardo P. Samson, Olga Samson and Aurelio Villaflor, Jr.** solidarily liable for illegal dismissal.

We **REVERSE** our ruling in *Manlimos v. NLRC* insofar as it upheld that, in a stock sale, the buyer in good faith has no obligation to retain the employees of the selling corporation, and that the dismissal of the affected employees is lawful even absent a just or authorized cause.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Perez, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Del Castillo and *Mendoza, JJ.,* no part. Concurred in the Court of Appeals Decision (CA-G.R. SP No. 97510).

Villarama, Jr., J., on leave.

EN BANC

[G.R. No. 187485. October 8, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SAN ROQUE POWER CORPORATION,** *respondent.*

[G.R. No. 196113. October 8, 2013]

TAGANITO MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 197156. October 8, 2013]

PHILEX MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; THE DOCTRINE OF OPERATIVE FACT IS AN EXCEPTION TO THE GENERAL RULE THAT A VOID LAW OR ADMINISTRATIVE ACT CANNOT BE THE SOURCE OF LEGAL RIGHTS OR DUTIES SUCH THAT A JUDICIAL DECLARATION OF INVALIDITY MAY NOT NECESSARILY OBLITERATE ALL THE EFFECTS AND CONSEQUENCES OF A VOID ACT PRIOR TO SUCH DECLARATION; APPLICATION OF THE DOCTRINE OF OPERATIVE FACT.— The general rule is that a void law or administrative act cannot be the source of legal rights or duties. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." The doctrine of operative fact is an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration. x x x For the operative fact doctrine to apply, there must be a **"legislative or executive measure,"** meaning **a law or executive issuance,** that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid. In the present case, however, there is no such law or executive issuance that has been invalidated by the Court except BIR Ruling No. DA-489-03.

2. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC); TAX REFUND OR TAX CREDIT; NO ADMINISTRATIVE PRACTICE ALLOWING SIMULTANEOUS FILING OF CLAIMS FOR TAX REFUND OR CREDIT; PRIOR TO ISSUANCE OF BIR RULING NO. DA-489-03, THE 120+30 DAY PERIODS WERE CONSIDERED MANDATORY AND JURISDICTIONAL.— To justify the application of the doctrine of operative fact as an exemption, San Roque asserts that "the BIR and the CTA **in actual practice** did not observe and did not require refund seekers to comply with the120+30 day periods." **This is glaring error because an administrative practice is neither a law nor an executive issuance. Moreover, in the present case, there is even no such administrative practice by the BIR as claimed by San Roque**. x x x. Before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, there was ***no*** administrative practice by the BIR that supported simultaneous filing of claims. Prior to BIR Ruling No. DA-489-03, the BIR considered the 120+30 day periods mandatory and jurisdictional. **Thus, prior to BIR Ruling No. DA-489-03, the BIR's actual administrative practice was to contest simultaneous filing of claims at the administrative and judicial levels, until the CA declared in *Hitachi* that the BIR's position was wrong. The CA's *Hitachi* decision is the basis of BIR Ruling No. DA-489-03 dated 10 December 2003 allowing simultaneous filing. From then on taxpayers could rely in good faith on BIR Ruling No. DA-489-03 even though it was erroneous as this Court subsequently decided in *Aichi* that the 120+30 day periods were mandatory and jurisdictional.**

3. ID.; ID.; ID.; FOR THE DOCTRINE OF OPERATIVE FACT TO APPLY, THERE MUST BE A RULE OR RULING ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE THAT IS RELIED UPON BY THE TAXPAYER IN GOOD FAITH, FOR AN ADMINISTRATIVE PRACTICE, NOT FORMALIZED INTO A RULE OR RULING, WILL NOT SUFFICE BECAUSE THE SAME MAY NOT BE UNIFORMLY AND CONSISTENTLY APPLIED.— The doctrine of operative fact is an argument for the application of equity and fair play. In the present case, we applied the doctrine of operative fact when we recognized

simultaneous filing during the period between 10 December 2003, when BIR Ruling No. DA-489-03 was issued, and 6 October 2010, when this Court promulgated *Aichi* declaring the 120+30 day periods mandatory and jurisdictional, thus reversing BIR Ruling No. DA-489-03. The doctrine of operative fact is in fact incorporated in Section 246 of the Tax Code x x x. Under Section 246, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact. **There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. A mere administrative practice, not formalized into a rule or ruling, will not suffice because such a mere administrative practice may not be uniformly and consistently applied. An administrative practice, if not formalized as a rule or ruling, will not be known to the general public and can be availed of only by those with informal contacts with the government agency.**

4. **ID.; ID.; ID.; SECTION 246 OF THE TAX CODE, BEING AN EXEMPTION TO STATUTORY TAXATION, MUST BE APPLIED STRICTLY AGAINST THE TAXPAYER CLAIMING SUCH EXEMPTION.—** Since the law has already prescribed in Section 246 of the Tax Code how the doctrine of operative fact should be applied, there can be no invocation of the doctrine of operative fact other than what the law has specifically provided in Section 246. In the present case, the rule or ruling subject of the operative fact doctrine is BIR Ruling No. DA-489-03 dated 10 December 2003. Prior to this date, there is no such rule or ruling calling for the application of the operative fact doctrine in Section 246. Section 246, being an exemption to statutory taxation, must be applied strictly against the taxpayer claiming such exemption.

5. **REMEDIAL LAW; JUDGMENTS; THE DECISIONS OF THE COURT OF TAX APPEALS OR COURT OF APPEALS ARE SPECIFIC RULINGS APPLICABLE ONLY TO THE PARTIES TO THE CASE AND NOT TO THE GENERAL PUBLIC, HENCE, THEY DO NOT FORM PART OF THE LAW; DECISIONS OF LOWER COURTS DO NOT HAVE ANY VALUE AS PRECEDENTS AND ARE NOT BINDING**

ON THE SUPREME COURT.— San Roque insists that this Court should not decide the present case in violation of the rulings of the CTA; otherwise, there will be adverse effects on the national economy. In effect, San Roque's doomsday scenario is a protest against this Court's power of appellate review. San Roque cites cases decided by the CTA to underscore that the CTA did not treat the 120+30 day periods as mandatory and jurisdictional. However, CTA or CA rulings are not the executive issuances covered by Section 246 of the Tax Code, which adopts the operative fact doctrine. CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the general public. CTA or CA decisions, unlike those of this Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents. Obviously, decisions of lower courts are not binding on this Court. **To hold that CTA or CA decisions, even if reversed by this Court, should still prevail is to turn upside down our legal system and hierarchy of courts, with adverse effects far worse than the dubious doomsday scenario San Roque has conjured.**

6. ID.; APPEALS; ANY ISSUE, WHETHER RAISED OR NOT BY THE PARTIES, BUT NOT PASSED UPON BY THE COURT, DOES NOT HAVE ANY VALUE AS PRECEDENT.— San Roque cited cases in its Supplemental Motion for Reconsideration to support its position that retroactive application of the doctrine in the present case will violate San Roque's right to equal protection of the law. However, San Roque itself *admits* that the cited cases never mentioned the issue of premature or simultaneous filing, nor of compliance with the 120+30 day period requirement. **We reiterate that "[a]ny issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent." Therefore, the cases cited by San Roque to bolster its claim against the application of the 120+30 day period requirement do not have any value as precedents in the present case.**

7. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; THE COMMISSIONER OF INTERNAL REVENUE MAY DELEGATE THE POWERS VESTED IN HIM TO ANY OR SUCH SUBORDINATE OFFICIALS WITH THE

RANK EQUIVALENT TO A DIVISION CHIEF OR HIGHER, SUBJECT TO SUCH LIMITATIONS AND RESTRICTIONS AS MAY BE IMPOSED UNDER RULES AND REGULATIONS TO BE PROMULGATED BY THE SECRETARY OF FINANCE, UPON RECOMMENDATION OF THE COMMISSIONER.— In asking this Court to disallow Taganito's claim for tax refund or credit, the CIR repudiates the validity of the issuance of its own BIR Ruling No. DA-489-03. "Taganito cannot rely on the pronouncements in BIR Ruling No. DA-489-03, being a mere issuance of a Deputy Commissioner." Although Section 4 of the 1997 Tax Code provides that the "power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance," Section 7 of the same Code does not prohibit the delegation of such power. Thus, "**[t]he Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

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

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; THE INTERPRETATIONS MADE THROUGH REVENUE REGULATION OR BY OPINION BY A DEPUTY COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE CONTRARY TO THE PROVISIONS OF THE LAW ARE *ULTRA VIRES*.— [T]he text of Section 112 (C) [of the 1997 tax code] is clear. It puts all taxpayers on notice. The interpretations made through Revenue Regulation or by Opinion by a Deputy Commissioner of the Bureau of Internal Revenue contrary to the provisions of the law are clearly *ultra vires* and should not be countenanced. If We sanction these acts, it undermines the operative value of the statute as written. It rewards erroneous interpretation and unduly grants discretion to the Commissioner of Internal Revenue, which may be abused given the pressure from million-peso claims for tax refunds.

2. ID.; ID.; SECTION 112 (C) THEREOF; APPEAL TO THE COURT OF TAX APPEALS IS MADE ONLY AFTER THE 120-DAY PERIOD FROM THE DATE OF SUBMISSION OF COMPLETE DOCUMENTS TO SUPPORT THE REFUND OR TAX CREDIT CERTIFICATE WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITHIN THE 120-DAY PERIOD FROM THE TIME THE CLAIM HAS BEEN DENIED OR ONLY PARTIALLY GRANTED.— There is no room for any other interpretation of the text [of Section 112 (c) of the 1997 tax code] except that resort to an appeal with the Court of Tax Appeals is made (a) only after the 120-day period from the date of submission of complete documents to support the refund or tax credit certificate with the Commissioner of Internal Revenue or (b) within the 120-day period from the time the claim has been denied or only partially granted.

3. STATUTORY CONSTRUCTION; WHEN THE COURT INTERPRETS LAW, IT DECLARES WHAT A PARTICULAR PROVISION HAS ALWAYS MEANT; IT DOES NOT CREATE NEW OBLIGATIONS FOR IT HAS NO POWER TO LEGISLATE.— [T]he *Aichi* doctrine as confirmed in *San Roque* should be applied to all undecided Value Added Tax or VAT refund cases, regardless of the period when the claim for refund was made. When this Court interprets law, it declares what a particular provision has always meant. We do not create new legal obligations. We do not have the power to legislate. Interpretations of law made by courts necessarily always have a "retroactive" effect. Once We determine that a previous interpretation of the law is erroneous, We cannot, at the same time, continue to give effect to such erroneous interpretation because Ours is the duty to uphold the true meaning of the law.

4. ID.; A CONSTRUCTION PLACED UPON THE LAW BY THE COMMISSIONER OF INTERNAL REVENUE EVEN IF IT HAS BEEN FOLLOWED FOR YEARS, IF FOUND TO BE CONTRARY TO LAW, MUST BE ABANDONED.— A construction placed upon the law by the Commissioner, even if it has been followed for years, if found to be contrary to law, must be abandoned. To say that such interpretation established by the administrative agency has effect would be to say that this Court has the power to control or suspend the

effectivity of laws. We cannot hold ourselves hostage to an erroneous interpretation. To say that equity should be considered because it has been relied upon by taxpayers would mean to underestimate or, worse, make the ordinary beneficiaries of the use of our taxes invisible. We cannot use equity only to favor large taxpayers.

5. ID.; ID.; AN ERRONEOUS APPLICATION AND ENFORCEMENT OF THE LAW BY PUBLIC OFFICERS DO NOT PRECLUDE A SUBSEQUENT CORRECT APPLICATION OF THE STATUTE, AND THE GOVERNMENT IS NEVER ESTOPPED BY MISTAKE OR ERROR ON THE PART OF ITS AGENTS.— Settled is the principle that an "erroneous application and enforcement of the law by public officers do not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents." Similar with Our duty of upholding the Constitution when it is in conflict with a statute, it is Our duty to uphold a statute when it is in conflict with an executive issuance. We ensure that clear provisions of law are not undermined by the Commissioner of Internal Revenue.

6. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); SECTION 4 THEREOF; THE COMMISSIONER OF INTERNAL REVENUE CANNOT LEGISLATE GUIDELINES CONTRARY TO LAW IT IS TASKED TO IMPLEMENT; HENCE, ITS INTERPRETATION IS NOT CONCLUSIVE AND WILL BE IGNORED IF JUDICIALLY FOUND TO BE ERRONEOUS.— [S]ection 4 of the Tax Code expressly grants to the Commissioner of Internal Revenue the power to interpret tax laws x x x. However, the Commissioner of Internal Revenue cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous.

7. ID.; ID.; TAX REFUNDS/TAX CREDITS; TAXPAYERS DO NOT HAVE VESTED RIGHTS OVER TAX REFUNDS FOR REFUNDS MUST BE PROVEN AND ITS APPLICATION RAISED IN THE RIGHT MANNER AS REQUIRED BY THE STATUTE; VESTED RIGHT, EXPLAINED; DOCTRINE OF OPERATIVE FACT, EXPLAINED.— The

doctrine of operative fact cannot be an excuse for Us to renege on this constitutional duty. This doctrine only refers to rights that have already been vested due to reliance on a statute or executive act that was eventually declared unconstitutional or invalid. In *Benguet Consolidated Mining Co. v. Pineda,* vested right is defined as follows: Vested right is "some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy." x x x "Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested." There are no vested rights in procedure. Taxpayers do not have vested rights over tax refunds. Refunds need to be proven and its application raised in the right manner as required by statute. Only after a final determination of the right to refund and its amount does it become a vested right for the taxpayer.

8. ID.; ID.; ID.; ID.; PRACTICE, WITHOUT MORE, NO MATTER HOW LONG CONTINUED, CANNOT GIVE RISE TO ANY VESTED RIGHTS IF IT IS CONTRARY TO LAW; ADMINISTRATIVE PRACTICE IS NOT SUBJECT TO THE DOCTRINE OF OPERATIVE FACT.— San Roque further anchors its argument on the "actual practice" by the Bureau and the Court of Tax Appeals in treating the 120+30-day period as permissive rather than directory. This contention is specious. x x x [A]n administrative practice is not subject to the doctrine of operative fact. "Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law."

9. ID.; ID.; SECTION 246 THEREOF APPLIES ONLY WHEN THERE IS A VALID INTERPRETATION MADE BY THE COMMISSIONER OF INTERNAL REVENUE; BUREAU OF INTERNAL REVENUE RULING NO. DA-489-03 DECLARED ULTRA VIRES AND WAS NOT VALIDLY ISSUED SINCE IT WAS PROMULGATED BY A DEPUTY COMMISSIONER.— Section 246. Non-Retroactivity of Rulings. – Any revocation, modification or reversal of any of

the rules and regulations promulgated ***in accordance with the preceding Sections*** or any of the rulings or circulars ***promulgated by the Commissioner*** shall not be given retroactive application if the revocation, modification, or reversal shall be prejudicial to the taxpayer, except in the following cases: (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue; (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) Where the taxpayer acted in bad faith. This provision should only apply when there is a valid interpretation made by the Commissioner of Internal Revenue. In the present case, the Bureau of Internal Revenue Ruling No. DA-489-03 is *ultra vires* and was not validly issued since it was promulgated by a Deputy Commissioner.

10. ID.; ID.; SECTION 112 (C) THEREOF; A RULE OR REGULATION CANNOT GO BEYOND THE TERMS AND PROVISIONS OF THE CODE; REVENUE REGULATION NO. 07-95 CANNOT GO BEYOND THE PROVISIONS OF THE TAX CODE.— Under Section 4 of the 1997 Tax Code, the power to interpret the provisions of the Code and other tax laws is under the exclusive and original jurisdiction of the Commissioner of Internal Revenue, subject to review by the Secretary of Finance. Pursuant to Section 7 of the Tax Code, the Commissioner of Internal Revenue may delegate his or her powers to a subordinate official except, among others, the power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau of Internal Revenue. The Bureau of Internal Revenue Ruling No. DA-489-03 is a ruling of first impression, declaring for the first time in written form the permissive nature of the 120-day period stated in Section 112 (C). x x x. [The dissent], however, disagrees x x x that the Bureau of Internal Revenue Ruling is an application of a rule already laid down and specified in Revenue Regulation No. 07-95, which considered the 120-day (then 60-day) period as non-obligatory and discretionary. Nowhere in the Revenue Regulation is it expressed or implied that the 120-day (then 60-day) period is permissive. x x x. [I]t is clear from [Section 4.106-2 of Revenue Regulation 07-95] that the appeal to the Court of Tax Appeals may be

made only after the lapse of the 60-day (now 120-day) period without action by the Commissioner of Internal Revenue on the administrative claim. A rule or regulation cannot go beyond the terms and provisions of the basic law. Revenue Regulation No. 07-95, therefore, cannot go beyond the provisions of the Tax Code.

11. ID.; ID.; TAX REFUNDS/TAX CREDITS; THE 120+30 DAY PERIOD IS NOT A MERE PROCEDURAL TECHNICALITY THAT CAN SIMPLY BE DISREGARDED IF THE CLAIM IS OTHERWISE MERITORIOUS, BUT A MANDATORY AND JURISDICTIONAL CONDITION IMPOSED BY LAW; NO ACTION FOR THE RECOVERY OF TAX PAID CAN BE MAINTAINED WITHOUT STRICTLY COMPLYING WITH EACH AND EVERY ONE OF THE CONDITIONS REQUIRED BY THE LAW TO THAT EFFECT.— [A] value added tax refund is not a refund of an excessively, illegally or erroneously collected tax. A value added tax refund claim may be made because it is specifically allowed and provided for by law, *i.e.*, Section 110 (B) and Section 112 (A) of the National Internal Revenue Code, as amended. Similar in nature to a tax exemption, it must be construed strictly against the taxpayer. Hence, strict compliance with *both* substantive and procedural requirements is required for a value added tax refund claim to prosper. The 120+30-day period is not a mere procedural technicality that can simply be disregarded if the claim is otherwise meritorious, but a mandatory and jurisdictional condition imposed by law. "Failure to comply with [these] requisite[s] is fatal because it has been repeatedly held that no action for the recovery of a tax paid can be maintained without strictly complying with each and every one of the conditions required by the law to that effect." Even handed justice requires that the new rule be applied retroactively to all who are similarly situated, including the claims of San Roque and Taganito, which are subject of the present case. Reiterating Our view expressed in the separate Opinion in the Decision: "the provisions that We have just reviewed already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that are available to them. That is, that resort to judicial action can only be done after a denial by the Commissioner or after the lapse of 120 days from the date of

submission of complete documents in support of the administrative claim for refund."

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

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; THE INTERPRETATION OF THE SECRETARY OF FINANCE, AS EMBODIED IN REVENUE REGULATIONS, PREVAILS OVER RULINGS ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE, WHO IS ONLY EMPOWERED, AT MOST, TO RECOMMEND THE PROMULGATIONS OF RULES AND REGULATIONS BY THE SECRETARY OF FINANCE; THE COMMISSIONER OF INTERNAL REVENUE CANNOT AMEND AND REVERSE A REVENUE REGULATION BY THE MERE EXPEDIENCE OF ISSUING A RULING.— *Lazi Bay* was not an isolated adjudication that deviated from an otherwise fixed and strict observance of the 120≤30 day period stated in Section 112 (C). Instead, it should be taken as a reflection of the prevailing rule and practice carried over from Republic Act No. (RA) 7716, by RR 7-95, which considered the period as non-obligatory and discretionary. RR 7-95 was promulgated pursuant to the power of the Secretary of Finance provided in Section 245 in relation to Section 4 of the 1977 NIRC, as amended by RA 7716. Section 245 of the 1977 NIRC defined the authority of the Secretary of Finance to promulgate rules and regulations x x x. Meanwhile, Section 4 of the 1977 NIRC, as amended, specified the provisions that must be contained in rules and regulations, not just in rulings of the BIR. Among other things, the 1977 NIRC required that "[t]he **conditions** to be observed by revenue officers, provincial fiscals and other officials respecting the institution and **conduct of legal actions and proceedings**" must be defined in a revenue regulation, not just an issuance of the BIR. Certainly, therefore, the specification of the details regarding the observance of the prescriptive period for the filing of judicial claims is within the power of the Secretary of Finance, not the CIR. This delineation of the rule-making powers of the tax authorities was reiterated in Sections 244 and 245, in relation to Sections 4 and 7, of the 1997 NIRC. Section 244 of the 1997 NIRC, again, defined the authority of the Secretary of Finance to promulgate rules and regulations,

and Section 245 enumerated the specific provisions that must be contained in a revenue regulation x x x. In turn, Section 4 of the 1997 NIRC provides that the CIR has the "power to interpret the provisions of the [1997 Tax] Code x x x subject to the review by the Secretary of Finance." Ergo, **the interpretation of the Secretary of Finance, as embodied in revenue regulations, prevails over rulings issued by the CIR**, who is only empowered, at most, "to recommend the promulgation of rules and regulations by the Secretary of Finance." Given the limited power vested on the CIR in relation to the rule-making power reposed on the Secretary of Finance, the CIR cannot amend and reverse a revenue regulation by the mere expedience of issuing a ruling. Thus, **if this Court is bent on upholding the effectivity of BIR Ruling No. DA-489-03 in *Lazi Bay*, it must be taken as an application of a rule already laid down and specified by the Secretary of Finance in RR 7-95, and not as an isolated application that deviated from an un-interpreted provision of law**.

2. ID.; ID.; REVENUE REGULATION 7-95 PREVAILS OVER MERE RULING OF THE BUREAU OF INTERNAL REVENUE.— Indeed, RR 7-95 prevails over a mere BIR Ruling. Note that a revenue regulation is published before its effectivity so that taxpayers are notified of its effects and the consequences of the failure to abide thereby. This is not so with respect to BIR Rulings. Instead, the rulings are addressed and transmitted to the parties who applied for the issuance of the BIR's opinion; other taxpayers are not notified by publication in a newspaper of general circulation of its import and consequence. Unless they conduct a thorough and in-depth investigation, they will not be informed of the opinion of the BIR as embodied in the ruling. As between RR 7-95, a revenue regulation and the BIR ruling in *Lazi Bay*, therefore, reliance on the former is more in accord with due process.

3. ID.; ID.; TAX REFUND/CREDIT; TAXPAYERS ARE ALLOWED TO TREAT THE 120-DAY PERIOD AS NON-COMPULSORY AND MERELY DISCRETIONARY SO LONG AS THE 2-YEAR PERIOD IS OBSERVED AND COMPLIED.— [T]o facilitate the sanctioned non-compulsory and discretionary treatment of the 120≤30 day period for the filing of judicial claims, RMC No. 42-03 was issued on July 15, 2003 to address, among others, the rule regarding

simultaneously filed and pending administrative and judicial claims. Note that RMC No. 42-03 did not mandate the dismissal of a judicial claim filed while an administrative claim is still pending on the ground of prematurity. Instead, RMC No. 42-03 contemplated a situation that allowed the exercise by the CTA and the CIR of concurrent jurisdiction over the claim for refund/issuance of TCC. This RMC was intended as a "response to request of selected taxpayers for adoption of procedures in handling refund cases that are **aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law**." And yet, RMC 49-03 allowed for the *simultaneous* processing of the administrative and judicial claims for input VAT refund/issuance of TCC by the BIR and the CTA, respectively, and NOT the dismissal of the judicial claim on the ground of prematurity. Clearly, the period referred to by the CIR in issuing RMC 49-03 is the period laid down in Section 112 (C) of the 1997 NIRC, as interpreted and enforced by RR 7-95, *i.e.*, "the two (2) year period from the date of filing of the VAT return for the taxable quarter." Hence, taxpayers were allowed to treat the 120-day period as non-compulsory and merely discretionary so long as the 2-year period is observed and complied. **BIR Ruling No. DA-489-03 in *Lazi Bay* simply echoed this rule laid down in RR 7-95 and affirmed by RMC Nos. 42-03 and 49-03** x x x. Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law. Hence, the prevailing rule even after the effectivity of the 1997 NIRC was to treat the 120≤30-day period as non-mandatory since RR 7-95 was not affected and remained in effect.

4. ID.; ID.; ID.; BIR RULING DA-489-03 IS AN EVIDENCE OF THE RULE AND PRACTICE THAT ALLOWED FOR THE DISCRETIONARY AND NON MANDATORY TREATMENT OF THE 120≤30 DAY PERIOD; WHEN THE LEGISLATURE REENACTS A LAW THAT HAS BEEN CONSTRUED BY AN EXECUTIVE AGENCY USING SUBSTANTIALLY THE SAME LANGUAGE, IT IS AN INDICATION OF THE ADOPTION BY THE LEGISLATURE OF THE PRIOR CONSTRUCTION BY THE AGENCY.— Section 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by

Section 112 (C) of the 1997 NIRC. It is a hornbook rule that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, it is an indication of the adoption by the legislature of the prior construction by the agency. The almost verbatim reproduction of Section 106(D) of the 1977 NIRC by Section 112(C) of the 1997 NIRC is therefore an implied recognition by the legislature of the propriety of the interpretation made by the Secretary of Finance of the proper prescriptive period in filing judicial claims for input VAT refund/issuance of TCCs. The continuing application of RR 7-95 in interpreting the provisions of the 1997 NIRC is also acknowledged by the Secretary of Finance, the BIR, the CTA, and this Court. x x x. Numerous BIR rulings rendered after the effectivity of the 1997 NIRC regarding tax incidents that occurred after January 1, 1998 similarly applied the relevant provisions of RR 7-95. Even this Court in resolving claims for refund of input VAT paid after January 1, 1998 recognized the effectivity of RR 7-95 in interpreting the provisions of the 1997 Tax Code. Citing *Panasonic v. Commissioner of Internal Revenue*, We explained that **RR 7-95 gained the status of a legislative act that binds the taxpayers and this Court** x x x. It is, therefore, inaccurate to state that before the issuance of BIR Ruling DA-489-03 in *Lazi Bay* on 10 December 2003, there was ***no*** administrative practice, rule or ruling rule followed by the BIR that supported simultaneous filing of claims and that prior to the *Lazi Bay* ruling, the BIR considered the 120≤30 day period mandatory. Rather, the *Lazi Bay* ruling is one of the outcomes and tangible evidence of such practice, as made concrete by RR 7-95, that allowed the simultaneous filing of claims. Similarly, as pointed out by movant, the fact that this Court, like the CTA and the BIR, has passed upon the issue of the prescriptive period for filing the judicial claim *sub silencio* is also a glaring evidence of the sanctioned rule and practice that allowed for the discretionary and non-mandatory treatment of the 120≤30 day period in Section 112(C) of the 1997 NIRC.

5. ID.; ID.; ID.; RR-16-2005 REQUIRING THE MANDATORY OBSERVANCE OF THE 120≤30 DAY PERIOD BEFORE THE FILING OF A JUDICIAL CLAIM FOR VAT REFUND APPLIES PROSPECTIVELY AND NOT RETROACTIVELY TO THE DATE OF THE

EFFECTIVITY OF THE 1997 TAX CODE; STATUTES INCLUDING ADMINISTRATIVE RULES AND REGULATIONS OPERATE PROSPECTIVELY ONLY, UNLESS THE LEGISLATIVE INTENT TO THE CONTRARY IS MANIFEST BY EXPRESS TERMS OR BY NECESSARY IMPLICATION.— The policy requiring the mandatory observance of the 120≤30 day period before the filing of a judicial claim for VAT refund was set and made clear only upon the effectivity of RR 16-2005 on November 1, 2005. RR 16-2005 abolished once and for all the standing rule provided in RR 7-95 when it deleted any reference to the 2-year period in conjunction with the filing of a judicial claim for refund/credit of input VAT x x x. Since, similar to RR 7-95, RR 16-2005 was promulgated pursuant to Sections 244 and 245 of the 1997 Tax Code, it embodies a legislative rule that deserves the deference and respect due the law it implements. For this reason, from the effectivity of RR 16-2005 on November 1, 2005, all taxpayers are bound to strictly observe the 120≤30 day period provided in Section 112 (C) and there was no need to wait for the promulgation of a decision like *Aichi* in view of the existence of a clear legislative rule that finally repealed all other rulings that may have clouded the mandatory nature of the 120<30 day period. Like all laws and regulations, RR 16-2005 applies prospectively and not retroactively to the date of the effectivity of the 1997 Tax Code. As this Court explained in *BPI Leasing Corporation v. Court of Appeals*, the rule on prospectivity of laws encompasses revenue regulations implementing the 1997 NIRC: x x x. **The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication**.

6. ID.; ID.; ID.; ID.; ID.; REFUND SEEKERS SHOULD NOT BE PREJUDICED, PENALIZED NOR CASTIGATED FOR HAVING TAKEN GUIDANCE FROM THE POLICIES, PRONOUNCEMENTS, ISSUANCES AND ACTUATIONS OF THE BUREAU OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, WHICH ACTUATIONS HAVE DIRECT BEARING ON A DIFFICULT QUESTION OF LAW; PRINCIPLE OF OPERATIVE FACT APPLIES.— The Decision of February 12, 2013 and the Resolution employ retroactivity to backdate the Court's new

interpretation of the 120≤30 day period under Section 112. This is a dangerous precedent. The retroactivity of application of a new judicial interpretation must be seen for what it is – a corrective tool that must be used in a very controlled, restricted manner and only for very necessary, limited situations and occasions. It is not a tool to be employed lightly; extreme need therefor must be first established. For it is capable of destroying established contractual rights and relationships and causing drastic, massive damage. The narration of case facts and antecedents of the Decisions and Resolutions of this Court and the CTA enumerated above speak to the principle of operative fact, inasmuch as they all bear witness that for years prior to the effectivity of RR 16-2005 in November 2005, in the process of resolving judicial claims for refund of input VAT, the BIR, the CTA and this Court all paid scant attention to the 120≤30 day period requirement in Section 112. This operative fact cannot be denied and ignored if this Court is to be true to its role as the vanguard of truth and ultimate dispenser of justice in this country. As this Court once said: "[t]he actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to its invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." Thus, in arriving at a judicious ruling on a "difficult question of law," this Court should give premium to the good faith of the taxpayers in relying on a valid revenue regulation that has taken the proper agencies too long to update. x x x. Thus, if, as the Decision declares, "[t]axpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law," there is more reason to maintain that refund seekers should not be prejudiced, penalized nor castigated for having taken guidance from the policies, pronouncements, issuances and actuations of the BIR and the CTA, which actuations have direct bearing on a difficult question of law.

7. ID.; ID.; ID.; ID.; JUDICIAL CLAIM FOR REFUND OF INPUT VAT FILED AND COMMENCED BEFORE THE EFFECTIVITY OF RR16 – 2005 ON NOVEMBER 1, 2005

SHOULD BE GRANTED REGARDLESS OF THE FAILURE OF THE TAXPAYER TO TAKE INTO ACCOUNT THE 120≤30 PERIOD REQUIREMENT IN SECTION 112 (C) OF THE NIRC.— This Court is, therefore, duty-bound to actively refrain from actions that may be perceived as elevating strict adherence to procedural rules and technicalities over and above the taxpayer's clear, substantive legal right to the refund sought. We must remain cognizant of the taxpayer's good faith compliance with procedures approved and sanctioned by the BIR and the CTA and accepted by this Court, and avoid creating obstacles to defeat the taxpayer's substantive right to refunds. Consistent with the principle of operative fact and the basic notions of fairness and equity, the strict and mandatory application of Section 112 (C) must be reckoned from the day the rule was set clarified and set in black and white—on the effectivity of RR 16-2005 on November 1, 2005. In net effect, all claims for refund of input VAT filed and commenced after November 1, 2005 must strictly observe the period provided in Section 112(C) of the 1997 Tax Code. Since San Roque filed its judicial claim in April 2003, or more than two (2) years *before* the effectivity of RR 16-2005, its claim for input VAT should be granted regardless of its failure to take into account the period provided in Section 112 (C).

8. ID.; ID.; ID.; THE PREMATURE FILING OF A JUDICIAL CLAIM BEFORE THE LAPSE OF 120 DAYS FROM THE FILING OF THE ADMINISTRATIVE CLAIM DOES NOT DEPRIVE THE COURT OF TAX APPEALS OF ITS JURISDICTION.— The non-mandatory treatment of the 120≤30 day period prior to November 1, 2005 should hold especially true for taxpayers like movant San Roque, that had filed its judicial claim within the 120 days, and not after the lapse of the period. The prematurity in filing, unlike the late filing, of the judicial claim cannot serve to deprive the CTA of its jurisdiction as it is axiomatic that the jurisdiction of courts is determined by law. The discretion is, therefore, with the CTA to dismiss without prejudice, upon proper motion, a judicial claim prematurely filed by a taxpayer. This Court cannot, contrary to RA 1125 which vested upon the CTA its jurisdiction, declare the immediate deprivation of such jurisdiction to consider and evaluate the legitimacy of a taxpayer's claim on the feeble

ground that the taxpayer has failed to patiently await the lapse of the period given to the CIR to act. At most, the prematurity of the filing of the judicial claim for the refund of VAT is a ground for the dismissal without prejudice of the claim that can be waived by the BIR and disregarded by the CTA, if the tribunal is inclined to rule on the substantial aspect of the claim. It is not for this Court to pre-empt the decision of the CTA on the exercise of the jurisdiction it has been conferred by law. In the case of San Roque, when both the CTA Second Division and the CTA *En Banc* looked into the substance of the movant-taxpayer's claim and eventually decided to grant it, despite San Roque's premature filing thereof, **the tax tribunal was acting with the jurisdiction** it has been granted under RA 1125, as amended.

9. ID.; ID.; ID.; ALL CLAIMS FOR INPUT VAT REFUND/ ISSUANCE OF TCC FILED AFTER NOVEMBER 1, 2005 MUST STRICTLY OBSERVE THE 120≤30 DAY PERIOD PROVIDED IN SECTION 112 (C) OF THE 1997 NIRC WHILE ALL JUDICIAL CLAIMS FILED PRIOR TO THE SAME DATE ARE ALLOWED TO RELY ON THE PRACTICE SANCTIONED BY RR 7-95, AS EXEMPLIFIED BY BIR RULING NO. DA-489-03.— The act of the CTA in granting San Roque's claim based on the merits of its claim is a further indication of the long-observed practice allowing the premature filing of judicial claims. In fact, in applying the x x x provision of RA 1125, the presently observed and still effective Revised Rules of the Court of Tax Appeals did not mention the period provided in Section 112 (C). Instead, it still underscores the two (2) year period contemplated in RR 7-95: x x x. We cannot, therefore, deny the movant's claim for refund solely based on the prematurity of its judicial filing, which in the first place has been instigated by the taxpayer's good faith reliance on a revenue regulation issued by the Secretary of Finance, the practice observed by the BIR and the CTA, and the silent tolerance by this Court. While, indeed, the lifeblood of our country is the taxes due from the taxpayers, the heart of this nation beats in rhyme with justice and fairness that deplore the sacrifice of a substantial right in the altars of procedure. Let us therefore look into the merits of the movant's rights and give credit to its good faith passing over of the period provided in Section 112 (C) of the 1997 NIRC. Hence, all claims for input VAT refund/issuance

of TCC filed after November 1, 2005 must strictly observe the 120≤30 day period provided in Section 112 (C) of the 1997 NIRC. Meanwhile, all judicial claims filed prior to the same date are allowed to rely on the practice sanctioned by RR 7-95, as exemplified by BIR Ruling No. DA-489-03 in *Lazi Bay*.

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R E S O L U T I O N

CARPIO, *J.*:

This Resolution resolves the Motion for Reconsideration and the Supplemental Motion for Reconsideration filed by San Roque Power Corporation (San Roque) in G.R. No. 187485, the Comment to the Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR) in G.R. No. 187485, the Motion for Reconsideration filed by the CIR in G.R. No. 196113, and the Comment to the Motion for Reconsideration filed by Taganito Mining Corporation (Taganito) in G.R. No. 196113.

San Roque prays that the rule established in our 12 February 2013 Decision be given only a prospective effect, arguing that "the manner by which the Bureau of Internal Revenue (BIR) and the Court of Tax Appeals (CTA) actually treated the 120 + 30 day periods constitutes an operative fact the effects and consequences of which cannot be erased or undone."[1]

The CIR, on the other hand, asserts that Taganito Mining Corporation's (Taganito) judicial claim for tax credit or refund was prematurely filed before the CTA and should be disallowed

[1] G.R. No. 187485, Motion for Reconsideration, p. 3.

because BIR Ruling No. DA-489-03 was issued by a Deputy Commissioner, not by the Commissioner of Internal Revenue.

We deny both motions.

The Doctrine of Operative Fact

The general rule is that a void law or administrative act cannot be the source of legal rights or duties. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."

The doctrine of operative fact is an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration.[2] In *Serrano de Agbayani v. Philippine National Bank*,[3] the application of the doctrine of operative fact was discussed as follows:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

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[2] See *Republic v. Court of Appeals*, G.R. No. 79732, 8 November 1993, 227 SCRA 509.

[3] 148 Phil. 443, 447-448 (1971). Emphasis added. Citations omitted.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as **until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect**. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because **the judiciary is the governmental organ which has the final say on whether or not a *legislative or executive measure* is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.* (Boldfacing and italicization supplied)

Clearly, for the operative fact doctrine to apply, there must be a "**legislative or executive measure**," meaning **a law or executive issuance**, that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid. In the present case, however, there is no such law or executive issuance that has been invalidated by the Court except BIR Ruling No. DA-489-03.

To justify the application of the doctrine of operative fact as an exemption, San Roque asserts that "the BIR and the CTA **in actual practice** did not observe and did not require refund seekers to comply with the 120+30 day periods."[4] **This is glaring error because an administrative practice is neither a law nor an executive issuance. Moreover, in the present case, there is even no such administrative practice by the BIR as claimed by San Roque.**

In BIR Ruling No. DA-489-03 dated 10 December 2003, the Department of Finance's One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF-OSS) asked the BIR to rule on the propriety of the actions taken by Lazi Bay Resources Development, Inc. (LBRDI). LBRDI filed an **administrative claim** for refund for alleged input VAT for the four quarters of 1998. Before the lapse of 120 days from the filing of its administrative claim, LBRDI also filed a **judicial claim** with the CTA on 28 March 2000 as well as a supplemental judicial claim on 29 September 2000. In its Memorandum dated 13 August 2002 before the BIR, the DOF-OSS pointed out that LBRDI is "not yet on the right forum in violation of the provision of Section 112(D) of the NIRC" when it sought judicial relief before the CTA. Section 112(D) provides for the 120+30 day periods for claiming tax refunds.

The DOF-OSS itself alerted the BIR that LBRDI did not follow the 120+30 day periods. In BIR Ruling No. DA-489-03, Deputy Commissioner Jose Mario C. Buñag ruled that "a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." Deputy Commissioner Buñag, citing the 7 February 2002 decision of the Court of Appeals (CA) in *Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation*[5] (*Hitachi*), stated that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the CTA.

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[4] Emphasis supplied. G.R. No. 187485, Motion for Reconsideration, p. 7.

[5] CA-G.R. SP No. 63340.

Before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, there was ***no*** administrative practice by the BIR that supported simultaneous filing of claims. Prior to BIR Ruling No. DA-489-03, the BIR considered the 120+30 day periods mandatory and jurisdictional. **Thus, prior to BIR Ruling No. DA-489-03, the BIR's actual administrative practice was to contest simultaneous filing of claims at the administrative and judicial levels, until the CA declared in *Hitachi* that the BIR's position was wrong. The CA's *Hitachi* decision is the basis of BIR Ruling No. DA-489-03 dated 10 December 2003 allowing simultaneous filing. From then on taxpayers could rely in good faith on BIR Ruling No. DA-489-03 even though it was erroneous as this Court subsequently decided in *Aichi* that the 120+30 day periods were mandatory and jurisdictional.**

We reiterate our pronouncements in our Decision as follows:

> At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.
>
> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner x x x.
>
> x x x x x x x x x

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[6]

San Roque's argument must, therefore, fail. The doctrine of operative fact is an argument for the application of equity and fair play. In the present case, we applied the doctrine of operative fact when we recognized simultaneous filing during the period between 10 December 2003, when BIR Ruling No. DA-489-03 was issued, and 6 October 2010, when this Court promulgated *Aichi* declaring the 120+30 day periods mandatory and jurisdictional, thus reversing BIR Ruling No. DA-489-03.

The doctrine of operative fact is in fact incorporated in Section 246 of the Tax Code, which provides:

SEC. 246. *Non-Retroactivity of Rulings*. – **Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith. (Emphasis supplied)

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[6] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013, 690 SCRA 336, 387 and 398-399.

Under Section 246, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact. **There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. A mere administrative practice, not formalized into a rule or ruling, will not suffice because such a mere administrative practice may not be uniformly and consistently applied. An administrative practice, if not formalized as a rule or ruling, will not be known to the general public and can be availed of only by those with informal contacts with the government agency.**

Since the law has already prescribed in Section 246 of the Tax Code how the doctrine of operative fact should be applied, there can be no invocation of the doctrine of operative fact other than what the law has specifically provided in Section 246. In the present case, the rule or ruling subject of the operative fact doctrine is BIR Ruling No. DA-489-03 dated 10 December 2003. Prior to this date, there is no such rule or ruling calling for the application of the operative fact doctrine in Section 246. Section 246, being an exemption to statutory taxation, must be applied strictly against the taxpayer claiming such exemption.

San Roque insists that this Court should not decide the present case in violation of the rulings of the CTA; otherwise, there will be adverse effects on the national economy. In effect, San Roque's doomsday scenario is a protest against this Court's power of appellate review. San Roque cites cases decided by the CTA to underscore that the CTA did not treat the 120+30 day periods as mandatory and jurisdictional. However, CTA or CA rulings are not the executive issuances covered by Section 246 of the Tax Code, which adopts the operative fact doctrine. CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the general public. CTA or CA decisions, unlike those of this Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents. Obviously, decisions of lower courts are not binding on this Court. **To hold that CTA or**

CA decisions, even if reversed by this Court, should still prevail is to turn upside down our legal system and hierarchy of courts, with adverse effects far worse than the dubious doomsday scenario San Roque has conjured.

San Roque cited cases[7] in its Supplemental Motion for Reconsideration to support its position that retroactive application of the doctrine in the present case will violate San Roque's right to equal protection of the law. However, San Roque itself *admits* that the cited cases never mentioned the issue of premature or simultaneous filing, nor of compliance with the 120+30 day period requirement. **We reiterate that "[a]ny issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent."**[8] **Therefore, the cases cited by San Roque to bolster its claim against the application of the 120+30 day period requirement do not have any value as precedents in the present case**.

Authority of the Commissioner to Delegate Power

In asking this Court to disallow Taganito's claim for tax refund or credit, the CIR repudiates the validity of the issuance

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[7] *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, 13 June 2012, 672 SCRA 350; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011, 659 SCRA 658; *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, 6 April 2011, 647 SCRA 398; *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011, 641 SCRA 70; *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 172378, 17 January 2011, 639 SCRA 521; *Hitachi Global Storage Technologies Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 174212, 20 October 2010, 634 SCRA 205; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, 550 Phil. 751 (2007); *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481 (2006); *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, 503 Phil. 823 (2005); *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625 (2005).

[8] *Commissioner of Internal Revenue v. San Roque Power Corporation, supra* note 6 at 410.

of its own BIR Ruling No. DA-489-03. "Taganito cannot rely on the pronouncements in BIR Ruling No. DA-489-03, being a mere issuance of a Deputy Commissioner."[9]

Although Section 4 of the 1997 Tax Code provides that the "power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance," Section 7 of the same Code does not prohibit the delegation of such power. Thus, "**[t]he Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

WHEREFORE, we **DENY** with **FINALITY** the Motions for Reconsideration filed by San Roque Power Corporation in G.R. No. 187485, and the Commissioner of Internal Revenue in G.R. No. 196113.

SO ORDERED.

Leonardo-de Castro, Brion, Bersamin, Abad, and *Perez, JJ.,* concur.

Leonen, J., see separate dissenting and concurring opinion.

Del Castillo, J., joins *J.* Leonen's concurring and separate dissenting opinion.

Sereno, C.J., maintains her dissent.

Velasco, Jr., J., dissents (pls. see dissenting opinion).

Peralta, Mendoza, Reyes and *Perlas-Bernabe, JJ.,* join the dissent of *J.* Velasco, Jr.

Villarama, Jr., J., on leave.

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[9] G.R. No. 196113, Motion for Reconsideration, p. 4.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

We undermine the operative value of the rule of law whenever we reward clearly erroneous administrative interpretation of statutes. We open the legal order to undeserved inconsistencies, and worse, we make the Commissioner of Internal Revenue vulnerable to pressure.

Inconsistency in the administrative implementation of clear statutory provisions and vulnerability of our revenue officials to rent-seeking behavior drive investors away from our markets.

Properly denying an irregular application for a tax refund would mean more funds that can be used for the social good. The beneficiaries of a social good may be too atomized that they may not have the resources to compel our tax officials to deny an improper application of refund of taxes made. In my view, this is the compelling rationale behind the principle that tax statutes are strictly construed against the taxpayer. Our legal order equalizes opportunities through its general principles.

I reiterate my concurrence with the interpretation of Section 112 (C) of the National Internal Revenue Code of 1997[1] (referred here as the 1997 Tax Code) that the 120+30 day period is mandatory and jurisdictional. It has been that way since 1997, and doubts as to what it clearly said only arose due to inconsistent issuances of the Bureau of Internal Revenue.

I, however, reiterate my dissent with respect to the application of this doctrinal interpretation as We resolved the Motions for Reconsideration of the February 12, 2013 Decision of this Court filed by San Roque Power Corporation in G.R. No. 187485, and the Commissioner of Internal Revenue in G.R. No. 196113.

In my view, the text of Section 112 (C) is clear. It puts all taxpayers on notice. The interpretations made through Revenue

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[1] Republic Act No. 8424 as amended by Republic Act No. 9337.

Regulation or by Opinion by a Deputy Commissioner of the Bureau of Internal Revenue contrary to the provisions of the law are clearly *ultra vires* and should not be countenanced. If We sanction these acts, it undermines the operative value of the statute as written. It rewards erroneous interpretation and unduly grants discretion to the Commissioner of Internal Revenue, which may be abused given the pressure from million-peso claims for tax refunds.

Section 112 (C) of the 1997 Tax Code provides:

> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) thereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayers affected may, ***within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.*** (Emphasis provided)

There is no room for any other interpretation of the text except that resort to an appeal with the Court of Tax Appeals is made (a) only after the 120-day period from the date of submission of complete documents to support the refund or tax credit certificate with the Commissioner of Internal Revenue or (b) within the 120-day period from the time the claim has been denied or only partially granted.

In the Decision, the majority considered the issuance by the Bureau of Internal Revenue of Ruling No. DA-489-03 dated December 10, 2003 in Re: Lazi Bay Resources Development, Inc. This opinion, rendered by a Deputy Commissioner, stated

that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief. The majority deemed it equitable to except, from the strict compliance with the 120+30-day mandatory and jurisdictional periods, judicial claims filed within the period from December 10, 2003, when Bureau of Internal Revenue Ruling No. DA-489-03 was issued, to October 6, 2010, when the doctrine in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] was adopted. The main *ponencia* still maintains that the taxpayers cannot be faulted for relying on the Bureau's declaration.

In its Motion for Reconsideration, San Roque argues that by the 'operative fact' principle, due recognition should be given to the fact that even prior to the issuance of Bureau of Internal Revenue Ruling No. DA-489-03, including the time when its administrative and judicial claims for refund were filed on March 28, 2003 and April 10, 2003, respectively, the Bureau and the Court of Tax Appeals in actual practice neither observed nor demanded compliance with the 120+30-day period. Thus, in the spirit of justice, fairness and equity, San Roque insists that the rule on the mandatory and jurisdictional nature of the 120+30-day period should only be applied prospectively.

On the other hand, the Commissioner of Internal Revenue argues that the Bureau of Internal Revenue Ruling No. DA-489-03 is not a valid issuance authorized under Section 4 of the 1997 Tax Code because a deputy commissioner issued it.

I maintain my position that the *Aichi* doctrine[3] as confirmed in *San Roque* should be applied to all undecided Value Added Tax or VAT refund cases, regardless of the period when the claim for refund was made.

When this Court interprets law, it declares what a particular provision has always meant. We do not create new legal obligations. We do not have the power to legislate. Interpretations

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[2] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[3] *Id.*

of law made by courts necessarily always have a "retroactive" effect.

Once We determine that a previous interpretation of the law is erroneous, We cannot, at the same time, continue to give effect to such erroneous interpretation because Ours is the duty to uphold the true meaning of the law.

A construction placed upon the law by the Commissioner, even if it has been followed for years, if found to be contrary to law, must be abandoned. To say that such interpretation established by the administrative agency has effect would be to say that this Court has the power to control or suspend the effectivity of laws. We cannot hold ourselves hostage to an erroneous interpretation. To say that equity should be considered because it has been relied upon by taxpayers would mean to underestimate or, worse, make the ordinary beneficiaries of the use of our taxes invisible. We cannot use equity only to favor large taxpayers.

We cannot justify such course of action.

Settled is the principle that an "erroneous application and enforcement of the law by public officers do not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents."[4] Similar with Our duty of upholding the Constitution when it is in conflict with a statute,[5] it is Our duty to uphold a statute when it is in conflict with an executive issuance. We ensure that clear provisions of law are not undermined by the Commissioner of Internal Revenue.[6]

Concededly, Section 4 of the Tax Code expressly grants to the Commissioner of Internal Revenue the power to interpret tax laws, thus:

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[4] *Philippine Basketball Association v. Court of Appeals*, 392 Phil. 133, 144 (2000).

[5] CONSTITUTION, Art. V, Sec. 5 (2)(a).

[6] *Philippine Petroleum Corp. v. Municipality of Pililla, Rizal,* G.R. No. 90776, June 3, 1991, 198 SCRA 82, 88.

> Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> x x x x x x x x x

However, the Commissioner of Internal Revenue cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous.

The doctrine of operative fact cannot be an excuse for Us to renege on this constitutional duty. This doctrine only refers to rights that have already been vested due to reliance on a statute or executive act that was eventually declared unconstitutional or invalid.[7]

In *Benguet Consolidated Mining Co. v. Pineda*,[8] vested right is defined as follows:

> Vested right is "some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy."
>
> x x x x x x x x x
>
> "Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested

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Well-settled is the rule that administrative regulations must be in harmony with the provisions of the law. In case of discrepancy between the basic law and an implementing rule or regulation, the former prevails.

[7] See *Agbayani, de v. Philippine National Bank, et al.,* 148 Phil. 443 (1971).

[8] 98 Phil. 711 (1956) citing *Balboa v. Farrales*, 51 Phil. 498, 502 (1928) and 16 C.J.S. 214-215.

right. So, inchoate rights which have not been acted on are not vested."[9]

There are no vested rights in procedure. Taxpayers do not have vested rights over tax refunds. Refunds need to be proven and its application raised in the right manner as required by statute. Only after a final determination of the right to refund and its amount does it become a vested right for the taxpayer.

San Roque further anchors its argument on the "actual practice" by the Bureau and the Court of Tax Appeals in treating the 120+30-day period as permissive rather than directory. This contention is specious. I agree with Justice Carpio that an administrative practice is not subject to the doctrine of operative fact. "Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law."[10]

I regret that I cannot agree with Justice Carpio that Section 246 of the Tax Code apply in these cases. This provides:

> Section 246. Non-Retroactivity of Rulings. – Any revocation, modification or reversal of any of the rules and regulations promulgated ***in accordance with the preceding Sections*** or any of the rulings or circulars ***promulgated by the Commissioner*** shall not be given retroactive application if the revocation, modification, or reversal shall be prejudicial to the taxpayer, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

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[9] *Id.* at 722.

[10] *Baybay Water District v. Commission on Audit*, 425 Phil. 326, 342 (2002).

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

This provision should only apply when there is a valid interpretation made by the Commissioner of Internal Revenue. In the present case, the Bureau of Internal Revenue Ruling No. DA-489-03 is *ultra vires* and was not validly issued since it was promulgated by a Deputy Commissioner.

In *Aichi*, this Court squarely addressed the particular issue on prematurity of a judicial claim based on its reasonable interpretation of the language of the 1997 Tax Code. In that case, this Court did not defer application of the rule laid down. This Court ordered the Court of Tax Appeals to dismiss *Aichi*'s appeal due to the premature filing of its claim for refund/credit of input value added tax. In *Aichi*, the administrative and judicial claims were simultaneously filed on September 30, 2004.

The Bureau of Internal Revenue Ruling is *ultra vires* and invalid not only because it contravenes the law but also because it was issued beyond the scope of the authority of the deputy commissioner. In this, I agree with Justice Velasco.

Under Section 4[11] of the 1997 Tax Code, the power to interpret the provisions of the Code and other tax laws is under the exclusive and original jurisdiction of the Commissioner of Internal Revenue, subject to review by the Secretary of Finance. Pursuant to

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[11] SECTION 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Section 7[12] of the Tax Code, the Commissioner of Internal Revenue may delegate his or her powers to a subordinate official except, among others, the power to issue rulings of first impression[13] or to reverse, revoke or modify any existing ruling of the Bureau of Internal Revenue. The Bureau of Internal Revenue Ruling No. DA-489-03 is a ruling of first impression, declaring for the first time in written form the permissive nature of the 120-day period stated in Section 112 (C).

I, however, disagree with my esteemed colleague, Justice Velasco, in his view that the Bureau of Internal Revenue Ruling is an application of a rule already laid down and specified in Revenue Regulation No. 07-95,[14] which considered the 120-day (then 60-day) period as non-obligatory and discretionary.

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[12] SECTION 7. *Authority of the Commissioner to Delegate Power*. — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however*, That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: *x x x*; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

[13] Rulings of first impression as defined in Revenue Administrative Order No. 2-2001, dated October 22, 2001, refer to the rulings, opinions and interpretations of the Commissioner of Internal Revenue with respect to the provisions of the Tax Code and other tax laws without established precedent, and which are issued in response to a specific request for ruling filed by a taxpayer with the Bureau of Internal Revenue. Provided, however, that the term shall include reversal, modifications or revocation of any existing ruling.

[14] Consolidated Value-Added Tax Regulations.

Nowhere in the Revenue Regulation is it expressed or implied that the 120-day (then 60-day) period is permissive. Section 4.106-2 of Revenue Regulation 07-95 provides:

> Section 4.106-2. *Procedures for claiming refunds or tax credits of input tax.* — (a) x x x.
>
> x x x x x x x x x
>
> (c) Period within which refund or tax credit of input taxes shall be made. — In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.
>
> In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue *after* the sixty (60) day period from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals**.
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> x x x x x x x x x

On the contrary, it is clear from the provision cited above that the appeal to the Court of Tax Appeals may be made only after the lapse of the 60-day (now 120-day) period without action by the Commissioner of Internal Revenue on the administrative claim. A rule or regulation cannot go beyond the terms and provisions of the basic law.[15] Revenue Regulation No. 07-95, therefore, cannot go beyond the provisions of the Tax Code.

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[15] CIVIL CODE, Art. 7.

> x x x x x x x x x
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> Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

Even assuming, without conceding, that Justice Velasco's interpretation of the Revenue Regulation is correct, it will still be *ultra vires* in the light of the clear provisions of the law.

San Roque further argues that strict adherence to procedural rules is exacted at the expense of substantive justice considering its clear entitlement to a refund. Such contention is misguided. Again, a value added tax refund is not a refund of an excessively, illegally or erroneously collected tax. A value added tax refund claim may be made because it is specifically allowed and provided for by law, *i.e.*, Section 110 (B)[16] and Section 112 (A)[17] of the

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[16] SECTION 110. *Tax Credits*. — x x x

x x x x x x x x x

(B) *Excess Output or Input Tax*. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided,* That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

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[17] SECTION 112. *Refunds or Tax Credits of Input Tax*. —

(A) *Zero-Rated or Effectively Zero-Rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provide, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-

National Internal Revenue Code, as amended. Similar in nature to a tax exemption, it must be construed strictly against the taxpayer. Hence, strict compliance with *both* substantive and procedural requirements is required for a value added tax refund claim to prosper.

The 120+30-day period is not a mere procedural technicality that can simply be disregarded if the claim is otherwise meritorious, but a mandatory and jurisdictional condition imposed by law. "Failure to comply with [these] requisite[s] is fatal because it has been repeatedly held that no action for the recovery of a tax paid can be maintained without strictly complying with each and every one of the conditions required by the law to that effect."[18]

Even handed justice requires that the new rule be applied retroactively to all who are similarly situated, including the claims of San Roque and Taganito, which are subject of the present case. Reiterating Our view expressed in the separate Opinion in the Decision: "the provisions that We have just reviewed already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that are available to them. That is, that resort to judicial action can only be done after a denial by the Commissioner or after the lapse of 120 days from the date of submission of complete documents in support of the administrative claim for refund."

Finally, San Roque's argument that the retroactive application of the subject Decision would have detrimental effects to the flow of investments, especially foreign, into our country and hampering the growth and development of our national economy, is inaccurate.

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rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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[18] *Wee Poco & Co. v. Posadas*, 64 Phil. 640, 648 (1937).

Investment is the process of exchanging income for goods that are expected to produce earnings at a later time.[19] Investments are not only composed of private investments (local or foreign). There are also public investments. Public investments include building infrastructure such as roads, ports, power, water, and telecommunication facilities.[20] These kinds of investments are as important to private investors as it is to the general population. National investment is an aggregate of both public and private investments in reality.

Prospective application of the new doctrine may lead to some private savings for refund-seekers. However, not all private savings may not be reinvested immediately for the public to experience some form of welfare gain.[21] Hence, private savings might not be enough to offset the government's deficit in its revenues caused in the reduction of the collected tax.[22] Since the government deficit is greater than private savings, national savings (or its economic equivalent of national investments) is actually reduced.[23]

On the other hand, public savings (from government revenue) translate to investments in public goods that benefit the majority of the population,[24] such as major infrastructure projects like roads and bridges, education, police and fire protection, to name a few.

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[19] Encyclopedia Britannica. <http://global.britannica.com/EBchecked/topic/292475/investment> (visited September 25, 2013).

[20] D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, 401 (Sixth Edition, 2006).

[21] This concept in economics is referred to as the relative inelasticity of private savings. For a more technical explanation, refer to J. STIGLITZ, ECONOMICS OF THE PUBLIC SECTOR, 584-586 (Third Edition, 2000).

[22] *Id.* at 584.

[23] *Id.*

[24] "The basic economic rationale for public investment is to finance projects for which the benefits accruing to a private investor are too small to make the venture profitable but benefits to society more broadly can be quite large." D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, 400-401 (Sixth Edition).

For many foreign investors eyeing developing countries as a potential investment ground, infrastructure is also a critical issue.[25] According to Dwight Perkins, *et al*., "Countries with poor infrastructure often cannot attract investment."[26] Since the Philippines is stricter compared to other countries in the region in terms of labor standards and wages, we will be in serious trouble if our government does not have enough revenue to sustain infrastructure projects. These projects also benefit private investment in the form of reduced transaction costs.

To reiterate, tax is only one aspect of the costs of doing business. Good infrastructure translates to reduced costs in more business-related aspects, such as transportation, communication, and other utilities.

Investors also are concerned with macroeconomic and political stability, and the quality of institutions and governance,[27] such as the judiciary's performance. When investors have the impression that court systems are unpredictable, they tend to move their investments elsewhere.[28] Systems can become unpredictable if unbridled discretion is rewarded among those that are tasked to implement the law. On the other hand, investor confidence is gained through a consistent application of the rule of law.[29]

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[25] *Id.* at 411.

[26] *Id*.

[27] D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, *supra* at 411-414.

[28] D. PERKINS, S. RADELET, and D. LINDAUER, *ECONOMICS OF DEVELOPMENT*, *supra* at 412.

[29] The World Bank has been aggregating data for indicators of governance and institutions, and one of the things they measure is Rule of Law, which is defined as "perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and **the courts**, as well as the likelihood of crime and violence." See D. KAUFMANN, A. KRAAY, AND M. MASTRUZZI, *Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008*, p. 6. <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/06/29/000158349_20090629095443/Rendered/PDF/WPS4978.pdf> (visited May 27, 2013).

Understandably, petitioners marshall arguments in support of their needs. Justice requires that We consider them carefully but weigh this in relation to the public interest. In doing so, We should always abide by Our understanding of the concept of the rule of law and always appropriately take the longer view. All these We can do so elegantly in this case with a plain, straightforward reading of what the law has always been providing since 1997.

WHEREFORE, I vote to:

1. DENY the Motion for Reconsideration of San Roque Power Corporation in G.R. No. 187485; and

2. GRANT the Motion for Reconsideration of the Commissioner of Internal Revenue in G.R. No. 196113.

DISSENTING OPINION

VELASCO, JR., *J.*:

Before Us are the Motions for Reconsideration filed by San Roque Power Corporation (San Roque) in G.R. No. 187485 and the Commissioner of Internal Revenue (CIR) in G.R. No. 196113.

As before, the sole issue for resolution is the application of Section 112 (C) of the National Internal Revenue Code of 1997 (1997 NIRC),[1] which requires the lapse of 120 days after the filing of an administrative claim for Value–Added Tax (VAT) refund before a judicial claim for the refund of the same tax can be successfully instituted within 30 days from expiration of the said 120-day period, *viz*:

SEC. 112. **Refunds or Tax Credits of Input Tax. –**

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes

[1] Previously Section 112 (D) of the 1997 Tax Code.

within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) thereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Underscoring supplied.)

In his Resolution denying the motions at bar, Justice Carpio reiterates the Decision dated February 12, 2013. He explained that the period in Section 112 (C) must be construed as mandatory from January 1, 1998 until December 10, 2003. From December 11, 2003, the 120≤30 day period is discretionary until October 5, 2010. Then, from October 6, 2010 onwards, the 120≤30 day period is again mandatory.

Justice Carpio ratiocinated that under the 1997 NIRC, in the filing of judicial claims for the refund of excess input VAT or the issuance of a tax credit certificate (TCC), the observance of the 120≤30 day-provided in Section 112 (C) of the 1997 Tax Code is mandatory. However, since the Bureau of Internal Revenue (BIR) issued BIR Ruling No. DA-489-03 Re: Lazi Bay Resources Development, Inc. (*Lazi Bay* ruling) on December 10, 2003, which provided the contrary position, taxpayers can rely on this BIR ruling until its reversal in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] (*Aichi*) promulgated on October 6, 2010. In other words, Justice Carpio is of the position that Section 112 (C) must be considered mandatory from the effectivity of the 1997 NIRC on January 1, 1998, except the period between December 10, 2003 and October 6, 2010.

Chief Justice Sereno in her Separate Dissenting Opinion, in the meantime, would advance the application of the mandatory nature of the period in Section 112 (C) from the date of promulgation of *Aichi* on October 6, 2010. She is of the considered

[2] G.R. No. 184823, October 6, 2010.

view that due process and equity demands that taxpayers, who relied on the various Court of Tax Appeals (CTA) and BIR Opinions promulgated prior to *Aichi* allowing the discretionary treatment of the period, must be exempted from the mandatory application of Section 112 (C). Thus, Section 112 (C) is not mandatory during the period between January 1, 1998 (the date of effectivity of the 1997 NIRC) and October 6, 2010 (the date of promulgation of *Aichi*).

Justice Leonen, on the other hand, states in his Separate Opinion the observation that the strict and mandatory application of the 120≤30 day-period must be reckoned from the date of the effectivity of the 1997 NIRC. He posits that the construction made by this Court in *Aichi* should be read into and considered part of Section 112 (C) from the moment it became effective on January 1, 1998.

In my previous Dissent, I submitted that for judicial claims for refund/credit of input VAT filed from January 1, 1996 (effectivity of Revenue Regulation No. [RR] 7-95) up to October 31, 2005 (prior to effectivity of RR 16-2005), the Court may treat the period provided for the filing of judicial claims as permissible provided that both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. Then, for judicial claims filed from November 1, 2005 (date of effectivity of RR 16-2005) and thereafter, the prescriptive period under Section 112 (C) is mandatory.

I explained that RR 7-95 was clear that both the administrative and judicial claims must be filed within 2 years from the close of the relevant taxable quarters. Hence, taxpayers were led to believe that the 120≤30 day-period (or 60≤30 as the case may be) is immaterial provided that the 2-year prescriptive period is observed. RR 7-95 remained in effect even after the effectivity of the 1997 NIRC on January 1, 1998, as shown by the various issuances of the Secretary of Finance, BIR (RMC 42-03, RMC 49-03, BIR Ruling No. DA-489-03), and the decisions of the CTA, which have mostly been affirmed by this Court.

It was only on November 1, 2005, when RR 16-2005 took effect, that the import of Section 112 (C) was clarified and

the standing rule enunciated in RR 07-95 was effectively repealed.

Hence, the discretionary treatment of the 120≤30 day-period in Section 112 (C) must be allowed during the period from January 1, 1996 until October 31, 2005 in recognition of the prevailing rule laid down in RR 7-95, as exemplified by the ruling in BIR Ruling No. DA-489-03, that allowed the simultaneous filing of administrative and judicial claims for the refund of excess VAT. Thereafter, or from November 1, 2005 onwards, the 120≤30 day period must be strictly applied and is mandatory pursuant to the letter of Section 112 (C), as correctly implemented by RR 16-2005 and recognized in *Aichi*.

I maintain my position.

BIR Ruling No. DA-489-03 is an evidence of the rule and practice observed after the effectivity of the 1997 NIRC that allowed the discretionary treatment of the 120≤30 day period; it is not an aberrant ruling that should justify the suspension of an otherwise mandatory rule

It is the contention of movant San Roque, which filed its judicial claim for VAT refund on April 10, 2003, or 13 days after filing its administrative claim, that the prevailing rule and practice observed by the BIR and the CTA at the time it filed its judicial claim sanctioned the discretionary treatment of Section 112 (C) of the 1997 NIRC. Hence, the relaxation of the strict and mandatory application of the said provision must not, as argued, be reckoned from the issuance of *Lazi Bay* in December 2003 but from the time that the BIR set in black and white the rule mandating the strict and mandatory observance of the 120≤30 day period in said Section 112 (C).

On this point, I agree with the movant San Roque and vote to grant its Motion for Reconsideration.

Lazi Bay was not an isolated adjudication that deviated from an otherwise fixed and strict observance of the 120≤30 day period stated in Section 112 (C). Instead, it should be taken as a reflection

of the prevailing rule and practice carried over from Republic Act No. (RA) 7716,[3] by RR 7-95,[4]

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[3] RA 7716, entitled "An Act Restructuring The Value Added Tax (VAT) System, Widening Its Tax Base And Enhancing Its Administration And For These Purposes Amending And Repealing The Relevant Provisions Of The National Internal Revenue Code, As Amended, And For Other Purposes" (dated May 5, 1994), amended Presidential Decree 1158, otherwise known as the 1977 Tax Code, and first introduced the period within which to file a judicial claim for the refund of VAT or the issuance of a TCC. Section 6 of which stated:

> Section 6. Section 106 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> "Sec. 106. Refunds or tax credits of creditable input tax. — (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, xxx
>
> xxx xxx xxx
>
> "(d) Period within which refund or tax credit of input taxes shall be made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals." (Emphasis and underscoring supplied.)

[4] Entitled "Consolidated Value-Added Tax Regulations" issued on December 9, 1995 and effective January 1, 1996. It implemented RA 7716, RA 8241 entitled "An Act Amending Republic Act No. 7716, Otherwise Known As The Expanded Value-Added Tax Law And Other Pertinent Provisions Of The National Internal Revenue Code As Amended" (dated December 10, 1996); and RA 8424, as amended, entitled "An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes" (effective January 1, 1998), specifically, Sections 105, 106, 106(A), 106(B), 106(C), 106(D), 107, 107(A), 107(B), 108, 108(A), 108(B), 108(C), 109, 110, 110(A), 110(B), 110(C), 111, 111(A), 111(B), 112, 112(A), 112(B), 112(C), 112(D), 112(E), 113, 113(A), 113(B), 114, 114(A), 114(B), 114(C), 115, 115(a), 115(b) and 236 and Title IV of the NIRC of 1997.

which considered the period as non-obligatory and discretionary.[5]

RR 7-95 was promulgated pursuant to the power of the Secretary of Finance provided in Section 245 in relation to Section 4 of the 1977 NIRC, as amended by RA 7716. Section 245 of the 1977 NIRC defined the authority of the Secretary of Finance to promulgate rules and regulations, *viz*:

> SEC. 245. The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code. x x x

Meanwhile, Section 4 of the 1977 NIRC, as amended, specified the provisions that must be contained in rules and regulations, not just in rulings of the BIR. Among other things, the 1977 NIRC required that "[t]he **conditions** to be observed by revenue officers, provincial fiscals and other officials respecting the institution and **conduct of legal actions and proceedings**"[6] must be defined in a revenue regulation, not just an issuance of the BIR. Certainly, therefore, the specification of the details regarding the observance of the prescriptive period for the filing of judicial claims is within the power of the Secretary of Finance, not the CIR.

This delineation of the rule-making powers of the tax authorities was reiterated in Sections 244 and 245, in relation to Sections 4 and 7, of the 1997 NIRC. Section 244 of the 1997 NIRC, again, defined the authority of the Secretary of Finance to promulgate rules and regulations, and Section 245 enumerated the specific provisions that must be contained in a revenue regulation:

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[5] Section 4.106-2 of RR 07-95 provided that taxpayers applying for input VAT refund/issuance of TCCs must file their judicial claims before the lapse of two (2) years from the date of filing of the VAT return for taxable years. This reference to the 2-year period in the filing of the judicial claim for refund/issuance of TCC led to the discretionary treatment of the period given to the CIR to resolve the administrative claim in order to toll the running of the 2-year prescriptive period.

[6] Section 4(C), 1977 Tax Code. Emphasis supplied.

SEC. 244. The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

SEC. 245. The rules and regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing or defining:

x x x x x x x x x

(d) The conditions to be observed by revenue officers respecting the institutions and conduct of legal actions and proceedings;

In turn, Section 4 of the 1997 NIRC provides that the CIR has the "power to interpret the provisions of the [1997 Tax] Code x x x subject to the review by the Secretary of Finance." Ergo, **the interpretation of the Secretary of Finance, as embodied in revenue regulations, prevails over rulings issued by the CIR**, who is only empowered, at most, "to recommend the promulgation of rules and regulations by the Secretary of Finance."[7]

Given the limited power vested on the CIR in relation to the rule-making power reposed on the Secretary of Finance, the CIR cannot amend and reverse a revenue regulation by the mere expedience of issuing a ruling. Thus, **if this Court is bent on upholding the effectivity of BIR Ruling No. DA-489-03 in *Lazi Bay*, it must be taken as an application of a rule already laid down and specified by the Secretary of Finance in RR 7-95, and not as an isolated application that deviated from an un-interpreted provision of law**.

The fact that then Deputy Commissioner for Legal & Inspection Group Jose Mario Buñag, instead of the CIR, issued BIR Ruling No. DA-489-03 is yet another proof that it is not to be construed as a departure from a rule or provision of law but an application of a rule already laid down in RR 7-95 and prevailing at the time of its issuance. Section 7 of the 1997 NIRC specifically prohibits the delegation of the power "to issue rulings of first impression or to reverse, revoke or modify any existing ruling

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[7] Section 7(a), 1997 Tax Code.

of the Bureau."[8] Hence, the *Lazi Bay* ruling can only be taken as an indication of a prevailing rule laid down by the Secretary of Finance and affirmed and resonated in the Revenue Memorandum Circulars (RMCs) issued by the CIR himself, such as RMC No. 42-03 and RMC 49-03.

Indeed, RR 7-95 prevails over a mere BIR Ruling. Note that a revenue regulation is published before its effectivity so that taxpayers are notified of its effects and the consequences of the failure to abide thereby. This is not so with respect to BIR Rulings. Instead, the rulings are addressed and transmitted to the parties who applied for the issuance of the BIR's opinion; other taxpayers are not notified by publication in a newspaper of general circulation of its import and consequence. Unless they conduct a thorough and in-depth investigation, they will not be informed of the opinion of the BIR as embodied in the ruling. As between RR 7-95, a revenue regulation and the BIR ruling in *Lazi Bay*, therefore, reliance on the former is more in accord with due process.

Further, to facilitate the sanctioned non-compulsory and discretionary treatment of the 120≤30 day period for the filing of judicial claims, RMC No. 42-03 was issued on July 15, 2003 to address, among others, the rule regarding **simultaneously filed and pending administrative and judicial claims**. Note that RMC No. 42-03 did not mandate the dismissal of a judicial claim filed while an administrative claim is still pending on the ground of prematurity. Instead, RMC No. 42-03 contemplated a situation that allowed the exercise by the CTA and the CIR of concurrent jurisdiction over the claim for refund/issuance of TCC, *viz*:

> Q-17: *If a claim submitted to the Court of Tax Appeals for judicial determination is denied by the CTA due to lack of documentary support, should the corresponding claim pending at the BIR offices be also denied?*
>
> A-17: Generally, the BIR loses jurisdiction over the claim when it is filed with the CTA. Thus, when the claim is denied by the

[8] Section 7(b), 1997 Tax Code.

CTA, the BIR cannot grant any tax credit or refund for the same claim. However, cases involving tax credit/refund claims, which are archived in the CTA and have not been acted upon by the said court, may be processed by the concerned BIR office upon approval of the CTA to archive or suspend the proceeding of the case pending in its bench

This situation was later clarified by RMC No. 49-03 dated August 15, 2003 entitled "Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund." This RMC was intended as a "response to request of selected taxpayers for adoption of procedures in handling refund cases that are **aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law**."[9] And yet, RMC 49-03 allowed for the *simultaneous* processing of the administrative and judicial claims for input VAT refund/issuance of TCC by the BIR and the CTA, respectively, and NOT the dismissal of the judicial claim on the ground of prematurity.[10]

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[9] Emphasis and underscoring supplied.

[10] In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

I.) *A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows*:

In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/ processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/ refund case filed by the taxpayer. *In the meantime, the investigating/ processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.*

Clearly, the period referred to by the CIR in issuing RMC 49-03 is the period laid down in Section 112 (C)[11] of the 1997 NIRC, as interpreted and enforced by RR 7-95, *i.e.*, "the two (2) year period from the date of filing of the VAT return for the taxable quarter."[12] Hence, taxpayers were allowed to treat the 120-day period as non-compulsory and merely discretionary so long as the 2-year period is observed and complied.

BIR Ruling No. DA-489-03 in *Lazi Bay* simply echoed this rule laid down in RR 7-95 and affirmed by RMC Nos. 42-03 and 49-03 when the Deputy Commissioner stated that:

> [A] a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe**. The Tax Code fixed the period of two (2) years filing a claim for refund with the Commissioner** [Sec. 112(A) in relation to Sec. 204(c)] ***and* for filing a case in court** [Section 229]. Hence,

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If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office.

[11] Previously Section 112 (D) of the 1997 Tax Code.

[12] Section 4.106-2 of RR 7-95.

a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law.[13]

Hence, the prevailing rule even after the effectivity of the 1997 NIRC was to treat the 120≤30-day period as non-mandatory since RR 7-95 was not affected and remained in effect.

Also worthy of note is that the provision that RR 7-95 interpreted and enforced virtually remained the same; Section 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Section 112 (C) of the 1997 NIRC.[14] It is a

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[13] Emphasis and underscoring supplied.

[14] Section 106 (D), 1997 NIRC	Section 112 (C), 1997 NIRC
Sec. 106. *Refunds or tax credits of creditable input tax.* — x x x d) *Period within which refund or tax credit of input taxes shall be made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.	Section 112. *Refunds or Tax Credits of Input Tax.* – x x x *(D) Period within which Refund or Tax Credit of Input Taxes shall be made*. In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

hornbook rule that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, it is an indication of the adoption by the legislature of the prior construction by the agency.[15] The almost verbatim reproduction of Section 106(D) of the 1977 NIRC by Section 112(C) of the 1997 NIRC is therefore an implied recognition by the legislature of the propriety of the interpretation made by the Secretary of Finance of the proper prescriptive period in filing judicial claims for input VAT refund/issuance of TCCs.

The continuing application of RR 7-95 in interpreting the provisions of the 1997 NIRC is also acknowledged by the Secretary of Finance, the BIR, the CTA, and this Court. To implement Section 5 of the 1997 NIRC, RR No. 19-99[16] issued on December 27, 1999 or almost two (2) years after the 1997 NIRC became effective, stated thus:

> SECTION 2. Coverage. — Beginning January 1, 2000, general professional partnerships, professionals and persons described above shall be governed by the provisions of Revenue Regulation No. 7-95, as amended, otherwise known as the "Consolidated Value-Added Tax Regulations." x x x[17]

Numerous BIR rulings rendered after the effectivity of the 1997 NIRC regarding tax incidents that occurred after January 1, 1998 similarly applied the relevant provisions of RR 7-95.[18]

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[15] *Commissioner of Internal Revenue v. American Express*, G.R. No. 152609, June 29, 2005, 462 SCRA 197, 229-230.

[16] Implementing Section 5 of Republic Act No. 8424, Otherwise Known as the Tax Reform Act of 1997, and Other Pertinent Provisions of the National Internal Revenue Code of 1997, Imposing Value-Added Tax (VAT) on Sale of Services by Persons Engaged in the Practice of Profession or Calling and Professional Services Rendered by General Professional Partnerships; Services Rendered by Actors, Actresses, Talents, Singers and Emcees; Radio and Television Broadcasters and Choreographers; Musical, Radio, Movie, Television and Stage Directors; and Professional Athletes, beginning January 1, 2000.

[17] Underscoring supplied.

[18] ITAD RULING NO. 145-03, September 26, 2003, addressed to Synertronix Inc.; ITAD RULING NO. 131-03, August 18, 2003, addressed

Even this Court in resolving claims for refund of input VAT paid after January 1, 1998 recognized the effectivity of RR 7-95 in interpreting the provisions of the 1997 Tax Code. In *Hitachi Global Storage Technologies Philippines, Corp. v. Commissioner of Internal Revenue*,[19] this Court, speaking through Justice Carpio, sustained the denial of an application for refund of input VAT for the four taxable quarters of 1999 on the ground of petitioner-taxpayer's failure to comply with the provisions of RR 7-95. Citing *Panasonic v. Commissioner of Internal Revenue*,[20] We explained that **RR 7-95 gained the status of a legislative act that binds the taxpayers and this Court**:

> On 4 August 2000, Hitachi filed an administrative claim for refund or issuance of a tax credit certificate before the BIR. The claim involved ₱25,023,471.84 representing excess input VAT attributable to Hitachi's zero-rated export sales for the four taxable quarters of 1999.
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> On 2 July 2001, due to the BIR's inaction, Hitachi filed a petition for review with the CTA …

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to Bernaldo Mirador Law Offices; ITAD RULING NO. 103-03, July 24, 2003, addressed to Baniqued & Baniqued Attorneys at Law; ITAD RULING NO. 211-02 dated ITAD RULING NO. 211-02, addressed to Terumo (Philippines) Corporation; ITAD RULING NO. 185-02, October 21, 2002, addressed to Fuji Plastic Industry Phils., Inc.; ITAD RULING NO. 147-02 dated ITAD RULING NO. 147-02, addressed to Sycip Gorres Velayo & Co.; ITAD RULING NO. 136-02 dated August 5, 2002, addressed to Noritake Porcelana Mfg., Inc.; ITAD RULING NO. 066-02 dated April 24, 2002 addressed to Castillo & Poblador Law Offices; ITAD RULING NO. 040-02 dated ITAD RULING NO. 040-02 addressed to Punongbayan & Araullo; ITAD RULING NO. 128-01 dated December 21, 2001 addressed to December 21, 2001; ITAD RULING NO. 116-01 dated ITAD RULING NO. 116-01 addressed to Punongbayan & Araullo; ITAD RULING NO. 086-01 dated October 10, 2001 addressed to Castillo Laman Tan Pantaleon & San Jose Law Offices; BIR RULING [DA-(S40M-023) 560-08] dated December 19, 2008 addressed to Platon Martinez Flores San Pedro Leaño; BIR RULING [DA-330-98] dated July 17, 1998 addressed to Sycip Gorres Velayo; VAT RULING NO. 016-05 dated August 26, 2005 addressed to SyCip Gorres Velayo & Co.; VAT RULING NO. 020-02 dated April 1, 2002 addressed to Joaquin Cunanan & Co.

[19] G.R. No. 174212, October 20, 2010.

[20] G.R. No. 178090, February 8, 2010.

x x x x x x x x x

We already settled the issue of printing the word "zero-rated" on the sales invoices in Panasonic *v.* Commissioner of Internal Revenue. In that case, we denied Panasonic's claim for refund of the VAT it paid as a zero-rated taxpayer on the ground that its sales invoices did not state on their face that its sales were "zero-rated." We said:

> But **when petitioner Panasonic made the export sales subject of this case, *i.e.*, from April 1998 to March 1999, the rule that applied was Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and took effect on January 1, 1996**. It already required the printing of the word "zero-rated" on invoices covering zero-rated sales. **When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code**. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of that law.
>
> Section 4.108-1 of **RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1997 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments**. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of the invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect. (Emphasis supplied)

Likewise, in this case, **when Hitachi filed its claim for refund or tax credit, RR 7-95 was already in force**.[21]

It is, therefore, inaccurate to state that before the issuance of BIR Ruling DA-489-03 in *Lazi Bay* on 10 December 2003,

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[21] Emphasis and underscoring supplied.

there was ***no*** administrative practice, rule or ruling rule followed by the BIR that supported simultaneous filing of claims and that prior to the *Lazi Bay* ruling, the BIR considered the 120≤30 day period mandatory. Rather, the *Lazi Bay* ruling is one of the outcomes and tangible evidence of such practice, as made concrete by RR 7-95, that allowed the simultaneous filing of claims.

Similarly, as pointed out by movant, the fact that this Court, like the CTA and the BIR, has passed upon the issue of the prescriptive period for filing the judicial claim *sub silencio* is also a glaring evidence of the sanctioned rule and practice that allowed for the discretionary and non-mandatory treatment of the 120≤30 day period in Section 112(C) of the 1997 NIRC.

A review of a sampling of twenty (20) CTA *En Banc* Decisions involving judicial claims for VAT refund filed between 1998 to 2003 will conclusively show that the CIR and the CTA completely ignored and considered as a non-issue the mandatory compliance of the 120≤30 day period. For convenience, I summarized in the table below the pertinent data culled from 20 CTA *En Banc* Decisions:

CTA EB Case No.	Case Title	Date of Administrative Claim	Date of Judicial Claim	Comment
14	*ECW Joint Venture, Inc. v. CIR*	June 19, 2002	July 19, 2002	Case was decided on the merits. CIR and CTA said nothing about prematurity of judicial claim or CTA's lack of jurisdiction.
43	*Overseas Ohsaki Construction Corp. v. CIR*	Oct. 23, 2001	Oct. 24, 2001	-ditto-
47	*BASF Phils., Inc. v. CIR*	Mar. 27, 2001	Apr. 19, 2001	-ditto-
53	*Jideco Mfg. Phils. Inc. v. CIR*	Oct. 23, 2002	Oct. 24, 2002	-ditto-
85	*Applied Food Ingredients Co. v. CIR*	July 5, 2000	Sep. 29, 2000	-ditto-
186	*Kepco Phils. Corp. v. CIR*	Jan. 29, 2001	Apr. 24, 2001	-ditto-
197	*American Express Int'l Inc. – Phil. Branch. CIR*	Apr. 25, 2002	Apr. 25, 2002	-ditto-
226	*Mirant (NavotasII) Corporation (formerly, Southern Energy Navotas II Power, Inc.) v. CIR*	Mar. 18, 2003	Mar. 31, 2003 & Jul. 22, 2003	-ditto-

231	*Marubeni Phils. Corp. v. CIR*	Mar. 30, 2001	Apr. 25, 2001	-ditto-
24	*Intel Technology Phils., Inc. v. CIR*	May 6, 1999	Sep. 29, 2000	CTA EB explicitly noted that the judicial claim was filed long after the lapse of the 120≤30 day period under Sec. 112. However, no mention was made about the prescription or the CTA's lack of jurisdiction. The case was decided on the merits.
28	*Intel Technology Phils., Inc. v. CIR*	May 18, 1999	Mar. 31, 2000	Case was resolved on the merits. No one raised the issue of violation of Sec. 112 or the CTA's lack of jurisdiction.
54	*Hitachi Global Storage Technologies Phils. Corp. v. CIR*	Aug. 4, 2000	July 2, 2002	-ditto-
107	*Kepco Phils. Corp. v. CIR*	Oct. 25, 1999	Oct. 1, 2001	-ditto-
154	*Silicon Phils., Inc. v. CIR*	Oct. 25, 1999	Oct. 1, 2001	-ditto-
174	*Kepco Phils. Corp. v. CIR*	Oct. 1, 2001 & June 24, 2002	Apr. 22, 2003	-ditto-
181	*Intel Technology Phils., Inc. v. CIR*	Aug. 26, 1999	Jun. 29, 2001	-ditto-
209	*Intel Phils. Mfg., Inc. v. CIR*	Aug. 6, 1999	Mar. 30, 2001	-ditto-
219	*Silicon Phils., Inc. v. CIR*	Aug. 10, 2000	June 28, 2002	-ditto-
233	*Panasonic Communications Imaging Corp, of the Phils. v. CIR*	Feb. 8, 2000 & Aug. 25, 2000	Mar. 6, 2001	-ditto
239	*Panasonic Communications Imaging Corp, of the Phils. v. CIR*	Mar. 12, 1999 Jul. 20, 1999	Dec. 16, 1999	-ditto-

Although CTA Decisions are not binding legal precedents, their factual recitals are nothing less than indelible records of, and incontrovertible proof as to, the manner in which both the BIR and the CTA regarded the 120≤30 day period, and the manner in which they actually handled administrative and judicial claims for refund/tax credit during the period in question. And the narrations of facts and case antecedents culled from the CTA *En Banc* Decisions establish that the BIR and CTA, by their very actuations in the period between 1996 and 2005, did in fact permit, tolerate and encourage taxpayers to file their refund/tax credit claims without regard to the 120≤30 day period in Section 112.

It is also necessary to point out that the February 12, 2013 Decision in these consolidated cases, in contrast, cited only one solitary decision rendered by the Court of Appeals (CA), not the CTA, as supposed proof that the BIR, in the years between 1998 and 2003, allegedly took the position that the 120≤30 day period was mandatory and jurisdictional.

While sheer number of cases is not always determinative of an issue, in this particular case, the large number of CTA EB Decisions containing factual recitals which prove that the BIR and the CTA did not observe the 120≤30 day period most certainly carry far more weight than a single solitary CA case allegedly showing the opposite.

Also deserving of a closer look are the Decisions of this Court in the following cases, involving similarly situated but "more fortunate" judicial claims which were decided earlier, prior to the promulgation of the Decision in these consolidated cases on February 12, 2013 embodying the Court's new interpretation of the 120≤30 period requirement:

1) *CIR v. Cebu Toyo Corporation*, G.R. No. 149073, February 16, 2005;
2) *CIR v. Toshiba Information Equipment,* G.R. No. 150154, August 9, 2005;
3) *CIR v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, G.R. No. 159593, October 12, 2006;
4) *Intel Phils. v. CIR,* G.R. No. 166732, April 27, 2007;
5) *CIR v. Ironcon Builders & Development Corp.,* G.R. No. 180042, February 8, 2010.
6) *Mirant Sual Corporation (formerly, Southern Energy Philippines, Inc.) v. CIR,* G.R. No. 167315, February 10, 2010.
7) *Hitachi Global Storage Technologies Phils. Corp. v. CIR,* G.R. No. 174212, October 20, 2010.
8) *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR,* G.R. No. 172378, January 17, 2011.
9) *Kepco Philippines Corp. v. CIR*, G.R. No. 179961, January 31, 2011;
10) *Microsoft Philippines, Inc. v. CIR,* G.R. No. 180173, April 6, 2011;

11) *Southern Philippines Power Corporation v. CIR,* G.R. No. 179632, October 19, 2011;
12) *Western Philippines Power Corporation v. CIR,* G.R. No. 181136, June 13, 2012;
13) *Eastern Telecom Phils., Inc. v. CIR,* G.R. No. 168856, August 29, 2012;
14) *Silicon Philippines, Inc. v. CIR, (Formerly Intel Philippines, Inc.) v. CIR,* G.R. No. 179904, February 6, 2013 [This is an unsigned Resolution of the Court's Second Division];
15) *Intel Technology Philippines, Inc. v. CIR,* G.R. No. 172613, February 13, 2013 [This is an unsigned Resolution of the Court's Second Division].

An examination of the narration of facts in each case of the above-listed cases shows that each case pertains to a judicial claim for refund of excess unutilized input VAT pursuant to Section 112 of the 1997 NIRC, and these judicial claims were all filed with the CTA within the period starting from January 1, 1998 to December 10, 2003, the so-called period of strict enforcement of the 120≤30 day period according to this Court's February 12, 2013 Decision in the present consolidated cases. Without exception, each of the above-listed judicial claims did not comply with the 120≤30 day period requirement. But in every instance and notwithstanding that the narrations of facts very clearly and unmistakably showed that these claims failed to comply with the aforesaid requirement, this Court nonetheless either granted those judicial claims or else denied them on grounds other than such non-compliance. Notably, in every single occasion, the Court let pass said non-compliance *sans* comment.

What is more, seven (7) of the foregoing Decisions and two (2) Resolutions mentioned above were promulgated after *Aichi* was promulgated on October 6, 2010, yet unlike San Roque, those nine judicial claims were not subjected to the *Aichi* ruling and the retroactive application of the Court's new interpretation. In other words, even in the post-*Aichi* scenario, the Court still refrained from denying outright these claims for their failure to strictly comply with the 120≤30 day period in recognition and cognizance of the prevailing practice after the effectivity of the 1997 NIRC and pre-RR 16-2005 that allowed the discretionary treatment of the period.

The mandatory application of the 120<30 day period was set in black and white only after the effectivity of RR 16-2005.

The policy requiring the mandatory observance of the 120≤30 day period before the filing of a judicial claim for VAT refund was set and made clear only upon the effectivity of RR 16-2005 on November 1, 2005. RR 16-2005 abolished once and for all the standing rule provided in RR 7-95 when it deleted any reference to the 2-year period in conjunction with the filing of a judicial claim for refund/credit of input VAT, *viz*.:

SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. –

x x x x x x x x x

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.** (Emphasis supplied.)

Since, similar to RR 7-95, RR 16-2005 was promulgated pursuant to Sections 244 and 245 of the 1997 Tax Code,[22] it

[22] In relation to Section 23 of RA 9337 which states: Value-Added Tax (VAT) Reform Act, effective July 1, 2005. "SECTION 23.Implementing Rules and Regulations. — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the

embodies a legislative rule that deserves the deference and respect due the law it implements. For this reason, from the effectivity of RR 16-2005 on November 1, 2005, all taxpayers are bound to strictly observe the 120≤30 day period provided in Section 112 (C) and there was no need to wait for the promulgation of a decision like *Aichi* in view of the existence of a clear legislative rule that finally repealed all other rulings that may have clouded the mandatory nature of the 120<30 day period.

Like all laws and regulations, RR 16-2005 applies prospectively and not retroactively to the date of the effectivity of the 1997 Tax Code. As this Court explained in *BPI Leasing Corporation v. Court of Appeals*,[23] the rule on prospectivity of laws encompasses revenue regulations implementing the 1997 NIRC:

> The Court finds the questioned revenue regulation to be legislative in nature. Section 1 of Revenue Regulation 19-86 plainly states that it was promulgated pursuant to Section 277 of the NIRC. Section 277 (now Section 244) is an express grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC. In *Paper Industries Corporation of the Philippines v. Court of Appeals*, the Court recognized that the application of Section 277 calls for none other than the exercise of quasi-legislative or rule-making authority. Verily, it cannot be disputed that Revenue Regulation 19-86 was issued pursuant to the rule-making power of the Secretary of Finance, thus making it legislative, and not interpretative as alleged by BLC.
>
> x x x x x x x x x
>
> **The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication**. In the present case, there is no indication that the revenue regulation may operate retroactively. Furthermore, there is an express provision stating that it "shall take

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effective implementation of this Act. Upon issuance of the said rules and regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked."

[23] G.R. No. 127624, November 18, 2003.

effect on January 1, 1987," and that it "shall be applicable to all leases written on or after the said date." Being clear on its prospective application, it must be given its literal meaning and applied without further interpretation. Thus, BLC is not in a position to invoke the provisions of Revenue Regulation 19-86 for lease rentals it received prior to January 1, 1987.[24]

The rule and practice observed between 1996 and November 2005 that allowed the non-mandatory application of the 120<30 day is an operative fact that must be considered in resolving judicial claims filed during the period. Hence, justice and fairness dictate that the tax claimants who relied on RR 07-95, and the practice observed by the BIR, the CTA and this Court be given relief

In line with the prospective application of RR 16-2005, no one can argue with the February 12, 2013 Decision where it declared that "[t]his court is applying *Mirant* and *Aichi* prospectively," on account of its sound basis in hornbook doctrine, law and jurisprudence, apart from being fully justified by considerations of fairness and equity. However, the Decision immediately departed from the doctrinal norm of prospectivity by retroactively applying the new interpretation thus causing the denial of San Roque's claim, while in the same breath announcing that the Court shall apply *Mirant* and *Aichi* prospectively. We can avoid such jarring dissonance by applying the new Doctrine from the moment when the strict application of the period had been put in ink by RR 16-2005.

The Decision of February 12, 2013 and the Resolution employ retroactivity to backdate the Court's new interpretation of the 120≤30 day period under Section 112. This is a dangerous precedent. The retroactivity of application of a new judicial interpretation must be seen for what it is – a corrective tool that must be used in a very controlled, restricted manner and only for very necessary, limited situations and occasions. It is not a tool to be employed lightly; extreme need therefor must be first established. For it is capable of destroying established

[24] Emphasis supplied.

contractual rights and relationships and causing drastic, massive damage.

The narration of case facts and antecedents of the Decisions and Resolutions of this Court and the CTA enumerated above speak to the principle of operative fact, inasmuch as they all bear witness that for years prior to the effectivity of RR 16-2005 in November 2005, in the process of resolving judicial claims for refund of input VAT, the BIR, the CTA and this Court all paid scant attention to the 120≤30 day period requirement in Section 112. This operative fact cannot be denied and ignored if this Court is to be true to its role as the vanguard of truth and ultimate dispenser of justice in this country. As this Court once said: "[t]he actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to its invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official."[25]

Thus, in arriving at a judicious ruling on a "difficult question of law," this Court should give premium to the good faith of the taxpayers in relying on a valid revenue regulation that has taken the proper agencies too long to update. On this point, I quote with approval a portion of the sound observation made by San Roque in its Supplemental MR:

> Respondent deferentially submits that fairness and evenhandedness will opt for a prospective application of the new interpretation, given the unalterable fact that taxpayers had taken their cue from the policies, and procedures of the tax agency and the tax court, (which policies, issuances and procedures enjoyed what amounts to the tacit approval of the High Court), and had filed their claims accordingly, and now are in no position to undo what had been done years before.

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[25] *Francisco Serrano de Agbayani v. Philippine National Bank, et al.*, G.R. No. L-23127, April 29, 1971; citing *Chicot County Drainage Dist. v. Baxter States Bank,* 308 US 371, 374 (1940).

The pragmatic application of the principle of operative fact calls to mind a kindred tenet *viz.,* the legal maxim "*Cursus curia est lex curiae,"* which means the "practice of the court is the law of the court" [Also written as "*cursus buriae est lex curiae*," the practice of the court is the law of the court. 3 Burst. 53; Broom, Leg. Max. (3d London Ed.)126; 12 C.B. 414; 17 Q. B. 86; 8 Exch. 199; 2 Maule & S. 25; 15 East, 226; 12 Mees. & W. 7; 4 Mylne & C. 635; 3 Scott, N. R. 599.] Of Ancient vintage, this principle or maxim declares that historically, the customs of the Court, are as binding as the law. Herbert Broom explains the significance of the maxim in this manner:

> "Where a practice has existed it is convenient to adhere to it, because it is the practice even though no reason can be assigned for it; for an inveterate practice in the law generally stands upon principles that are founded in justice and convenience. Hence, if any necessary proceeding in an action be informal, or be not done within the time limited for it, or in the manner prescribed by the practice of the court, it may be set aside for irregulartity." [*Broom, Herbert, A Selection of Legal Maxims Classified and Illustrated,* (London: Sweet & Maxweel Limited, 1845)

The "operative fact" principle would suggest that due recognition be given to the fact that the non-observance of the 120≤30 day period requirement has been the consistent, long-standing practice or the "*cursus curiae*" of the CTA, the CIR and the CA (with the tacit approval of this Honorable Court) for over a decade and a half, and that the binding effect thereof cannot simply be made to vanish by waving a new judicial interpretation.[26]

Thus, if, as the Decision declares, "[t]axpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law," there is more reason to maintain that refund seekers should not be prejudiced, penalized nor castigated for having taken guidance from the policies, pronouncements, issuances and actuations of the BIR and the CTA, which actuations have direct bearing on a difficult question of law.

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[26] Supplemental Motion for Resolution, pp. 16-17.

It is clear from the provisions of the Civil Code that good faith possession of a right can spring from a difficult question of law:

> Article 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.
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> x x x x x x x x x
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> Mistake upon a doubtful or difficult question of law may be the basis of good faith.

This Court is, therefore, duty-bound to actively refrain from actions that may be perceived as elevating strict adherence to procedural rules and technicalities over and above the taxpayer's clear, substantive legal right to the refund sought. We must remain cognizant of the taxpayer's good faith compliance with procedures approved and sanctioned by the BIR and the CTA and accepted by this Court, and avoid creating obstacles to defeat the taxpayer's substantive right to refunds.

Consistent with the principle of operative fact and the basic notions of fairness and equity, the strict and mandatory application of Section 112 (C) must be reckoned from the day the rule was set clarified and set in black and white—on the effectivity of RR 16-2005 on November 1, 2005. In net effect, all claims for refund of input VAT filed and commenced after November 1, 2005 must strictly observe the period provided in Section 112(C) of the 1997 Tax Code. Since San Roque filed its judicial claim in April 2003, or more than two (2) years *before* the effectivity of RR 16-2005, its claim for input VAT should be granted regardless of its failure to take into account the period provided in Section 112 (C).

Premature filing of a judicial claim before the lapse of 120 days from the filing of the administrative claim does not deprive the CTA of jurisdiction

The non-mandatory treatment of the 120≤30 day period prior to November 1, 2005 should hold especially true for taxpayers

like movant San Roque, that had filed its judicial claim within the 120 days, and not after the lapse of the period.

The prematurity in filing, unlike the late filing, of the judicial claim cannot serve to deprive the CTA of its jurisdiction as it is axiomatic that the jurisdiction of courts is determined by law.[27] The discretion is, therefore, with the CTA to dismiss without prejudice, upon proper motion, a judicial claim prematurely filed by a taxpayer. This Court cannot, contrary to RA 1125 which vested upon the CTA its jurisdiction, declare the immediate deprivation of such jurisdiction to consider and evaluate the legitimacy of a taxpayer's claim on the feeble ground that the taxpayer has failed to patiently await the lapse of the period given to the CIR to act.

At most, the prematurity of the filing of the judicial claim for the refund of VAT is a ground for the dismissal without prejudice of the claim that can be waived by the BIR and disregarded by the CTA, if the tribunal is inclined to rule on the substantial aspect of the claim. It is not for this Court to pre-empt the decision of the CTA on the exercise of the jurisdiction it has been conferred by law.

In the case of San Roque, when both the CTA Second Division and the CTA *En Banc* looked into the substance of the movant-taxpayer's claim and eventually decided to grant it, despite San Roque's premature filing thereof, **the tax tribunal was acting with the jurisdiction** it has been granted under RA 1125, as amended,[28] which states that:

SEC. 7. ***Jurisdiction.*** – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review appeal, as herein provided:

x x x x x x x x x

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[27] *Heirs of Juanita Padilla v. Magdua*, G.R. No. 176858, September 15, 2010.

[28] An Act Creating the Court of Tax Appeals.

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue provided a specific period of action, in which case the inaction shall be deemed a denial.

The act of the CTA in granting San Roque's claim based on the merits of its claim is a further indication of the long-observed practice allowing the premature filing of judicial claims. In fact, in applying the foregoing provision of RA 1125, the presently observed and still effective Revised Rules of the Court of Tax Appeals[29] did not mention the period provided in Section 112 (C). Instead, it still underscores the two (2) year period contemplated in RR 7-95:

Rule 4
JURISDICTION OF THE COURT

Sec. 3. *Cases within the jurisdiction of the Court in Divisions*. –

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue involving disputed assessments, refunds of internal revenue, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides as specific period of action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty-day period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of the Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the

[29] A.M. No. 05-11-07-CTA, Effective November 22, 2005 (last amended as of October 15, 2008)

disputed assessment beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court **prior to the expiration of the two-year period** under Section 229 of the National Internal Revenue Code;

x x x x x x x x x

Rule 8
PROCEDURE IN CIVIL CASES

Sec. 3. *Who may appeal; period to file petition –*

(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes xxx xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, **the taxpayer must file a petition within the two-year period prescribed by law from payment or collection of the taxes**.[30]

We cannot, therefore, deny the movant's claim for refund solely based on the prematurity of its judicial filing, which in the first place has been instigated by the taxpayer's good faith reliance on a revenue regulation issued by the Secretary of Finance, the practice observed by the BIR and the CTA, and the silent tolerance by this Court.

While, indeed, the lifeblood of our country is the taxes due from the taxpayers, the heart of this nation beats in rhyme with justice and fairness that deplore the sacrifice of a substantial right in the altars of procedure. Let us therefore look into the merits of the movant's rights and give credit to its good faith passing over of the period provided in Section 112 (C) of the 1997 NIRC.

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[30] Emphasis and underscoring supplied.

Hence all claims for input VAT refund/issuance of TCC filed after November 1, 2005 must strictly observe the 120≤30 day period provided in Section 112 (C) of the 1997 NIRC. Meanwhile, all judicial claims filed prior to the same date are allowed to rely on the practice sanctioned by RR 7-95, as exemplified by BIR Ruling No. DA-489-03 in *Lazi Bay*.

For all the foregoing, I vote to GRANT the Motion for Reconsideration filed by San Roque Power Corporation in G.R. No. 187485, and **DENY** the Motion for Reconsideration of the Commissioner of Internal Revenue in G.R. No. 196113.

THIRD DIVISION

[G.R. No. 162802. October 9, 2013]

EDS MANUFACTURING, INC., *petitioner, vs.* **HEALTHCHECK INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; RESOLUTION OF A CONTRACT WILL NOT BE PERMITTED FOR A SLIGHT OR CASUAL BREACH, BUT ONLY FOR SUCH SUBSTANTIAL AND FUNDAMENTAL VIOLATIONS AS WOULD DEFEAT THE VERY OBJECT OF THE PARTIES IN MAKING THE AGREEMENT; RESOLUTION OF CONTRACT IS THE BREACH OF FAITH BY ONE OF THE PARTIES WHICH IS VIOLATIVE OF THE RECIPROCITY BETWEEN THEM.— The general rule is that rescission (more appropriately, ***resolution***) of a contract will not be permitted

for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement. In his concurring opinion in *Universal Food Corporation v. Court of Appeals*, Justice J.B.L. Reyes clarifies: It is probable that the petitioner's confusion arose from the defective technique of the new Code that terms both instances as "rescission" without distinction between them; unlike the previous Spanish Code of 1889 that differentiated between "resolution" for breach of stipulations from "rescission" by reason of lesion or damage. But the terminological vagueness does not justify confusing one case with the other, considering the patent difference in causes and results of either action. Reiterating the aforementioned pronouncement, this Court in *Pryce Corporation v. Philippine Amusement Gaming Corporation* held that: Relevantly, it has been pointed out that resolution was originally used in Article 1124 of the old Civil Code, and that the term became the basis for rescission under Article 1191 (and conformably, also Article 1659). Thus, the rescission referred to in Article 1191, more appropriately referred to as ***resolution***, is on the breach of faith by one of the parties which is violative of the reciprocity between them.

2. ID.; ID.; ID.; A JUDICIAL OR NOTARIAL ACT IS NECESSARY BEFORE A VALID RESCISSION CAN TAKE PLACE, WHETHER OR NOT AUTOMATIC RESCISSION HAS BEEN STIPULATED, FOR THE OPERATIVE ACT WHICH PRODUCES THE RESOLUTION OF THE CONTRACT IS THE DECREE OF THE COURT AND NOT THE MERE ACT OF THE VENDOR.— In the present case, it is apparent that HCI violated its contract with EMI to provide medical service to its employees in a substantial way. As aptly found by the CA, the various reports made by the EMI employees from July to August 1998 are living testaments to the gross denial of services to them at a time when the delivery was crucial to their health and lives. However, although a ground exists to validly rescind the contract between the parties, it appears that EMI failed to judicially rescind the same. In *Iringan v. Court of Appeals*, this Court reiterated the rule that in the absence of a stipulation, a party cannot unilaterally and extrajudicially rescind a contract. A judicial or notarial act is necessary before a valid rescission (or ***resolution***) can take place. Thus – Clearly, a judicial or notarial act is necessary before a valid rescission can take place,

whether or not automatic rescission has been stipulated. It is to be noted that the law uses the phrase "even though" emphasizing that when no stipulation is found on automatic rescission, the judicial or notarial requirement still applies. x x x. Consequently, even if the right to rescind is made available to the injured party, the obligation is not *ipso facto* erased by the failure of the other party to comply with what is incumbent upon him. **The party entitled to rescind should apply to the court for a decree of rescission**. The right cannot be exercised solely on a party's own judgment that the other committed a breach of the obligation. The operative act which produces the resolution of the contract is the decree of the court and not the mere act of the vendor. Since a judicial or notarial act is required by law for a valid rescission to take place, the letter written by respondent declaring his intention to rescind did not operate to validly rescind the contract. What is more, it is evident that EMI had not rescinded the contract at all. As observed by the CA, despite EMI's pronouncement, it failed to surrender the HMO cards of its employees although this was required by the Agreement, and allowed them to continue using them beyond the date of the rescission. The *in-patient* and the *out-patient* utilization reports submitted by HCI shows entries as late as March 1999, signifying that EMI employees were availing of the services until the contract period were almost over. The continued use by them of their privileges under the contract, with the apparent consent of EMI, belies any intention to cancel or rescind it, even as they felt that they ought to have received more than what they got.

LEONEN, *J., concurring opinion:*

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; A PARTY'S FAILURE TO COMPLY WITH WHAT IS INCUMBENT UPON HIM TRIGGERS THE OTHER PARTY'S RIGHT TO CONSIDER THE CONTRACT RESOLVED EVEN WITHOUT INSTITUTING COURT ACTION IF THE PARTY WHO FAILED TO COMPLY DOES NOT CONTEST THE RESOLUTION, THEN THE CONTRACT IS DEEMED RESOLVED; THE RESOLUTION PRODUCES LEGAL EFFECTS.— [W]e have held that the right to resolve under Article 1191 of the Civil Code must be invoked judicially.

Even if there is a stipulation in the contract that makes available to the parties the right to resolve, the resolving party must still apply to the court for a judicial decree of resolution. The court decree is the operative act that produces the resolution, not the unilateral act of the resolving party. "It cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation." However, We have also held that failure to judicially resolve the contract does not invalidate the resolution and that the right to resolve need not be invoked judicially. This is based on Article 1191 which makes the power to resolve an implication of reciprocal obligations. This means that the power emanates from the quality of the obligation – not from a stipulation or judicial decree. Thus interpreted, a party's failure to comply with what is incumbent upon him or her triggers the other party's right to consider the contract resolved even without instituting court action. If the party who failed to comply does not contest the resolution, then the contract is deemed resolved; the resolution produces legal effects.

2. ID.; ID.; ID.; WHILE RESOLUTION OF THE CONTRACT MAY BE VALID EVEN WITHOUT A JUDICIAL DECREE, THE OTHER PARTY MAY QUESTION IN COURT THE ACT OF RESOLUTION IN CASE OF ABUSE BY THE RESOLVING PARTY; THE PARTY WHO UNILATERALLY RESOLVES A CONTRACT RUNS THE RISK OF HAVING HIS ACTION CORRECTED BY THE COURT BY DECLARING IT AS INVALID IF HE ABUSES OR ERRONEOUSLY USES HIS POWER TO RESOLVE.— The courts step into the picture only when the party who allegedly violated the contract disputes the other party's unilateral resolution. In that case, the court determines whether there is indeed substantial breach of the contract to justify the party's unilateral resolution of the contract. We held in *University of the Philippines v. De Los Angeles:* In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it *proceeds at its own risk.* For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait

for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203). We see no conflict between this ruling and the previous jurisprudence of this Court invoked by respondent declaring that judicial action is necessary for the resolution of a reciprocal obligation, since in every case where the extrajudicial resolution is contested only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will remain contestable and subject to judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription. There is, therefore, support in saying that a judicial decree is not necessary to constitute a valid resolution. It is only necessary when the ground for the resolution is in dispute. A judgment on the validity of the resolution settles whether the unilateral resolution is proper. In other words, while resolution may be valid even without a judicial decree, the other party may question in court the act of resolution in case of abuse by the resolving party. The party who unilaterally resolves a contract runs the risk of having his or her action corrected by the court by declaring it as invalid if he or she abuses or erroneously uses his or her power to resolve.

3. ID.; ID.; ID.; ABSENT ANY PROVISION PROVIDING FOR A RIGHT TO RESCIND, THE PARTIES MAY NEVERTHELESS RESCIND THE CONTRACT SHOULD THE OTHER OBLIGOR FAIL TO COMPLY WITH ITS OBLIGATIONS.— The application of power to resolve without judicial action is not limited to contracts that contain a stipulation to that effect. We have clarified that "x x x even without express provision conferring the power of cancellation upon one contracting party, the Supreme Court of Spain, in construing the effect of Article 1124 of the Spanish Civil Code (of which Article 1191 of our own Civil Code is practically a reproduction), has repeatedly held that a resolution of reciprocal or synallagmatic contracts may be made extrajudicially unless

successfully impugned in court." "x x x [A]bsent any provision providing for a right to rescind, the parties may nevertheless rescind the contract should the other obligor fail to comply with its obligations." The invalidity of Eds Manufacturing, Inc.'s resolution of its contract with Healthcheck International, Inc. based on its failure to institute a judicial action for resolution is, therefore, disputable. Nevertheless, Eds Manufacturing, Inc.'s resolution is invalid because of its employees' continued use of Healthcheck International, Inc.'s services even after the contract period. This contradicts the alleged intention to resolve the contract.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya and Fernandez for petitioner.

Silverio D. Corpuz for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated November 28, 2003 and Resolution[2] dated March 16, 2004 of the Court of Appeals (*CA*) in CA-G.R. CV No. 69420.

The facts, as found by the CA, are as follows:

The plaintiff Healthcheck Inc. is a Health Maintenance Organization (HMO) that provides prepaid health and medical insurance coverage to its clients. To undergird its program, it maintains a network of accredited hospitals and medical clinics, one of which is the De La Salle University Medical Center located at Dasmariñas, Cavite. Being within the access of this medical facility, the defendant Eds Manufacturing Inc. with about 5,000 employees at Imus, Cavite saw fit in April 1998 to obtain insurance coverage

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[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Martin S. Villarama, Jr. and Jose C. Reyes, Jr., concurring; *rollo*, pp. 30-38.

[2] *Id.* at 50.

from it. They entered into a one-year contract from May 1, 1998 to April 30, 1999 in which HCI was to provide the 4,191 employees of EMI and their 4,592 dependents as host of medical services and benefits. Attached to the Agreement was a *Service Program* which listed the services that HCI would provide and the responsibilities that EMI would undertake in order to avail of the services. Putting the Agreement into effect, EMI paid the full premium for the coverage in the staggering amount of ₱8,826,307.50.

Only two months into the program, problems began to loom in the horizon. On July 17, HCI notified EMI that its accreditation with DLSUMC was suspended and advised it to avail of the services of nearby accredited institutions. A more detailed communication to subscribers came out days later informing them of the problems of the HMO industry in the wake of the Asian regional financial crisis and proposing interim measures for the unexpired service contracts. In a quickly convened meeting, EMI and HCI hammered out this handwritten 5-point agreement:

> "1) Healthcheck to furnish EMI with list of procedural enhancements by 7/24 (FRI)-hospitals & professional fees payment.
>
> 2) Healthcheck to reduce no. of accredited hospitals to improve monitoring of bills for payment & other problems.
>
> 3) EMI to study the possibility of adding 'LIABILITY CLAUSE' to existing contract; to furnish HC copy for its review.
>
> 4) No renewal of contract w/ HC should there be another suspension of services in any hospitals to be chosen (w/ regard to item #2.) w/in the present contract period.
>
> 5) HC decision on APE provided by 7/24(FRI)."

Although HCI had yet to settle its accounts with it, DLSUMC resumed services on July 24. In another meeting with EMI on August 3, HCI undertook to settle all its accounts with DLSUMC in order to maintain its accreditation. Despite this commitment, HCI failed to preserve its credit standing with DLSUMC prompting the latter to suspend its accreditation for a second time from August 15 to 20. A third suspension was still to follow on September 9 and remained in force until the end of the contract period.

Until the difficulties between HCI and its client came to a head in September 1998, complaints from EMI employees and workers

were pouring in that their HMO cards were not being honored by the DLSUMC and other hospitals and physicians. On September 3, EMI formally notified HCI that it was rescinding their April 1998 Agreement on account of HCI's *serious and repeated breach of its undertaking including but not limited to the unjustified non-availability of services*. It demanded a return of premium for the unused period after September 3, giving a ballpark figure of ₱6 million.

What went in the way of the rescission of the contract, the fly in the ointment so to speak, was the failure of EMI to collect all the HMO cards of the employees and surrender them to HCI as stipulated in the Agreement. HCI had to tell EMI on October 12, 1998 that its employees were still utilizing the cards even beyond the pretermination date set by EMI. It asked for the surrender of the cards so that it could process the pretermination of the contract and finalize the reconciliation of accounts. *Until we have received the IDs*, HCI said, *we will consider your account with us ongoing and existing, thus subject for inclusion to present billing and payment*.

Without responding to this reminder, EMI sent HCI two letters in January 1999 demanding for the payment of ₱5,884,205 as the 2/3 portion of the premium that remained unutilized after the Agreement was rescinded in the previous September. The computation was made on the basis of these observations:

- that EMI paid premium of ₱8,826,307.50
- Healthcheck's accreditation with DLSUMC was suspended on July 17, August 15 and Sept. 9, 1998 by reason of Healthcheck's unjustified failure to pay its benefits to the hospital.
- That Healthcheck's accreditation with other hospitals and individual physicians was also suspended on various dates for the same reason.
- That, in effect Healthcheck managed to comply with its obligation only for the first 4 months of the year-long contract, or 1/3 thereof.

HCI pre-empted EMI's threat of legal action by instituting the present case before the Regional Trial Court of Pasig. The cause of action it presented was the unlawful pretermination of the contract and failure of EMI to submit to a joint reconciliation of accounts and deliver such assets as properly belonged to HCI. EMI responded with an answer alleging that HCI reneged on its duty to provide

adequate medical coverage after EMI paid the premium in full. Having rescinded the contract, it claimed that it was entitled to the unutilized portion of the premium, and that the accounting required by HCI could not be undertaken until it submitted the monthly utilization reports mentioned in the Agreement. EMI asked for the dismissal of the complaint and interposed a counterclaim for damages and unutilized premium of ₱5,884,205.

In September 2000, after trial, the court ruled in favor of HCI. It found that EMI's rescission of the Agreement on September 3, 1998 was not done through court action or by a notarial act and was based on casual or slight breaches of the contract. Moreover, despite the announced rescission, the employees of EMI continued to avail of HCI's services until March 1999. The services rendered by HCI from May 1998 to March 1999 purportedly came to a total of ₱10,149,821.13. The court deducted from this figure the premium paid by EMI, leaving a net payable to HCI of ₱1,323,513.63, in addition to moral damages and attorney's fees. EMI's counterclaims, on the other hand, were dismissed for lack of merit.[3]

On appeal, the CA reversed the decision of the Regional Trial Court (*RTC*) of Pasig City and ruled that although Healthcheck International, Inc. (*HCI*) substantially breached their agreement, it also appears that Eds Manufacturing, Inc. (*EMI*) did not validly rescind the contract between them. Thus, the CA dismissed the complaint filed by HCI, while at the same time dismissing the counterclaim filed by EMI.

Undeterred, EMI filed a Motion for Partial Reconsideration against said decision. However, the same was denied in a Resolution dated March 16, 2004.

Hence, EMI filed the present petition raising the following issues for our resolution:

A

THE COURT OF APPEALS, WHILE CORRECTLY OVERTURNING THE RTC'S DECISION BY DISMISSING THE COMPLAINT, COMMITTED A REVERSIBLE AND GROSS ERROR WHEN IT LIKEWISE DISMISSED THE COUNTERCLAIM ON THE GROUND THAT PETITIONER EMI DID NOT

[3] *Id.* at 30-34.

ACTUALLY RESCIND THE CONTRACT WHICH RULING BY THE APPELLATE COURT ALREADY WENT BEYOND THE AGREED/SUBMITTED ISSUES FOR ADJUDICATION.

B

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN ADMITTING THE UTILIZATION REPORTS AS COMPETENT EVIDENCE OF THE PURPORTED NON-RESCISSION, WHEN SUCH EVIDENCE IS DOUBLE HEARSAY INASMUCH AS THE PERSON WHO PREPARED THE SAME DID NOT TESTIFY IN COURT AND HIS UNAVAILABILITY WAS UNEXPLAINED.

C

THE COURT OF APPEALS MADE A GRAVE ERROR WHEN IT DECLARED THAT PETITIONER, BY SUPPOSEDLY ALLOWING THE UTILIZATIONS AFTER THE RESCISSION, NEGATED ITS CLAIMED PRE-TERMINATION OF THE CONTRACT AND THEREFORE FORFEITED ITS ₱5.8M CLAIMS FOR UNUTILIZED PREMIUMS.[4]

Simply, the issue is whether or not there was a valid rescission of the Agreement between the parties.

We rule in the negative.

First, Article 1191 of the Civil Code states:

> 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.**

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

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.[5]

The general rule is that rescission (more appropriately, ***resolution***) of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.[6]

In his concurring opinion in *Universal Food Corporation v. Court of Appeals*,[7] Justice J.B.L. Reyes clarifies:

> It is probable that the petitioner's confusion arose from the defective technique of the new Code that terms both instances as "rescission" without distinction between them; unlike the previous Spanish Code of 1889 that differentiated between "resolution" for breach of stipulations from "rescission" by reason of lesion or damage. But the terminological vagueness does not justify confusing one case with the other, considering the patent difference in causes and results of either action.[8]

Reiterating the aforementioned pronouncement, this Court in *Pryce Corporation v. Philippine Amusement Gaming Corporation*[9] held that:

> Relevantly, it has been pointed out that resolution was originally used in Article 1124 of the old Civil Code, and that the term became the basis for rescission under Article 1191 (and conformably, also Article 1659).[10]

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[5] Emphasis supplied.

[6] *Viloria v. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012, 663 SCRA 57, 86-87.

[7] 144 Phil. 1 (1970).

[8] *Universal Food Corporation v. Court of Appeals, supra*, at 22. (Citation omitted)

[9] 497 Phil. 490 (2005).

[10] *Pryce Corporation v. PAGCOR, supra*, at 505.

Thus, the rescission referred to in Article 1191, more appropriately referred to as ***resolution***, is on the breach of faith by one of the parties which is violative of the reciprocity between them.[11]

In the present case, it is apparent that HCI violated its contract with EMI to provide medical service to its employees in a substantial way. As aptly found by the CA, the various reports made by the EMI employees from July to August 1998 are living testaments to the gross denial of services to them at a time when the delivery was crucial to their health and lives.

However, although a ground exists to validly rescind the contract between the parties, it appears that EMI failed to judicially rescind the same.

In *Iringan v. Court of Appeals*,[12] this Court reiterated the rule that in the absence of a stipulation, a party cannot unilaterally and extrajudicially rescind a contract. A judicial or notarial act is necessary before a valid rescission (or ***resolution***) can take place. Thus —

> Clearly, a judicial or notarial act is necessary before a valid rescission can take place, whether or not automatic rescission has been stipulated. It is to be noted that the law uses the phrase "even though" emphasizing that when no stipulation is found on automatic rescission, the judicial or notarial requirement still applies.
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> x x x x x x x x x
>
> But in our view, even if Article 1191 were applicable, petitioner would still not be entitled to automatic rescission. In *Escueta v. Pando*, we ruled that under Article 1124 (now Article 1191) of the Civil Code, the **right to resolve reciprocal obligations, is deemed implied in case one of the obligors shall fail to comply with what is incumbent upon him. But that right must be invoked judicially**. The same article also provides: "The Court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation."

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[11] *F.F. Cruz & Co., Inc. v. HR Construction Corporation,* G.R. No. 187521, March 14, 2012, 668 SCRA 302, 327.

[12] 418 Phil. 286, 294 (2001).

This requirement has been retained in the third paragraph of Article 1191, which states that "the court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."

Consequently, even if the right to rescind is made available to the injured party, the obligation is not *ipso facto* erased by the failure of the other party to comply with what is incumbent upon him. **The party entitled to rescind should apply to the court for a decree of rescission**. The right cannot be exercised solely on a party's own judgment that the other committed a breach of the obligation. The operative act which produces the resolution of the contract is the decree of the court and not the mere act of the vendor. Since a judicial or notarial act is required by law for a valid rescission to take place, the letter written by respondent declaring his intention to rescind did not operate to validly rescind the contract.[13]

What is more, it is evident that EMI had not rescinded the contract at all. As observed by the CA, despite EMI's pronouncement, it failed to surrender the HMO cards of its employees although this was required by the Agreement, and allowed them to continue using them beyond the date of the rescission. The *in-patient* and the *out-patient* utilization reports submitted by HCI shows entries as late as March 1999, signifying that EMI employees were availing of the services until the contract period were almost over. The continued use by them of their privileges under the contract, with the apparent consent of EMI, belies any intention to cancel or rescind it, even as they felt that they ought to have received more than what they got.

WHEREFORE, premises considered, the Decision dated November 28, 2003 and Resolution dated March 16, 2004 of the Court of Appeals, in CA-G.R. CV No. 69420, are hereby **AFFIRMED.**

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

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[13] *Iringan v. Court of Appeals*, *supra*, at 294-295. (Emphasis supplied.)

CONCURRING OPINION

LEONEN, *J.*:

I agree that Healthcheck International, Inc.'s violation of its contract with Eds Manufacturing, Inc. is substantial. Its violation is enough ground for Eds Manufacturing, Inc. to resolve (or rescind) the contract in accordance with Article 1191 of the Civil Code.

Our jurisprudence, however, is replete with rulings clarifying when the resolving party needs to obtain a judicial decree of resolution.

Indeed, We have held that the right to resolve under Article 1191 of the Civil Code must be invoked judicially.[1] Even if there is a stipulation in the contract that makes available to the parties the right to resolve, the resolving party must still apply to the court for a judicial decree of resolution.[2] The court decree is the operative act that produces the resolution, not the unilateral act of the resolving party.[3] "It cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation."[4]

However, We have also held that failure to judicially resolve the contract does not invalidate the resolution and that the right to resolve need not be invoked judicially. This is based on Article 1191 which makes the power to resolve an implication of reciprocal obligations. This means that the power emanates from the quality of the obligation – not from a stipulation or judicial decree.

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[1] *Rubio de Larena v. Villanueva,* 53 Phil. 923 (1928); *Iringan v. Court of Appeals,* G.R. No. 129107, September 26, 2001, 366 SCRA 41, 47.

[2] *Id*. at 48.

[3] *Id*.

[4] *Philippine Amusement Enterprises, Inc. v. Natividad,* No. L-21876, September 29, 1967, 21 SCRA 284, 289 cited in *Tan v. Court of Appeals,* G.R. No. 80479, July 28, 1989, 175 SCRA 656, 662.

Thus interpreted, a party's failure to comply with what is incumbent upon him or her triggers the other party's right to consider the contract resolved even without instituting court action. If the party who failed to comply does not contest the resolution, then the contract is deemed resolved; the resolution produces legal effects.[5]

The courts step into the picture only when the party who allegedly violated the contract disputes the other party's unilateral resolution.[6] In that case, the court determines whether there is indeed substantial breach of the contract to justify the party's unilateral resolution of the contract.

We held in *University of the Philippines v. De Los Angeles*:[7]

> In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it *proceeds at its own risk.* For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203).
>
> We see no conflict between this ruling and the previous jurisprudence of this Court invoked by respondent declaring that judicial action is necessary for the resolution of a reciprocal obligation, since in every case where the extrajudicial resolution is contested only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial

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[5] *Adelfa Properties, Inc. v. Court of Appeals*, G.R. No. 111238, January 25, 1995, 240 SCRA 565, 588; See also *Sps. Eduardo and Agustin v. CA*, G.R. No. 84751, June 6, 1990, 186 SCRA 375, 381.

[6] *Adelfa Properties, Inc. v. Court of Appeals, supra* note 5, at 588.

[7] G.R. No. L-28602, 146 Phil. 108 (1970).

resolution will remain contestable and subject to judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription.[8]

There is, therefore, support in saying that a judicial decree is not necessary to constitute a valid resolution. It is only necessary when the ground for the resolution is in dispute. A judgment on the validity of the resolution settles whether the unilateral resolution is proper.

In other words, while resolution may be valid even without a judicial decree, the other party may question in court the act of resolution in case of abuse by the resolving party. The party who unilaterally resolves a contract runs the risk of having his or her action corrected by the court by declaring it as invalid if he or she abuses or erroneously uses his or her power to resolve.

The application of power to resolve without judicial action is not limited to contracts that contain a stipulation to that effect. We have clarified that "x x x even without express provision conferring the power of cancellation upon one contracting party, the Supreme Court of Spain, in construing the effect of Article 1124 of the Spanish Civil Code (of which Article 1191 of our own Civil Code is practically a reproduction), has repeatedly held that a resolution of reciprocal or synallagmatic contracts may be made extrajudicially unless successfully impugned in court."[9] "x x x [A]bsent any provision providing for a right to rescind, the parties may nevertheless rescind the contract should the other obligor fail to comply with its obligations."[10]

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[8] *Id.* at 115.

[9] *Id.* at 116.

[10] *Casiño, Jr. v. Court of Appeals*, G.R. No. 133803, September 16, 2005, 470 SCRA 57, 67-68 citing *Multinational Village Homeowners Association, Inc. v. Ara Security & Surveillance Agency, Inc.*, G.R. No. 154852, October 21, 2004, 441 SCRA 126, 135.

The invalidity of Eds Manufacturing, Inc.'s resolution of its contract with Healthcheck International, Inc. based on its failure to institute a judicial action for resolution is, therefore, disputable. Nevertheless, Eds Manufacturing, Inc.'s resolution is invalid because of its employees' continued use of Healthcheck International, Inc.'s services even after the contract period. This contradicts the alleged intention to resolve the contract.

WHEREFORE, I vote to AFFIRM the Court of Appeals Decision dated November 28, 2003 and Resolution dated March 16, 2004.

FIRST DIVISION

[G.R. No. 170598. October 9, 2013]

FAR EAST BANK & TRUST COMPANY, *petitioner, vs.* **ROBERT MAR CHANTE, *a.k.a.* ROBERT MAR G. CHAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; CONCEPTS.— Burden of proof is a term that refers to two separate and quite different concepts, namely: (*a*) the risk of non-persuasion, or the burden of persuasion, or simply persuasion burden; and (*b*) the duty of producing evidence, or the burden of going forward with the evidence, or simply the production burden or the burden of evidence. In its first concept, it is the duty to establish the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case at which the issue arises. In its other concept, it is the duty of producing evidence at the beginning or at any subsequent stage of trial in order to make or meet a *prima facie* case. Generally speaking, burden of proof in its second

concept passes from party to party as the case progresses, while in its first concept it rests throughout upon the party asserting the affirmative of the issue.

2. ID.; ID.; ID.; THE BURDEN OF PROOF, WHICH MAY EITHER BE ON THE PLAINTIFF OR THE DEFENDANT, IS ON THE PLAINTIFF IF THE DEFENDANT DENIES THE FACTUAL ALLEGATIONS OF THE COMPLAINT IN THE MANNER REQUIRED BY THE RULES OF COURT; OR ON THE DEFENDANT IF HE ADMITS EXPRESSLY OR IMPLIEDLY THE ESSENTIAL ALLEGATIONS BUT RAISES AN AFFIRMATIVE DEFENSE, THAT, IF PROVED, WOULD EXCULPATE HIM FROM LIABILITY.— The party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. This is because our system frees the trier of facts from the responsibility of investigating and presenting the facts and arguments, placing that responsibility entirely upon the respective parties. The burden of proof, which may either be on the plaintiff or the defendant, is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the *Rules of Court*; or on the defendant if he admits expressly or impliedly the essential allegations but raises an affirmative defense or defenses, that, if proved, would exculpate him from liability.

3. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANT EVIDENCE REFERS TO EVIDENCE THAT IS OF GREAT WEIGHT, OR MORE CONVINCING, THAN THE EVIDENCE OFFERED IN OPPOSITION TO IT; IT IS THE PROOF THAT LEADS THE TRIER OF FACTS TO FIND THAT THE EXISTENCE OF THE CONTESTED FACT IS MORE PROBABLE THAN ITS NONEXISTENCE; THE PETITIONER MUST RELY ON THE STRENGTH OF ITS OWN EVIDENCE INSTEAD OF UPON THE WEAKNESS OF THE RESPONDENT'S EVIDENCE.— Section 1, Rule 133 of the *Rules of Court* sets the quantum of evidence for civil actions, and delineates how preponderance of evidence is determined x x x. As the rule indicates, preponderant evidence refers to

evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its nonexistence. Being the plaintiff, FEBTC must rely on the strength of its own evidence instead of upon the weakness of Chan's evidence. Its burden of proof thus required it to preponderantly demonstrate that his ATM card had been used to make the withdrawals, and that he had used the ATM card and PIN by himself or by another person to make the fraudulent withdrawals. Otherwise, it could not recover from him any funds supposedly improperly withdrawn from the ATM account. We remind that as a banking institution, FEBTC had the duty and responsibility to ensure the safety of the funds it held in trust for its depositors. It could not avoid the duty or evade the responsibility because it alone should bear the price for the fraud resulting from the system bug on account of its exclusive control of its computer system. Did FEBTC discharge its burden of proof? The CA ruled that FEBTC did not because – After a review of the records of this case, we find the totality of evidence submitted by FEBTC insufficient to establish the crucial facts that would justify a judgment in its favor. **To our mind, the fact that Chan's account number and ATM card number were the ones used for the withdrawals, by itself, is not sufficient to support the conclusion that he should be deemed to have made the withdrawals.** x x x. In our view, the CA's ruling was correct. x x x. FEBTC did not present preponderant evidence proving Chan's liability for the supposedly fraudulent withdrawals. It thus failed in discharging its burden of persuasion.

APPEARANCES OF COUNSEL

Benedicto Verzosa Felipe & Burkley Law Office for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

In this dispute between a bank and its depositor over liability for several supposedly fraudulent withdrawals from the latter's account through an automated tellering machine (ATM), we

hereby resolve the issue of liability against the bank because of the intervention of a system bug that facilitated the purported withdrawals.

The Case

Under review on *certiorari* is the decision promulgated on August 1, 2005,[1] whereby the Court of Appeals (CA) reversed the judgment the Regional Trial Court, Branch 51, in Manila (RTC) rendered in favor of the petitioner on May 14, 1998 in Civil Case No. 92-61706.[2] Thereby, the CA relieved the depositor of any liability for the supposedly fraudulent withdrawals.

Antecedents

Robert Mar Chante, also known as Robert Mar G. Chan (Chan), was a current account depositor of petitioner Far East Bank & Trust Co. (FEBTC) at its Ongpin Branch (Current Account No. 5012-00340-3). FEBTC issued to him Far East Card No. 05-01120-5-0 with July 1993 as the expiry date. The card, known as a "Do-It-All" card to handle credit card and ATM transactions, was tagged in his current account. As a security feature, a personal identification number (PIN), known only to Chan as the depositor, was required in order to gain access to the account. Upon the card's issuance, FEBTC required him as the depositor to key in the six-digit PIN. Thus, with the use of his card and the PIN, he could then deposit and withdraw funds from his current account from any FEBTC ATM facility, including the MEGALINK facilities of other member banks that included the Philippine National Bank (PNB).

Civil Case No. 92-61706 sprang from the complaint brought by petitioner Far East Bank & Trust Co. (FEBTC) on July 1, 1992 in the RTC,[3] to recover from Chan the principal sum of

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[1] *Rollo*, pp. 42-63; penned by Associate Justice Arturo D. Brion (now a Member of this Court), with Associate Justice Eugenio S. Labitoria (retired) and Associate Justice Eliezer R. De los Santos (retired/deceased) concurring.

[2] *Id.* at 75-82.

[3] Records, pp. 1-7.

₱770,488.30 representing the unpaid balance of the amount fraudulently withdrawn from Chan's Current Account No. 5012-00340-3 with the use of Far East Card No. 05-01120-5-0.

FEBTC alleged that between 8:52 p.m. of May 4, 1992 and 4:06 a.m. of May 5, 1992, Chan had used Far East Card No. 05-01120-5-0 to withdraw funds totaling ₱967,000.00 from the PNB-MEGALINK ATM facility at the Manila Pavilion Hotel in Manila; that the withdrawals were done in a series of 242 transactions with the use of the same machine, at ₱4,000.00/ withdrawal, except for transaction No. 108 at 3:51 a.m. of May 5, 1992, when the machine dispensed only ₱3,000.00; that MEGALINK'S journal tapes showed that Far East Card No. 05-01120-5-0 had been used in all the 242 transactions; and that the transactions were processed and recorded by the respective computer systems of PNB and MEGALINK despite the following circumstances, namely: (*a*) the offline status of the branch of account (FEBTC Ongpin Branch); (*b*) Chan's account balance being only ₱198,511.70 at the time, as shown in the bank statement; (*c*) the maximum withdrawal limit of the ATM facility being ₱50,000.00/day; and (*d*) his withdrawal transactions not being reflected in his account, and no debits or deductions from his current account with the FEBTC Ongpin Branch being recorded.

FEBTC added that at the time of the ATM withdrawal transactions, there was an error in its computer system known as "system bug" whose nature had allowed Chan to successfully withdraw funds in excess of his current credit balance of ₱198,511.70; and that Chan had taken advantage of the system bug to do the withdrawal transactions.

On his part, Chan denied liability. Although admitting his physical possession of Far East Card No. 05-01120-5-0 on May 4 and May 5, 1992, he denied making the ATM withdrawals totalling ₱967,000.00, and instead insisted that he had been actually home at the time of the withdrawals. He alluded to a possible "inside job" as the cause of the supposed withdrawals, citing a newspaper report to the effect that an employee of FEBTC's had admitted having debited accounts of its depositors

by using his knowledge of computers as well as information available to him. Chan claimed that it would be physically impossible for any human being like him to stand long hours in front of the ATM facility just to withdraw funds. He contested the debiting of his account, stating that the debiting had affected his business and had caused him to suffer great humiliation after the dishonor of his sufficiently-funded checks by FEBTC.

The records show that FEBTC discovered the system bug only after its routine reconciliation of the ATM-MEGALINK transactions on May 7, 1992; that it immediately adopted remedial and corrective measures to protect its interest in order to avoid incurring further damage as well as to prevent a recurrence of the incident; that one of the measures it adopted pursuant to its ATM Service Agreement with Chan was to program its computer system to repossess his ATM card; that his ATM card was repossessed at the Ermita Branch of FEBTC when he again attempted to withdraw at the ATM facility there; that the ATM facility retained his ATM card until its recovery by the bank; and that FEBTC conducted an in-depth investigation and a time-and-motion study of the withdrawals in question.

On May 14, 1992, FEBTC debited his current account in the amount of ₱192,517.20 pursuant to Chan's ATM Service Agreement. It debited the further sum of ₱3,000.00 on May 18, 1992, leaving the unrecovered portion of the funds allegedly withdrawn by him at ₱770,488.30. Thus, on May 14 and May 18, 1992, FEBTC sent to Chan letters demanding the reimbursement of the unrecovered balance of ₱770,488.30, but he turned a deaf ear to the demands, impelling it to bring this case on July 1, 1992.[4]

Ruling of the RTC

As reflected in the pre-trial order of October 19, 1992, the issues to be resolved were, firstly, whether or not Chan had himself withdrawn the total sum of ₱967,000.00 with the use of his Far East Card No. 05-01120-5-0 at the PNB-MEGALINK

[4] *Supra* note 3.

ATM facility; and, secondly, if the answer to the first issue was that he did, whether or not he was liable to reimburse to FEBTC the amount of ₱770,488.30 as actual damages, plus interest.[5]

On May 14, 1998, the RTC rendered judgment in favor of FEBTC, pertinently holding and ruling as follows:[6]

> In the instant case, what happened was that the defendant who was at the U.N. Branch of the PNB used his card. He entered his PIN to have access to a withdrawal transaction from his account in Far East Bank, Ongpin Branch. However, after recognizing the card and went to the path of his account it could not get a signal to proceed with the transaction so it proceeded to the other path who gave the signal to go on and dispense money. But there was a computer error as it did not only dispense the money limit for the day but it continued to dispense a lot more until it reached the amount of ₱967,000.00 which took the defendant till the hours of the morning to obtain. But defendant says he did not use his card. He alleges that it could be an inside job just like what happened to the said bank which was published in the newspaper wherein the bank employee admitted having done the theft through his knowledge of the computer. Could this be true?
>
> The Court opines that it is not far-fetched. However why did this Court state that plaintiff's cause of action will survive? **The action of the defendant after the incident gave him away. Merely two days after the heavy withdrawal, the defendant returned not at the exact scene of the incident but at a nearby branch which is also in Ermita and tried again to withdraw. But at this time the bank already knew what happened so it blocked the card and retained it being a hot card. The defendant was not successful this time so what he did was to issue a check almost for the whole amount of his balance in his account leaving only a minimal amount. This incident puzzles the Court. Maybe the defendant was hoping that the machine nearby may likewise dispense so much amount without being detected. He will not definitely go back to the U.N. branch as he may think that it is being watched and so he went to a nearby branch. Unfortunately, luck was not**

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[5] Records, p. 102.

[6] *Rollo*, pp. 78-81 (bold emphasis is supplied).

with him this time and his card was taken by the bank. The fact that he hastily withdrew the balance of his account after his card was retained by the bank only showed his knowledge that the bank may debit his account. It also showed his intent to do something further other than first inquire why his card was considered a hot card if he is really innocent. When he went to the Ermita branch to withdraw from the ATM booth he was intending to withdraw not more than ₱50,000.00 as it is the bank's limit for the day and if ever he needed a bigger amount than ₱50,000.00 immediately he should have gone to the branch for an over the counter transaction but he did not do so and instead issued a check for ₱190,000.00 dated May 7, 1992 and another check for ₱5,000.00 dated May 13, 1992. To the mind of the Court, to take advantage of a computer error, to gain sudden and undeserved amount of money should be condemned in the strongest terms.

There are no available precedents in this case regarding computer errors, but the Court feels that defendant should be held liable for the mistaken amount he was able to get from the machine based on the following provisions of the law.

Articles 19, 21, 22 and 23 of the Civil Code x x x.

x x x x x x x x x

There is likewise one point that the Court would like to discuss about the allegation of the defendant that it was impossible for him to withdraw the money in such long period and almost minute after minute. This Court believes that money is the least of all, a person may give priority in life. There are many who would sacrifice a lot just to have lots of it, so it would not be impossible for one to take time, stand for several hours and just enter some items in the computer if the return would be something like a million or close to a million. In fact, the effort exerted was just peanuts compared to other legitimate ways of earning a living as the only capital or means used to obtain it was the defendant's loss of sleep and the time spent in withdrawing the same.

Moreover, though the cause of action in this case may be the erroneous dispensation of money due to computer bug which is not of defendant's wrong doing, the Court sees that what was wrong was the failure to return the amount in excess of what was legally his. There is such a thing as JUSTICE. Justice means rendering to

others their due. A person is just when he is careful about respecting the rights of others, and who knows too, how to claim what he rightfully deserves as a consequence of fulfilling his duties.

From the foregoing, the conclusion is manifest that plaintiff is within its right in initiating the instant suit, as defendant's refusal to pay the claim constitutes the cause of action for sum of money.

x x x x x x x x x

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Far East Bank and Trust Company and against the defendant Robert Mar Chante a.k.a. Robert Mar G. Chan ordering the latter to pay the former the following:

1. the amount of ₱770,488.30 as actual damages representing the unrecovered balance of the amounts withdrawn by defendant;
2. interest of 24% per annum on the actual damages from July 1, 1992, the date of the filing of the complaint until fully paid;
3. the amount of ₱100,000.00 as exemplary damages;
4. the sum of ₱30,000.00 as and for attorney's fees; and
5. the costs of the suit.

Defendant's counterclaim is hereby dismissed for lack of merit.

SO ORDERED.

Ruling of the CA

Chan appealed,[7] assigning the following errors to the RTC, to wit:

1. THE TRIAL COURT ERRED IN HOLDING DEFENDANT-APPELLANT LIABLE FOR THE ALLEGED WITHDRAWAL OF THE AMOUNT OF ₱967,000.00 WITH INTEREST AT THE RATE OF 24% PER ANNUM BASED MERELY ON CONJECTURES AND SUSPICIONS NOT ESTABLISHED BY SOLID EVIDENCE;

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[7] CA *rollo*, pp. 34-52.

2. THE TRIAL COURT ERRED IN AWARDING IN FAVOR OF APPELLEE EXEMPLARY DAMAGES IN THE AMOUNT OF ₱100,000.00 AND ATTORNEY'S FEES IN THE AMOUNT OF ₱30,000.00;

3. THE TRIAL COURT ERRED IN NOT ORDERING THE RESTITUTION OF THE AMOUNT OF ₱196,521.30 ILLEGALLY DEBITED BY APPELLEE FROM APPELLANT'S ACCOUNT.

On August 1, 2005, the CA promulgated the assailed decision, reversing the RTC's judgment, to wit:

x x x. The issues really before us are issues of contract application and issues of fact that would require an examination and appreciation of the evidence presented. The first order therefore in our review of the trial court's decision is to take stock of the established and undisputed facts, and of the evidence the parties have presented. We say this at the outset as we believe that it was in this respect that the lower court failed in its consideration and appreciation of the case.

x x x x x x x x x

An evidentiary dilemma we face in this case is the fact that there is no direct evidence on the issue of who made the actual withdrawals. Chan correctly claims that the bank failed to present any witness testifying that he (Chan) made the actual withdrawals. At the same time, Chan can only rely on his own uncorroborated testimony that he was at home on the night that withdrawals were made. We recognize that the bank can claim that no other evidence of actual withdrawal is necessary because the PIN unique to Chan is already evidence that only Chan or his authorized representative – and none other – could have accessed his account. But at the same time, we cannot close our eyes to the fact that computers and the ATM system is not perfect as shown by an incident cited by Chan involving the FEBTC itself. Aside from the vulnerability to inside staff members, we take judicial notice that no less than our own Central Bank has publicly warned banks about other nefarious schemes involving ATM machines. In a March 7, 2003 letter, the Central Bank stated:

March 7, 2003

BSP CIRCULAR LETTER
TO : All Banks
SUBJECT : Technology Fraud on ATM Systems

Please be advised that there were incidents in other countries regarding technology fraud in ATM systems perpetrated by unscrupulous individuals and/ or syndicates.

These acts are carried out by:

1. A specialized scanner attached to the ATM card slot, and;

2. A pinhole camera

x x x x x x x x x

In light of the absence of conclusive direct evidence of actual withdrawal that we can rely upon, we have to depend on evidence "other than direct" to reach verdict in this case.

x x x x x x x x x

WHEREFORE, premises considered, we hereby **GRANT** the appeal and accordingly **REVERSE** and **SET ASIDE** the Decision dated May 14, 1998 of the Regional Trial Court of Manila, Branch 51, in Civil Case No. 92-61706. We accordingly **ORDER** plaintiff-appellee Far East Bank and Trust Company (FEBTC) to return to Chan the amount of Php196,571.30 plus 12% interest per annum computed from August 7, 1992 – the time Chan filed his counterclaim – until the obligation is satisfied. Costs against the plaintiff-appellee FEBTC.

SO ORDERED.[8]

FEBTC moved for reconsideration, but the CA denied its motion on November 24, 2005.[9]

Issues

Hence, FEBTC has appealed, urging the reversal of the CA's adverse decision, and praying that Chan be held liable for the

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[8] *Supra* note 1, at 48-63.

[9] *Rollo*, pp. 65-68.

withdrawals made from his account on May 4 and May 5, 1992; and that it should not be held liable to return to Chan the sum of ₱196,571.30 debited from his account.

Ruling

The appeal lacks merit.

FEBTC would want us to hold that Chan had authored the May 4 and May 5, 1992 ATM withdrawals based on the following attendant factors, namely: (*a*) ATM transactions were processed and identified by the PIN, among others; (*b*) the PIN was exclusive and known only to the account holder; (*c*) the ATM was tagged in the cardholder's account where the ATM transactions were debited or credited; (*d*) the account number tagged in the ATM card identified the cardholder; (*e*) the ATM withdrawals were documented transactions; and (*f*) the transactions were strictly monitored and recorded not only by FEBTC as the bank of account but also by the ATM machine and MEGALINK. In other words, the ATM transactions in question would not be processed unless the PIN, which was known only to Chan as the cardholder, had been correctly entered, an indication both that it was his ATM card that had been used, and that all the transactions had been processed successfully by the PNB-MEGALINK ATM facility at the Manila Pavilion Hotel with the use of the correct PIN.

We disagree with FEBTC.

Although there was no question that Chan had the physical possession of Far East Card No. 05-01120-5-0 at the time of the withdrawals, the exclusive possession of the card alone did not suffice to preponderantly establish that he had himself made the withdrawals, or that he had caused the withdrawals to be made. In his answer, he denied using the card to withdraw funds from his account on the dates in question, and averred that the withdrawals had been an "inside job." His denial effectively traversed FEBTC's claim of his direct and personal liability for the withdrawals, that it would lose the case unless it competently and sufficiently established that he had personally

made the withdrawals himself, or that he had caused the withdrawals. In other words, it carried the burden of proof.

Burden of proof is a term that refers to two separate and quite different concepts, namely: (*a*) the risk of non-persuasion, or the burden of persuasion, or simply persuasion burden; and (*b*) the duty of producing evidence, or the burden of going forward with the evidence, or simply the production burden or the burden of evidence.[10] In its first concept, it is the duty to establish the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case at which the issue arises.[11] In its other concept, it is the duty of producing evidence at the beginning or at any subsequent stage of trial in order to make or meet a *prima facie* case. Generally speaking, burden of proof in its second concept passes from party to party as the case progresses, while in its first concept it rests throughout upon the party asserting the affirmative of the issue.[12]

The party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it.[13] Verily, the party who asserts, not he who denies, must prove.[14]

In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.[15] This is because

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[10] James, Jr., *Burdens of Proof*, 47 Virginia Law Review 51 (1961).

[11] *Giblin v. Dudley Hardware Co.*, 44 R.I. 371, 375, 117 A. 418, 419 (1922); see also *People v. Macagaling*, G.R. Nos. 109131-33, October 3, 1994, 237 SCRA 299, 320.

[12] *Id.*; see also *Birmingham Trust & Savings Co. v. Acacia Mutual Life Ass'n.*, 221 Ala. 561, 130 So. 327 (1930).

[13] *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325; *Coronel v. Court of Appeals*, G.R. No. 103577, October 7, 1996, 263 SCRA 15, 35.

[14] *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 596; *Luxuria Homes, Inc. v. Court of Appeals*, *supra*, at 327.

[15] *Pacific Banking Corporation Employees Organization v. Court of Appeals*, G.R. No. 109373, March 27, 1998, 288 SCRA 198, 206.

our system frees the trier of facts from the responsibility of investigating and presenting the facts and arguments, placing that responsibility entirely upon the respective parties.[16] The burden of proof, which may either be on the plaintiff or the defendant, is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the *Rules of Court*; or on the defendant if he admits expressly or impliedly the essential allegations but raises an affirmative defense or defenses, that, if proved, would exculpate him from liability.[17]

Section 1, Rule 133 of the *Rules of Court* sets the quantum of evidence for civil actions, and delineates how preponderance of evidence is determined, *viz*:

> Section 1. **In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial.** The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Emphasis supplied)

As the rule indicates, preponderant evidence refers to evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it.[18] It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its nonexistence.[19]

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[16] James, Jr., *supra*, at 52.

[17] *Sambar v. Levi Strauss & Co.*, G.R. No. 132604, March 6, 2002, 378 SCRA 364, 371.

[18] *Jison v. Court of Appeals*, G.R. No. 124853, February 24, 1998, 286 SCRA 495, 532.

[19] 2 McCormick on *Evidence*, Fifth Edition, §422.

Being the plaintiff, FEBTC must rely on the strength of its own evidence instead of upon the weakness of Chan's evidence. Its burden of proof thus required it to preponderantly demonstrate that his ATM card had been used to make the withdrawals, and that he had used the ATM card and PIN by himself or by another person to make the fraudulent withdrawals. Otherwise, it could not recover from him any funds supposedly improperly withdrawn from the ATM account. We remind that as a banking institution, FEBTC had the duty and responsibility to ensure the safety of the funds it held in trust for its depositors. It could not avoid the duty or evade the responsibility because it alone should bear the price for the fraud resulting from the system bug on account of its exclusive control of its computer system.

Did FEBTC discharge its burden of proof?

The CA ruled that FEBTC did not because –

After a review of the records of this case, we find the totality of evidence submitted by FEBTC insufficient to establish the crucial facts that would justify a judgment in its favor.

To our mind, the fact that Chan's account number and ATM card number were the ones used for the withdrawals, by itself, is not sufficient to support the conclusion that he should be deemed to have made the withdrawals. FEBTC offers in this regard the PNB ATM's journal tapes to prove the withdrawals and their details – the time of the transactions; the account number used; the ATM card number; and the amount withdrawn – and at the same time declared that these tapes are authentic and genuine.

These tapes, however, are not as reliable as FEBTC represented them to be as they are not even internally consistent. A disturbing internal discrepancy we note relates to the amounts reflected as "ledger balance" and "available balance." We find it strange that for every 4,000.00 pesos allegedly withdrawn by Chan, the available balance increased rather than diminished. Worse, the amount of available balance as reflected in the tapes was way above the actual available balance of less than Php200,000.00 that Chan's current account had at that time. These discrepancies must inevitably reflect on the integrity of the journal tapes; the proven inconsistencies in some aspects of these tapes leave the other aspects suspect and

uncertain. **But more than this, we are not convinced that the tapes lead us to the inevitable conclusion that Chan's card, rather than a replacement card containing Chan's PIN and card number or some other equivalent scheme, was used. To our mind, we cannot discount this possibility given the available technology making computer fraud a possibility, the cited instances of computer security breaches, the admitted system bug, and – *most notably – the fact that the withdrawals were made under circumstances that took advantage of the system bug.* System errors of this kind, when taken advantage of to the extent that had happened in this case, are planned for. Indeed, prior preparation must take place to avoid suspicion and attention where the withdrawal was made for seven (7) long hours in a place frequented by hundreds of guests, over 242 transactions where the physical volume of the money withdrawn was not insignificant. To say that this was done by the owner of the account based solely on the records of the transactions, is a convenient but not a convincing explanation**.[20]

In our view, the CA's ruling was correct.

To start with, Edgar Munarriz, FEBTC's very own Systems Analyst, admitted that the bug infecting the bank's computer system had facilitated the fraudulent withdrawals.[21] This admission impelled the CA to thoroughly dissect the situation in order to determine the consequences of the intervention of the system bug in FEBTC's computer system. It ultimately determined thusly:

Significantly, FEBTC made the admission that there was a program bug in its computer system. To digress, computers are run based on specific pre-arranged instructions or "programs" that act on data or information that computer users input. Computers can only process these inputted data or information according to the installed programs. Thus, computers are as efficient, as accurate and as convenient to use as the instructions in their installed programs. They can count, sort, compute and arrive at decisions but they do so only and strictly in accordance with the programs that make them work. To cite an

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[20] *Supra* note 1, at 58-60 (bold emphasis is supplied).

[21] TSN, July 16, 1993, pp. 70-84.

easy example, a computer can be programmed to sort a stack of cards prepared by male and female clients, into male and female stacks, respectively. To do this, the computer will first scan a card and look at the place ("a field") where the male/female information can be found. This information may be in an appropriate box which the bank client checks or shades to indicate if he/she is male or female. The computer will check if the box beside the word "Female" is shaded. If it is, it will send the card to the "Female" bin. If the box beside the "male" is shaded, it will send the card to the "Male" bin. If both the squares are shaded or none is shaded or the card cannot be read, it will send the card to the "Unknown" bin. This way, the female cards and the male cards can be sorted efficiently. However, the program instructions can be written in such a way that the computer can only make two decisions, that is, if the Female box is shaded, then the card goes to the "Female" bin; otherwise, the card goes to the "Male" bin. In this program, all the Female cards will be sorted correctly but the Male bin will contain all the other cards, that is, the Male cards, the cards with no shading at all, and all the other cards that cannot be classified. **The imperfect results arose from the imperfect program instructions or from a program "bug". Something very close to this example happened in the present case**.

According to the testimony of the FEBTC's systems analyst, there were two computer programs that were involved in the transactions: CAPDROTH and SCPUP 900. CAPDROTH is the program that validates if the account exists in the FEBTC files, if the transaction is valid, and if the branch where the account is maintained is ON-LINE (*i.e.* continuously sending data). When the Chan transaction entered the system, it was validated by CAPDROTH which, on seeing that the FEBTC-Ongpin branch was off-line, returned a decision code passing on the decision to authorize the transaction to the SCPUP 900, another module. However, SCPUP 900 was not expecting this type of response or decision code. As the SCPUP 900 program was originally written, it will send back an error message and abort a requested transaction if it receives an error message from any other module; otherwise, it will send a message authorizing the transaction. In other words, SCPUP 900 had only two decisions to make: check if the message is an error message, if not then, authorize. Since what it received in the disputed transactions were not error messages and were not also authorizations, it sent back

authorization messages allowing the cash withdrawals. It kept on sending authorization messages for the 242 cash withdrawal transactions made from Chan's account between the evening of May 4 and early morning of May 5, 1992. This program bug was the reason the 242 cash withdrawals were allowed by the PNB ATM-Megalink machine.

The program bug occurred because of the simultaneous presence of three conditions that allowed it to happen: (1) the withdrawal transactions involved a current account; (2) the current account was with a branch that at that time was off-line; and (3) the transaction originated from MEGALINK (*i.e.*, through MEGALINK through a member bank other than FEBTC). Because of the bug, Chan's account was not accessed at the time of the transactions so that withdrawals in excess of what the account contained were allowed. Additionally, FEBTC's rule that only a maximum withdrawable amount per day (in the present case ₱50,000.00 per day) can be made from an ATM account, was by-passed. Thus, 242 withdrawals were made over an eight hour period, in the total amount of ₱967,000.00.[22]

Secondly, the RTC's deductions on the cause of the withdrawals were faulty. In holding against Chan, the RTC chiefly relied on inferences drawn from his acts subsequent to the series of withdrawals, specifically his attempt to withdraw funds from his account at an FEBTC ATM facility in Ermita, Manila barely two days after the questioned withdrawals; his issuance of a check for ₱190,000.00 immediately after the capture of his ATM card by the ATM facility; his failure to immediately report the capture of his ATM card to FEBTC; and his going to FEBTC only after the dishonor of the check he had issued following the freezing of his account. The inferences were not warranted, however, because the subsequent acts would not persuasively establish his actual participation in the withdrawals due to their being actually susceptible of other interpretations consistent with his innocence.

We join the CA's observation that Chan's subsequent acts "could have been impelled by so many reasons and motivations,

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[22] *Supra* note 1, at 51-53 (bold emphasis is supplied).

and cannot simply be given the meaning that the lower court attributed to them," and, instead, were even consistent with the purpose and nature of his maintaining the current account deposit with FEBTC, rendering the acts "not unusual nor … illegal."[23] Although he was expected to forthwith bring his card's capture to FEBTC's attention, that he did not do so could have other plausible explanations consistent with good faith, among them his being constantly occupied as a businessman to attend to the multifarious activities of his business. He might have also honestly believed that he still had the sufficient funds in his current account, as borne out by his issuance of a check instead after the capture of the card so as not for him to undermine any financial obligation then becoming due. Nor should his opting to withdraw funds from his account at the ATM facility in Ermita in less than two days after the questioned withdrawals manifest responsibility on his part, for he could also be properly presumed to be then still unaware of the situation involving his account. We note that his letters[24] written in response to FEBTC's written demands to him disclosed honest intentions rather than malice.

Thirdly, the RTC ignored the likelihood that somebody other than Chan familiar with the bug infection of FEBTC's computer system at the time of the withdrawals and adept with the workings of the computer system had committed the fraud. This likelihood was not far-fetched considering that FEBTC had immediately adopted corrective measures upon its discovery of the system bug, by which FEBTC admitted its negligence in ensuring an error-free computer system; and that the system bug had affected only the account of Chan.[25] Truly, the trial court misapprehended the extent to which the system bug had made the computer system of FEBTC stumble in serious error.

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[23] *Rollo*, p. 57.

[24] Records, pp. 31-35.

[25] Per Eduardo Munarriz, TSN, October 18, 1993, pp. 72-75, only the account of Chan was reported to FEBTC; per Irene Tan, TSN, October 10, 1994, pp. 21-22, the fraudulent withdrawals from Chan's account were the only bug-related problem received at FEBTC's Ongpin branch.

Fourthly, and perhaps the most damaging lapse, was that FEBTC failed to establish that the PNB-MEGALINK's ATM facility at the Manila Pavilion Hotel had actually dispensed cash in the very significantly large amount alleged during the series of questioned withdrawals. For sure, FEBTC should have proved the actual dispensing of funds from the ATM facility as the factual basis for its claim against Chan. It did require PNB to furnish a validated showing of the exact level of cash then carried by the latter's ATM facility in the Manila Pavilion Hotel on May 4, 1992.[26] Yet, when PNB employee Erwin Arellano stood as a witness for FEBTC, he confirmed the authenticity of the journal tapes that had recorded Chan's May 4 and May 5, 1992 supposed ATM transactions but did not categorically state how much funds PNB-MEGALINK's ATM facility at the Manila Pavilion Hotel had exactly carried at the time of the withdrawals, particularly the amounts immediately preceding and immediately following the series of withdrawals. The omission left a yawning gap in the evidence against Chan.

And lastly, Chan's allegation of an "inside job" accounting for the anomalous withdrawals should not be quickly dismissed as unworthy of credence or weight. FEBTC employee Manuel Del Castillo, another witness for FEBTC, revealed that FEBTC had previously encountered problems of bank accounts being debited despite the absence of any withdrawal transactions by their owners. He attributed the problems to the erroneous tagging of the affected accounts as somebody else's account, allowing the latter to withdraw from the affected accounts with the use of the latter's own ATM card, and to the former's account being debited.[27] The revelation of Del Castillo tended to support Chan's denial of liability, as it showed the possibility of withdrawals being made by another person despite the PIN being an exclusive access number known only to the cardholder.[28]

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[26] TSN, May 18, 1994, pp. 11-14.

[27] TSN, March 31, 1993, pp. 26-29.

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

It is true that Del Castillo also declared that FEBTC did not store the PINs of its clients' ATM cards. However, he mentioned that FEBTC had stored the opposite numbers corresponding to the PINs, which meant that the PINs did not remain entirely irretrievable at all times and in all cases by any of its officers or employees with access to the bank's computer system. Accordingly, Del Castillo's assertion that the PINs were rendered useless upon being entered in the bank's computer system did not entirely disclose how the information on the PINs of the depositors was stored or discarded as to become useless for any purpose.

In view of the foregoing, FEBTC did not present preponderant evidence proving Chan's liability for the supposedly fraudulent withdrawals. It thus failed in discharging its burden of persuasion.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals; and **DIRECTS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Reyes, and *Leonen,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 174004. October 9, 2013]

VIRGILIO G. CAGATAO, *petitioner, vs.* **GUILLERMO ALMONTE, ARTHUR AGUILAR, SPS. ERNESTO FERNANDEZ and AVELINA FERNANDEZ, MARVIN**

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[*] Vice Associate Justice Martin S. Villarama, Jr., who is on sick leave of absence, pursuant to Special Order No. 1545 (Revised).

JOHN FERNANDEZ, MARSON FERNANDEZ, and MARJUN FERNANDEZ, *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; A CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO COLLATERAL ATTACK; IT CANNOT BE ALTERED, MODIFIED, OR CANCELLED EXCEPT IN A DIRECT PROCEEDING IN ACCORDANCE WITH LAW.— From the arguments of Cagatao, it is clear that he is assailing the validity of the title of Carlos over the land in question. Section 48 of P.D. No. 1529 clearly states that "a certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." An attack on the validity of the title is considered to be a collateral attack when, in an action to obtain a different relief and as an incident of the said action, an attack is made against the judgment granting the title. Cagatao's original complaint before the RTC was for the cancellation of TCT No. T-249437 in the name of the Fernandez Siblings and the nullification of the deeds of sale between the Fernandez Siblings and Spouses Fernandez, and the earlier one between the latter and Almonte and Aguilar. Nowhere in his complaint did Cagatao mention that he sought to invalidate TCT No. 12159-A. It was only during the course of the proceedings, when Spouses Fernandez disclosed that they had purchased the property from Carlos, that Cagatao thought of questioning the validity of TCT No. 12159-A.

2. ID.; ID.; A TORRENS CERTIFICATE OF TITLE IS INDEFEASIBLE AND BINDING UPON THE WHOLE WORLD UNLESS IT IS NULLIFIED BY A COURT OF COMPETENT JURISDICTION IN A DIRECT PROCEEDING FOR CANCELLATION OF TITLE.— Although the CA correctly ruled that the transfer from Gatchalian to Manzulin was invalid, the existence of a valid Torrens title in the name of Carlos which has remained unchallenged before the proper courts has made irrelevant the issue of whether Gatchalian and his successors-in-interest should have retained ownership over the property. This is pursuant

to the principle that a Torrens title is irrevocable and its validity can only be challenged in a direct proceeding. The purpose of adopting a Torrens System in our jurisdiction is to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. This is to avoid any possible conflicts of title that may arise by giving the public the right to rely upon the face of the Torrens title and dispense with the need of inquiring further as to the ownership of the property. Hence, a Torrens certificate of title is indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title.

3. REMEDIAL LAW; ACTIONS; PARTIES; INDISPENSABLE PARTIES; NO MAN CAN BE AFFECTED BY ANY PROCEEDING TO WHICH HE IS A STRANGER AND STRANGERS TO A CASE CANNOT BE BOUND BY A JUDGMENT RENDERED BY THE COURT; CASE AT BAR.— [C]arlos, as the registered owner of the lot whose title Cagatao seeks to nullify, should have been impleaded as an indispensable party. Section 7, Rule 3 of the 1997 Rules of Civil Procedure defines indispensable parties to be "parties in interest without whom no final determination can be had of an action." It is clear in this case that Cagatao failed to include Carlos in his action for the annulment of TCT No. 12159-A. Basic is the rule in procedural law that no man can be affected by any proceeding to which he is a stranger and strangers to a case cannot be bound by a judgment rendered by the court. It would be the height of injustice to entertain an action for the annulment of Carlos' title without giving her the opportunity to present evidence to support her claim of ownership through title. In addition, it is without question a violation of the constitutional guarantee that no person shall be deprived of property without due process of law. Thus, should Cagatao wish to question the ownership of the subject lot of Carlos and Spouses Fernandez, he should institute a direct action before the proper courts for the cancellation or modification of the titles in the name of the latter two. He cannot do so now because it is tantamount to a collateral attack on Carlos' title, which is expressly prohibited by law and jurisprudence.

4. CIVIL LAW; LAND REGISTRATION; A PERSON DEALING WITH A REGISTERED LAND HAS THE RIGHT TO RELY ON THE FACE OF THE TORRENS TITLE AND NEED NOT INQUIRE FURTHER, UNLESS THE PARTY CONCERNED HAS ACTUAL KNOWLEDGE OF FACTS AND CIRCUMSTANCES THAT WOULD IMPEL A REASONABLY CAUTIOUS MAN TO MAKE SUCH AN INQUIRY.— The CA did not err in amending its decision and recognizing the validity of the sale between Spouses Fernandez and Carlos. Time and again, the Court has repeatedly ruled that a person dealing with a registered land has the right to rely on the face of the Torrens title and need not inquire further, unless the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such an inquiry. The indefeasibility of a Torrens title as evidence of lawful ownership of the property protects buyers in good faith who rely on what appears on the face of the said certificate of title. Moreover, a potential buyer is charged with notice of only the burdens and claims annotated on the title. As explained in *Sandoval v. Court of Appeals*, . . . a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of inquiring further except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith; and hence does not merit the protection of the law.

5. ID.; ID.; ID.; IF A PERSON PURCHASES A PIECE OF LAND ON THE ASSURANCE THAT THE SELLER'S TITLE THERETO IS VALID, HE SHOULD NOT RUN THE RISK OF BEING TOLD LATER THAT HIS ACQUISITION WAS INEFFECTUAL AFTER ALL, FOR THIS WOULD NOT ONLY BE UNFAIR TO HIM, BUT ALSO IF THE SAME IS PERMITTED, PUBLIC CONFIDENCE IN THE SYSTEM WOULD BE ERODED AND LAND

TRANSACTIONS WOULD HAVE TO BE ATTENDED BY COMPLICATED AND NOT NECESSARILY CONCLUSIVE INVESTIGATIONS AND PROOF OF OWNERSHIP.— In this case, there has been no showing that Spouses Fernandez were aware of any irregularity in Carlos' title that would make them suspicious and cause them to doubt the legitimacy of Carlos' claim of ownership, especially because there were no encumbrances annotated on Carlos' title. At any rate, that is the proper subject of another action initiated for the purpose of questioning Carlos' certificate of title from which Spouses Fernandez derived their ownership because, otherwise, the title of Spouses Fernandez would become indefeasible. The reason for this is extensively explained in *Tenio-Obsequio v. Court of Appeals*: The Torrens system was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. If a person purchases a piece of land on the assurance that the seller's title thereto is valid, he should not run the risk of being told later that his acquisition was ineffectual after all. This would not only be unfair to him. What is worse is that if this were permitted, public confidence in the system would be eroded and land transactions would have to be attended by complicated and not necessarily conclusive investigations and proof of ownership. The further consequence would be that land conflicts could be even more numerous and complex than they are now and possibly also more abrasive, if not even violent. The Government, recognizing the worthy purposes of the Torrens system, should be the first to accept the validity of titles issued thereunder once the conditions laid down by the law are satisfied. While the Court finds that the validity of TCT No. 12159-A cannot be attacked collaterally and that Cagatao had not sufficiently established his claim of ownership over the subject property, it agrees with the CA that he, the current possessor, shall remain to be so until such time that his possession is successfully contested by a person with a better right.

APPEARANCES OF COUNSEL

Benedictine Law Center for petitioner.
Cabucana Cabucana & Cabucana for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the March 9, 2006 Amended Decision[1] and the August 7, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 72094, modifying the June 22, 2001 Decision[3] of the Regional Trial Court, Branch 24, Echague, Isabela *(RTC)*, in Civil Case No. Br. 24-0458, an action for annulment of sale, cancellation of title and damages.

The Facts

This case stemmed from an action for annulment of deeds of sale, cancellation of title and damages filed on April 18, 1996 by petitioner Virgilio G. Cagatao *(Cagatao)* against respondents Guillermo Almonte *(Almonte)*, Arthur Aguilar *(Aguilar)*, Spouses Ernesto and Avelina Fernandez *(Spouses Fernandez)*, and Marvin John Fernandez, Marson Fernandez and Marjun Fernandez (collectively the *Fernandez Siblings*).[4]

On February 16, 1949, a homestead patent over the property subject of this controversy (Lot No. 5598, Pls-67) was issued in favor of Juan Gatchalian.[5] Cagatao claimed that sometime in 1940, Gatchalian sold the lot to Delfin Manzulin *(Manzulin)* in exchange for one carabao, as embodied in a barter agreement which was unfortunately destroyed or lost during the Second World War.[6] In 1990, Manzulin allegedly executed a private written document in the Ilocano dialect, transferring ownership

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[1] *Rollo*, pp. 42-46.

[2] *Id.* at 47-48.

[3] *Id.* at 182-193; penned by Judge Bonifacio T. Ong.

[4] *Id.* at 11.

[5] *Id.* at 252.

[6] *Id.* at 350.

over the property to his son-in-law, Cagatao.[7] The latter then occupied and cultivated the land until the Fernandez Siblings attempted to take possession of the lot, thereby prompting him to file the subject complaint before the RTC.[8]

The respondents, on the other hand, contended that on April 3, 1993, the Spouses Fernandez purchased the property from Almonte and Aguilar who had in their possession a tax declaration covering the said land.[9] To protect their interest, on January 17, 1996, Spouses Fernandez once again bought the same property for ₱220,000.00 from Emmaculada Carlos *(Carlos)*, believed to be the owner of the lot by virtue of Transfer Certificate of Title *(TCT)* No. T-12159-A, a *reconstituted title* in her name.[10] The former, in turn, executed a deed of sale, dated January 22, 1996, in favor of their children, the Fernandez Siblings, resulting in the issuance of TCT No. T-249437 in their names.[11]

In his Memorandum before the RTC, Cagatao questioned the sale to Spouses Fernandez by Carlos because, at that time, Manzulin was already the owner of the subject property. He also pointed out that it was highly irregular that Spouses Fernandez would buy the same property from two different vendors on two different occasions. Apart from these anomalous transactions, Cagatao insisted that TCT No. T-249437 in the name of the Fernandez Siblings was a nullity because the sale from the Spouses Fernandez was simulated, as testified to by Avelina Fernandez *(Fernandez)* who confirmed that she and her husband did not sign the deed of sale purporting to have transferred ownership of the property to the Fernandez Siblings.[12]

The respondents claimed that Cagatao was unable to present proof of title or any public document embodying the sale of the

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[7] *Id.* at 253.

[8] *Id.*

[9] *Id.* at 254.

[10] *Id.*

[11] *Id.* at 258.

[12] *Id.* at 254.

property from Gatchalian to Manzulin and from the latter to Cagatao. They also argued that even if a homestead patent was indeed issued to Gatchalian, the same became void when he (Gatchalian) did not occupy the land himself, in violation of Commonwealth Act No. 141 (Public Land Act of 1936).[13]

Pending litigation, the RTC issued a writ of preliminary injunction restraining the respondents from disturbing Cagatao's possession of the land in question during the pendency of the case.[14] In its Decision, dated June 22, 2001, however, the RTC ruled that Cagatao's evidence was insufficient to prove his ownership over the land in question because Manzulin never acquired a lawful title to the property from his predecessor, Gatchalian. The court explained that the transfer to Manzulin was null and void because it failed to comply with Section 20[15] of Commonwealth Act No. 141. As to the supposed conveyance of the lot from Manzulin to Cagatao, it could not have been valid because the document alleged to be a deed of sale was a private document which did not conclusively establish his (Cagatao's) right to the property because of the requirement in contract law that the transmission of rights over an immovable property must be contained in a public document.

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[13] *Id.* at 255.

[14] *Id.* at 184.

[15] SECTION 20. If at any time after the approval of the application and before the patent is issued, the applicant shall prove to the satisfaction of the Director of Lands that he has complied with all the requirements of the law, but cannot continue with his homestead, through no fault of his own, and there is a bona fide purchaser for the rights and improvements of the applicant on the land, and that the conveyance is not made for purposes of speculation, then the applicant, with the previous approval of the Director of Lands may transfer his rights to the land and improvements to any person legally qualified to apply for a homestead, and immediately after such transfer, the purchaser shall file a homestead application for the land so acquired and shall succeed the original homesteader in his rights and obligations beginning with the date of the approval of said application of the purchaser. Any person who has so transferred his rights may not again apply for a new homestead. Every transfer made without the previous approval of the Director of Lands shall be null and void and shall result in the cancellation of the entry and the refusal of the patent.

The RTC, after noting that Cagatao had no valid title, ruled that his claim of possession could not prevail over the claim of ownership by Spouses Fernandez as evidenced by a certificate of title. Accordingly, it upheld the validity of the deed of sale, dated January 17, 1996, between Spouses Fernandez and Carlos. It, however, nullified the transfer from Spouses Fernandez to Fernandez Siblings because Avelina herself admitted that she and her husband never signed the deed of sale which transferred ownership to their children. Finally, the RTC sustained the validity of TCT No. T-12159-A in the name of Carlos, theorizing that someone must have applied for an original certificate of title from which the said title was derived.[16] Thus, the RTC disposed:

1. the dismissal of the plaintiff's [Cagatao's] Complaint;

2. the Cancellation and setting aside of the writ of preliminary injunction;

3. the Register of Deeds to cancel Transfer Certificate of Title No. T-249437 issued in favor of Marvin, Marson and Marjun, all surnamed Fernandez, the Deed of Sale (Exhibit "C") dated January 22, 1996 being null and void; and

4. declaring the Deed of Sale (Exhibit "2") dated January 17, 1996 in favor of Sps. Avelina M. Fernandez and Ernesto S. Fernandez and TCT No. T-12159-A registered in the name of Emmaculada G. Carlos as valid and binding.

SO ORDERED.[17]

Aggrieved, Cagatao elevated the case to the CA. On July 29, 2005, the CA partly granted his petition and modified the decision of the RTC. The CA deemed as speculative and without legal basis[18] the trial court's conclusion that Gatchalian might have abandoned his homestead patent, leaving it open for another person to apply for a patent and secure an original certificate of title from which TCT No. T-12159-A in the name of Carlos

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[16] *Rollo,* pp. 190-192.

[17] *Id.* at 193.

[18] *Id.* at 259.

originated. In other words, the ownership of the land remained with Gatchalian by virtue of the homestead patent in his name, and neither the alleged transfer to Manzulin nor the theory of abandonment of the RTC could divest him of said title.

In addition, the CA took note of Entry No. 7259 in the memorandum of encumbrances at the dorsal side of TCT No. T-12159-A, which disclosed the existence of another deed of sale entered into by Carlos and the respondents on January 17, 1979. Holding that the two sales could not overlap, it invalidated the January 17, 1996 deed of sale between Carlos and Spouses Fernandez. It also considered as void the sale of the same property by Almonte to Spouses Fernandez and observed that neither the latter nor the Fernandez siblings invoked this transaction as the basis of their claim.

Although the CA declared that Cagatao's claim of ownership could not be recognized, it nevertheless ruled that his possession could not be disturbed because only the true owner could challenge him for possession of the subject property. Leaving the parties where it found them, the CA disposed:

> 1) the Register of Deeds is ORDERED TO CANCEL Transfer Certificate of Title No. 249437 issued in favor of Marvin, Marson and Marjun, all surnamed Fernandez; 2) the Deed of Sale dated January 17, 1996 between Emmaculada Carlos and the Fernandez spouses is declared NULL and VOID; 3) the Deed of Sale dated January 22, 1996 between defendants-appellees Fernandez siblings and the Fernandez spouses is DECLARED NULL and VOID; 4) the Deed of Sale dated April 3, 1993 between the Fernandez spouses and Guillermo Almonte and Arthur Aguilar is likewise DECLARED NULL and VOID; 5) the verbal sale between Delfin Manzulin and plaintiff-appellant is DECLARED NULL and VOID. The Writ of Preliminary Injunction against defendants-appellants Fernandez siblings is made PERMANENT.[19]

The respondents moved for a reconsideration of the CA decision on August 24, 2005. On March 9, 2006, the CA rendered the questioned *Amended Decision*, reversing itself when it ruled

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[19] *Id.* at 263-264.

that the deed of sale between Carlos and Spouses Fernandez could not be declared null and void, especially because Carlos was not impleaded as a party in the case. It, however, stressed that Cagatao's possession of the subject property should be respected. Any party, including the respondents, who would like to assert their claim of ownership or a better right over the lot should assert their right in an appropriate action in court against him.

Not in conformity, Cagatao moved for reconsideration but the motion was denied by the CA in its Resolution, dated August 7, 2006.[20]

Hence, this petition.

The Issues

In his petition, Cagatao raises the following issues:

I. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT RULING THAT THE RECONSTITUTED TCT NO. 12159-A IN THE NAME OF EMMACULADA CARLOS IS VOID.

II. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT RULING THAT HOMESTEAD TITLE HOLDER JUAN GATCHALIAN AND THE PETITIONER AS HIS SUCCESSORS-IN-INTEREST ARE THE TRUE OWNERS OF THE SUBJECT PROPERTY.

III. WHETHER OR NOT THE COURT OF APPEALS ERRED IN RENDERING THE CHALLENGED AMENDED DECISION BY DELETING FROM THE DISPOSITIVE PORTION OF THE ORIGINAL DECISION ITS RULING THAT THE DEED OF SALE BETWEEN EMMACULADA CARLOS AND RESPONDENTS SPOUSES FERNANDEZ OVER THE SUBJECT PROPERTY IS VOID.[21]

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[20] *Id.* at 47-48.

[21] *Id.* at 362.

The Court's Ruling

Cagatao's entire petition revolves around the assertion that the reconstituted TCT No. 12159-A in the name of Carlos was a fake and should have been declared void. This claim is based on the existence of an allegedly falsified annotation (Entry No. 7259), the speculative nature of the RTC's declaration that the said title appeared valid, and the fact that the respondents were not able to present an affidavit of loss or any proof of judicial reconstitution.[22]

The Court cannot accommodate the petitioner.

The validity of TCT No. 12159-A cannot be attacked collaterally; Carlos is an indispensable party

From the arguments of Cagatao, it is clear that he is assailing the validity of the title of Carlos over the land in question. Section 48 of P.D. No. 1529 clearly states that "a certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." An attack on the validity of the title is considered to be a collateral attack when, in an action to obtain a different relief and as an incident of the said action, an attack is made against the judgment granting the title.[23] Cagatao's original complaint before the RTC was for the cancellation of TCT No. T-249437 in the name of the Fernandez Siblings and the nullification of the deeds of sale between the Fernandez Siblings and Spouses Fernandez, and the earlier one between the latter and Almonte and Aguilar. Nowhere in his complaint did Cagatao mention that he sought to invalidate TCT No. 12159-A. It was only during the course of the proceedings, when Spouses Fernandez disclosed that they had purchased the property from Carlos, that Cagatao thought of questioning the validity of TCT No. 12159-A.

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[22] *Id.* at 363-365.

[23] *Casimiro Development Corporation v. Mateo*, G.R. No. 175485, July 27, 2011, 654 SCRA 676.

Although the CA correctly ruled that the transfer from Gatchalian to Manzulin was invalid, the existence of a valid Torrens title in the name of Carlos which has remained unchallenged before the proper courts has made irrelevant the issue of whether Gatchalian and his successors-in-interest should have retained ownership over the property. This is pursuant to the principle that a Torrens title is irrevocable and its validity can only be challenged in a direct proceeding. The purpose of adopting a Torrens System in our jurisdiction is to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. This is to avoid any possible conflicts of title that may arise by giving the public the right to rely upon the face of the Torrens title and dispense with the need of inquiring further as to the ownership of the property.[24] Hence, a Torrens certificate of title is indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title.[25]

Moreover, Carlos, as the registered owner of the lot whose title Cagatao seeks to nullify, should have been impleaded as an indispensable party. Section 7, Rule 3 of the 1997 Rules of Civil Procedure defines indispensable parties to be "parties in interest without whom no final determination can be had of an action." It is clear in this case that Cagatao failed to include Carlos in his action for the annulment of TCT No. 12159-A. Basic is the rule in procedural law that no man can be affected by any proceeding to which he is a stranger and strangers to a case cannot be bound by a judgment rendered by the court.[26] It would be the height of injustice to entertain an action for the annulment of Carlos' title without giving her the opportunity to present evidence to support her claim of ownership through title. In addition, it is without question a violation of the

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[24] *Id.*

[25] *Co v. Militar*, 466 Phil. 217, 224 (2004).

[26] *Atilano II v. Asaali*, G.R. No. 174982, September 10, 2012.

constitutional guarantee that no person shall be deprived of property without due process of law.[27]

Thus, should Cagatao wish to question the ownership of the subject lot of Carlos and Spouses Fernandez, he should institute a direct action before the proper courts for the cancellation or modification of the titles in the name of the latter two. He cannot do so now because it is tantamount to a collateral attack on Carlos' title, which is expressly prohibited by law and jurisprudence.

Deed of sale between Carlos and Spouses Fernandez is presumed valid

The CA did not err in amending its decision and recognizing the validity of the sale between Spouses Fernandez and Carlos. Time and again, the Court has repeatedly ruled that a person dealing with a registered land has the right to rely on the face of the Torrens title and need not inquire further, unless the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such an inquiry. The indefeasibility of a Torrens title as evidence of lawful ownership of the property protects buyers in good faith who rely on what appears on the face of the said certificate of title. Moreover, a potential buyer is charged with notice of only the burdens and claims annotated on the title.[28] As explained in *Sandoval v. Court of Appeals*,[29]

> . . . a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of inquiring further except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate

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[27] *National Housing Authority v. Evangelista*, 497 Phil. 762, 771 (2005).

[28] *Clemente v. Razo*, 493 Phil. 119, 128 (2005).

[29] 329 Phil. 48, 60-61 (1996).

and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith; and hence does not merit the protection of the law.[30]

In this case, there has been no showing that Spouses Fernandez were aware of any irregularity in Carlos' title that would make them suspicious and cause them to doubt the legitimacy of Carlos' claim of ownership, especially because there were no encumbrances annotated on Carlos' title. At any rate, that is the proper subject of another action initiated for the purpose of questioning Carlos' certificate of title from which Spouses Fernandez derived their ownership because, otherwise, the title of Spouses Fernandez would become indefeasible. The reason for this is extensively explained in *Tenio-Obsequio v. Court of Appeals*:[31]

> The Torrens system was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. If a person purchases a piece of land on the assurance that the seller's title thereto is valid, he should not run the risk of being told later that his acquisition was ineffectual after all. This would not only be unfair to him. What is worse is that if this were permitted, public confidence in the system would be eroded and land transactions would have to be attended by complicated and not necessarily conclusive investigations and proof of ownership. The further consequence would be that land conflicts could be even more numerous and complex than they are now and possibly also more abrasive, if not even violent. The Government, recognizing the worthy purposes of the Torrens system, should be the first to accept the validity of titles issued thereunder once the conditions laid down by the law are satisfied.[32]

While the Court finds that the validity of TCT No. 12159-A cannot be attacked collaterally and that Cagatao had not

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[30] *Id.*

[31] G.R. No. 107967, March 1, 1994, 230 SCRA 550.

[32] *Id.*

sufficiently established his claim of ownership over the subject property, it agrees with the CA that he, the current possessor, shall remain to be so until such time that his possession is successfully contested by a person with a better right.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178008. October 9, 2013]

SAN FERNANDO REGALA TRADING, INC., *petitioner, vs.* **CARGILL PHILIPPINES, INC.,** *respondent.*

[G.R. No. 178042. October 9, 2013]

CARGILL PHILIPPINES, INC., *petitioner, vs.* **SAN FERNANDO REGALA TRADING, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; BREACH OF CONTRACT; THE THING SOLD CAN ONLY BE UNDERSTOOD AS DELIVERED TO THE BUYER WHEN IT IS PLACED IN THE BUYER'S CONTROL AND POSSESSION AT THE AGREED PLACE OF DELIVERY.— The CA held that Cargill committed no breach of Contract 5026 because it had earlier delivered 951 mt of molasses in March 1997 and sent a barge containing 1,174 mt of the goods on April 2, 1997 at the Ajinomoto's wharf. It was actually San Fernando that refused to accept this delivery

on April 2. But Contract 5026 required Cargill to deliver 4,000 mt of molasses during the period "April to May 1997." Thus, anything less than that quantity constitutes breach of the agreement. And since Cargill only delivered a total of 2,125 mt of molasses during the agreed period, Cargill should be regarded as having violated Contract 5026 with respect to the undelivered balance of 1,875 mt of molasses. x x x. Cargill, of course, claimed that it had sufficient inventories of molasses to complete its deliveries, implying that had San Fernando accepted its initial delivery of 1,174 mt it would have continued delivering the rest. But it is not enough for a seller to show that he is capable of delivering the goods on the date he agreed to make the delivery. He has to bring his goods and deliver them at the place their agreement called for, *i.e.*, at the Ajinomoto Pasig River wharf. A stipulation designating the place and manner of delivery is controlling on the contracting parties. The thing sold can only be understood as delivered to the buyer when it is placed in the buyer's control and possession at the agreed place of delivery. Cargill presented no evidence that it attempted to make other deliveries to complete the balance of Contract 5026.

2. ID.; ID.; ID.; DEMAND IS NOT NECESSARY WHEN THE OBLIGATION UNDER THE CONTRACT SPECIFIES THE DATE AND PLACE OF DELIVERY; PAYMENT OF UNREALIZED PROFIT BECAUSE OF BREACH OF CONTRACT, WARRANTED.— The CA correctly ruled that Cargill was in breach of Contract 5047 which provided for delivery of the molasses within the months of October, November, and December 1996. Thus, when Cargill wrote San Fernando on May 14, 1997 proposing to move the delivery dates of this contract to May, June, and July, 1997, it was already in default. San Fernando's refusal to signify its conformity at the proper space on Cargill's letter-proposal regarding Contract 5047 signifies that it was not amenable to the change. x x x. [C]argill's failure to deliver the 5,000 mt of molasses on "October-November-December 1996" makes it liable to San Fernando for ₱11,000,000.00 in unrealized profits. x x x. In failing to make any delivery under Contract 5047, Cargill should pay San Fernando the profit that it lost because of such breach. Cargill of course points out that San Fernando never wrote a demand letter respecting its failure to

make any delivery under that contract. But demand was not necessary since Cargill's obligation under the contract specified the date and place of delivery, *i.e.*, "October-November-December 1996," at the Ajinomoto wharf in Pasig.

3. ID.; DAMAGES; MORAL DAMAGES; NOT RECOVERABLE IN *CULPA CONTRACTUAL* EXCEPT WHEN BAD FAITH HAD BEEN PROVED.— The Court concurs with the CA's deletion of the RTC's award of moral damages to San Fernando. As a rule, moral damages are not awarded to a corporation unless it enjoyed good reputation that the offender debased and besmirched by his actuations. San Fernando failed to prove by sufficient evidence that it fell within this exception. Besides, moral damages are, as a rule, also not recoverable in *culpa contractual* except when bad faith had been proved. San Fernando failed to show that Cargill was motivated by bad faith or ill will when it failed to deliver the molasses as agreed.

4. ID.; ID.; EXEMPLARY DAMAGES; IN BREACH OF CONTRACT, THE COURT MAY ONLY AWARD EXEMPLARY DAMAGES IF THE DEFENDANT ACTED IN WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER.— The Court rules that the CA correctly deleted the award of exemplary damages to San Fernando. In breach of contract, the court may only award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. The evidence has not sufficiently established that Cargill's failure to deliver the molasses on time was attended by such wickedness.

5. ID.; ID.; ATTORNEY'S FEES AND LITIGATION COST; PROPER ONLY WHEN EXEMPLARY DAMAGES ARE AWARDED.— [T]he CA correctly deleted the award of attorney's fees and cost of litigation to San Fernando. Attorney's fees and expenses of litigation under Article 2208 of the Civil Code are proper only when exemplary damages are awarded. Here, the Court has ruled that San Fernando is not entitled to an award of exemplary damages. Both parties actually committed shortcomings in complying with their contractual obligations. San Fernando failed in Contract 5026 to accept Cargill's delivery of 1,174 mt of molasses; Cargill only complied partially with its undertakings under Contract 5026 and altogether breached its obligations under Contract 5047. For these, they must bear their own expenses of litigation.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc and Delos Angeles for Cargill Phils., Inc.

Estelito P. Mendoza for San Fernando Regala Trading, Inc.

D E C I S I O N

ABAD, *J.*:

These cases pertain to the reciprocal obligations of the parties in a contract of sale to deliver the goods, receive them, and pay the price as stipulated and the consequent effects of breach of such obligations.

The Facts and the Case

Cargill Philippines, Inc. (Cargill) and San Fernando Regala Trading, Inc. (San Fernando) were cane molasses traders that did business with each other for sometime. The present controversy arose when San Fernando claimed that Cargill reneged on its contractual obligations to deliver certain quantities of molasses. Cargill denied this, insisting that San Fernando actually refused to accept the delivery of the goods. This enmity resulted in Cargill's filing on March 2, 1998 a complaint for sum of money and damages against San Fernando before the Regional Trial Court (RTC) of Makati City in Civil Case 98-493.

Cargill alleged that on July 15, 1996 it entered into Contract 5026[1] covering its sale to San Fernando of 4,000 metric tons (mt) of molasses at the price of ₱3,950.00 per mt. Cargill agreed to deliver the molasses within the months of "April to May 1997" at the wharf of Union Ajinomoto, Inc. (Ajinomoto) along the Pasig River, Metro Manila. This was a risk-taking forward sale in that its execution was to take place about 10 months later when the parties did not yet know what the trading price of molasses would be.

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[1] Records, p. 9, Exhibit "A".

Shortly after, Cargill also entered into Contract 5047[2] covering another sale to San Fernando of 5,000 mt of molasses at ₱2,750.00 per mt. The delivery period under this contract was within "October-November-December 1996," sooner than the delivery period under Contract 5026. Apparently, San Fernando had a deal with Ajinomoto for the supply of these molasses.

Cargill further alleged that it offered to deliver the 4,000 mt of molasses as required by Contract 5026 within the months of April and May 1997 but San Fernando accepted only 951 mt, refusing to accept the rest. On April 2, 1997 Dolman V, the barge carrying Cargill's 1,174 mt of molasses, arrived at the Ajinomoto wharf but San Fernando refused to accept the same. The barge stayed at the wharf for 71 days, waiting for San Fernando's unloading order. Because of the delay, the owner of the barge slapped Cargill with demurrage amounting to ₱920,000.00. Cargill also suffered ₱3,480,000.00 in damages by way of unrealized profits because it had to sell the cargo to another buyer at a loss.

Cargill further alleged that it earlier sought to deliver the molasses covered by Contract 5047 at the Ajinomoto wharf in the months of October, November, and December 1996, but San Fernando failed or refused for unjustified reasons to accept the delivery. Consequently, Cargill suffered damages by way of unrealized profits of ₱360,000.00 from this contract. Apart from asking the RTC for awards of unrealized profits, Cargill also asked for a return of the demurrage it paid, attorney's fees, and cost of litigation.

To substantiate its claim, Cargill presented David Mozo of Dolman Transport Corp. who testified that Cargill chartered its Dolman V barge to carry molasses from Pasacao to the Ajinomoto wharf in Pasig. But the barge was unable to unload its cargo and was placed on stand-by for around 70 days, awaiting orders to unload its molasses. Consequently, Dolman Transport charged Cargill for demurrage.

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[2] *Id.* at 12, Exhibit "B".

Cargill also presented Arthur Gunlao, an employee, who testified that his company was unable to unload the molasses covered by Contracts 5026 and 5047 because San Fernando's President, Quirino Kehyeng, advised them to wait because Ajinomoto's storage tanks were still full and could not receive the molasses. Because of the prolonged delay in the unloading of the goods, Cargill had no choice but to sell the molasses to another buyer. At the prodding of Kehyeng, Cargill wrote San Fernando on May 14, 1997 proposing changes in the delivery periods of Contracts 5026 and 5047, respectively from "April to May 1997" to "May to June 1997" and from "October-November-December 1996" to "May-June-July 1997."[3] The amendments were needed to keep the contracts valid and maintain the good business relations between the two companies.

In its Answer with counterclaim, San Fernando pointed out that, except for the 951 mt of molasses that Cargill delivered in March 1997, the latter made no further deliveries for Contract 5026. Indeed, Cargill sent San Fernando a letter dated May 14, 1997 proposing a change in the delivery period for that contract from "April to May 1997" to "May to June 1997." But San Fernando rejected the change since it had a contract to sell the molasses to Ajinomoto for ₱5,300.00 per mt.[4] San Fernando expected to earn a ₱5,400,000.00 profit out of Contract 5026.

As for Contract 5047, San Fernando maintained that Cargill delivered no amount of molasses in connection with the same. Cargill admitted its inability to deliver the goods when it wrote San Fernando a letter on May 14, 1997, proposing to move the delivery period from "October-November-December 1996" to "May-June-July 1997." But San Fernando also rejected the change since it had already contracted to sell the subject molasses to Ajinomoto for ₱4,950.00 per mt.[5] San Fernando expected a profit of ₱11,000,000.00 under this contract.

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[3] *Id.* at 67-68, Exhibits "4" and "5".

[4] *Id.* at 408, Exhibit "6".

[5] *Id.* at 413, Exhibit "8".

To prove its claims, San Fernando presented its President, Kehyeng, who testified that apart from the March 1997 delivery of 951 mt of molasses under Contract 5026, Cargill made no further deliveries. He called Dennis Seah of Cargill several times demanding delivery but nothing came of it. Subsequently, Cargill wrote San Fernando, proposing the extension of the delivery periods provided in their two contracts. But Kehyeng rejected the proposal and refused to sign his conformity at the appropriate spaces on Cargill's letter.

Kehyeng denied that San Fernando had refused to receive deliveries because it bought molasses from Cargill at prices higher than what Ajinomoto was willing to pay. Kehyeng insisted that San Fernando had always received Cargill's deliveries even on occasions when the prices fluctuated resulting in losses to his company. He claimed that, as a result of Cargill's violation of Contracts 5026 and 5047, San Fernando was entitled to rescission and awards for unrealized profits of ₱4,115,329.20 and ₱11,000,000.00, respectively, moral and exemplary damages each in the amount of ₱500,000.00, attorney's fees of ₱1,000,000.00, and litigation expenses.

On December 23, 2003 the RTC dismissed Cargill's complaint for lack of merit and granted San Fernando's counterclaims. The RTC did not give credence to Cargill's claim that San Fernando refused to accept the deliveries of molasses because Ajinomoto's tanks were full. San Fernando sufficiently proved that Ajinomoto continued receiving molasses from other suppliers during the entire time that Cargill's chartered barge was put on stand-by at the wharf, supposedly waiting for San Fernando's unloading orders.

It was incomprehensible, said the RTC, for San Fernando to refuse Cargill's deliveries, considering that Ajinomoto had already agreed to buy the molasses from it. Cargill's failure to make the required deliveries resulted in San Fernando's default on its obligations to Ajinomoto, prompting the latter to cancel its orders. As a result, San Fernando lost expected profits of ₱4,115,329.20 representing the remaining undelivered molasses under Contract 5026 and ₱11,000,000.00 under Contract 5047.

The RTC awarded San Fernando its claims for unrealized profits, ₱500,000.00 in moral damages, another ₱500,000.00 in exemplary damages, attorney's fees of ₱1,000,000.00, and ₱500,000.00 as cost of litigation.

The Court of Appeals (CA) ruled on appeal, however, that Cargill was not entirely in breach of Contract 5026. Cargill made an advance delivery of 951 mt in March 1997. It then actually sent a barge containing 1,174 mt of molasses on April 2, 1997 for delivery at Ajinomoto's wharf but San Fernando refused to have the cargo unloaded. Consequently, the trial court erred in awarding San Fernando unrealized profits of ₱4,115,329.20 under Contract 5026. The CA also ruled that since San Fernando unjustifiably refused to accept the April 2, 1997 delivery, it should reimburse Cargill the ₱892,732.50 demurrage that it paid the owner of the barge.

The CA, however, found Cargill guilty of breach of Contract 5047 which called for delivery of the molasses in "October-November-December 1996." Since San Fernando did not accede to Cargill's request to move the delivery period back, Cargill violated the contract when it did not deliver the goods during the previously agreed period. Cargill was liable to San Fernando for unrealized profits of ₱11,000,000.00 that it would have made if it had sold them to Ajinomoto. The CA deleted the award of moral and exemplary damages in favor of San Fernando for its failure to sufficiently establish Cargill's bad faith in complying with its obligations. The CA also deleted the awards of attorney's fees and cost of litigation.

The CA thus ordered: 1) San Fernando to reimburse Cargill the demurrage of ₱892,732.50 that it paid, subject to 6% interest per annum computed from the date of the filing of the complaint until the finality of the decision; and 2) Cargill to pay San Fernando ₱11,000,000.00 in unrealized profits under Contract 5047. The CA deleted the award of moral and exemplary damages, attorney's fees, and cost of litigation. This prompted both Cargill and San Fernando to appeal to this Court.

Issues for Resolution

These cases present the following issues:

1. Whether or not the CA erred in ruling that Cargill was not guilty of breach of obligation to deliver the 4,000 mt of molasses covered by Contract 5026 during the period April and May 1997;

2. Whether or not the CA erred in ruling that Cargill was guilty of breach of obligation to deliver the 5,000 mt of molasses covered by Contract 5047 during the period October, November, and December 1996; and

3. Whether or not the CA erred in deleting the award of moral and exemplary damages, attorney's fees, and cost of suit in favor of San Fernando.

The Rulings of the Court

One. The CA held that Cargill committed no breach of Contract 5026 because it had earlier delivered 951 mt of molasses in March 1997[6] and sent a barge containing 1,174 mt of the goods on April 2, 1997 at the Ajinomoto's wharf. It was actually San Fernando that refused to accept this delivery on April 2.

But Contract 5026 required Cargill to deliver 4,000 mt of molasses during the period "April to May 1997." Thus, anything less than that quantity constitutes breach of the agreement. And since Cargill only delivered a total of 2,125 mt of molasses during the agreed period, Cargill should be regarded as having violated Contract 5026 with respect to the undelivered balance of 1,875 mt of molasses.

Notably, Cargill's chartered barge showed up with 1,174 mt of molasses at the Ajinomoto wharf on April 27, 1997. The barge stayed there for around 70 days, awaiting orders to unload the cargo. David Mozo of Dolman Transport Corp. attested to this. Dolman V was put on stand-by at the wharf while other barges queued to unload their molasses into Ajinomoto's storage

[6] This delivery has already been paid for by San Fernando.

tanks.[7] In failing to accept delivery of Cargill's 1,174 molasses, San Fernando should reimburse Cargill the ₱892,732.50 demurrage that it paid.

Ultimately, what are the liabilities of the parties under Contract 5026? Had San Fernando accepted the delivery of 1,174 mt of molasses on April 27, 1997 Cargill would have been entitled to payment of their price of ₱4,637,300.00 at ₱3,950.00 per mt. But, since Cargill succeeded in selling that 1,174 mt of molasses to Schuurmans & Van Ginneken for ₱1,861.92 per mt.[8] Cargill's unrealized profit then amounted to only ₱2,451,405.59. Thus:

₱3,950 per mt – ₱1,861.92 per mt = ₱2,088.09 x 1,174 mt = ₱2,451,405.59

Since Cargill failed, however, to deliver the balance of 1,875 mt of molasses under Contract 5026, it must pay San Fernando the ₱2,531,250.00, representing the latter's unrealized profits had it been able to sell that 1,875 mt of molasses to Ajinomoto. Thus:

₱5,300 per mt selling price at Ajinomoto – ₱3,950 acquisition cost = ₱1,350 profit per mt

₱1,350.00 profit margin per mt x 1,875 mt = ₱2,531,250.00

Cargill, of course, claimed that it had sufficient inventories of molasses to complete its deliveries, implying that had San Fernando accepted its initial delivery of 1,174 mt it would have continued delivering the rest. But it is not enough for a seller to show that he is capable of delivering the goods on the date he agreed to make the delivery. He has to bring his goods and deliver them at the place their agreement called for, *i.e.*, at the Ajinomoto Pasig River wharf.

A stipulation designating the place and manner of delivery is controlling on the contracting parties.[9] The thing sold can

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[7] TSN, October 12, 1999, pp. 8-10.

[8] TSN, January 18, 2000, pp. 11-12.

[9] CIVIL CODE, Art. 1521.

only be understood as delivered to the buyer when it is placed in the buyer's control and possession at the agreed place of delivery.[10] Cargill presented no evidence that it attempted to make other deliveries to complete the balance of Contract 5026.

Two. The CA correctly ruled that Cargill was in breach of Contract 5047 which provided for delivery of the molasses within the months of October, November, and December 1996. Thus, when Cargill wrote San Fernando on May 14, 1997 proposing to move the delivery dates of this contract to May, June, and July, 1997, it was already in default. San Fernando's refusal to signify its conformity at the proper space on Cargill's letter-proposal regarding Contract 5047 signifies that it was not amenable to the change.

San Fernando had good reason for this: it had already agreed to supply Ajinomoto the molasses covered by Contract 5047 at the rate of ₱4,950.00 per mt.[11] Consequently, Cargill's failure to deliver the 5,000 mt of molasses on "October-November-December 1996" makes it liable to San Fernando for ₱11,000,000.00 in unrealized profits. Thus:

₱4,950 per mt selling price to Ajinomoto – ₱2,750 acquisition cost = ₱2,200 profit per mt

₱2,200 per mt x 5,000 mt = ₱11,000,000.00

In failing to make any delivery under Contract 5047, Cargill should pay San Fernando the profit that it lost because of such breach. Cargill of course points out that San Fernando never wrote a demand letter respecting its failure to make any delivery under that contract. But demand was not necessary since Cargill's obligation under the contract specified the date and place of delivery, *i.e.*, "October-November-December 1996," at the Ajinomoto wharf in Pasig.[12]

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[10] *Id.*, Art. 1497.

[11] *Supra* note 5.

[12] See CIVIL CODE, Art. 1169 (1).

Three. The Court concurs with the CA's deletion of the RTC's award of moral damages to San Fernando. As a rule, moral damages are not awarded to a corporation unless it enjoyed good reputation that the offender debased and besmirched by his actuations.[13] San Fernando failed to prove by sufficient evidence that it fell within this exception. Besides, moral damages are, as a rule, also not recoverable in *culpa contractual* except when bad faith had been proved.[14] San Fernando failed to show that Cargill was motivated by bad faith or ill will when it failed to deliver the molasses as agreed.

The Court rules that the CA correctly deleted the award of exemplary damages to San Fernando. In breach of contract, the court may only award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[15] The evidence has not sufficiently established that Cargill's failure to deliver the molasses on time was attended by such wickedness.

Lastly, the CA correctly deleted the award of attorney's fees and cost of litigation to San Fernando. Attorney's fees and expenses of litigation under Article 2208 of the Civil Code are proper only when exemplary damages are awarded. Here, the Court has ruled that San Fernando is not entitled to an award of exemplary damages. Both parties actually committed shortcomings in complying with their contractual obligations. San Fernando failed in Contract 5026 to accept Cargill's delivery of 1,174 mt of molasses; Cargill only complied partially with its undertakings under Contract 5026 and altogether breached its obligations under Contract 5047. For these, they must bear their own expenses of litigation.

WHEREFORE, the Court **PARTIALLY GRANTS** the petitions and **MODIFIES** the Court of Appeals Decision on January 19, 2007 in CA-G.R. CV 81993 as follows:

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[13] *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499, 530 (1999).

[14] *Yobido v. Court of Appeals*, 346 Phil. 1, 13 (1997).

[15] CIVIL CODE, Art. 2232.

1. San Fernando Regala Trading, Inc. is **ORDERED** to pay Cargill Philippines, Inc. (a) ₱892,732.50 representing the demurrage that the latter incurred and (b) ₱2,451,405.59 representing its unrealized profit on the rejected delivery of 1,174 mt of molasses, both under Contract 5026, for a total of ₱3,344,138.09, with interest at 6% per annum computed from the date of the filing of the complaint until the same is fully paid; and

2. Cargill Philippines, Inc. is **ORDERED** to pay San Fernando Regala Trading, Inc. the latter's unrealized profits of ₱2,531,250.00 for the breach of Contract 5026 and ₱11,000,000.00 for the breach of Contract 5047, for a total of ₱13,531,250.00, with interest at 6% per annum computed from the date of the filing of the answer with counterclaim until the same is fully paid.

The Court of Appeals' deletion of the awards of moral and exemplary damages, attorney's fees, and costs of litigation stands.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181753. October 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAMON PLACER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— By pleading self-defense, Ramon

admitted the authorship of the killing of Rosalino Gernale. The consequence of the plea of self-defense was to shift to Ramon's shoulders the burden of evidence, that he must then prove clearly and convincingly the following elements of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself. Although the elements must concur, self-defense must rest firstly on proof of the unlawful aggression on the part of the victim.

2. ID.; ID.; ID.; ID.; IN SELF-DEFENSE, UNLAWFUL AGGRESSION IS A PRIMORDIAL ELEMENT, A CONDITION *SINE QUA NON*; ELEMENTS OF UNLAWFUL AGGRESSION; EXPOUNDED.— There can be no self-defense, whether complete or incomplete, if no unlawful aggression from the victim is established. In self-defense, unlawful aggression is a primordial element, a condition *sine qua non*. If no unlawful aggression attributable to the victim is established, self-defense is not a defense, because there would then be nothing to repel on the part of the accused. In *People v. Nugas*, the Court has properly delineated the character of unlawful aggression as an indispensable element of self-defense in the following manner: x x x. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful. Unlawful aggression is of two kinds: (*a*) actual or material unlawful aggression; and (*b*) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful

aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

3. ID.; ID.; ID.; ID.; PLEA OF SELF-DEFENSE, NOT PROVED.— The fatal confrontation between Rosalino emanated from the near collision between Rosalino's tricycle and the tricycle driven by Virgilio which then also carried Ramon. The near collision immediately led to a heated exchange of words between Rosalino and Virgilio, but they later parted with each going his separate way. However, Virgilio soon after pursued Rosalino's tricycle and blocked its path. Both Ramon and Virgilio quickly alighted from their tricycle to confront Rosalino, who also alighted from his tricycle to protest. It was at that point when Ramon assaulted Rosalino by stabbing the latter in the chest with his *balisong*, causing the latter to fall towards his own tricycle. On his part, Virgilio also stabbed Rosalino in the stomach supposedly with an icepick just as the latter was falling down from Ramon's attack, but Virgilio's supposed assault with the icepick was deemed by the RTC to be unproved. This sequence of the events showed that the aggression originated from Ramon, not from Rosalino, thereby removing any factual and legal bases for Ramon's plea of self-defense.

4. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT PRESENT WHEN THE VICTIM WAS PLACED ON HIS GUARD, SUCH AS WHEN A HEATED ARGUMENT HAS PRECEDED THE ATTACK, OR WHEN THE VICTIM WAS STANDING FACE TO FACE WITH ASSAILANTS; CRIME COMMITTED IS HOMICIDE, NOT MURDER, WHERE TREACHERY WAS NOT PROVED BEYOND REASONABLE DOUBT.— There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Treachery is not presumed but must be proved as conclusively as the crime itself. The essence of treachery is the sudden and unexpected attack on the unsuspecting victim. Hence, treachery is absent when the victim was placed on his guard, like when a heated argument has preceded the attack,

or when the victim was standing face to face with his assailants. The fatal stabbing of Rosalino by Ramon was immediately preceded by two altercations between Ramon and Virgilio, on one hand, and Rosalino, on the other. The first altercation occurred right after the near-collision of the tricycles, while the other happened shortly after Ramon and Virgilio had blocked Rosalino's tricycle. During the second altercation, Rosalino stood face to face with Ramon and Virgilio. It was then when Ramon stabbed the victim twice, the sequential method of attack being borne out in the necropsy report showing that Rosalino had sustained two fatal stab wounds in the chest and abdomen. Under the circumstances, Rosalino was rendered completely aware of the imminent danger to himself from Ramon and Virgilio, rendering their assault far from sudden and unexpected as to put Rosalino off his guard against any deadly assault. To stress, treachery cannot be appreciated if the victim was forewarned of an impending danger and could have foreseen the aggression of the accused. With treachery not being proved beyond reasonable doubt, the crime Ramon was properly guilty of was homicide. Pursuant to Article 249 of the *Revised Penal Code*, the penalty for homicide is *reclusion temporal.*

5. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES IN ORDER TO BE APPRECIATED IN FAVOR OF THE ACCUSED; PROVED.— Voluntary surrender is a circumstance that reduces the penalty for the offense. Its requisites as a mitigating circumstance are that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. The presence of the foregoing requisites was sufficiently proven by Ramon.

6. ID.; HOMICIDE; IMPOSABLE PENALTY WHERE THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER WAS APPRECIATED IN FAVOR OF THE ACCUSED-APPELLANT.— Upon taking the mitigating circumstance of voluntary surrender into consideration, the imposable penalty is the minimum period of *reclusion temporal*, that is, from 12 years and one day to 14 years and eight months. The range of the indeterminate penalty under the Indeterminate Sentence Law is *prision mayor* in any of its periods, as minimum, to the minimum period of *reclusion temporal* minimum, as

maximum. Accordingly, Ramon's indeterminate penalty is eight years and one day of *prision mayor*, as minimum, to 14 years of *reclusion temporal*, as maximum.

7. ID.; ID.; AN ACCOMPLICE IN MURDER IS ENTITLED TO THE BENEFITS OF THE LIGHTER SENTENCE, DESPITE HIS NON-APPEAL, WHERE THE COURT REVISED THE CRIME COMMITTED FROM MURDER TO HOMICIDE.— The revised characterization of the crime committed as homicide necessarily favors Virgilio despite his non-appeal. As an accomplice in murder, he was prescribed the indeterminate penalty of eight years and one day of *prision mayor*, as minimum, to 14 years, ten months and 20 days of *reclusion temporal*, as maximum, but he should now instead be found guilty conformably with this decision as an accomplice in homicide, a result definitely favorable to him as an accused. Pursuant to Article 52, *Revised Penal Code*, the accomplice is imposed the penalty next lower in degree than that prescribed by law for the consummated felony. He is entitled to the benefits of the lighter sentence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.

Ramon Placer hereby appeals the affirmance of his conviction for murder promulgated by the Court of Appeals (CA) on August 31, 2007.[1]

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[1] *Rollo*, pp. 4-16; penned by Associate Justice Marina L. Buzon (retired), with Associate Justice Rosmari D. Carandang and Associate Justice Mariflor P. Punzalan-Castillo concurring.

Antecedents

On August 3, 2001, the Office of the Provincial Prosecutor of Sorsogon charged Ramon and his brother Virgilio Placer with murder in the Regional Trial Court (RTC) in Sorsogon City, alleging thuswise:

> That on or about June 24, 2001, at more or less 7:00 o'clock in the evening at barangay Somagongsong, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapon, conspiring, confederating and mutually helping one another, with intent to kill, with treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully, and feloniously attack, assault and stab one Rosalino Gernale, thereby inflicting mortal/fatal wounds which caused his instantaneous death to the damage and prejudice of his legal heirs.
>
> CONTRARY TO LAW.[2]

After the two accused pleaded *not guilty* to the foregoing information,[3] trial ensued.

The State presented seven witnesses, namely: Maria Gernale, Dr. Estrella Payoyo, Dr. Joseph Chavez, Gina Listana, Angelina Gestiada, SPO3 June Dominguez, and SPO2 Eulogio Santos. In the Brief for the People, the Office of the Solicitor General (OSG) summed up the State's evidence,[4] *viz*:

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> On June 24, 2001, around 7 P.M., Maria Gernale and her husband, Rosalino Gernale, were on their way home to Brgy. Inararan, Bulan, Sorsogon on board a tricycle. They were in the company of Maria's father, another female passenger and five (5) young children. While their tricycle was moving, another tricycle carrying appellants Ramon and Virgilio Placer almost hit them. Appellants and Rosalino alighted [from] their respective tricycles and a heated altercation ensued

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[2] Records, p. 1.

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

[4] CA *rollo*, pp. 111-123.

between them. When things had subsided, Gernale and appellants proceeded their separate ways. (TSN, March 24, 2002, p. 9)

Sometime later, Maria realized that appellants were chasing them. The latter were able to overtake the tricycle driven by Rosalino and later blocked its path. Appellants alighted [from] their tricycle and proceeded towards the direction of Rosalino who had also alighted from his tricycle. A confrontation followed and Angelina Gestiada, Rosalino's sister, tried to pacify appellants. But appellant Ramon Placer did not heed as he stabbed Rosalino in the chest. (*Id*) Maria who was only about two (2) steps away saw the incident. (TSN, January 7, 2002, p. 10) Rosalino fell towards the direction of his tricycle and just as he was about to fall, this time Virgilio stabbed him in the stomach. (*Id*)

Thereafter, appellants immediately fled the area on board their tricycle. It was Virgilio who drove the tricycle. Maria frantically shouted for help and Angelina ran towards the house of their nearest relative to ask for assistance. Rosalino was brought to the Bulan Municipal Hospital where he was pronounced dead. (TSN, May 7, 2002, p.7)

Dr. Estrella A. Payoyo, of the Rural Health Unit, Bulan Municipal Hospital, testified that the immediate cause of Rosalino's death was internal hemorrhage secondary to multiple stab wounds. (TSN, January 7, 2002, p. 16) Dr. Joseph Chavez, the Medical Officer of Bulan Municipal Hospital who prepared the necropsy report testified that the multiple stab wounds inflicted upon Rosalino were fatal and that some vital organs were injured. The possible assault weapon according to Dr. Chavez was a sharp pointed object, more or less 0.5 cm. in width with a gape of 0.5 cm. (TSN, February 11, 2002, pp. 5-7)

Rosalino's sister, Angelina Gestiada, reported the incident to the police authorities. (Police Blotter, Entry No. 1308, p. 281, June 24, 2001) Angelina accompanied SPO3 June Dominguez and a Barangay Kagawad of Somagongsong to the residence of appellant Virgilio Placer but the latter's wife informed them that Virgilio was out. When they reached the residence of appellant Ramon Placer, they were informed that the latter had also gone out. SPO2 Eulogio Santos and PO1 Giado discovered the tricycle used by appellants parked some fifty (50) meters away from the house of the father of appellants. (TSN, July 9, 2002, p. 11)

On June 25, 2001, Ramon Placer voluntarily surrendered himself to Brgy. Capt. Rey Loilo of Beguin, Bulan, Sorsogon who then accompanied him to the local police authorities.

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On the other hand, the version of the Defense was rendered by Ramon and three other witnesses, namely: Aproniana Manchos, Rey Loilo and SPO2 Eugenio Magno. Virgilio opted not to testify in court. The CA summarized this version in its decision,[5] thusly:

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Ramon tried to show that he was informed by Randy Gordola that Virgilio was having an altercation with someone, who turned out to be Rosalino. Ramon rode his bicycle and proceeded to the place mentioned. Ramon saw Rosalino chasing Virgilio with a bolo, but the latter was able to go inside a fence, and Rosalino being pulled by his wife. Rosalino went to his tricycle and drove away. After a while, Rosalino stopped, alighted from his tricycle and returned to the place where he chased Virgilio. Ramon told Rosalino to go home in order to avoid trouble. Rosalino asked Ramon who he was, uttered invectives and attacked the latter. Ramon was surprised and boxed Rosalino on the mouth, causing the latter to fall on the ground. Rosalino stood up and attempted to stab Ramon with a Batangas knife, but the latter was able to grab the Batangas knife and he stabbed Rosalino. Ramon, who could not remember how many times he stabbed Rosalino, then ran towards his house. The following day, Ramon went to the house of Barangay Captain Rey Loilo and requested the latter to accompany him to the police authorities in order to surrender himself and the knife which he used in stabbing somebody.

Appropriana Manchos, an aunt of Ramon and Virgilio, testified that she was inside her house when she heard a commotion. She ran to the place of the commotion, which was about 80-100 meters away from her house, and she saw Ramon being attacked by someone. Ramon retaliated by boxing said person on the mouth, causing the latter to fall down. Said person then stood up holding a bladed weapon

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[5] *Supra* note 1.

and tried to stab Ramon. Ramon was able to get hold of the knife and stabbed said person. Appropriana stated that she did not see Virgilio at the place of the incident.

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After trial, the RTC convicted Ramon and Virgilio of murder upon finding the States's version more credible than that of the Defense,[6] decreeing:

WHEREFORE, premises considered, accused RAMON PLACER and VIRGILIO PLACER having been found GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, as amended by RA 7659, are hereby sentenced as follows:

a) RAMON PLACER being the principal by direct participation involved in the actual killing of ROSALINO GERNALE (deceased), to him is imposed the indivisible penalty of *RECLUSION PERPETUA* regardless of the presence of mitigating circumstance of VOLUNTARY SURRENDER (Art. 63, Revised Penal Code), with all the accessory penalties;

b) VIRGILIO PLACER having been found to be liable as an ACCOMPLICE, to him is imposed the lesser indeterminate penalty of 8 years and 1 day of *prision mayor*, as minimum, to 14 years, 10 months and 20 days of *reclusion temporal*, as maximum, absent any mitigating or aggravating circumstance (par. (1), Art. 64, Revised Penal Code, as amended)

c) To indemnify the heirs of the late Rosalino Gernale jointly and solidarily in the amount of ₱25,000.00 as actual damages; ₱50,000.00 as civil indemnity for his death; and another ₱50,000.00 as moral damages; and to pay the costs.

The period of preventive imprisonment already served by accused Virgil[i]o and Ramon both surnamed Placer, shall be credited in the service of their sentences pursuant to Article 29 of the R.P.C., as amended.

SO ORDERED.

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[6] Records, pp. 195-196.

Ramon and Virgilio appealed *via* notice of appeal directly to the Court,[7] but the Court remanded the appeal to the CA on February 20, 2006.[8] Virgilio subsequently filed an *Urgent Motion to Withdraw Appeal* in the CA,[9] averring that he had already served more than six years in detention for this case and had thus qualified to apply for parole or executive clemency; that he had already applied for parole or executive clemency; and that he would need a certification of non-appeal to support his application for parole or executive clemency.[10] Upon verification from Atty. Elmer M. Rejano, then the Acting Chief Legal Officer of the Bureau of Corrections, that Virgilio had voluntarily executed his motion and had fully understood its consequences,[11] the CA granted the *Urgent Motion to Withdraw Appeal* and considered the appeal closed and terminated as to him.[12]

As earlier mentioned, the CA affirmed Ramon's conviction on August 31, 2007.[13] Hence, his present appeal.

Issues

Ramon still contends that he incurred no criminal liability because he had acted in self-defense in stabbing Rosalino; that, assuming that he was criminally liable for the killing of the victim, the crime committed was homicide, not murder; and that his voluntary surrender was a mitigating circumstance that entitled him to a lower penalty.[14]

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[7] CA *rollo*, p. 108.

[8] *Id.* at 109-110.

[9] *Id.* at 133.

[10] *Id.* at 104, 126-132.

[11] *Id.* at 134.

[12] *Id.* at 138.

[13] *Supra* note 1.

[14] CA *rollo*, pp. 74-82.

Ruling

The appeal is partly meritorious.

I.

Ramon's plea of self-defense was not established

By pleading self-defense, Ramon admitted the authorship of the killing of Rosalino Gernale. The consequence of the plea of self-defense was to shift to Ramon's shoulders the burden of evidence, that he must then prove clearly and convincingly the following elements of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.[15] Although the elements must concur, self-defense must rest firstly on proof of the unlawful aggression on the part of the victim.

There can be no self-defense, whether complete or incomplete, if no unlawful aggression from the victim is established.[16] In self-defense, unlawful aggression is a primordial element, a condition *sine qua non*. If no unlawful aggression attributable to the victim is established, self-defense is not a defense, because there would then be nothing to repel on the part of the accused.[17]

In *People v. Nugas*,[18] the Court has properly delineated the character of unlawful aggression as an indispensable element of self-defense in the following manner:

> x x x. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly,

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[15] Article 11 (1), *Revised Penal Code*.

[16] *Mahawan v. People*, G.R. No. 176609, December 18, 2008, 574 SCRA 737, 746.

[17] *Calim v. Court of Appeals*, G.R. No. 140065, February 13, 2001, 351 SCRA 559, 571.

[18] G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

the accused must establish the concurrence of three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (*a*) actual or material unlawful aggression; and (*b*) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

The fatal confrontation between Rosalino emanated from the near collision between Rosalino's tricycle and the tricycle driven by Virgilio which then also carried Ramon. The near collision immediately led to a heated exchange of words between Rosalino and Virgilio, but they later parted with each going his separate way. However, Virgilio soon after pursued Rosalino's tricycle and blocked its path. Both Ramon and Virgilio quickly alighted from their tricycle to confront Rosalino, who also alighted from his tricycle to protest. It was at that point when Ramon assaulted Rosalino by stabbing the latter in the chest with his *balisong*, causing the latter to fall towards his own tricycle. On his part, Virgilio also stabbed Rosalino in the stomach supposedly with an icepick just as the latter was falling down from Ramon's attack,[19] but Virgilio's supposed assault with the icepick was deemed by the RTC to be unproved. This sequence of the events showed that the aggression originated from Ramon, not from Rosalino, thereby removing any factual and legal bases for Ramon's plea of self-defense.

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[19] TSN, January 7, 2002, pp. 2-8; July 9, 2002, pp. 2-8; May 7, 2002, pp. 2-7.

II.

Ramon committed homicide, not murder

Murder is defined and punished by Article 248 of the *Revised Penal Code* (RPC), as amended by Republic Act No. 7659, *viz*:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:
>
> 1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
>
> x x x x x x x x x

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[20] Treachery is not presumed but must be proved as conclusively as the crime itself.[21]

The essence of treachery is the sudden and unexpected attack on the unsuspecting victim.[22] Hence, treachery is absent when the victim was placed on his guard, like when a heated argument has preceded the attack,[23] or when the victim was standing face to face with his assailants.[24]

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[20] Article 14, paragraph 16, *Revised Penal Code*.

[21] *People v. Bermudez*, G.R. No. 129033, June 25, 1999, 309 SCRA 124, 138.

[22] *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 668, 696.

[23] *People v. Ocumen*, G.R. Nos. 120493-94/117692, December 2, 1999, 319 SCRA 539, 563; *People v. Antonio*, G.R. No. 128900, July 14, 2000, 335 SCRA 646, 671-672.

[24] *People v. Antonio*, *supra*, 671.

The fatal stabbing of Rosalino by Ramon was immediately preceded by two altercations between Ramon and Virgilio, on one hand, and Rosalino, on the other. The first altercation occurred right after the near-collision of the tricycles,[25] while the other happened shortly after Ramon and Virgilio had blocked Rosalino's tricycle.[26] During the second altercation, Rosalino stood face to face with Ramon and Virgilio. It was then when Ramon stabbed the victim twice,[27] the sequential method of attack being borne out in the necropsy report showing that Rosalino had sustained two fatal stab wounds in the chest and abdomen.[28] Under the circumstances, Rosalino was rendered completely aware of the imminent danger to himself from Ramon and Virgilio, rendering their assault far from sudden and unexpected as to put Rosalino off his guard against any deadly assault. To stress, treachery cannot be appreciated if the victim was forewarned of an impending danger and could have foreseen the aggression of the accused.

With treachery not being proved beyond reasonable doubt, the crime Ramon was properly guilty of was homicide. Pursuant to Article 249 of the *Revised Penal Code*, the penalty for homicide is *reclusion temporal*.[29]

III.

Ramon's voluntary surrender was a mitigating circumstance that lowered the imposable penalty

Voluntary surrender is a circumstance that reduces the penalty for the offense. Its requisites as a mitigating circumstance are

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[25] TSN, March 25, 2002, p. 9.

[26] TSN, May 7, 2002, pp. 30-31.

[27] TSN, February 11, 2002, p. 9.

[28] Records, p. 12.

[29] Article 249. *Homicide*. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[30]

The presence of the foregoing requisites was sufficiently proven by Ramon. He had voluntarily yielded himself and the *balisong* used in the stabbing to Barangay Chairman Rey Loilo of Beguin, Bulan, Sorsogon, who then brought him and the weapon to the police station for proper disposal. This took place at about 9:25 o'clock in the morning of June 25, 2001, the day following the fatal stabbing of Rosalino in the evening of June 24, 2001. The time and manner of the surrender were documented in the police blotter of Bulan Police Station.[31] That the surrender preceded the filing of the criminal complaint with the Municipal Trial Court of Bulan on June 27, 2001[32] is notable. There is every indication that the surrender was spontaneous on Ramon's part,[33] indicating his intent to unconditionally submit himself to the authorities, either because he acknowledged his guilt or he wished to save them the trouble and expenses necessary for his search and capture.[34]

Upon taking the mitigating circumstance of voluntary surrender into consideration, the imposable penalty is the minimum period of *reclusion temporal*, that is, from 12 years and one day to 14 years and eight months.[35] The range of the indeterminate penalty under the Indeterminate Sentence Law is *prision mayor* in any of its periods, as minimum, to the minimum period of *reclusion temporal* minimum, as maximum. Accordingly, Ramon's

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[30] Article 13, paragraph 7, *Revised Penal Code*; see also *People v. Ignacio*, G.R. No. 134568, February 10, 2000, 325 SCRA 375, 384; *People v. Antonio*, G.R. No. 128900, July 14, 2000, 335 SCRA 646, 668.

[31] Records, p. 112.

[32] *Id.* at 9, 15-16.

[33] *Id.*

[34] *People v. Lagrana*, No. 68790, January 23, 1987, 147 SCRA 281, 285.

[35] Article 64 (2), in relation to Article 76, of the *Revised Penal Code*.

indeterminate penalty is eight years and one day of *prision mayor*, as minimum, to 14 years of *reclusion temporal*, as maximum.

IV.

Despite his non-appeal, Virgilio's criminal liability should be downgraded

The revised characterization of the crime committed as homicide necessarily favors Virgilio despite his non-appeal. As an accomplice in murder, he was prescribed the indeterminate penalty of eight years and one day of *prision mayor*, as minimum, to 14 years, ten months and 20 days of *reclusion temporal*, as maximum, but he should now instead be found guilty conformably with this decision as an accomplice in homicide, a result definitely favorable to him as an accused. Pursuant to Article 52, *Revised Penal Code*, the accomplice is imposed the penalty next lower in degree than that prescribed by law for the consummated felony. He is entitled to the benefits of the lighter sentence.

As such, Virgilio's penalty should be within the medium period of *prision mayor*, the penalty next lower in degree to *reclusion temporal*, to be imposed in the medium period due to the absence of any modifying circumstances. The duration of the penalty is from eight years and one day to ten years.[36] Considering that the minimum of the indeterminate sentence under the Indeterminate Sentence Law is taken from *prision correccional*, the penalty next lower in degree to *prision mayor*, which ranges from six months and one day to six years, his sentence is modified to an indeterminate penalty of two years of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum.

WHEREFORE, the Court **FINDS AND DECLARES** appellant **RAMON PLACER** guilty of homicide, and **IMPOSES** on him the indeterminate penalty of eight years and one day of *prision mayor*, as minimum, to 14 years of *reclusion temporal*, as maximum.

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[36] Article 76 of the *Revised Penal Code* requires that the legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum.

The Court **CORRECTS** the indeterminate penalty imposed on **VIRGILIO PLACER** to two years of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum.

Costs of suit to be paid by appellant **RAMON PLACER**.

SO ORDERED.

Sereno, C.J., *Leonardo-de Castro, Reyes,* and *Leonen,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 181852. October 9, 2013]

ERIC V. CHUANICO, *petitioner, vs.* **LEGACY CONSOLIDATED PLANS, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TO BE A VALID CAUSE FOR DISMISSAL, THE LOSS OF TRUST MUST BE BASED ON A WILLFUL BREACH OF SUCH TRUST AND FOUNDED ON CLEARLY ESTABLISHED FACTS.— The CA found reasonable basis for believing that Atty. Chuanico had breached his employer's trust. He was not a mere rank-and-file employee but an in-house counsel. Thus, Legacy Consolidated enjoyed wide latitude in evaluating his work and attitude and in terminating his employment on the ground of loss of trust and confidence.

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[*] Vice Associate Justice Martin S. Villarama, Jr., who is on sick leave of absence, pursuant to Special Order No. 1545 (Revised).

His mishandling of the cases assigned to him shows that he had been unfit to continue working for his employer. But these are broad principles that do not themselves show when, where, and how Atty. Chuanico betrayed the trust that Legacy Consolidated gave him as in-house counsel. To be a valid cause for dismissal, the loss of trust must be based on a willful breach of such trust and founded on clearly established facts. The company charged him with having mishandled two things that were assigned to him, the drafting of an answer in one and the preparation of a complaint affidavit in the other. It failed to present proof, however, of such mishandling. In the first case, the charge is that the draft-answer Atty. Chuanico prepared for Bank of East Asia was so haphazardly done that the lawyers assigned to handle them had to prepare another answer that was eventually filed in court. Yet, as the LA found, Legacy Consolidated did not bother to present the draft-answer Atty. Chuanico prepared and demonstrate why it regarded the same as haphazardly done. Besides, as Atty. Chuanico said, he was given only one day within which to finish the draft-answer and Legacy Consolidated did not contest this fact. Consequently, he could not be expected to do more than an adequate pleading.

2. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES, WHICH ARE TRIERS OF FACTS ON MATTERS WITHIN THEIR EXPERTISE, SHOULD BE CONSIDERED, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, BINDING AND CONCLUSIVE ON APPELLATE COURTS.— In the second case, Legacy Consolidated accused Atty. Chuanico of failing to prepare a complaint-affidavit against a certain De Rama. Atty. Chuanico denied that the matter had been assigned to him. Yet, as the LA and the NLRC noted, Legacy Consolidated did not bother to present some note or logbook to refute this denial. It only presented the sworn statement of the office secretary, supposedly competent, who relied merely on her memory for ascertaining individual work assignments in a law practice that served a number of affiliated companies. Besides, Atty. Amparo, the former handling lawyer of the Rural Bank case said in his sworn statement that he had been unable to prepare the required complaint-affidavit because the bank could not produce a witness against De Rama. Atty. Amparo further

added that it was to Atty. Cruz, not to Atty. Chuanico, that he turned over the Rural Bank's case. The Court held in *CAPANELA v. National Labor Relations Commission* that the factual findings of quasi-judicial bodies, which are triers of facts on matters within their expertise, should be considered, when supported by substantial evidence, binding and conclusive on appellate courts. Here the LA and the NLRC were in better positions to assess and evaluate the credibility of the parties' claims and the weight to which their respective evidence is entitled.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABSENT EVIDENCE TO SUPPORT THE CHARGE OF INEFFICIENCY, THE COURT CANNOT CONSIDER THE SAME, WITHOUT VIOLATING THE RESPONDENT'S RIGHT TO DUE PROCESS OF LAW.—** Legacy Consolidated said in its Comment that certain employees complained of Atty. Chuanico's work attitude and inefficiency. But these were not the charges that Legacy Consolidated required him to defend himself. Indeed, these charges lack the specifics of time, place, and circumstances. Moreover, since Legacy Consolidated did not present evidence to support such broad charges before the LA, the Court cannot consider the same without violating Atty. Chuanico's right to due process of law.

4. **ID.; ID.; ID.; LOSS OF TRUST; TO BE VALID CAUSE FOR DISMISSAL, THE BREACH OF TRUST MUST BE WILLFUL; ORDINARY BREACH, NOT SUFFICIENT.—** [A]tty. Chuanico was dismissed due to willful breach of trust. Settled is the rule, however, that under Article 282(c) of the Labor Code, the breach of trust must be willful. Ordinary breach will not be enough. A breach is willful if it is done intentionally and knowingly without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently. Willful breach was not proved in this case.

APPEARANCES OF COUNSEL

Faina E. Pilar for petitioner.
Tiongson and Antenor Cruz Law Offices for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the perceived incompetence and sloth of an in-house counsel as ground for his dismissal from work.

The Facts and the Case

On January 3, 2002 Legacy Plans Philippines, Inc. (Legacy Plans) hired petitioner Eric V. Chuanico (Atty. Chuanico) as Assistant Vice-President for legal services. He was to serve as in-house counsel for the company and its subsidiaries under the supervision of Atty. Christine A. Cruz (Atty. Cruz), the Senior Vice-President for Legal Affairs.[1] In the same year, Legacy Plans merged with Consolidated Plans Philippines, Inc. to become Legacy Consolidated Plans, Inc. (Legacy Consolidated), the respondent in this case. Its legal services unit served all its affiliates.

On October 17, 2002 Atty. Cruz wrote Atty. Chuanico a memorandum, requiring him to explain why no administrative action should be taken against him for mishandling two cases.[2] In the first case he was supposed to draft an answer to a complaint for Bank of East Asia (a Legacy Consolidated affiliate) but he belatedly drafted a haphazard one that he gave to the handling lawyers without coursing it to his superior.[3] In his defense, Atty. Chuanico said that he was given only one day within which to finish the draft. While admitting that his superior had no opportunity to review it for lack of time, he denied that the answer had been haphazardly done.[4]

In the second case, Atty. Chuanico was required to prepare a complaint-affidavit for the Rural Bank of Parañaque (also a Legacy Consolidated affiliate) against a certain De Rama but

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[1] *Rollo*, pp. 132, 140.

[2] *Id.* at 132, 142.

[3] *Id.* at 133.

[4] *Id.* at 109-110.

he failed to do so.[5] Atty. Chuanico replied that the case had not actually been turned over to him. It was originally assigned to Atty. Dennis Amparo who later said that the complaint-affidavit could not be prepared because the Rural Bank had no witness.[6]

On December 5, 2002 Legacy Consolidated dismissed Atty. Chuanico with effect on December 20, 2002 for serious misconduct, willful disobedience to lawful orders, gross and habitual neglect of duties, and willful breach of trust.[7] This prompted him to file a complaint for illegal dismissal with claims for his unpaid December 2002 salary and 13th month pay plus moral and exemplary damages and attorney's fees.[8]

On August 31, 2004 the Labor Arbiter (LA) rendered a decision finding Legacy Consolidated guilty of illegal dismissal and awarded Atty. Chuanico with full backwages from December 20, 2002 and separation pay in lieu of reinstatement computed at one month pay for every year of service inclusive of the period when the case was pending. The LA also found that Legacy Consolidated did not dispute the unpaid salary and 13th month pay. In all, the money judgment against Legacy Consolidated amounted to ₱1,532,300.00.[9]

The LA found that Atty. Chuanico actually drafted an answer for Bank of East Asia but the company's two new lawyers did not like it and chose to file one that they themselves prepared. But since Legacy Consolidated neither bothered to present Atty. Chuanico's draft answer nor explained why it regarded the same as haphazardly done, it failed to prove its case. It also did not present evidence that the bank filed a late answer on account of Atty. Chuanico's fault.[10]

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[5] *Id.* at 133.

[6] *Id.* at 114-115.

[7] *Id.* at 134.

[8] *Id.* at 131.

[9] *Id.* at 134-138.

[10] *Id.* at 136.

As to the second charge, the LA gave credence to Atty. Dennis Amparo's sworn statement that it was to Atty. Cruz, not to Atty. Chuanico, that he personally turned over the cases he was handling. In one of these, the case for the Rural Bank, he had been unable to prepare a complaint affidavit against De Rama for failure of the bank to find a willing witness against her.[11]

On appeal, the National Labor Relations Commission (NLRC) rendered a Resolution[12] dated December 29, 2005 affirming the LA's Decision. The NLRC held that Legacy Consolidated failed to present evidence to prove that Atty. Chuanico violated some company rules or his superior's order. His employer gave him no notice of these alleged violations that were supposedly willful.[13] The NLRC denied Legacy Consolidated's motion for reconsideration, prompting it to file a petition for *certiorari* with the Court of Appeals (CA) for grave abuse of discretion.

On September 26, 2007 the CA[14] held that the NLRC committed grave abuse of discretion in holding Legacy Consolidated guilty of illegal dismissal of Atty. Chuanico. It affirmed, however, the award to him of ₱46,100.00 as 13th month pay for 2002, it appearing that he did not receive it.[15] Atty. Chuanico moved for reconsideration but the CA denied his motion on February 26, 2008, hence this petition.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in holding that the NLRC committed grave abuse of discretion in finding that Legacy Consolidated illegally dismissed

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[11] *Id.* at 137.

[12] *Id.* at 139-157.

[13] *Id.* at 150-156.

[14] *Id.* at 70-85. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Vicente S.E. Veloso and Estela M. Perlas-Bernabe (now a member of the Court).

[15] *Id.* at 84-85.

Atty. Chuanico for mishandling the two cases alleged to have been assigned to him.

The Ruling of the Court

The CA found reasonable basis for believing that Atty. Chuanico had breached his employer's trust. He was not a mere rank-and-file employee but an in-house counsel. Thus, Legacy Consolidated enjoyed wide latitude in evaluating his work and attitude and in terminating his employment on the ground of loss of trust and confidence. His mishandling of the cases assigned to him shows that he had been unfit to continue working for his employer.[16]

But these are broad principles that do not themselves show when, where, and how Atty. Chuanico betrayed the trust that Legacy Consolidated gave him as in-house counsel. To be a valid cause for dismissal, the loss of trust must be based on a willful breach of such trust and founded on clearly established facts.[17] The company charged him with having mishandled two things that were assigned to him, the drafting of an answer in one and the preparation of a complaint affidavit in the other. It failed to present proof, however, of such mishandling.

In the first case, the charge is that the draft-answer Atty. Chuanico prepared for Bank of East Asia was so haphazardly done that the lawyers assigned to handle them had to prepare another answer that was eventually filed in court. Yet, as the LA found, Legacy Consolidated did not bother to present the draft-answer Atty. Chuanico prepared and demonstrate why it regarded the same as haphazardly done. Besides, as Atty. Chuanico said, he was given only one day within which to finish the draft-answer and Legacy Consolidated did not contest this fact. Consequently, he could not be expected to do more than an adequate pleading.

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[16] *Id.* at 83.

[17] *Sanden Aircon Philippines v. Rosales*, G.R. No. 169260, March 23, 2011, 646 SCRA 232, 245.

The CA noted from an alleged copy of Atty. Chuanico's draft-answer, belatedly submitted, that he incorrectly titled it "Answer with Cross Party Complaint" instead of "Answer with Cross Claim" and wrote in the explanation regarding mode of service that the pleading was an "Answer with Third Party Complaint." But, since Legacy Consolidated did not adduce this document at the hearing below, the CA cannot say that the LA and the NLRC gravely abused their discretion in failing to consider the same. Besides, the alleged error in misstating the second part of the pleading's title is clearly of little consequence since what mattered most in pleadings are their factual allegations, claims, and defenses.

In the second case, Legacy Consolidated accused Atty. Chuanico of failing to prepare a complaint-affidavit against a certain De Rama. Atty. Chuanico denied that the matter had been assigned to him. Yet, as the LA and the NLRC noted, Legacy Consolidated did not bother to present some note or logbook to refute this denial. It only presented the sworn statement of the office secretary, supposedly competent, who relied merely on her memory for ascertaining individual work assignments in a law practice that served a number of affiliated companies.

Besides, Atty. Amparo, the former handling lawyer of the Rural Bank case said in his sworn statement that he had been unable to prepare the required complaint-affidavit because the bank could not produce a witness against De Rama. Atty. Amparo further added that it was to Atty. Cruz, not to Atty. Chuanico, that he turned over the Rural Bank's case.

The Court held in *CAPANELA v. National Labor Relations Commission*[18] that the factual findings of quasi-judicial bodies, which are triers of facts on matters within their expertise, should be considered, when supported by substantial evidence, binding and conclusive on appellate courts. Here the LA and the NLRC were in better positions to assess and evaluate the credibility of the parties' claims and the weight to which their respective evidence is entitled.

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[18] 311 Phil. 744, 755-756 (1995).

Legacy Consolidated said in its Comment that certain employees complained of Atty. Chuanico's work attitude and inefficiency.[19] But these were not the charges that Legacy Consolidated required him to defend himself. Indeed, these charges lack the specifics of time, place, and circumstances. Moreover, since Legacy Consolidated did not present evidence to support such broad charges before the LA, the Court cannot consider the same without violating Atty. Chuanico's right to due process of law.

Lastly Atty. Chuanico was dismissed due to willful breach of trust. Settled is the rule, however, that under Article 282(c) of the Labor Code, the breach of trust must be willful. Ordinary breach will not be enough. A breach is willful if it is done intentionally and knowingly without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently.[20] Willful breach was not proved in this case.

WHEREFORE, the Court **GRANTS** the petition, **SETS ASIDE** the Decision of the Court of Appeals in CA-G.R. SP 94309 dated September 26, 2007, and **REINSTATES** the Resolution of the National Labor Relations Commission in NLRC NCR 00-01-00205-03 dated December 29, 2005.

SO ORDERED.

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

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[19] *Rollo,* p. 188.

[20] *Sanden Aircon Philippines v. Rosales, supra* note 17, at 243.

THIRD DIVISION

[G.R. No. 190814. October 9, 2013]

MICHELLE LANA BROWN-ARANETA, for herself and representing her minor daughters, ARABELLA MARGARITA B. ARANETA and AVANGELINA MYKAELA B. ARANETA, *petitioners, vs.* **JUAN IGNACIO ARANETA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; TWO OR MORE ACTIONS INVOLVING THE SAME PARTIES FOR THE SAME CAUSE OF ACTION ARE INSTITUTED, EITHER SIMULTANEOUSLY OR SUCCESSIVELY, ON THE SUPPOSITION THAT ONE OR THE OTHER COURT WOULD COME OUT WITH A FAVORABLE DISPOSITION; EXPOUNDED.— A circumstance of forum shopping occurs when, as a result or in anticipation of an adverse decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari* by raising identical causes of action, subject matter and issues. Stated a bit differently, forum shopping is the institution of two or more actions involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition. An indicium of the presence of, or the test for determining whether a litigant violated the rule against, forum shopping is where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other case. *Litis pendentia*, as a ground for the dismissal of a civil suit, refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes vexatious and unnecessary. For the bar of *litis pendentia* to be invoked, the concurring requisites must be present: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any

judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other. Thus, it has been held that there is forum shopping (1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or *certiorari*) in another; or (2) if, after he has filed a petition before the Supreme Court, a party files another before the CA since in such case said party deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open"; or (3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain it from the original court. The evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case.

2. ID.; ID.; ID.; IDENTITY OF PARTIES; ABSOLUTE IDENTITY OF PARTIES IS NOT REQUIRED; THE FACT THAT THE POSITIONS OF THE PARTIES ARE REVERSED, *I.E.*, THE PLAINTIFFS IN THE FIRST CASE ARE THE DEFENDANTS IN THE SECOND CASE OR VICE VERSA, DOES NOT NEGATE THE IDENTITY OF PARTIES FOR PURPOSES OF DETERMINING WHETHER THE CASE IS DISMISSIBLE ON GROUND OF *LITIS PENDENTIA*.— [T]he presiding judge of the Makati RTC, in the custody case, made of record that she was not inclined to issue a protection order in favor of Michelle because she did not bother to appear in Court and that the allegations against Juan Ignacio cannot, per se, prevent him from exercising visitation rights over his children. After this adverse ruling, Michelle sought the favorable opinion of the Muntinlupa RTC by filing an independent Petition for Protection Order. Clearly, the Petition for Custody and the Petition for Protection Order have the same parties who represent the same interests. The fact that Ava and Ara, who are parties in the Petition for Protection Order, are not impleaded in the Petition for Custody is of no moment because they are precisely the very subjects

of the Petition for Custody and their respective rights are represented by their mother, Michelle. In a long line of cases on forum shopping, the Court has held that absolute identity of the parties is not required, it being enough that there is substantial identity of the parties or at least such parties represent the same interests in both actions. It does not matter, as here, that in the Petition for Custody, Juan Ignacio is the petitioner and Michelle is the respondent while in the Petition for Protection Order, their roles are reversed. That a party is the petitioner in one case and at the same time, the respondent in the other case does not, without more, remove the said cases from the ambit of the rules on forum shopping. So did the Court hold, for example in *First Philippine International Bank v. Court of Appeals*, that forum shopping exists even in cases like this where petitioners or plaintiffs in one case were impleaded as respondents or defendants in another. Moreover, this Court has constantly held that the fact that the positions of the parties are reversed, *i.e.*, the plaintiffs in the first case are the defendants in the second case or vice versa, does not negate the identity of parties for purposes of determining whether the case is dismissible on the ground of *litis pendentia*.

3. ID.; ID.; ID.; THE RIGHTS ASSERTED AND RELIEFS PRAYED FOR IN THE CUSTODY CASE AND PETITION FOR PROTECTION ORDER ARE BASED ON THE SAME FACTS IN CASE AT BAR.— [T]he rights asserted and reliefs prayed for in Civil Case No. 08-023 are practically based on the same facts and are so intertwined with that in SP. PROC. Case No. 6543, such that any judgment rendered in the pending cases, regardless of which party is successful, will amount to *res judicata*. In the custody case, Juan Ignacio mainly asserted his right, as father, to visit his children and enjoy joint custody over them. He prayed for a judgment granting him joint custody, or alternatively, permanent visitation rights over Ava and Ara. In disposing of the custody case, the Makati RTC is expected, following the rationale behind the issuance of the Rule on Custody of Minors, to consider, among others, the best interest of the children, any threat or danger of physical, mental, sexual or emotional violence which endangers their safety and best interest, their health, safety and welfare, any history of child or spousal abuse by the person seeking custody, habitual use of alcohol, dangerous drugs or regulated substances, marital

misconduct, and the most suitable physical, emotional, spiritual, psychological and educational environment for the holistic development and growth of the minor. Michelle's answer and motion for issuance of protection order in the custody case contained allegations of psychological, sexual, emotional and economic abuse she and her children suffered at the hands of Juan Ignacio to defeat his asserted right to have joint custody over Ava and Ara and as argument that the grant of visitation rights in his favor will not be in the best interest of the children. These allegations of abuse were in substance the very same ones she made in her Petition for Protection Order. Juan Ignacio's rights and reliefs prayed for are dependent on and, to be sure, would be predicated on the question of whether or not granting him the desired custody or at least visitations rights over the children are in their best interest. In deciding this issue, the Makati RTC will definitely have to reckon with and make a finding on Michelle's allegations of psychological, sexual, emotional and economic abuse. Similarly, the Muntinlupa RTC must necessarily consider and make a determination based on the very same facts and allegations on whether or not Michelle shall be entitled to the relief she prayed for in her own petition, in particular, a permanent protection order against Juan Ignacio.

4. ID.; ID.; ID.; ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT AND ANY JUDGMENT RENDERED IN BOTH THE CUSTODY CASE AND PETITION FOR PROTECTION ORDER, REGARDLESS OF WHICH PARTY IS SUCCESSFUL, WOULD AMOUNT TO *RES JUDICATA*.— Any judgment rendered in the pending cases, regardless of which party is successful, would amount to *res judicata*. Consider: If the Makati RTC were to grant Juan Ignacio's petition for custody, this would necessarily mean that it would be in the best interest of the children if he were allowed to visit and spend time with them and that granting Juan Ignacio visitation rights would not pose any danger or threat to the children. On the other hand, a grant by the Muntinlupa RTC of Michelle's prayer for a permanent protection order would presuppose at the minimum that it would be to the children's best interest if Juan Ignacio is directed to keep away from them, necessarily implying that he is unfit even to visit Ara and Ava. Conversely, if Juan Ignacio's Petition for Custody were denied, then it would mean that the Makati RTC

gave weight and credence to Michelle's allegations of abuse and found them to be in the best interest of the children to bar Juan Ignacio from visiting them. Thus, the Muntinlupa RTC should have no ground to deny Michelle's Petition for Protection Order pending before it.

5. ID.; ID.; ID.; PETITION FOR PROTECTION ORDER DISMISSED ON GROUND OF FORUM SHOPPING.— The grave mischief sought to be avoided by the rule against forum shopping, *i.e.*, the rendition by two competent tribunals of two separate and contradictory decisions, is well-nigh palpable in this case. If the Muntinlupa RTC were to rule that Michelle was entitled to a Protection Order, this would necessarily conflict with any order or decision from the Makati RTC granting Juan Ignacio visitation rights over Ava and Ara. x x x. No less than the Muntinlupa RTC itself recognized the resulting aberration of its orders conflicting with that/those of the Makati RTC. As it were, the former, in its Order of May 12, 2008, resolving Juan Ignacio's Motion to Dismiss with Prayer to Lift Temporary Protection Order, categorically stated that there may be orders in the protection order case that would possibly conflict with the orders issued by the Makati RTC in the custody case. So it was that to address these possible conflicts, the Muntinlupa RTC partially granted Juan Ignacio's Motion to Dismiss by modifying the reliefs provided under the TPO by excluding from its coverage those orders issued by the Makati RTC in the exercise of its jurisdiction over the custody case. Pursuant to the foregoing Order of the Muntinlupa RTC, the December 21, 2007 and January 4, 2008 Orders of the Makati RTC, granting Juan Ignacio visitation rights on Christmas Day and New Year's Day and one (1) Saturday and Sunday in January 2008, are not covered by the reliefs under the TPO. Hence, despite the TPO directing Juan Ignacio to stay at least one (1) kilometer away from Ava and Ara, Juan Ignacio would still have the right to see his children by virtue of the orders issued by the Makati RTC granting him temporary visitation rights. x x x. Verily, the Muntinlupa RTC was aware that its issuances and its eventual final disposition on the Petition for Protection Order would affect the custody case before the Makati RTC, if not totally clash with the latter court's decision. x x x. Civil Case No. 08-023 should, thus, be dismissed with prejudice for being a clear case of forum shopping.

APPEARANCES OF COUNSEL

Maria Rowena Amelia V. Guanzon for petitioners.
Caguioa & Gatmaytan for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Assailed and sought to be set aside in this Petition for Review on *Certiorari* under Rule 45 are the May 11, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 105442 and its Resolution[2] of December 28, 2009 denying petitioner's motion for reconsideration of said decision.

The assailed decision ordered the dismissal of Civil Case No. 08-023 of the Regional Trial Court (RTC), Branch 207 in Muntinlupa City and nullified all the issuances it made in that case, a petition for protection order under Republic Act No. (RA) 9262, otherwise known as the *Anti-Violence Against Women and Their Children Act of 2004*, commenced by petitioner Michelle Lana Brown-Araneta (Michelle) against respondent Juan Ignacio Araneta (Juan Ignacio) before that court.

The Facts

On April 14, 2000, Juan Ignacio and Michelle were married in Las Vegas, Nevada, USA. The union produced two (2) children, namely: Arabella Margarita (Ara) and Avangelina Mykaela (Ava), born on February 22, 2003 and April 15, 2005, respectively. After a little over seven years of disharmonious relationship, husband and wife separated. Since the couple's estrangement and *de facto* separation, Ara and Ava have remained in Michelle's custody.

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[1] *Rollo*, pp. 55-66. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Jose C. Reyes, Jr. and Martin S. Villarama, Jr. (now a member of this Court).

[2] *Id.* at 107-109.

In November 2007 before the RTC of Makati City, Juan Ignacio filed, pursuant to A.M. No. 03-04-04-SC[3] or *The Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors* (Rule on Custody of Minors), a **Petition for the Custody of the Minors Arabella Margarita Araneta and Avangelina Mykaela Araneta** (Petition for Custody), with prayer for visitation rights against Michelle and her mother, Glenda B. Santos (Santos). Docketed as SP PROC. Case No. M-6543, this petition was eventually raffled to Branch 60 of the Makati City RTC (Makati RTC), presided over by Judge Marissa Macaraig-Guillen (Judge Macaraig-Guillen).

Juan Ignacio invoked, as main basis for his petition, his right as father of Ava and Ara to have custody of and to exercise parental authority over them, albeit both were below seven (7) years of age. In this regard, he claimed that, apart from refusing to communicate with him, both Michelle and Santos have completely barred him from seeing or getting in touch with his daughters despite repeated requests. He thus prayed the court to:

> 1. Immediately issue a Provisional Order granting [him] visitation rights with respect to the minors [Ava and Ara] x x x during the pendency of these proceedings;
>
> 2. Immediately issue an *ex parte* Hold Departure Order preventing the departure of [both] minors x x x from the country; and
>
> 3. After appropriate proceedings, render judgment granting [him] joint custody, or alternatively, granting him permanent visitation rights, over [both] his legitimate children x x x.[4]

To facilitate service of summons, Juan Ignacio, via a Motion and Urgent Manifestation of November 27, 2007, would inform the Makati RTC that Michelle and Santos may have transferred to No. 408 Anonas Street, Ayala Alabang Village, Muntinlupa City (Anonas residence), an address different from what he

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[3] Took effect on May 15, 2003.

[4] CA *rollo*, p. 55.

provided in his basic petition, referring to the Molave Drive residence in the same village. In her Officer's Return dated December 10, 2007,[5] process server Linda Fallorin stated the following: (1) she initially attempted to serve the summons upon Michelle and Santos on December 7, 2007 at the Anonas residence, only to be told by one Roberto Anonas, who refused to receive the summons, that both were out at that time; and (2) on December 10, 2007, she was finally able to serve the summons upon Michelle and Santos by substituted service through the driver of Santos' husband.

In her Answer,[6] Santos disclaimed knowledge of Michelle's present address, or her whereabouts, adding in this regard that the adverted Molave Drive residence was being rented out. As to be expected, Santos traversed Juan Ignacio's insinuation that she has conspired with Michelle to keep Ara and Ava out of his reach, or worse, hide them from him. And in an obvious bid to deny Juan Ignacio of visitation rights, Santos raised the question of the court's jurisdiction over Michelle and then rattled off negative habits and character traits of Juan Ignacio as husband and father.

On December 18, 2007, Juan Ignacio moved for the issuance of provisional visitorial order. After a hearing on this motion, the Makati RTC issued on December 21, 2007 an Order[7] allowing Juan Ignacio to visit her daughters on Christmas Day and New Year's Day. The visiting grant came after the court, taking stock of the Officer's Return, declared that it has acquired jurisdiction over the person of Michelle, but despite being given the opportunity to file a responsive pleading, she has failed to do so.

Christmas and New Year's Day 2008 came and went, but Juan Ignacio was unable to see his little girls in those days for reasons of little materiality to this narration.

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[5] *Id.* at 66.

[6] *Id.* at 67. Dated December 19, 2007.

[7] *Rollo*, p. 298.

On January 2, 2008, Michelle filed in SP PROC. Case No. M-6543 a **Motion to Admit Answer** and an **Answer (with Affirmative Defenses and With Very Urgent *Ex-Parte* Motion for Issuance of Protection Order)**.[8]

In her Motion to Admit Answer, Michelle acknowledged learning from her mother about the delivery of the summons and a copy of the petition for custody to their Anonas Residence. She, however, disregarded said summons thinking, so she claimed, that it was improperly served upon her person. It was, she added, only upon learning of the issuance of the provisional order of visitation rights that she gathered enough courage to come out to present her side.[9]

In her Answer, on the other hand, Michelle owned up sole responsibility for the decision not to allow her husband to see their daughters. In support of her plea for the dismissal of his petition for custody, the denial of visitation rights *pendente lite*, and in the meanwhile the *ex parte* issuance in her favor of a temporary protection order (TPO),[10] she recounted in lurid details incidents characterizing the painful life she and her children allegedly had to endure from her husband whom she tagged as a drug user, sexual pervert, emotionally unstable and temperamental, among other names. In her words, Juan Ignacio's "wild, decadent, irresponsible lifestyle makes him unfit to exercise parental authority and even enjoy visitation rights."[11]

During the January 4, 2008 hearing on Michelle's prayer for a TPO, Judge Macaraig-Guillen expressed her bent to maintain

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[8] *Id.* at 333.

[9] *Id.* at 334.

[10] Specifically, Michelle, *inter alia*, asked that, pursuant to Sec. 17 of the Rule on Custody of Minors, Juan Ignacio be ordered to cease and desist from harassing, intimidating, threatening or stalking her, Ava and Ara, their *yaya*s or any persons looking after said children and to stay away from them within a radius of one thousand (1,000) meters, and to refrain from communicating with them directly or indirectly by any known means of communication. CA *rollo*, p. 99.

[11] *Id.* at 84.

her jurisdiction over SP PROC. Case No. M-6543 and her disinclination to issue the desired TPO. In her Order of even date, she directed that the ensuing observations she earlier made be entered into the records:

> 1. She is not inclined to issue a [TPO] in favor of respondent at this time because she initially questioned the jurisdiction of this Court over her person and only resorted to this Urgent *Ex-Parte* Motion for a Protective Order after she realized that the Court had every intention of maintaining jurisdiction over this case x x x. It was emphasized that the Court does not issue Protective Orders over a person who has not bothered to appear in Court x x x. Until the respondent herself shows up in order to recognize the jurisdiction of this Court over her and in order to substantiate the allegations in her Urgent Motion, there is no basis for this Court to address the matters contained in the said Urgent *Ex-Parte* Motion.
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> 2. Secondly, x x x even assuming for the sake of argument that the petitioner is, as respondent described him to be, temperamental, violent, a habitual drug user and a womanizer, these qualities cannot, per se, prevent him from exercising visitation rights over his children because these are rights due to him inherently, he being their biological father.[12]

During the same hearing, the Makati RTC granted Juan Ignacio visitation rights on one (1) Saturday and Sunday in January 2008 considering that he was unable to see his children on the days granted under the December 21, 2007 Order.

Subsequently, by its Order of January 21, 2008, as would later be effectively reiterated by another Order[13] of March 7, 2008, the Makati RTC resolved to deny admission of Michelle's answer to the petition for custody and declared her in default, pertinently disposing thusly:

> WHEREFORE, in view of the foregoing, respondent Araneta's Motion to Admit Answer of January 2, 2008 is herein DENIED for lack of merit.

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[12] *Rollo*, p. 398.

[13] CA *rollo*, pp. 172-177.

Because of respondent Araneta's failure to file her responsive pleading within the reglementary period, x x x respondent Araneta is herein declared in DEFAULT in this proceedings.

As a consequence of this ruling, x x x the petitioner is allowed to present evidence ex-parte to substantiate the allegation in his Petition x x x.[14]

On January 21, 2008 also, Michelle interposed a Motion to Withdraw Urgent *Ex-Parte* Motion for Protective Order, there pointing out that no right of Juan Ignacio, if any, will be affected if the said urgent motion is withdrawn or expunged from her answer. And obviously to sway the Makati RTC's mind of the resulting insignificance of such withdrawal, if approved, Michelle cited the ensuing observation thus made by the court during the hearing on January 4, 2008:

COURT:

Well, I agree, she should really appear but whether or not she should really appear here and substantiate her allegations for the issuance of a protective order as far as I am concerned is irrelevant insofar as the enforcement of petitioner's visitation rights are concerned, this case is for custody, this is not a case for the issuance of protective orders that is only a counter manifestation that she is seeking.[15]

It is upon the foregoing set of events and proceedings that Michelle, on March 25, 2008, instituted, pursuant to RA 9262, a Petition For Temporary and Permanent Protection Order[16] (Petition for Protection Order) before the RTC in Muntinlupa City, docketed as **Civil Case No. 08-023**. Thereat, Michelle claimed, among other things, that in the course of their marriage, Juan Ignacio made her and their children engage in sexual acts inimical to their emotional, physical and psychological development and well-being; that he engaged in perverted sexual acts with friends, victimizing her and the children; that he has

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[14] *Rollo*, pp. 115-116.

[15] CA *rollo*, p. 129. TSN, January 4, 2008, p. 23.

[16] *Id.* at 193-204.

consistently failed and refused to support their family; and that he has a violent temper and was consistently harassing and threatening her to get sole custody of the children. Michelle volunteered the information that, per her therapist, she is suffering from Battered Woman's Syndrome.[17]

In the verification portion of her petition for protection order, Michelle stated that "[t]here is x x x a pending petition for the custody of our children in the [RTC] Br. 60, Makati City, x x x Civil Case No. M-6543."[18]

The following events and proceedings then transpired:

1. On March 31, 2008, the Muntinlupa RTC **granted** Michelle's prayer for a **TPO** which, at its most basic, ordered Juan Ignacio (1) to stay away at a specified distance from Michelle and the children, inclusive of their present residence and other places they frequent; and (2) to desist from calling or otherwise communicating with Michelle.

(2) On April 14, 2008, Juan Ignacio filed in Civil Case No. M-6543 a "***Motion to Dismiss [Petition] with Prayer to Lift [TPO]***"[19] anchored on several grounds, foremost of which are the following: (a) *litis pendentia*, Juan Ignacio noting in this regard that the Makati RTC is competent to grant in its SP PROC. Case No. M-6543 the very same reliefs Michelle seeks in Civil Case No. M-6543, pursuant to Sections 17 and 18 of the Rule on Custody of Minors;[20] (b) in view of item (a) above,

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[17] RA 9262, Sec. 3(c). "Battered Woman's Syndrome" refers to a scientifically defined pattern of psychological and behavioural symptoms found in women living in battering relationships as a result of cumulative abuse.

[18] CA *rollo*, p. 205.

[19] *Id.* at 206.

[20] SECTION 17. *Protection Order*. – The court may issue a Protection Order requiring any person:

(a) To stay away from the home, school, business, or place of employment of the minor, other parent or other party, or from any other specific place designated by the court;

the Makati RTC, having first assumed jurisdiction over identical subject matters, issues and parties, does so to the exclusion of the Muntinlupa RTC; and (c) Michelle's act of filing her petition for protection order before the Muntinlupa RTC constitutes, under the premises, forum shopping, a practice proscribed owing to the possibility of different courts arriving at conflicting decisions. Juan Ignacio would in fact stress that the TPO thus issued by the Muntinlupa RTC directing him to stay at least a kilometer away from his children already conflicted with the

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(b) To cease and desist from harassing, intimidating, or threatening such minor or the other parent or any person to whom custody of the minor is awarded;

(c) To refrain from acts or commission or omission that create an unreasonable risk to the health, safety, or welfare of the minor;

(d) To permit a parent, or a party entitled to visitation by a court order or a separation agreement, to visit the minor at stated periods;

(e) To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; and

(f) To comply with such other orders as are necessary for the protection of the minor.

SECTION 18. *Judgment.* – After trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor.

If it appears that both parties are unfit to have the care and custody of the minor, the court may designate either the paternal or maternal grandparent of the minor, or his oldest brother or sister, or any reputable person to take charge of such minor, or commit him to any suitable home for children.

In its judgment, the court may order either or both parents to give an amount necessary for the support, maintenance and education of the minor, irrespective of who may be its custodian. In determining the amount of support, the court may consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the minor; (2) the physical and emotional health, special needs, and aptitude of the minor; (3) the standard of living the minor has been accustomed to; and (4) the non-monetary contributions that the parents would make toward the care and well-being of the minor.

The court may also issue any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody.

Makati RTC-issued provisional orders granting him visitation rights over them.

(3) By Order of May 12, 2008, the Muntinlupa RTC, conceding the exclusionary effect of the assumption at the first instance by the Makati RTC of jurisdiction on the issue of custody on Ava and Ara and the likelihood of the issuance by either court of clashing decisions, partially granted Juan Ignacio's motion to dismiss and accordingly modified the TPO issued on March 31, 2008. As thus modified, the protection order, or to be precise, the reliefs provided in favor of Michelle in said TPO shall exclude from its coverage the orders issued by the Makati RTC in the exercise of its jurisdiction on the pending custody case.

In another Order of June 30, 2008, the Muntinlupa RTC denied Juan Ignacio's Motion for Reconsideration of the earlier May 12, 2008 Order on the ground that such a motion is a prohibited pleading.[21]

(4) Meanwhile, Michelle, in connection with certain orders of the Makati RTC in the custody case, denying her motion to admit answer and its jurisdictional issue pronouncements, went to the CA on *certiorari* via a petition docketed as **CA-G.R. SP No. 103392**.

On August 28, 2008, in **CA-G.R. SP No. 103392**, the CA rendered a judgment finding partly for Michelle, as petitioner, it being the appellate court's determination that the substituted service of summons upon her in the custody suit was defective and irregular. Accordingly, the period within which Michelle was to file an answer, so the CA declared, did not start to run and, hence, the denial by the Makati RTC of her motion to admit answer in the custody case and corollarily, its holding that she is in default, by virtue of its Orders dated January 21, 2008 and March 7, 2008, were unwarranted and ought to be nullified. Neither of the parties appealed the foregoing Decision.

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[21] Under Sec. 22(k) of A.M. No. 04-10-11-SC or *The Rule on Violence Against Women and Their Children*, a motion for reconsideration is a prohibited pleading.

The CA Decision, thus, became final. The *fallo* of the said CA Decision reads:

WHEREFORE, the foregoing considered, the instant petition is hereby **PARTLY GRANTED**. Accordingly, the assailed Orders of 21 January 2008 and 7 March 2008 are **REVERSED** and **SET ASIDE** while the Orders of 29 February 2008 and 31 March 2008, in so far as the denial of petitioner's Motion for Inhibition is concerned, are **AFFIRMED.** No costs.

SO ORDERED.[22]

Partly, the CA wrote:

x x x [T]he pivotal issue x x x is whether the [Makati RTC] had acquired jurisdiction over the person of the petitioner, and if so, whether the disposition of the respondent [Makati RTC] judge in declaring her in default has factual and legal basis. Admittedly, the summons and the copy of the petition were not personally served upon the petitioner as explicitly required under Section 5 of A.M. No. 03-04-04-SC x x x.

Indeed, the records would show that the summons and the petition were served upon the petitioner x x x by substituted service as they were received by x x x a certain Nilo Santos at said Anonas residence, an address belatedly supplied by private respondent himself. However, x x x petitioner had actually been informed of such substituted service sometime in the second week of December 2007 and that she had opted to simply disregard the same since she had thought that such service is invalid x x x.

Despite the fact that she had known of the existence of the petition *a quo* and the fact that the service of summons had been made upon her by substituted service, petitioner made a decision whether it be an informed one or not, not to move for its dismissal on the ground of lack of jurisdiction over her person x x x. It was only upon the issuance of the Provisional Order that she had opted to participate in the proceeding by filing her responsive pleading to the petition. Unfortunately though, the respondent [Makati RTC] judge denied her motion to admit and declared her in default on the basis of its

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[22] *Rollo*, p. 139. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Magdangal M. De Leon and Ramon R. Garcia.

disquisition that the failure of the petitioner to file her responsive pleading is not due to excusable negligence or other circumstances beyond her control.

Still and all, it cannot be denied that the trial court, previous to or at the time the petitioner had filed her responsive pleading, has yet to acquire jurisdiction over the person of the latter. **The Rule on Custody of Minors specifically requires that service of summons be made personally on the respondent** and yet the trial court served the same upon the person of the petitioner by substituted service without proof of exhaustion of means to personally serve the same or the impossibility thereof to warrant the extraordinary method of substituted service.

Surely, while the Rule on Custody of Minors provides that the Rules of Court shall apply suppletorily in custody proceedings, the express provision requiring personal service and the very nature of custody cases should have caused the respondent judge x x x to adhere to the evident intention of the rules, that is to have both parties in a custody case participate therein.

Regrettably, the respondent judge, relying on the Officer's Return x x x, precipitately declared x x x that the trial court had already acquired jurisdiction over the person of the petitioner. x x x

Sadly though, respondent judge, in grave abuse of discretion, assumed jurisdiction over the person of the petitioner and proceeded to act on the petition. Worse, x x x the respondent judge denied the motion to admit filed by the petitioner and declared the latter in default. **While the petitioner had already submitted herself to the jurisdiction of the trial court** by way of her voluntary act of filing a responsive pleading to the petition *a quo*, the period to file said responsive pleading, as already stated, in so far as the petitioner is concerned has yet to commence, and thus, the filing of her motion to admit answer cannot plausibly be considered as to have been filed beyond the reglementary period. In this light, the denial of said motion and the issuance of the default order are unwarranted and are reversible errors of jurisdiction x x x.[23] (Emphasis added.)

(5) From the adverse May 12, 2008 and June 30, 2008 Orders of the Muntinlupa RTC in Civil Case No. M-6543, Juan Ignacio also repaired to the CA on a petition for *certiorari*. Docketed

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[23] *Id.* at 132-134, 136.

as **CA-G.R. SP. No. 105442**, the petition prayed that the Muntinlupa RTC be enjoined from further taking cognizance of Michelle's protection order petition as the said case will infringe or intrude upon the Makati RTC's disposition of the custody case.[24]

Michelle opposed and sought the dismissal of the *certiorari* petition on the ground that it is a prohibited pleading under Sec. 22(j) of RA 9262.

Eventually, the CA issued, on May 11, 2009, the assailed Decision which, on one hand, found Michelle guilty of forum shopping, a sufficient cause for summary dismissal of a case, but viewed, on the other, Juan Ignacio's petition for *certiorari* as a prohibited pleading which, ordinarily, would then render it dismissible. In the veritable clash under the premises of the effects of forum shopping and the rule on prohibited pleading, the CA nonetheless ruled for Juan Ignacio, as petitioner, pertinently disposing as follows:

ACCORDINGLY, the petition is **GIVEN DUE COURSE**. Civil Case No. 08-023 is **ORDERED DISMISSED** and all issuances made by [RTC], Branch 207, Muntinlupa City, are declared void. The [RTC] Branch 60, Makati City is **DIRECTED** to proceed with the case with dispatch.[25]

The CA extricated itself from the foregoing legal bind on the basis of the following ratiocination and the plausible suppositions interjected thereat:

In resolving the present petition, the Court had to consider two (2) things. First, pursuant to Section 22 (j) of A.M. No. 04-10-11-SC, a petition for *certiorari* against any interlocutory order issued by a family court is a **prohibited pleading.** Accordingly, if this Court were to strictly follow [said] Section 22 (j) x x x, then the present petition for *certiorari* must be dismissed. Second, the Private Respondent had first moved that the Makati RTC issue a TPO and that when her motion was denied, she filed a petition before the

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[24] CA *rollo*, p. 387.

[25] *Rollo*, p. 66.

Muntinlupa RTC asking that the said court issue a TPO. In short, the Private Respondent **committed forum-shopping**. And when forum-shopping is committed, the case(s) must be dismissed with prejudice.

Thus, it falls upon this Court to balance the conflict.

This Court notes that the Muntinlupa RTC tried to balance out the conflicting jurisdictional issues with the Makati RTC by stating in its first assailed Order that **the reliefs provided in favor of [herein private respondent] in the [TPO] x x x are modified, to exclude from its coverage those Orders issued by the Makati Court in the exercise of its jurisdiction on the pending custody case.** Be that as it may, the Muntinlupa RTC itself recognized the jurisdiction of the Makati RTC and that the case before it would, in fact, impinge upon the jurisdiction of the latter court when it stated that the **disposition on the matter by this Court may result in the possibility of conflicting decisions/orders**. In short, **the Muntinlupa RTC itself acknowledges the fact that any <u>future</u> issuances, including its eventual decision on the petition before it, would affect the custody case pending before the Makati RTC and might even result to conflicting decisions.** Thus, in the interest of judicial stability, it is incumbent upon this Court to ensure that this eventuality will not come to pass.

x x x x x x x x x

To test the argument that a petition for *certiorari* is an absolutely prohibited pleading, let us push the present case to its logical extreme.

What if a woman claiming to be a battered wife leaves one of her children with her parents and another with a sibling of hers? She then went to another place, transferred residency, and filed a petition for TPO. Her parents [and sibling], who reside in another locality, likewise files a petition for TPO in behalf of the grandchild [and nephew/niece entrusted] in their custody. x x x What if the family courts refuse consolidation? Is the man devoid of any remedy and would have to spend his time shuttling between three (3) localities since a petition for *certiorari* is a prohibited pleading?

What if the woman went to another locality purposely in order to find a friendly venue x x x? Again, if we are to strictly construe Section 22 (j) of A.M. No. 04-10-11-SC that man would just have to bear the consequences since he cannot seek the extraordinary writ of *certiorari*. Or, what if both of the spouses do not reside

within the court's jurisdiction, but the judge refuses to grant a motion to dismiss due to his zeal? What remedy would a man have since he cannot resort to a petition for *certiorari*?

The rules are not sacrosanct. If they go in the way of the smooth and orderly administration of justice, then magistrates should apply their best judgment. If not, courts would be so hideously bound or captives to the stern and literal provisions of the law that they themselves would, wittingly or otherwise, become administrators of injustice.

On the one hand, **this Court hereby notes that Private Respondent herself recognizes the jurisdiction of the Makati RTC to issue a TPO. It was only *after* the Makati RTC denied her prayer for a TPO when she filed a petition before the Muntinlupa RTC asking for the issuance of a TPO**. It is thus highly disturbing that the Private Respondent sought another forum in order to try to obtain a favorable judgment. Thus, as aptly pointed out by the Petitioner, some sort of forum-shopping was committed.

On the other hand, if the Court were to dismiss the present petition on the ground that a petition for *certiorari* is a prohibited pleading, it would have to close its eyes to the fact that the Private Respondent wilfully committed forum-shopping. To dismiss the present petition would, in effect, "reward" her for this negative act. This, the Court cannot countenance.

x x x x x x x x x

Accordingly, x x x Civil Case No. 08-023 must not be allowed to proceed any further. Imperatively, to ensure that the jurisdiction of the Makati RTC remains unshackled, all of the issuances of the Muntinlupa RTC should, by all means, be nullified.[26] (Emphasis added.)

The CA denied Michelle's motion for reconsideration per its equally assailed Resolution of December 28, 2009.

Aggrieved, Michelle, for herself and for her minor daughters, filed the instant recourse, her submissions revolving on the twin issues of forum shopping and the prohibition under Sec. 22 of

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[26] *Id.* at 62-66.

the Rule on Violence Against Women and Children[27] against the filing of petitions for *certiorari* to defeat TPOs issued to promote the protection of victims of violence against women and their children.

Michelle presently argues that the assailed Decision of the CA is based on an erroneous appreciation of the facts of the case. To her, there was no forum shopping when she filed her Petition for Protection Order in the Muntinlupa RTC while the custody case was pending in the Makati RTC. Her stated reason: the absence in both cases of identity of parties and rights asserted, on top of which the reliefs sought and prayed for are different and not founded on the same set of facts.

To downplay the application of the *litis pendentia* principle, she argues that it was impossible for her to apply for and secure a protective order under RA 9262 in the custody case before the Makati RTC being, *first*, a respondent, not a petitioner in the Makati case; and *second*, the venue for an application for protection order is, under RA 9262, the place where the woman or the offended party resides, which in her case is Muntinlupa.[28]

Michelle would invite attention to her having withdrawn her motion for protective order in the custody case before the Makati RTC before she filed her Petition for Protective Order with the Muntinlupa RTC. Additionally, she points to the CA's Decision of August 28, 2008 in CA-G.R. SP No. 103392 (2008 CA Decision), which held that the Makati RTC did not acquire jurisdiction over her so that all issuances of the Makati RTC were void. All these, Michelle claims, argue against the existence of *litis pendentia*.

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[27] Section 22. Prohibited pleadings and motions. – The following pleadings, motions or petitions shall not be allowed:

x x x x x x x x x

(j) Petition for *certiorari*, *mandamus* or prohibition against any interlocutory order issued by the court.

[28] *Rollo*, p. 19.

The Issue

The issue to be resolved in this case is whether or not petitioner, in filing her Petition for Protection Order before the Muntinlupa RTC, violated the rule on forum shopping, given the pendency of the respondent's Petition for Custody before the Makati RTC and considering incidentally that she filed said petition for protection order **after** the Makati RTC had **denied** her application for protection order in the custody case.

The Court's Ruling

Before anything else, however, the Court wishes to point out disturbing developments in this proceeding which ought not to be swept under the rug on the simplistic pretext that they may not be determinative of the outcome of this case. But first, some basic premises on record.

First, as correctly stated in this petition, Michelle withdrew her *Ex Parte* Motion for Issuance of Protective Order in the custody case prior to her filing of her Petition for Protection Order with the Muntinlupa RTC. It should be made clear, however, that she filed said motion to withdraw on January 21, 2008, or **after** the Makati RTC, in its Order dated January 4, 2008, had, for all intents and purposes, **denied** the said e*x parte* motion. To recapitulate, the Makati RTC judge made it of record that she was not inclined to issue a protective order in favor of a person, *i.e.*, petitioner Michelle, who has not bothered to appear in court, even assuming, she adds, that the person against whom the protection order is directed, *i.e.*, Juan Ignacio, is prone to violence, a drug user and a womanizer.

Second, there is absolutely nothing in the 2008 CA Decision declaring that all issuances of the Makati RTC were void. In order to bolster her position that the rule against forum shopping was not breached in this case, Michelle matter-of-factly alleged in this recourse that since in the 2008 CA Decision it was ruled that the Makati RTC did not acquire jurisdiction over her person due to the irregularity in the service of summons, then "all the issuances or orders of [the Makati RTC in the custody case]

were void;"[29] and "[t]herefore, there was no *litis pendentia* to begin with since the RTC of Makati City Branch 60 had no jurisdiction from the start."[30]

For perspective, the 2008 CA Decision did not rule that the Makati RTC did not acquire jurisdiction over Michelle. Quite the contrary. As a matter of record, the CA in that disposition found and thus declared Michelle to have voluntarily submitted herself to the jurisdiction of the Makati RTC when she filed her Answer in SP. PROC. Case No. 6543 on January 2, 2008. But to be precise about things, the CA in that 2008 Decision found, as having been tainted with of grave abuse of discretion, only that part of the Makati RTC's disposition denying Michelle's motion to admit answer for belated filing and the consequent default order. Along this line, the CA merely **nullified** the Makati RTC's Orders dated January 21, 2008 and March 7, 2008 which declared Michelle in default and denied her motion for reconsideration, respectively. The ensuing excerpts of the 2008 CA Decision speak for themselves:

> Sadly though, respondent judge, in grave abuse of discretion, assumed jurisdiction over the person of the petitioner and proceeded to act on the petition. Worse, without due regard to the plain intention of the rule in ensuring the adjudication of the controversy surrounding a custody case based on its merits, the respondent judge denied the motion to admit filed by the petitioner and declared the latter in default. **While the petitioner had already submitted herself to the jurisdiction of the trial court by way of her voluntary act of filing a responsive pleading to the petition *a quo*, the period to file said responsive pleading, as already stated, in so far as the petitioner is concerned has yet to commence, and thus, the filing of her motion to admit answer cannot plausibly be considered as to have been filed beyond the reglementary period. In this light, the denial of said motion and the issuance of the default order are unwarranted and are reversible errors of jurisdiction, therefore correctible by a writ of *certiorari*.** (Emphasis supplied.)
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> x x x x x x x x x

[29] *Id.* at 10.

[30] *Id.* at 20.

WHEREFORE, the foregoing considered, the instant petition is hereby **PARTLY GRANTED**. Accordingly, the assailed Orders of 21 January 2008 and 7 March 2008 are **REVERSED** and **SET ASIDE** while the Orders of 29 February 2008 and 31 March 2008, in so far as the denial of petitioner's Motion for Inhibition is concerned, are **AFFIRMED.** No costs.

SO ORDERED.[31]

Withal, the Court finds it downright offensive and utterly distasteful that petitioner raised the following as one of the issues in this appellate proceeding:

> Whether or not the petitioners are guilty of forum-shopping when the Petition for Custody of private respondent Araneta was **dismissed** by the Court of Appeals on the ground that the RTC of Makati City Branch 60 did not acquire jurisdiction because the summons was not served personally upon herein Petitioner Michelle Lana Brown Araneta.[32] (Emphasis supplied.)

Petitioner's above posture smacks of bad faith, taken doubtless to deceive and mislead the Court. Indeed, nothing in either the body or the *fallo* of the 2008 CA Decision would yield the conclusion that the petition for custody is being dismissed, as petitioner unabashedly would have the Court believe.

Was there forum shopping? Did petitioner forum shop?

A circumstance of forum shopping occurs when, as a result or in anticipation of an adverse decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari* by raising identical causes of action, subject matter and issues. Stated a bit differently, forum shopping is the institution of two or more actions involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition.[33] An indicium of the

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[31] *Id.* at 136, 139.

[32] *Id.* at 6.

[33] *Yap v. Chua*, G.R. No. 186730, June 30, 2012, 672 SCRA 419, 427-428.

presence of, or the test for determining whether a litigant violated the rule against, forum shopping is where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other case.[34]

Litis pendentia,[35] as a ground for the dismissal of a civil suit, refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes vexatious and unnecessary.[36] For the bar of *litis pendentia* to be invoked, the concurring requisites must be present: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.[37]

Thus, it has been held that there is forum shopping (1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or *certiorari*) in another; or (2) if, after he has filed a petition before the Supreme Court, a party files another before the CA since in such case said party deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open"; or (3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain it from the original court.[38]

The evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two

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[34] *Ligon v. Court of Appeals*, G.R. No. 127683, August 7, 1998, 294 SCRA 73, 99.

[35] A Latin term literally meaning "a pending suit."

[36] *Yap v. Chua*, *supra* note 33, at 428.

[37] *Hongkong and Shanghai Banking Corp., Ltd. v. Catalan*, G.R. Nos. 159590 & 159591, October 18, 2004, 440 SCRA 298, 512.

[38] *Executive Secretary v. Gordon*, G.R. No. 134171, November 18, 1998, 298 SCRA 736, 740-741.

separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case.[39]

Considering the above doctrinal pronouncements on forum shopping, We find all the badges of this deplorable, docket-clogging practice present in this case.

As a result or in anticipation of an adverse ruling of the Makati RTC, petitioner sought the favorable opinion of the Muntinlupa RTC

As discussed above, the presiding judge of the Makati RTC, in the custody case, made of record that she was not inclined to issue a protection order in favor of Michelle because she did not bother to appear in Court and that the allegations against Juan Ignacio cannot, per se, prevent him from exercising visitation rights over his children. After this adverse ruling, Michelle sought the favorable opinion of the Muntinlupa RTC by filing an independent Petition for Protection Order.

The cases have identical parties

Clearly, the Petition for Custody and the Petition for Protection Order have the same parties who represent the same interests. The fact that Ava and Ara, who are parties in the Petition for Protection Order, are not impleaded in the Petition for Custody is of no moment because they are precisely the very subjects of the Petition for Custody and their respective rights are represented by their mother, Michelle. In a long line of cases on forum shopping, the Court has held that absolute identity of the parties is not required, it being enough that there is substantial identity of the parties[40] or at least such parties represent the same interests

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[39] *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 746.

[40] *Luis Ao-As v. Court of Appeals*, G.R. No. 128464, June 20, 2006, 491 SCRA 339, 354.

in both actions. It does not matter, as here, that in the Petition for Custody, Juan Ignacio is the petitioner and Michelle is the respondent while in the Petition for Protection Order, their roles are reversed. That a party is the petitioner in one case and at the same time, the respondent in the other case does not, without more, remove the said cases from the ambit of the rules on forum shopping. So did the Court hold, for example in *First Philippine International Bank v. Court of Appeals,* that forum shopping exists even in cases like this where petitioners or plaintiffs in one case were impleaded as respondents or defendants in another.[41] Moreover, this Court has constantly held that the fact that the positions of the parties are reversed, *i.e.*, the plaintiffs in the first case are the defendants in the second case or vice versa, does not negate the identity of parties for purposes of determining whether the case is dismissible on the ground of *litis pendentia*.[42]

The rights asserted and reliefs prayed for are based on the same facts

Further, the rights asserted and reliefs prayed for in Civil Case No. 08-023 are practically based on the same facts and are so intertwined with that in SP. PROC. Case No. 6543, such that any judgment rendered in the pending cases, regardless of which party is successful, will amount to *res judicata*.

In the custody case, Juan Ignacio mainly asserted his right, as father, to visit his children and enjoy joint custody over them. He prayed for a judgment granting him joint custody, or alternatively, permanent visitation rights over Ava and Ara.

In disposing of the custody case, the Makati RTC is expected, following the rationale behind the issuance of the Rule on Custody of Minors, to consider, among others, the best interest of the

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[41] See *First Philippine International Bank v. CA*, 322 Phil. 280, 313 (1996).

[42] *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Philippines*, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 602.

children,[43] any threat or danger of physical, mental, sexual or emotional violence which endangers their safety and best interest, their health, safety and welfare,[44] any history of child or spousal abuse by the person seeking custody,[45] habitual use of alcohol, dangerous drugs or regulated substances,[46] marital misconduct,[47] and the most suitable physical, emotional, spiritual, psychological and educational environment for the holistic development and growth of the minor.[48]

Michelle's answer and motion for issuance of protection order in the custody case contained allegations of psychological, sexual, emotional and economic abuse she and her children suffered at the hands of Juan Ignacio to defeat his asserted right to have joint custody over Ava and Ara and as argument that the grant of visitation rights in his favor will not be in the best interest of the children. These allegations of abuse were in substance the very same ones she made in her Petition for Protection Order.

Juan Ignacio's rights and reliefs prayed for are dependent on and, to be sure, would be predicated on the question of whether or not granting him the desired custody or at least visitations rights over the children are in their best interest. In deciding this issue, the Makati RTC will definitely have to reckon with and make a finding on Michelle's allegations of psychological, sexual, emotional and economic abuse.

Similarly, the Muntinlupa RTC must necessarily consider and make a determination based on the very same facts and allegations on whether or not Michelle shall be entitled to the relief she prayed for in her own petition, in particular, a permanent protection order against Juan Ignacio.

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[43] THE RULE ON CUSTODY OF MINORS, Sec. 14.

[44] *Id.*, Sec. 14(c).

[45] *Id.*, Sec. 14(d).

[46] *Id.*, Sec. 14(f).

[47] *Id.*, Sec. 14(g).

[48] *Id.*, Sec. 14(h).

Elements of *litis pendentia* are present and any judgment in the pending cases would amount to *res judicata*

Any judgment rendered in the pending cases, regardless of which party is successful, would amount to *res judicata*. Consider: If the Makati RTC were to grant Juan Ignacio's petition for custody, this would necessarily mean that it would be in the best interest of the children if he were allowed to visit and spend time with them and that granting Juan Ignacio visitation rights would not pose any danger or threat to the children.

On the other hand, a grant by the Muntinlupa RTC of Michelle's prayer for a permanent protection order would presuppose at the minimum that it would be to the children's best interest if Juan Ignacio is directed to keep away from them, necessarily implying that he is unfit even to visit Ara and Ava. Conversely, if Juan Ignacio's Petition for Custody were denied, then it would mean that the Makati RTC gave weight and credence to Michelle's allegations of abuse and found them to be in the best interest of the children to bar Juan Ignacio from visiting them. Thus, the Muntinlupa RTC should have no ground to deny Michelle's Petition for Protection Order pending before it.

The evil sought to be avoided by the rule against forum shopping is present in this case

The grave mischief sought to be avoided by the rule against forum shopping, *i.e.*, the rendition by two competent tribunals of two separate and contradictory decisions, is well-nigh palpable in this case. If the Muntinlupa RTC were to rule that Michelle was entitled to a Protection Order, this would necessarily conflict with any order or decision from the Makati RTC granting Juan Ignacio visitation rights over Ava and Ara. As aptly pointed out by Juan Ignacio in his Comment such a conflict had already occurred, as the TPO issued by the Muntinlupa RTC actually conflicted with the Orders issued by the Makati RTC granting Juan Ignacio temporary visitation rights over his children. There now exists an Order from the Muntinlupa RTC which, among others, directed Juan Ignacio to stay at least one (1) kilometer away from Ava and Ara, even as the Makati RTC recognized,

in two (2) separate Orders, that he had the right, albeit temporarily to see his children.[49]

In fact, Michelle was very much aware of the possible conflicts between the orders of Makati RTC and Muntinlupa RTC. In her Opposition (to Urgent Motion for Immediate Enforcement of Visitation Orders dated December 21, 2007 and January 4, 2008), she recognized that the granting of visitation rights in favor of Juan Ignacio would conflict the TPO and, therefore, the Makati Court would be rendering a conflicting decision with that of the Muntinlupa RTC, *viz*:

> x x x There is therefore, no conflict of jurisdiction in this case but since the petitioner filed a Petition for *Certiorari* in the Court of Appeals, which includes the issue of custody, **we submit that the matter of custody *pendente lite* including visitation, should not and can not be resolved by this Honorable Court without conflicting with the Temporary Protection Order of a co-equal court, the RTC of Muntinlupa City**. x x x
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> x x x x x x x x x
>
> If the petitioner is granted visitation rights, the Honorable Court, with due respect would be allowing him to violate the TPO against him; **the Honorable Court would then be rendering a conflicting decision**.[50] (Emphasis supplied.)

No less than the Muntinlupa RTC itself recognized the resulting aberration of its orders conflicting with that/those of the Makati RTC. As it were, the former, in its Order of May 12, 2008, resolving Juan Ignacio's Motion to Dismiss with Prayer to Lift Temporary Protection Order, categorically stated that there may be orders in the protection order case that would possibly conflict with the orders issued by the Makati RTC in the custody case. So it was that to address these possible conflicts, the Muntinlupa RTC partially granted Juan Ignacio's Motion to Dismiss by modifying the reliefs provided under the TPO by excluding from its coverage those orders issued by the Makati RTC in the exercise

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[49] *Rollo*, p. 207.

[50] *Id.* at 322.

of its jurisdiction over the custody case. Pursuant to the foregoing Order of the Muntinlupa RTC, the December 21, 2007 and January 4, 2008 Orders of the Makati RTC, granting Juan Ignacio visitation rights on Christmas Day and New Year's Day and one (1) Saturday and Sunday in January 2008, are not covered by the reliefs under the TPO. Hence, despite the TPO directing Juan Ignacio to stay at least one (1) kilometer away from Ava and Ara, Juan Ignacio would still have the right to see his children by virtue of the orders issued by the Makati RTC granting him temporary visitation rights. The said Muntinlupa RTC Order reads:

> Based on the pleadings filed, this (Muntinlupa) Court holds that since the Makati Court first acquired jurisdiction over the issue of custody, the latter continues to exercise it, **so that any disposition on the matter by this Court may result in the possibility of conflicting decisions/orders**.
>
> Wherefore, this Court partially grants respondent's Motion to Dismiss insofar as those matters covered by A.M. No. 03-04-04-SC, Rule on Custody of Minors and Writ of *Habeas corpus* in Relation to Custody of Minors are concerned, which are within the jurisdiction of the Makati Court, but continues to take cognizance on matters not included therein (A.M. No. 03-04-04-SC) but within the protective mantle of R.A. No. 9262.
>
> Consequently, the reliefs provided in favor of the petitioner in the Temporary Protection Order dated March 31, 2008 are modified, to exclude from its coverage those Orders issued by the Makati Court in the exercise of its jurisdiction on the pending custody case.
>
> The motions to lift the temporary protection order (except on those matter stated above) and to cite petitioner in contempt of court are denied for lack of merit.[51] (Emphasis supplied.)

Verily, the Muntinlupa RTC was aware that its issuances and its eventual final disposition on the Petition for Protection Order would affect the custody case before the Makati RTC, if not totally clash with the latter court's decision. We agree with the CA's ensuing observation:

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[51] CA *rollo*, p. 39.

This Court notes that the Muntinlupa RTC tried to balance out the conflicting jurisdictional issues with the Makati RTC by stating in its first assailed Order that ***the reliefs provided in favor of [herein private respondent] in the [TPO] dated March 31, 2008 are modified, to exclude from its coverage those Orders issued by the Makati Court in the exercise of its jurisdiction on the pending custody case.*** Be that as it may, the Muntinlupa RTC itself recognized the jurisdiction of the Makati RTC and that the case before it would, in fact, impinge upon the jurisdiction of the latter court when it stated that the ***disposition on the matter by this Court may result in the possibility of conflicting decisions/orders.*** In short, **the Muntinlupa RTC itself acknowledges the fact that any future issuances, including its eventual decision on the petition before it, would affect the custody case pending before the Makati RTC and might even result to conflicting decisions**. Thus, in the interest of judicial stability, it is incumbent upon this Court to ensure that this eventuality will not come to pass.[52]

Civil Case No. 08-023 should, thus, be dismissed with prejudice for being a clear case of forum shopping.

WHEREFORE, premises considered, the appealed May 11, 2009 Decision and the December 28, 2009 Resolution of the Court of Appeals in CA-G.R. SP. No. 105442, particularly insofar as these ordered the dismissal of subject Civil Case No. 08-023 and the nullification of the orders made in that case, are hereby **AFFIRMED.**

No costs.

SO ORDERED.

Leonardo-de Castro,[*] *Abad, Mendoza,* and *Leonen, JJ.,* concur.

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[52] *Rollo,* pp. 62-63.

[*] Additional member per Raffle dated September 24, 2013.

FIRST DIVISION

[G.R. No. 190862. October 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO DEARO, PAULINO LUAGUE and WILFREDO TOLEDO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; TO JUSTIFY A CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE, THE COMBINATION OF CIRCUMSTANCES MUST BE INTERWOVEN IN SUCH A WAY AS TO LEAVE NO REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED.— Section 4, Rule 133 of the Rules of Court, applies when no witness has seen the actual commission of the crime. It states: SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Under the rule on circumstantial evidence, the circumstances shown must be consistent with each other. They should all support the hypothesis that the accused is guilty and, at the same time, be inconsistent with the hypothesis that the accused is innocent. "Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused." We agree with the RTC and the CA in their finding that the x x x circumstances, proven by the prosecution and uncontroverted by the defense, combine to leave no reasonable doubt that the appellants conspired to kill the victim.

2. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHEN AN ASSAILANT TAKES ADVANTAGE OF A SITUATION IN WHICH THE VICTIM IS ASLEEP, UNAWARE OF THE EVIL DESIGN, OR HAS JUST AWAKENED.— We also find that the qualifying circumstance of treachery was properly appreciated by the RTC and the CA. There is treachery when the offender

commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to himself arising from the defense that the offended party might make. We have ruled that treachery is present when an assailant takes advantage of a situation in which the victim is asleep, unaware of the evil design, or has just awakened. It has been established by the prosecution, and even confirmed by the defense, that the victims were sleeping when they were shot. To be precise, it was Emeterio who was asleep when he was shot, considering that the women were able to cry for help before the rapid firing that silenced them. In any case, it was clear that the women were in no position to defend themselves, having been rudely awakened by the shooting of their companion. The fact that they shouted for help also showed their loss of hope in the face of what was coming – rapid gunfire from long firearms.

3. **ID.; ID.; EVIDENT PREMEDITATION; THE ESSENCE OF EVIDENT PREMEDITATION IS THAT THE EXECUTION OF THE CRIMINAL ACT MUST BE PRECEDED BY COOL THOUGHT AND REFLECTION UPON THE RESOLUTION TO CARRY OUT THE CRIMINAL INTENT, DURING THE SPACE OF TIME SUFFICIENT TO ARRIVE AT A CALM JUDGMENT.—** Evident premeditation further aggravates the crime of murder committed by appellants. "The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment." Evidence shows that Luague had a grudge against Porferia, and that their last confrontation occurred a day before the shooting. The involvement of appellants Dearo and Toledo was shown by the testimony of Jose Santiago that the two were with Luague three days before the shooting. Appellant Dearo then vowed to kill Emeterio. These uncontroverted pieces of evidence clearly showed the instances when appellants resolved to commit the felony. The space of time from the resolution to the actual execution allowed them to contemplate on the matter, or maybe even reconsider. That they did not reconsider is shown by the case before us now.

4. **ID.; MURDER; PROPER PENALTY.—** [I]t has been established that appellants killed Emeterio, Porferia and Analiza.

Appreciating treachery as a qualifying circumstance, the crime is properly denominated as murder. Article 248 of the Revised Penal Code (RPC) punishes murder with *reclusion perpetua* to death. With the further appreciation of evident premeditation as generic aggravating circumstance, the greater penalty shall be applied, pursuant to Article 63 of the RPC. However, since the imposition of the death penalty has been prohibited by Republic Act No. 9346, the penalty that shall be imposed on appellants is *reclusion perpetua* without eligibility for parole.

5. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As to the award of damages to the heirs of each victim, we find that the awards of civil indemnity and temperate damages made by the CA in the amounts of ₱75,000 and ₱25,000, respectively, are in keeping with prevailing jurisprudence. However, considering that the penalty imposed should have been death but was reduced to *reclusion perpetua* without eligibility for parole, the amount of moral damages is increased from ₱50,000 to ₱75,000, and the award of exemplary damages from ₱25,000 to ₱30,000. These awards shall earn interest at the rate of 6% from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Erames Law Firm for accused-appellants.

D E C I S I O N

SERENO, *C.J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) Cebu City affirming the Judgment[2] of the Regional Trial

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[1] *Rollo*, pp. 2-21. The Decision dated 7 July 2009 of the Court of Appeals (CA) Cebu City Eighteenth Division in CA-G.R. CR-HC. No. 00035 was penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Rodil V. Zalameda concurring.

[2] CA *rollo*, pp. 64-81; in Criminal Case Nos. 12521, 12522 and 12526 dated 30 July 2004.

Court of Negros Oriental, Dumaguete City, Branch 34 (RTC), finding appellants guilty of three counts of murder and sentencing them to suffer the penalty of *reclusion perpetua* for each count.

On the evening of 26 February 1996, Jose Jaro (Jose), Emeterio Santiago (Emeterio) and his son Rolly, as well as Porferia Luague Guardario (Porferia) and her daughter Analiza, were attending a *fiesta* celebration at Bugay, Bayawan, Negros Oriental.[3] Around midnight, Emeterio asked Jose whether they might be able to spend the night in the latter's house, which was only about 500 meters away from the dancing area. Jose acceded and told Emeterio, Porferia and Analiza to proceed to his house while he looked for Rolly. Jose eventually found Rolly, and both of them followed the three others to Jose's home.

When Jose and Rolly were about 10 meters away, they heard a single gunshot coming from the house.[4] The two went down on the ground for safety as they saw Paulino Luague (Luague) coming down from Jose's house, saying "*Ti, tapos ka man!*" (There, now you are finished!). Immediately after, they heard cries of women from inside the house asking for help, followed by a rapid series of gunfire from the back of the house.

When the firing stopped, they saw appellants Ricardo Dearo (Dearo) and Wilfredo Toledo (Toledo), both carrying long firearms, walk with Luague from the back of the house towards the road.[5] The three had other companions, but Jose and Rolly were not able to identify them.

After appellants left, Jose and Rolly went inside the house and saw Emeterio on the floor, already dead.[6] Porferia was lying nearby, also dead, while Analiza was still moaning in pain. Rolly wasted no time in looking for a vehicle to bring the victims to the hospital, but Analiza was later also pronounced dead.

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[3] *Rollo,* p. 7.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 8.

Authorities from the Bayawan police station arrived in the house on the afternoon of 27 February 1996 to investigate.[7] Both Jose and Rolly opted not to divulge any information to them.[8] Instead, Rolly sought the help of the elements of the Criminal Investigation System (CIS) of Dumaguete City for investigation.[9]

In the course of the investigation, it was found that the Luague family owned a vast tract of land in Bayawan, Negros Oriental. It was the subject of a sharing dispute between the heirs, including Luague and his sister Porferia.[10] Part of the dispute involved the appointment of Emeterio as overseer of the land, a move that angered Luague. The animosity deepened when Emeterio padlocked the old house of Aquilino Luague (Aquilino), father of Luague and Porferia.

A few days before the incident, or on 24 February 1996, at around 10:00 a.m., Luague and appellants Dearo and Toledo asked Jose Santiago, brother of Emeterio, to accompany them to the old house to remove the padlock.[11] While there, Jose Santiago heard appellant Dearo berating *Aquilino*'s tenants in this wise: "You tenants, you believe everything Emeterio tells you. He is not from here. There is no Emeterio Santiago living in Bugay. If only he was here, I would show you how I'd kill him. Before the end of three days, I'll finish him!"[12]

Marcelo Guardario, husband of Porferia and father of Analiza, confirmed the existence of a land dispute between his wife and her siblings.[13] They used to reside in Bugay, Bayawan, Negros Oriental, but decided to relocate to Cebu when Luague threatened

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[7] CA *rollo*, p. 68.

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

[9] *Id.* at 68.

[10] Records (Criminal Case No. 12521), p. 66.

[11] *Rollo*, pp. 8-9.

[12] *Id.* at 9.

[13] *Id.*

that they would lose a family member if they returned to Bugay. There was even a time when Luague pointed a gun at Porferia with the same threats.[14] The latest confrontation between brother and sister was on 26 February 1996, a day before the shooting, when the police advised Luague that he could not prevent Porferia from attending to the farm.[15]

On 4 June 1996, in three Informations, appellants were charged with murder, all committed by conspiracy and attended by treachery and evident premeditation.[16]

During trial, appellant Dearo interposed the defenses of denial and alibi. He stated that he was at the *fiesta* celebration until 1:00 a.m. of 27 February 1996 and arrived home about 2:00 a.m. together with his family.[17] He denied being with Luague and Toledo and stated that he only learned about the incident from Senior Police Officer 2 (SPO2) Georgin Sefe and Police Officer 3 (PO3) Napoleon Tuble of the Bayawan police station on the afternoon of 27 February 1996. He heard the police officers ask Jose and his wife Larry about the details regarding the incident, and they categorically answered that they could not say anything, because they were not present when it happened.

This statement was corroborated by the police officers, who said that they failed to file a case concerning the incident, because nobody could give them any information.[18] When SPO2 Sefe and PO3 Tuble went to the house of Jose on the afternoon of 27 February 1996, they only saw bullet holes in the wall of the house and three empty shells of an M-16 rifle. When they sought the other members of the victims' family, they could not name any suspect.

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[14] *Id.* at 10.

[15] Records (Criminal Case No. 12521), p. 18.

[16] *Rollo*, pp. 3-5.

[17] *Id.* at 10.

[18] *Id.* at 11.

RULING OF THE RTC

On 30 July 2004, the RTC rendered a Judgment[19] finding Luague and appellants Dearo and Toledo guilty of the three counts of murder and sentenced them to suffer the penalty of *reclusion perpetua* for each count.[20] For each of the three counts of murder, appellants were also ordered to pay the victims' heirs in the amounts of ₱70,000 as civil indemnity, ₱25,000 as temperate damages and ₱20,000 as moral damages.

The RTC found that while none of the prosecution witnesses saw the actual shooting of the three victims, the attendant circumstantial evidence in the case are all consistent with the conclusion that Luague and appellants Dearo and Toledo are responsible for the death of the three victims.[21] Conspiracy was also shown by the closeness and coordination of their acts a few days before and immediately after the shooting.[22]

The RTC appreciated the qualifying circumstances of treachery and evident premeditation. According to the trial court, treachery was evident when the victims were fired upon while they were inside the house sleeping.[23] Evident premeditation was also present, since appellant Dearo had already boisterously announced his intention to kill Emeterio a few days before.[24] Luague was likewise shown to have threatened the life of Porferia a number of times.[25]

On appeal to the CA, Luague and appellants Dearo and Toledo decried the alleged violation of due process due to supposed partiality and vindictiveness of Judge Rosendo B. Bandal, Jr.

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[19] CA *rollo*, pp. 64-81.

[20] *Id.* at 80-81.

[21] *Id.* at 75-79.

[22] *Id.* at 75.

[23] *Id.* at 79.

[24] *Id.* at 80.

[25] *Id.* at 79-80.

(Judge Bandal).[26] They also pointed out the lack or insufficiency of evidence, which did not satisfy the standard of proof beyond reasonable doubt.

RULING OF THE CA

On 7 July 2009, the CA rendered a Decision[27] affirming the Judgment of the RTC, with modification in that the civil indemnity was increased to ₱75,000 and the moral damages to ₱50,000, and exemplary damages in the amount of ₱25,000 were added. The award of temperate damages in the amount of ₱25,000 was maintained.

According to the CA, the pieces of evidence presented by the prosecution were of such nature that these would lead to a conviction that Luague and appellants Dearo and Toledo had acted in concert to kill the victims. Thus, it affirmed the finding of the RTC that the attendant circumstantial evidence in the case was sufficient to support a finding of guilt on their part. The appellate court also affirmed the finding of the RTC that treachery and evident premeditation had attended the crime.[28]

The CA found no showing that the decision of Judge Bandal was affected at all by the letter of Teodora Luague, wife of Luague, sent to this Court seeking his inhibition and pointing out that the case had remained unacted upon for eight years by the trial court.[29] The CA ruled that the evidence on record was clear that Luague and appellants Dearo and Toledo were the perpetrators of the crimes.

Hence, this appeal. On 20 February 2012, we considered the case closed and terminated insofar as Luague was concerned in view of his death on 15 September 2011.

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[26] *Id.* at 86-110.

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

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

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

ISSUE

Whether the guilt of appellants Dearo and Toledo was proven beyond reasonable doubt

OUR RULING

We deny the appeal.

Section 4, Rule 133 of the Rules of Court, applies when no witness has seen the actual commission of the crime.[30] It states:

SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Under the rule on circumstantial evidence, the circumstances shown must be consistent with each other. They should all support the hypothesis that the accused is guilty and, at the same time, be inconsistent with the hypothesis that the accused is innocent.[31] "Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused."[32]

We agree with the RTC and the CA in their finding that the following circumstances, proven by the prosecution and uncontroverted by the defense, combine to leave no reasonable doubt that the appellants conspired to kill the victims:

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[30] *People v. Deocampo*, G.R. No. 185212, 15 February 2012, 666 SCRA 288.

[31] *People v. Abdulah*, G.R. No. 182518, 20 January 2009, 576 SCRA 797.

[32] *Bastian v. CA*, 575 Phil. 42, 56 (2008).

a) Luague was at odds with Porferia regarding the sharing of their inherited tract of land, as a result of which Luague had threatened her life a few times before.
b) Emeterio was the overseer of the land.
c) Three days before the killing, appellant Dearo vowed to kill Emeterio.
d) About 10 meters away from the house, Jose and Rolly heard the sound of a gunshot coming from inside the house, after which they saw Luague come out saying, "*Ti, tapos ka man!*" (There, now you are finished!).
e) Jose and Rolly heard women's cries for help immediately followed by a series of rapid gunfire coming from the back of the house.
f) Appellants Dearo and Toledo emerged from the back of the house carrying long firearms.
g) Jose and Rolly found the victims with gunshot wounds inside the house, with Emeterio and Porferia already dead, and Analiza still moaning in pain.
h) A ballistic examination of the recovered metallic fragments and cartridge cases showed that they were fired from an M-16 rifle, a long firearm.[33]

Appellants try to make much of the alleged insufficiency of lighting at the scene of the incident and argue that it is not enough to make a positive identification of appellants as the assailants. We entertain no doubt regarding their identification immediately after the shooting. Both Jose and Rolly testified that there was sufficient illumination for them to recognize appellants.[34] Furthermore, they were all well-known to one another, since appellant Dearo was the *barangay* captain, appellant Toledo was a known Citizen Armed Force Geographical Unit (CAFGU) member, and Luague was Jose's close friend.[35]

Appellants allege that Jose never mentioned the name of any suspect when the Bayawan police interviewed him, and only came up with one when the CIS came into the picture. However,

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[33] CA *rollo*, p. 70.

[34] *Rollo*, p. 14.

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

we note with approval the observation of the CA that Jose initially did not want to get involved and only told his relatives about what he saw.[36] In fact, he was so scared for his life, considering that the killing took place in his house, that he moved from Bugay, Bayawan, Negros Oriental, after the incident.

The weakness of appellants' position is in their reliance on the alleged finding of the Bayawan police that the assailants were "unknown," and that the result of its investigation was "negative."[37] Rather than focusing their energies on contradicting the evidence proven by the prosecution, appellants insisted that the Bayawan police had not filed a case against anybody because of lack of information.

It is well to point out that Jose and Rolly both admitted that they chose not to divulge any information to the Bayawan police. On his part, Jose was so scared for his life that he initially did not want to get involved. On the other hand, Rolly cannot be faulted for choosing to put his trust on the elements of the CIS from Dumaguete City to conduct the investigation, instead of relying on the authorities from Bayawan.

We also find that the qualifying circumstance of treachery was properly appreciated by the RTC and the CA. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to himself arising from the defense that the offended party might make.[38] We have ruled that treachery is present when an assailant takes advantage of a situation in which the victim is asleep,[39] unaware of the evil design, or has just awakened.[40]

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[36] *Id.* at 16.

[37] *Id.* at 53.

[38] REVISED PENAL CODE, Art. 14(16).

[39] *People v. Sally*, G.R. No. 191254, 13 October 2010, 633 SCRA 293; *People v. Melendres*, 450 Phil. 333 (2003); *People v. Necerio*, G.R. No. 98430, 10 July 1992, 211 SCRA 415.

[40] *People v. Barcimo*, 467 Phil. 709 (2004).

It has been established by the prosecution, and even confirmed by the defense,[41] that the victims were sleeping when they were shot. To be precise, it was Emeterio who was asleep when he was shot, considering that the women were able to cry for help before the rapid firing that silenced them. In any case, it was clear that the women were in no position to defend themselves, having been rudely awakened by the shooting of their companion. The fact that they shouted for help also showed their loss of hope in the face of what was coming – rapid gunfire from long firearms.

Evident premeditation further aggravates the crime of murder committed by appellants. "The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment."[42] Evidence shows that Luague had a grudge against Porferia, and that their last confrontation occurred a day before the shooting. The involvement of appellants Dearo and Toledo was shown by the testimony of Jose Santiago that the two were with Luague three days before the shooting. Appellant Dearo then vowed to kill Emeterio. These uncontroverted pieces of evidence clearly showed the instances when appellants resolved to commit the felony. The space of time from the resolution to the actual execution allowed them to contemplate on the matter, or maybe even reconsider. That they did not reconsider is shown by the case before us now.

Thus, it has been established that appellants killed Emeterio, Porferia and Analiza. Appreciating treachery as a qualifying circumstance, the crime is properly denominated as murder. Article 248 of the Revised Penal Code (RPC) punishes murder with *reclusion perpetua* to death. With the further appreciation of evident premeditation as generic aggravating circumstance, the greater penalty shall be applied, pursuant to Article 63[43] of

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[41] *Rollo,* p. 48.

[42] *People v. Belga,* 328 Phil. 93, 114 (1996).

[43] Article 63. *Rules for the application of indivisible penalties.*– x x x.

the RPC. However, since the imposition of the death penalty has been prohibited by Republic Act No. 9346,[44] the penalty that shall be imposed on appellants is *reclusion perpetua* without eligibility for parole.[45]

As to the award of damages to the heirs of each victim, we find that the awards of civil indemnity and temperate damages made by the CA in the amounts of ₱75,000 and ₱25,000, respectively, are in keeping with prevailing jurisprudence.[46] However, considering that the penalty imposed should have been death but was reduced to *reclusion perpetua* without eligibility for parole, the amount of moral damages is increased from ₱50,000 to ₱75,000, and the award of exemplary damages from ₱25,000 to ₱30,000.[47] These awards shall earn interest at the rate of 6% from the finality of this Decision until fully paid.[48]

WHEREFORE, the Decision of the Court of Appeals Cebu City in CA-G.R. CR-HC No. 00035 is **AFFIRMED** with **MODIFICATION.** Appellants Ricardo Dearo and Wilfredo Toledo are hereby **SENTENCED** to suffer the penalty of

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In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

[44] An Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on 24 June 2006.

[45] Section 3 of Republic Act No. 9346 states that "Person convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

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

[47] *People v. Regalario*, G.R. No. 174483, 31 March 2009, 582 SCRA 738.

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

reclusion perpetua without eligibility for parole for each of the three counts of murder, and **ORDERED** to pay the heirs of each of the victims Emeterio Santiago, Porferia Luague Guardario and Analiza Guardario the amounts of ₱75,000 as civil indemnity, ₱75,000 as moral damages, ₱30,000 as exemplary damages, and ₱25,000 as temperate damages, plus the legal interest at the rate of 6% from the finality of this Decision until fully paid.

SO ORDERED.

Leonardo-de Castro, Bersamin, Reyes, and *Leonen,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 191063. October 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALDRIN M. GALICIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY CONCLUSIVE ON THE SUPREME COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; EXCEPTION.— Time and again, we have ruled that factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record. In numerous

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[*] Designated member in lieu of Associate Justice Martin S. Villarama, Jr. as Acting Member of the First Division per S.O. No. 1545 dated 16 September 2013.

instances, this Court observes restraint in interfering with the trial court's assessment of the witnesses' credibility, absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion, more so, when the CA sustained such assessment, as in this case, where it affirmed the trial court's findings of fact, the veracity of the testimonies of the witnesses, the determination of physical evidence and conclusions. As exception to the rule, the only time a reviewing court is not bound by the trial court's assessment of credibility arises upon a showing of a fact or circumstance of weight and influence that was overlooked which, if considered, could affect the outcome of the case. With this exception as basis we reviewed the records for any indication of arbitrariness or clear oversight of some fact or circumstance of weight that can warrant a reversal of the findings of the courts *a quo*.

2. ID.; ID.; ID.; INCONSISTENCIES BETWEEN A WITNESS' AFFIDAVIT AND TESTIMONY DO NOT NECESSARILY IMPAIR HIS CREDIBILITY; RATIONALE.— Deciding on the merit of the submitted inconsistencies between the prosecution witnesses' testimonies and affidavits, we reiterate our ruling in *People v. Villadares*, where we held that discrepancies and/or inconsistencies between a witness' affidavit and testimony do not necessarily impair his credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. What is important is, in the over-all analysis of the case, the trial court's findings and conclusions are duly supported by the evidence on record.

3. ID.; ID.; ID.; THE VARIANCE IN THE TESTIMONIES OF WITNESSES IN SOME MINOR DETAILS IS CONSIDERED NATURAL; APPLICATION IN CASE AT BAR.— As aptly held, the evaluation by the trial court of the testimony of a witness is accorded with highest respect because the trial court had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of a witness while testifying and therefore, competent to determine whether or not the witness is telling the truth. The variance in the testimonies of Flores and Enriquez, in some minor details, is considered natural. As inconsequential is the initial hesitation

and/or failure of witness Flores to divulge to *Barangay* Chairwoman Rosales what she had witnessed. What is significant is that the testimonies are categorical on material aspects, specifically on the positive identification of Galicia as the person responsible for the crime.

4. ID.; ID.; ID.; WHERE THERE IS NOTHING TO SHOW THAT THE WITNESSES WERE ACTUATED WITH IMPROPER MOTIVE, THEIR POSITIVE AND CATEGORICAL DECLARATIONS ON THE WITNESS STAND DESERVE FULL FAITH AND CREDENCE.— We also consider in this case that no ill motive was found on the part of the witnesses that could have impelled them to testify against Galicia. In *People v. Nogra,* we ruled that where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand, under the solemnity of an oath, deserve full faith and credence. It necessarily prevails over alibi and denial, especially when neither alibi nor denial is substantiated by clear and convincing evidence.

5. CRIMINAL LAW; REVISED PENAL CODE; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; TREACHERY IS PRESENT WHEN THE VICTIM HAD NO INKLING THAT AN ATTACK WAS FORTHCOMING AND HAD NO OPPORTUNITY TO PUT UP A DEFENSE; CASE AT BAR.— We agree with the lower courts that treachery attended the killing of Judge Rosales. The attack, as testified to by the prosecution witnesses, was sudden and unexpected. The victim had no inkling that an attack was forthcoming and had no opportunity to put up any defense.

6. ID.; ID.; ID.; ID.; EVIDENT PREMEDITATION; THE ESSENCE THEREOF IS THAT THE EXECUTION OF THE CRIMINAL ACT IS PRECEDED BY COOL THOUGHT AND REFLECTION UPON THE RESOLUTION TO CARRY OUT THE CRIMINAL INTENT WITHIN THE SPACE OF TIME SUFFICIENT TO ARRIVE AT A CALM JUDGMENT; PRESENT IN CASE AT BAR.— [W]e appreciate the existence of the qualifying circumstance of evident premeditation. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution

to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. In this case, it was clearly shown that the two accused who were "riding in tandem" hatched the means on how to carry out and facilitate the commission of the crime. The time that had elapsed while the accused were waiting for their victim to pass by, is indicative of cool thought and reflection on their part that they clung to their determination to commit the crime. We are therefore convinced that the elements of evident premeditation were established by the trial court with equal certainty as the criminal act itself. Since the crime has already been qualified to murder by the attendant circumstance of treachery, the other proven circumstance of evident premeditation should be appreciated as a generic aggravating circumstance.

7. ID.; ID.; ID.; IMPOSABLE PENALTY; CASE AT BAR.— The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code, as amended, with *reclusion perpetua* to death. For the death of Judge Voltaire Rosales, given the aggravating circumstance of evident premeditation that attended the commission of the crime, the penalty of death should have been meted against Galicia. However, due to the dictates of Republic Act No. 9346 prohibiting its imposition, the lower courts correctly sentenced the appellant to suffer the penalty of *reclusion perpetua* only.

8. ID.; ID.; ID.; MORAL DAMAGES MUST BE AWARDED EVEN IN THE ABSENCE OF ANY ALLEGATION AND PROOF OF THE HEIRS' EMOTIONAL SUFFERING; SUSTAINED.— The award of moral damages by the CA should be increased from ₱50,000.00 to ₱100,000.00. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of any allegation and proof of the heirs' emotional suffering.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Law Firm of Amurao Amurao and Associates for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03143 promulgated on 14 November 2008, which affirmed with modification the 5 November 2007 Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 58, finding the appellant guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 05-1602.

The Facts

On 10 January 2005,[3] accused-appellant Aldrin M. Galicia (Galicia) and co-accused Jun Asuncion were charged with the crime of Murder punishable under Article 248 of the Revised Penal Code in an Information,[4] the accusatory portion of which reads:

That on or about 11:45 in the morning of June 10, 2004, at N. Gonzales St., cor. F. Platon St., Barangay II, Poblacion, Tanauan City and within the jurisdiction of this Honorable Court, the above named accused conspiring and confederating and mutually helping one another, with treachery and evident premeditation, one of the accused **JUN ASUNCION *y* NOBERO**, armed with a firearm, and with deliberate intent to kill, did then and there willfully, unalwfully and feloniously in an unexpected manner, shot Judge Voltaire Rosales,

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[1] CA *rollo*, pp. 155-175; Penned by Associate Justice Mariflor P. Punzalan Castillo with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Rosmari D. Carandang concurring.

[2] *Id.* at 102-120.

[3] Records, Vol. I, pp. 1-3.

[4] *Id.* at 1.

hitting the latter on his head and neck thus causing fatal injuries which resulted to the instantaneous death of said Judge Rosales. Said accused escaped through the use of a motorcycle then driven by the accused **ALDRIN GALICIA *y* MICOSA**.

Upon arraignment, Galicia pleaded not guilty[5] to the charge. On the other hand, accused Jun Asuncion remained at large.

Thereafter, trial on the merits ensued.

The prosecution evidence, established primarily from the eyewitness accounts of Maricel Flores (Flores) and Ramil Enriquez (Enriquez), is culled by the summary[6] of State's evidence of guilt presented by the Office of the Solicitor General (OSG), quoted hereunder:

> On June 10, 2004, at 9:15 in the morning, [Flores] was tending to a garden of the *carinderia* located at No. 58 N. Gonzales St., Tanauan, Batangas where she was working, when she noticed two (2) men three to four meters away. x x x
>
> One of them approached her and asked what she was planting. She replied that she does not know the name of the plant. She noticed that the man has big eyes, dark skin and has a prominent jaw (*pangahin*). He was wearing a black jacket and a helmet which was open in front. The other man remained where he was standing and was wearing a gray jacket. That man was later identified by [Flores] as [Galicia]. Beside him was a black motorcycle which has no plate number and the engine still running. x x x
>
> When [Flores] noticed that it was about to rain, she invited them to come inside the *carinderia*. As [Flores] entered the diner, she turned her face towards the two men and stared hard. x x x
>
> After a few moments while she was attending to the chores inside the diner, she heard successive gunshots. Immediately she looked out of the window and from her vantage point, she saw a green Pajero 7 to 10 meters away, slowly crossing and swerving to the right toward Platon St. x x x

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[5] *Id.* at 97.

[6] CA *rollo*, pp. 133-135; Appellee's Brief.

After the shots were fired, she saw the two men she talked to earlier riding their motorcycle and speeding away. The motorcycle was driven by [Galicia]. Then in a split second, she saw the Pajero hitting the wall at the corner of Platon and N. Gonzales St. x x x

Moments later, policemen arrived and they took pictures of the Pajero as well as the crime scene. x x x

On July 7, 2004, she summoned her courage to disclose what she knew and executed an affidavit before the Tanauan Police Station. She disclosed what she witnessed because her conscience bothered her. x x x

Likewise, on June 10, 2004 in the morning, [Enriquez], an agent of the Surety Commonwealth Insurance Company of Tanauan City, Batangas was walking at N. Gonzales St., Tanauan City headed towards Jollibee when he noticed a black Enduro motorcycle without plate number with two riders cruising the streets. x x x

Suddenly from where [Enriquez] was standing, he saw a green Mitsubishi Pajero pass by. Then he saw the two riders of the motorcycle firing upon somebody inside the vehicle. He saw appellant manning the motorcycle. x x x

After firing the shots, the motorcycle sped away. [Enriquez] later learned that the occupant of the Green Mitsubishi Pajero was Judge Voltair[e] Rosales. He knew him considering his job as bondsman. x x x

On the part of Galicia, the Public Attorney's Office (PAO) rendered the following version of events:[7]

At about 11:45 a.m. of June 10, 2004, Judge Voltaire Rosales was killed while on board his Pajero van at N. Gonzales St. Corner F. Platon St., Barangay II, Poblacion, Tanauan, Batangas. At about one o' clock of the same day, a team of SOCO Investigators from PNP Region 4, Canlubang, Laguna, arrived at the scene of the crime and conducted an investigation. The PNP-SOCO's investigation revealed that the "assailants (of Judge Voltaire Rosales) were wearing "black bonnets" (Exh. "A"). Nobody questioned by the police investigators could identify the assailants.

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[7] *Id.* at 66-68; Brief for Accused-Appellant.

On January 24, 2005, seven months after the incident, an Information for Murder was filed against Galicia and one Jun Asuncion in the Regional Trial Court, Tanauan City, Batangas.

The Information alleged thus:

> *The undersigned State Prosecutors of the Department of Justice accuse ALDRIN GALICIA y MICOSA and JUN ASUNCION y NOBERO of the crime of MURDER defined under Article 248 of the Revised Penal Code as amended by Republic Act 7659, committed as follows:*
>
> x x x x x x x x x
>
> *CONTRARY TO LAW.*

Having been arrested, Galicia filed an Application For Bail on the ground that the Prosecution's evidence against him is not strong.

After hearing, the Regional Trial Court of Makati, Branch 145, thru Judge Cesar Santamaria, denied the application for bail.

Upon motion for inhibition filed by Galicia, the case was re-raffled and assigned to Branch 58 of the same Regional Trial Court, which conducted the trial and convicted Galicia in its Decision subject of the appeal.

The prosecution presented as witnesses the following PNP SOCO Investigators, namely: Police Supt. Ligaya Sim Cabal of the PNP Regional Crime Laboratory, Calamba City, Laguna; Gregorio de Guzman, Chief Inspector and Team Leader of the SOCO team dispatched to the crime scene; Jerome Quiasao, Chief Forensic Photographer and Operating Officer, PNP Regional Crime Laboratory, Camp Vicente Lim, Calamba, Laguna; and Jupri Delantar, the forensic chemical officer of the Batangas Provincial Crime Laboratory. The Prosecution also presented Antonio Vertido, medico-legal officer of the NBI, Southern Tagalog Region and two civilians, namely: [Flores] and [Enriquez].

The medico-legal officer and the PNP-SOCO Investigators testified on **post-crime** matters. Civilian witnesses [Flores] and [Enriquez], who claimed to be within the area where the crime was committed, testified on facts which they allegedly and purportedly observed.

On the other hand, Galicia presented himself and the following as his witnesses, namely: Lourdes Rosales, Teresita Mabilangan-Lucido and Katherine Sison Ramilo.

In essence, the defense witnesses testified that Galicia could not have committed the crime charged because on the day and time of the incident, he was attending the wake of his grandfather Armando Lucido in Brgy. Pantay Matanda, Tanauan City, who testified that Armando Lucido died on June 7, 2004 and was in state at his house in Pantay Matanda, Tanauan City from June 8, 2004 until June 11, 2004 when his remains were brought to Cabanatuan City, where his wife and children reside, for final interment.

x x x x x x x x x

Witness Lourdes Rosales, the Barangay Chairwoman of the place where the incident happened, testified in essence that on June 11, 2004 at around 6 p.m., she was asked by her cousin Carmelita Yabut, the owner of the *carinderia* where [Flores] works, to go to their house to talk to [Flores]. When she arrived at the house, she saw policemen who wanted to talk to [Flores] but the latter refused to talk to them. As a Barangay Chairwoman, she asked [Flores] to talk to the policemen so they will not keep coming back and to tell them the truth of what happened. Finally, [Flores] was convinced to talk to the policemen with the barangay chairwoman accompanying her. During the interview by the policemen, [Flores] said that "she did not see the incident and also did not see the perpetrator."

After evaluating the evidence presented by the parties, the trial court rendered a Decision[8] dated 5 November 2007, finding the appellant guilty of murder, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court renders judgment finding the accused ALDRIN GALICIA ***GUILTY*** beyond reasonable doubt of the crime of Murder and is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA***. Consequently, he is hereby ordered to indemnify the victim the amount of Php50,000.00 as civil damages.

Considering that the Court has not yet acquired jurisdiction over the person of accused Jun Asuncion who has remained at large, let an *alias* warrant of arrest be issued against him.

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[8] *Id.* at 102-120.

Aggrieved, Galicia assailed the decision on appeal. The CA sustained the trial court's finding and found the same to be in order.

The appellant now seeks recourse in this Court maintaining the issues raised before the CA as reversible errors committed by the *court a quo* in giving credence to the testimonies of Flores and Enriquez despite serious contradictions and material inconsistencies, while disregarding or ignoring the testimony of defense witness *Barangay* Chairwoman Lourdes Rosales.

Our Ruling

We find the appeal bereft of merit.

Time and again, we have ruled that factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record.[9] In numerous instances, this Court observes restraint in interfering with the trial court's assessment of the witnesses' credibility, absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion, more so, when the CA sustained such assessment, as in this case, where it affirmed the trial court's findings of fact, the veracity of the testimonies of the witnesses, the determination of physical evidence and conclusions.

As exception to the rule, the only time a reviewing court is not bound by the trial court's assessment of credibility arises upon a showing of a fact or circumstance of weight and influence that was overlooked which, if considered, could affect the outcome of the case.[10] With this exception as basis we reviewed the records for any indication of arbitrariness or clear oversight of some fact or circumstance of weight that can warrant a reversal of the findings of the courts *a quo*. We found none.

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[9] *People v. Barde*, G.R. No. 183094, 22 September 2010, 631 SCRA 187, 209.

[10] *People v. Valdez*, G.R. No. 175602, 18 January 2012, 663 SCRA 272, 282 citing *People v. Darilay*, G.R. Nos. 139751-752, 26 January 2004, 421 SCRA 45, 54.

Galicia calls our attention to the discrepancy between the respective testimonies and affidavits of prosecution witnesses Flores and Enriquez, to wit:

A. Testimony of Flores:[11]

1. She pointed to "Galicia" as the man driving the motorcycle while the other man approached her in the garden at back x x x. However, she contradicted herself and said that she asked the first man who approached her, this time pointing to Galicia who was in court, to go inside the *carinderia* (canteen) since it was raining x x x;

2. She also declared that after she heard the gunshots, she looked out of the window of the *carinderia* and saw Judge Rosales' Pajero moving slowly then hitting the wall at the corner of Gonzales and Platon Streets. [Flores] testified that she did not know how the Pajero was fired upon, how the firing began, and how it ended, and she did not see the persons who fired the gun; and

3. She also declared in court that the two assailants were wearing helmets. The portion of the helmet going down the right and left sides of their faces to the chin measured two inches wide, thereby the impossibility of recognizing the face.

B. Testimony of Enriquez:[12]

1. In his *Sinumpaang Salaysay* taken on September 8, 2004 taken by PO3 Johnson Melgar, he declared that on June 10, 2004 at about 12:00 p.m noontime, he was walking along F. Platon Street towards N. Gonzales Street, when at a distance of about 15 meters from the intersection, he saw a black Enduro motorcycle stop;

2. In his testimony before the Honorable Court on February 15, 2007, [Enriquez] testified that on June 10, 2004 at about 11:45 AM to 12:00 o' clock noon, he was walking along N. Gonzales Street when he saw a black Enduro motorcycle;

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[11] CA *rollo*, pp. 67-71.

[12] *Id.* at 83-87.

3. [Enriquez] testified that he was very familiar with F. Platon and N.Gonzales Streets in Tanauan City because he often passed these streets;

4. On cross-examination, however, when he was confronted with these material contradictions, [Enriquez] could only offer an explanation that he signed his *Sinumpaang Salaysay* x x x without reading the same x x x and that at that time when he signed the said *Sinumpaang Salaysay*, "he was so confused that he did not know anymore what to do x x x. He was still confused at the time his *Sinumpaang Salaysay* x x x was filed at the fiscal's office x x x. Even at the time he signed Exhibit "00" during the hearing of this instant case before the lower court on February 15, 2007, Ramil Enriquez declared that he was still confused;

5. While he was about 15 meters away from the intersection of N. Gonzales and F. Platon Streets, he saw an "Enduro" motorcycle. When questioned further on cross-examination, [Enriquez] declared that he is not a motorcycle enthusiast and, in fact, does not know anything about this "Enduro" motorcycle;

6. What is more telling is when [Enriquez] testified that there was no word "Enduro" on the motorcycle that he saw x x x. With all these factors, it is highly improbable for the witness to say that what he saw at a distance of 15 meters away was an "Enduro" motorcycle;

7. In his *Sinumpaang Salaysay*, [Enriquez] declared that "the one who was driving the motorcycle (who he later pointed to as "Galicia") had a slim body, brown complexion, 5'7" or 5'8" in height, and wearing black jacket and camouflaged pants.

   On cross-examination, however, he testified that the one driving the motorcycle was wearing a long-sleeved grey jacket and long camouflaged pants, and that the jacket covered his entire body and his hands, while the pants covered his entire legs. With his long-sleeved jacket and long camouflaged pants, it would be physically impossible to see the color and complexion of the one driving the motorcycle. To state that his complexion is brown is simply a lie. Later, [Enriquez] relented in his testimony and said

that what he testified was a speculation, assumption and conclusion; and

8. [Enriquez] also declared that the one driving the motorcycle is 5'7" or 5'8" in height. On cross-examination, however, he testified that the driver remained sitting and that he never alighted from the motorcycle.

Given all these observations, Galicia insists that either the prosecution has no evidence at all against him or its evidence is weak and insufficient to convict him beyond reasonable doubt.

We are not swayed. A judicious review and examination of the entire record of the instant case provide compelling reason to affirm Galicia's conviction.

At the outset, let it be emphasized that the issue being raised is one of credibility which is naturally factual – a domain of the trial court that had the opportunity to observe the deportment and manner of the witnesses as they testified[13] whose finding is, as such, entitled to respect. And we do not consider the accused's observations as relevant facts of substance which can affect the result of the case.

Deciding on the merit of the submitted inconsistencies between the prosecution witnesses' testimonies and affidavits, we reiterate our ruling in *People v. Villadares*,[14] where we held that discrepancies and/or inconsistencies between a witness' affidavit and testimony do not necessarily impair his credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. What is important is, in the over-all analysis of the case, the trial court's findings and conclusions are duly supported by the evidence on record.

As we have observed, the testimonies of Flores and Enriquez when taken together, would point to the culpability of Galicia and his cohort as the perpetrators in the killing of Judge Voltaire

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[13] *People v. Meris*, 385 Phil. 667, 683 (2000).

[14] 406 Phil. 530, 540 (2001).

Rosales. It may be true that Flores did not witness the actual shooting as she recounted only the time immediately prior to and after the shooting transpired. However, such missing detail as to the actual shooting was supplied by state witness Enriquez who testified in a straightforward manner how Galicia and his co-accused fired upon the Pajero.

A perusal of the testimony of Flores would reveal that she was in a position to positively identify the appellant as one of the two motorcycle riding men in the scene of the crime before and after the fatal shooting of the victim. On the witness stand, Flores stated that the co-accused of Galicia approached and talked to her at a distance of merely 3 to 4 meters, whereas, his companion identified later on as Galicia was on the motorcycle.[15] Prior to being approached, Flores was in the garden in front of which Galicia and his co-accused stood,[16] thus, she had a good enough view of the appearance of the two men. Besides, Flores was then alarmed by their presence as she was entertaining thoughts of the *carinderia* being robbed by them; reason why she took a hard look at their faces. In fact, she was able to describe their physical features and so identified appellant Galicia in open court. She even insisted during her cross-examination that despite the helmet, the faces of appellant and his co-accused were exposed.[17]

We entertain no doubt as to the culpability of Galicia and his co-accused even though Flores did not see the actual shooting. Note that, she stated in a categorical manner that after she heard the gunshots, she looked out of the window and saw the two men riding in the motorcycle she saw earlier, who were speeding away from the Pajero.[18] She was situated barely 7 to 10 meters from where the incident happened at the corner of Platon and

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[15] TSN, 24 November 2005, pp. 9-11.

[16] *Id.* at 8.

[17] *Id.* at 65-66 and TSN 8 December 2005, pp. 5-6.

[18] TSN, 24 November 2005, pp. 20-22.

N. Gonzales Streets,[19] the same location where prosecution witness Enriquez saw the actual shooting.

The testimonial accounts of the prosecution witnesses jibed with the physical evidence and the medico-legal report. Dr. Antonio Vertido who conducted the autopsy[20] on Judge Rosales' body certified that the cause of death was the gunshot wounds sustained at the head and the area of the neck and jaw.

So that, the inconsistencies in the color of Galicia's clothes, his complexion, the brand of the motorcycle and his height are trivial and cannot affect the credibility of the prosecution witnesses. As aptly held, the evaluation by the trial court of the testimony of a witness is accorded with highest respect because the trial court had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of a witness while testifying and therefore, competent to determine whether or not the witness is telling the truth.[21]

The variance in the testimonies of Flores and Enriquez, in some minor details, is considered natural. As inconsequential is the initial hesitation and/or failure of witness Flores to divulge to *Barangay* Chairwoman Rosales what she had witnessed. What is significant is that the testimonies are categorical on material aspects, specifically on the positive identification of Galicia as the person responsible for the crime.

We also consider in this case that no ill motive was found on the part of the witnesses that could have impelled them to testify against Galicia. In *People v. Nogra*,[22] we ruled that where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand, under the solemnity of an

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

[20] Records, Vol. I, p. 247; Autopsy Report BTNO-04-221, Exhibit "M" to "M-1".

[21] *People v. Villadares*, *supra* note at 14 at 537 citing *People v. Cortes*, G.R. No. 129693, 24 January 2000, 323 SCRA 131.

[22] G.R No. 170834, 29 August 2008, 563 SCRA 723, 735.

oath, deserve full faith and credence. It necessarily prevails over alibi and denial, especially when neither alibi nor denial is substantiated by clear and convincing evidence.

We agree with the lower courts that treachery attended the killing of Judge Rosales. The attack, as testified to by the prosecution witnesses, was sudden and unexpected. The victim had no inkling that an attack was forthcoming and had no opportunity to put up any defense.

In the same vein, contrary to the finding of the CA, we appreciate the existence of the qualifying circumstance of evident premeditation. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. In this case, it was clearly shown that the two accused who were "riding in tandem" hatched the means on how to carry out and facilitate the commission of the crime. The time that had elapsed while the accused were waiting for their victim to pass by, is indicative of cool thought and reflection on their part that they clung to their determination to commit the crime. We are therefore convinced that the elements of evident premeditation were established by the trial court with equal certainty as the criminal act itself.[23] Since the crime has already been qualified to murder by the attendant circumstance of treachery, the other proven circumstance of evident premeditation should be appreciated as a generic aggravating circumstance.[24]

The Penalties

The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code, as amended, with *reclusion perpetua* to death. For the death of Judge Voltaire Rosales, given the aggravating circumstance of evident premeditation that attended the commission of the crime, the penalty of death

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[23] *People v. Sia*, 421 Phil. 784, 800 (2001).

[24] See Aquino, *The Revised Penal Code*, Vol. 1, 1976 ed., page 341 citing cases. See also *People v. Dueno*, 179 Phil. 14, 29 (1979).

should have been meted against Galicia. However, due to the dictates of Republic Act No. 9346[25] prohibiting its imposition, the lower courts correctly sentenced the appellant to suffer the penalty of *reclusion perpetua* only.

As to Damages

The award of moral damages by the CA should be increased from ₱50,000.00 to ₱100,000.00.[26] As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of any allegation and proof of the heirs' emotional suffering.[27]

Likewise, in conformity with our ruling in *People v. Halil Gambao, et al.*,[28] where the penalty for the crime committed is death which, however, cannot be imposed as earlier discussed, we increase the award of civil indemnity from ₱50,000.00 to ₱100,000.00. In addition, the award of exemplary damages in the amount of ₱100,000.00, is in order. Further, in accordance with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid.[29]

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[25] An Act Prohibiting the Imposition of Death Penalty in the Philippines approved on 24 June 2006.

[26] *People v. Halil Gambao, et al.*, G.R. No. 172707, 1 October 2013.

[27] *People v. Cabote*, 420 Phil. 867, 879 (2001).

[28] *Supra* note 26.

[29] *People v. Campos*, G.R. No. 176061, 4 July 2011, 653 SCRA 99, 116 citing *People v. Dela Cruz*, G.R. No. 174371, 11 December 2008, 573 SCRA 708, 721-722.

WHEREFORE, the appealed judgment is **AFFIRMED with the MODIFICATION** that appellant Aldrin M. Galicia is ordered to pay the heirs of the victim Judge Voltaire Rosales the amount of ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages, all in addition to the interest on all these damages assessed at the legal rate of 6% from date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191362. October 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCIANO CIAL *Y* LORENA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; RAPE CAN BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE.—** It is settled jurisprudence that rape can be committed even in places where people congregate. As held by the CA, "lust is no respecter of time and place." Thus, the presence of "AAA's" grandmother would not negate the commission of the rape; neither would it prove appellant's innocence.

2. **ID.; ID.; ID.; MEDICAL EXAMINATION IS NOT INDISPENSABLE IN PROSECUTING A RAPE CHARGE; CASE AT BAR.—** It must be stressed that the examining physician was presented to testify only on the fact that he

examined the victim and on the results of such examination. He is thus expected to testify on the nature, extent and location of the wounds. Dr. Arnulfo Imperial (Dr. Imperial) found, among others, that "AAA" suffered hymenal lacerations. This refers to the location and nature of the wounds suffered by the victim. Dr. Imperial could not be expected to establish the cause of such lacerations with particularity because he has no personal knowledge of how these hymenal lacerations were inflicted on "AAA." He could only surmise that the lacerations could have been caused "by activities like cycling, horseback riding x x x or the insertion of [a] hard object [into] the vagina of the victim x x x [such as] the penis." In any case, a medical examination is not even indispensable in prosecuting a rape charge. In fact, an accused's conviction for rape may be anchored solely on the testimony of the victim. At best, the medical examination would only serve as corroborative evidence.

3. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP MUST BE PROVED BEYOND REASONABLE DOUBT JUST LIKE THE CRIME ITSELF.— Suffice it to state that qualifying circumstances must be proved beyond reasonable doubt just like the crime itself. In this case, the prosecution utterly failed to prove beyond reasonable doubt the qualifying circumstances of minority and relationship. As such, appellant should only be convicted of the crime of simple rape, the penalty for which is *reclusion perpetua.*

4. ID.; ID.; ID.; DAMAGES AWARDED TO THE VICTIM, SUSTAINED.— As regards damages, "AAA" is entitled to civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00 and exemplary damages in the amount of ₱30,000.00. In addition, interest at the rate of 6% *per annum* is imposed on all damages awarded from date of 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.*:

Assailed before this Court is the November 24, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03162 which affirmed with modifications the November 26, 2007 Decision[2] of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 62 finding appellant Marciano Cial *y* Lorena guilty beyond reasonable doubt of the crime of qualified rape.

On February 5, 2004, appellant was charged with the crime of rape. The Information[3] reads as follows:

> That on or about the month of December, 2002, at Barangay Balubad, Municipality of Atimonan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of "AAA",[4] a minor, 13 years old, against her will.
>
> That the commission of the rape was attended by the qualifying circumstances of minority, the victim being less than 18 years old, and relationship, the accused being the common-law husband of complainant's mother.
>
> Contrary to law.

During his arraignment on June 29, 2004, appellant pleaded not guilty.[5] After pre-trial, trial on the merits ensued.

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[1] CA *rollo*, pp. 104-111; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Rebecca De Guia-Salvador and Apolinario D. Bruselas, Jr.

[2] Records, pp. 193-199; penned by Judge Hector B. Almeyda.

[3] *Id.* at 2.

[4] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004)." *People v. Teodoro*, G.R. No. 175876, February 20, 2013.

[5] Records, p. 11.

Version of the Prosecution

The version of the prosecution as summarized in the Appellee's Brief[6] is as follows:

"AAA" is one of the six (6) children born to "BBB" and "CCC." After "CCC" died, "BBB" cohabited with appellant Marciano Cial (also known as "Onot"). Appellant and "BBB" have two (2) children.

In 2002, "AAA", then thirteen (13) years old, was a Grade I pupil and was residing with her family and appellant in x x x Quezon Province. "AAA" calls appellant "Papa."

Sometime in December 2002, appellant called "AAA" and told her to go to the bedroom inside their house. Once inside, appellant took off "AAA's" shorts and panty and spread her legs. Appellant pulled his pants down to his thighs and inserted his penis into the little girl's vagina. "AAA" felt intense pain but she did not try to struggle because appellant had a bolo on his waist. After satiating his lust, appellant threatened to kill "AAA" and her family if she reported the incident to anyone. At that time, "AAA's" maternal grandmother was in the house but was unaware that "AAA" was being ravished.

x x x x x x x x x

Unable to endure the torment, "AAA" confided her ordeal to her mother. But "AAA's" mother did not believe her. "AAA" ran away from home and went to her maternal uncle's house. There, she disclosed her harrowing experience to her mother's siblings. Her uncle appeared to be angered by appellant's wrong doing. But nonetheless, her uncle allowed appellant to bring her home when appellant fetched her.

For fear that she might be raped again, "AAA" ran away and went to the house of her aunt. Her aunt helped her file the complaint against her stepfather.

On March 19, 2003, "AAA" was brought to Doña Marta Memorial District Hospital in Atimonan, Quezon where she was physically examined by Dr. Arnulfo Imperial. Dr. Imperial issued a Medico-Legal Report which essentially states that:

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[6] CA *rollo*, pp. 68-96.

1) she was negative to pubic hair; there was a negative physical injury at the pubic area, with normal external genitalia;

2) the hymen has an old laceration on the 12 o'clock and 5 o'clock positions, introitus admits one examining finger with ease; and

3) spermatozoa determination result was negative for examination of spermatozoa.

According to Dr. Imperial, the negative result for pubic hair as indicated in his report means that the victim has not yet fully developed her secondary characteristics which usually manifests during puberty. Dr. Imperial explained that the easy insertion of one finger into her vagina means that the child was no longer a virgin and that it would be difficult to insert even the tip of the little finger into the private part of a virgin as she would have suffered pain. On the absence of spermatozoa on the victim's genitals, Dr. Imperial explained that a sperm has a life span of three (3) days. The lapse of almost four months from the time of the rape would naturally yield negative results for spermatozoa.

On April 7, 2003, "AAA" and her aunt sought the assistance of the Crisis Center for Women at Gumaca, Quezon. "AAA" was admitted to the said center and still continued to reside therein at the time of her testimony.[7]

Version of the Defense

As to be expected, appellant denied the charge. He alleged that he treated "AAA" as his own daughter. He also claimed that "AAA's" aunt fabricated the charge because appellant called her a thief.

Ruling of the Regional Trial Court

The trial court lent credence to the testimony of "AAA" especially considering that the same is corroborated by the medical findings. On the other hand, the RTC found appellant's defense not only "laughable" and "sickening" but also completely untrue.[8]

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[7] *Id.* at 75-78.

[8] Records, p. 195.

The court *a quo* also found the qualifying circumstances of minority and relationship to be present. Thus, on November 26, 2007, the RTC rendered its Decision finding appellant guilty of qualified rape. Considering, however, the proscription on the imposition of the death penalty, the trial court instead sentenced appellant to *reclusion perpetua*.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, accused Marciano Cial is found guilty beyond reasonable doubt of the crime of rape and he is sentenced to suffer the penalty of *reclusion perpetua*, and the complainant "AAA" is awarded moral and exemplary damages in the amount of Fifty Thousand (₱50,000.00) Pesos.
>
> Costs against the accused.
>
> SO ORDERED.[9]

Ruling of the Court of Appeals

Appellant appealed to the CA but the appellate court found the appeal to be without merit and dismissed the same. The appellate court thus affirmed the RTC finding appellant guilty of qualified rape but with modifications as to the damages, *viz*:

> FOR THESE REASONS, the decision dated November 26, 2007 of the RTC is AFFIRMED with the following MODIFICATIONS:
>
> 1. MARCIANO CIAL *y* LORENA is sentenced to *reclusion perpetua* conformably with R.A. No. 9346, without eligibility for parole; and
>
> 2. He is ordered to indemnify AAA (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱30,000.00 as exemplary damages.
>
> SO ORDERED.[10]

The CA found that the elements of rape have been duly established. "AAA's" testimony proved that appellant had carnal

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[9] *Id.* at 199.

[10] CA *rollo*, p. 110.

knowledge of her against her will and without her consent. The examining doctor corroborated "AAA's" narration by testifying that the hymenal lacerations could have been possibly caused by an erect penis. The CA disregarded appellant's contention that he could not have raped "AAA" in the presence of "AAA's" grandmother as "lust is no respecter of time and place."[11] Moreover, the appellate court found that the prosecution satisfactorily established "AAA's" minority as well as the qualifying circumstance of relationship, appellant being the common-law husband of "AAA's" mother.

Hence, this appeal raising the following arguments, *viz*:

I

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE CIRCUMSTANCES CLEARLY POINTING TO THE INNOCENCE OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF RAPE.[12]

Appellant argues that if he indeed raped "AAA" in the manner that she narrated, it would be improbable for "AAA's" maternal grandmother not to have noticed the same. Appellant also claims that it was illogical for "AAA's" uncle to allow "AAA" to return home after learning about the alleged rape incident. Appellant also insists that the examining physician was unsure as to what actually caused "AAA's" hymenal lacerations.

Our Ruling

The appeal lacks merit.

In this appeal, appellant assails the factual findings of the trial court and the credibility it lent to the testimony of the victim. As a general rule, however, this Court accords great respect to

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[11] *Id.* at 109.

[12] *Id.* at 47.

the factual findings of the RTC, especially when affirmed by the CA. We find no cogent reason to depart from this rule.

Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, her 'furtive glance, blush of unconscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath' – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, 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 were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. (Citations omitted.)[13]

Besides, it would not be amiss to point out that "AAA" was only 13 years of age when she testified in court.[14]

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity

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[13] *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 387-388.

[14] TSN, March 28, 2006, p. 2.

are generally badges of truth and sincerity. Considering her tender age, AAA could not have invented a horrible story. x x x[15]

We are not persuaded by appellant's argument that if he indeed raped "AAA" inside their house, then "AAA's" maternal grandmother would have noticed the same. It is settled jurisprudence that rape can be committed even in places where people congregate. As held by the CA, "lust is no respecter of time and place."[16] Thus, the presence of "AAA's" grandmother would not negate the commission of the rape; neither would it prove appellant's innocence.

There is also no merit to appellant's contention that it was irrational for "AAA's" uncle to allow her to return home even after learning about the rape incident. The considerations or reasons which impelled "AAA's" uncle to allow her to return home are immaterial to the rape charge. Such have no bearing on appellant's guilt.

Likewise undeserving of our consideration is appellant's imputation that the examining physician was unsure as to what caused "AAA's" hymenal lacerations. It must be stressed that the examining physician was presented to testify only on the fact that he examined the victim and on the results of such examination. He is thus expected to testify on the nature, extent and location of the wounds. Dr. Arnulfo Imperial (Dr. Imperial) found, among others, that "AAA" suffered hymenal lacerations. This refers to the location and nature of the wounds suffered by the victim. Dr. Imperial could not be expected to establish the cause of such lacerations with particularity because he has no personal knowledge of how these hymenal lacerations were inflicted on "AAA." He could only surmise that the lacerations could have been caused "by activities like cycling, horseback riding x x x or the insertion of [a] hard object [into] the vagina of the victim x x x [such as] the penis."[17] In any case, a medical

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[15] *People v. Piosang*, G.R. No. 200329, June 5, 2013.

[16] CA *rollo*, p. 109.

[17] TSN, November 9, 2004, p. 6.

examination is not even indispensable in prosecuting a rape charge. In fact, an accused's conviction for rape may be anchored solely on the testimony of the victim. At best, the medical examination would only serve as corroborative evidence.

We find however that both the trial court and the CA erred in convicting appellant of the crime of qualified rape. According to both courts, the twin qualifying circumstances of minority and relationship attended the commission of the crime. We rule otherwise.

In its Formal Offer of Evidence,[18] the prosecution mentioned "AAA's" Certificate of Live Birth. Also attached to the Folder of Exhibits marked as Exhibit "B" is "AAA's" Certificate of Live Birth showing that "AAA" was born on October 31, 1991. However, upon closer scrutiny, we note that the said Certificate of Live Birth was never presented or offered during the trial of the case. During the March 28, 2006 hearing, the prosecution manifested before the RTC that it will be presenting "AAA's" Certificate of Live Birth at the next setting. In its Order[19] dated June 27, 2006, the trial court reset the hearing of the case to allow the prosecution to present evidence with respect to "AAA's" Certificate of Live Birth. However, up until the prosecution rested its case, nobody was presented to testify on "AAA's" Certificate of Live Birth. Records show that the prosecution presented only "AAA" and Dr. Imperial as its witnesses. Dr. Imperial never testified on "AAA's" age. On the other hand, "AAA" even testified on the witness stand that she does not know her age, *viz*:

Q. Do you remember how old were you during that time?
A. I do not know, ma'am.

Q. Do you know your birthday?
A. I do not know, ma'am.[20]

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[18] Records, p. 128.

[19] *Id.* at 122.

[20] TSN, March 28, 2006, p. 12.

Clearly, the prosecution failed to prove the minority of "AAA".

The same is true with respect to the other qualifying circumstance of relationship. The prosecution likewise miserably failed to establish "AAA's" relationship with the appellant. Although the Information alleged that appellant is the *common-law* husband of "AAA's" mother, "AAA'" referred to appellant as her *step-father*.

Q. And who is Onot?
A. He is my step father, ma'am.

Q. What do you mean step father, what is his relation to your mother?
A. He is the husband of my mother, ma'am.

x x x x x x x x x

Q. When did this Onot become the husband of your mother?
A. I could no longer remember, ma'am.

Q. Were you still small or big when he [became] the husband of your mother?
A. I was still small when he [became] the husband of my mother, ma'am.

Q. And how do you call this Onot?
A. Papa, ma'am.

Q. Is this Onot whom you called Papa inside this room now?
A. Yes, ma'am. (Witness pointed [to] the bald man who when asked his name responded that he is Mar[c]iano Cial).

Q. Do you know that person?
A. Yes, ma'am.

Q. Why do you know him?
A. Because he is the husband of my mother, ma'am.[21]

Meanwhile, appellant claimed that he is married to "AAA's" mother:

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[21] *Id.* at 3-4.

Q. You [identified] yourself Mr. Witness as married. You are married to the mother of "AAA"?
A. Yes, Your Honor.

x x x x x x x x x

Q. So, you mean to say that you are the step father of "AAA"?
A. Yes, sir.[22]

Even the RTC interchangeably referred to appellant as the common-law husband of "AAA's" mother[23] as well as the step-father of "AAA".[24] Moreover, the RTC failed to cite any basis for its reference to appellant as such. In fact, the RTC Decision is bereft of any discussion as to how it reached its conclusion that appellant is the common-law husband of "AAA's" mother or that "AAA" is his step-daughter.

The CA committed the same error. Notwithstanding appellant's claim that he is married to "AAA's" mother, it went on to declare, without any explanation or justification, that appellant is the common-law husband of "AAA's" mother, *viz*:

x x x Also, given that Marciano and AAA's mother were not legally married, the qualifying circumstance that the accused is the common-law husband of the victim's mother may be properly appreciated.[25]

The terms "common-law husband" and "step-father" have different legal connotations. For appellant to be a step-father to "AAA," he must be legally married to "AAA's" mother.[26]

Suffice it to state that qualifying circumstances must be proved beyond reasonable doubt just like the crime itself. In this case, the prosecution utterly failed to prove beyond reasonable doubt

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[22] TSN, February 27, 2007, p. 5.

[23] Records, p. 193.

[24] *Id.* at 199.

[25] CA *rollo*, p. 107.

[26] *People v. Salazar*, G.R. No. 181900, October 20, 2010, 634 SCRA, 307, 324.

the qualifying circumstances of minority and relationship. As such, appellant should only be convicted of the crime of simple rape, the penalty for which is *reclusion perpetua*.[27]

As regards damages, "AAA" is entitled to civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00 and exemplary damages in the amount of ₱30,000.00. In addition, interest at the rate of 6% *per annum* is imposed on all damages awarded from date of finality of this judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED.** The November 24, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03162 is **MODIFIED.** Appellant Marciano Cial *y* Lorena is hereby found guilty of rape and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant is ordered to pay "AAA" the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

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

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[27] REVISED PENAL CODE, Art. 266-B.

SECOND DIVISION

[G.R. No. 196842. October 9, 2013]

ALFREDO ROMULO A. BUSUEGO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (MINDANAO) [and] ROSA S. BUSUEGO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; POWERS; THE OMBUDSMAN HAS FULL DISCRETIONARY AUTHORITY IN THE DETERMINATION OF PROBABLE CAUSE DURING A PRELIMINARY INVESTIGATION; SUSTAINED.— The Ombudsman has full discretionary authority in the determination of probable cause during a preliminary investigation. This is the reason why judicial review of the resolution of the Ombudsman in the exercise of its power and duty to investigate and prosecute felonies and/or offenses of public officers is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction. Courts are not empowered to substitute their judgment for that of the Ombudsman. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. x x x The Ombudsman's primary jurisdiction, albeit concurrent with the DOJ, to conduct preliminary investigation of crimes involving public officers, without regard to its commission in relation to office, had long been settled in *Sen. Honasan II v. The Panel of Investigating Prosecutors of DOJ*, and affirmed in subsequent cases: x x x **Plainly, applying that ruling in this case, the Ombudsman has primary jurisdiction, albeit concurrent with the DOJ, over Rosa's complaint, and after choosing to exercise such jurisdiction, need not defer to the dictates of a respondent in a complaint, such as Alfredo**. In other words, the Ombudsman may exercise jurisdiction to the exclusion of the DOJ.

2. CRIMINAL LAW; REVISED PENAL CODE; CONCUBINAGE; ADMISSION SET AGAINST THE SPECIFIC ACTS OF CONCUBINAGE DOES NOT AMOUNT TO CONDONATION; CASE AT BAR.— Old jurisprudence has held that the cynosure in the question of whether the wife condoned the concubinage lies in the wife's "line of conduct under the assumption that [she] really believed [her husband] guilty of [concubinage]:" x x x Indeed, Rosa's admission was that she believed her husband had stopped womanizing, not that she had knowledge of Alfredo's specific acts of concubinage with Sia and de Leon, specifically keeping them in the conjugal dwelling. This admission set against the specific acts of concubinage listed in Article 334 of the Revised Penal Code does not amount to condonation. Their continued cohabitation as husband and wife construed from Rosa's annual visits to Davao City is not acquiescence to Alfredo's relations with his concubines.

3. ID.; ID.; ID.; SPECIFIC ACTS OF CONCUBINAGE BY A HUSBAND, ENUMERATED; PRESENT IN CASE AT BAR.— Article 334 of the Revised Penal Code lists three (3) specific acts of concubinage by a husband: (1) keeping a mistress in the conjugal dwelling; (2) sexual intercourse, under scandalous circumstances, with a woman who is not his wife; and (3) cohabiting with [a woman who is not his wife] in any other place. The Ombudsman found a *prima facie* case against Alfredo and Sia based on the testimony of Robert, Melissa S. Diambangan and Liza S. Diambangan that Alfredo had kept Sia in the conjugal dwelling where Sia even stayed at the conjugal room. x x x We further note that the presence of Sia at the Busuego household and her *interim* residence thereat was not disputed nor explained. Alfredo just cavalierly declares that Sia may have stayed in the conjugal dwelling, but never as his mistress, and Sia supposedly slept in the maids' quarters. While such a claim is not necessarily preposterous, we hold that such is a matter of defense which Alfredo should raise in court given that Rosa's complaint and its accompanying affidavits have created a *prima facie* case for Concubinage against Alfredo and Sia.

4. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; AFFIDAVITS OF RECANTATION ARE

UNRELIABLE AND DESERVE SCANT CONSIDERATION.— Affidavits of recantation are unreliable and deserve scant consideration. The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.

APPEARANCES OF COUNSEL

Buhion-Campoamor & Campoamor for petitioner.
Alabastro and Olaguer Law Offices for private respondent.

D E C I S I O N

PEREZ, *J.*:

Before us is a petition for *certiorari* seeking to annul and set aside the Resolution of the Ombudsman dated 17 April 2009[1] and Order dated 11 October 2010,[2] which directed the filing of an Information for Concubinage under Article 334 of the Revised Penal Code against petitioner Alfredo Romulo A. Busuego (Alfredo).

We chronicle the facts thus.

Private respondent Rosa S. Busuego (Rosa) filed a complaint for: (1) Concubinage under Article 334 of the Revised Penal Code; (2) violation of Republic Act No. 9262 (Anti-Violence Against Women and Their Children); and (3) Grave Threats under Article 282 of the Revised Penal Code, before the Office of the Ombudsman against her husband, Alfredo, with designation Chief of Hospital, Davao Regional Hospital, Apokon, Tagum City.

In her complaint, Rosa painted a picture of a marriage in disarray.

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[1] *Rollo,* pp. 242-272.

[2] *Id.* at 317-321.

She and Alfredo were married on 12 July 1975 at the Assumption Church, Davao City. Their union was blessed with two (2) sons, Alfred and Robert, born in 1976 and 1978, respectively.

Sometime in 1983, their marriage turned sour. At this time, Rosa unearthed photographs of, and love letters addressed to Alfredo from, other women. Rosa confronted Alfredo who claimed ignorance of the existence of these letters and innocence of any wrongdoing.

Purportedly, Alfredo very rarely stayed at home to spend time with his family. He would come home late at night on weekdays and head early to work the next day; his weekends were spent with his friends, instead of with his family. Rosa considered herself lucky if their family was able to spend a solid hour with Alfredo.

Around this time, an opportunity to work as nurse in New York City, United States of America (US) opened up for Rosa. Rosa informed Alfredo, who vehemently opposed Rosa's plan to work abroad. Nonetheless, Rosa completed the necessary requirements to work in the US and was scheduled to depart the Philippines in March 1985.

Before leaving, Rosa took up the matter again with Alfredo, who remained opposed to her working abroad. Furious with Rosa's pressing, Alfredo took his loaded gun and pointed it at Rosa's right temple, threatening and taunting Rosa to attempt to leave him and their family. Alfredo was only staved off because Rosa's mother arrived at the couple's house. Alfredo left the house in a rage: Rosa and her mother heard gun shots fired outside.

Because of that incident, Rosa acted up to her plan and left for the US. While in the US, Rosa became homesick and was subsequently joined by her children who were brought to the US by Alfredo. Rosa singularly reared them: Alfred, from grade school to university, while Robert, upon finishing high school, went back to Davao City to study medicine and lived with Alfredo.

During that time his entire family was in the US, Alfredo never sent financial support. In fact, it was Rosa who would remit money to Alfredo from time to time, believing that Alfredo had stopped womanizing. Rosa continued to spend her annual vacation in Davao City.

Sometime in 1997, Rosa learned that a certain Emy Sia (Sia) was living at their conjugal home. When Rosa asked Alfredo, the latter explained that Sia was a nurse working at the Regional Hospital in Tagum who was in a sorry plight as she was allegedly being raped by Rosa's brother-in-law. To get her out of the situation, Alfredo allowed Sia to live in their house and sleep in the maids' quarters. At that time, Rosa gave Alfredo the benefit of the doubt.

In October 2005, Rosa finally learned of Alfredo's extra-marital relationships. Robert, who was already living in Davao City, called Rosa to complain of Alfredo's illicit affairs and shabby treatment of him. Rosa then rang up Alfredo which, not surprisingly, resulted in an altercation.

Robert executed an affidavit, corroborating his mother's story and confirming his father's illicit affairs:

1. In varying dates from July 1997 to January 1998, Robert found it strange that Sia slept with his father in the conjugal bedroom.
2. He did not inform his mother of that odd arrangement as he did not want to bring trouble to their family.
3. Eventually, Sia herself confirmed to Robert that she was Alfredo's mistress.
4. During this period of concubinage, Sia was hospitalized and upon her discharge, she and Alfredo resumed their cohabitation.
5. The relationship between Alfredo and Sia ended only when the latter found another boyfriend.
6. His father next took up an affair with Julie de Leon (de Leon) whom Robert met when de Leon fetched Alfredo

on one occasion when their vehicle broke down in the middle of the road.

7. Robert read various Short Message Service (SMS) exchanges between Julie and Alfredo on Alfredo's mobile phone.

8. On 23, 24, 30 and 31 December 2004, de Leon stayed in Rosa's and Alfredo's conjugal dwelling and stayed in the conjugal room the entire nights thereof.

The househelpers, Melissa S. Diambangan and Liza S. Diambangan, likewise executed a joint affidavit in support of Rosa's allegations:

1. They had seen Sia sleep and stay overnight with Alfredo in the conjugal bedroom.

2. Sia herself, who called Alfredo "Papa," confirmed the two's sexual relationship.

3. On 23, 24, 30 and 31 December 2004, de Leon stayed in the conjugal dwelling and slept overnight with Alfredo in the conjugal room.

As a result, Rosa and their other son Alfred forthwith flew to Davao City without informing Alfredo of their impending return. Upon Rosa's return, she gathered and consolidated information on her husband's sexual affairs.

Pursuant to her charges of violation of Republic Act No. 9262 and Grave Threats, Rosa averred that during the course of their marriage, apart from the marital infidelity, Alfredo physically and verbally abused her and her family. On one occasion after Rosa confirmed the affairs, Alfredo threatened their family, including other members of their household that he will gun them down should he chance upon them in Tagum City. Lastly, on 22 March 2006, Alfredo purportedly dismissed househelper Liza Diambangan and threatened her.

As expected, Alfredo, in his counter-affidavit, denied all accusations against him and alleged that:

1. Rosa, despite his pleas for them to remain and raise their family in the Philippines, chose to live in the US, separate from him.

2. Rosa's allegations that he had kept photographs of, and love letters from, other women, were only made to create a cause of action for the suit for Legal Separation which Rosa filed sometime in 1998.

3. It was highly improbable that he committed acts of concubinage with Sia and de Leon since from the time he became Chief of Hospital of the Davao Regional Hospital in Tagum City, he practically stayed all days of the work week in the hospital. The instances he went home were few and far between, only to check on the house and provide for household expenses.

4. When Robert returned to Davao City and lived with him, it became more impossible for him to have shacked up with Sia and de Leon in the conjugal dwelling.

5. With respect to his alleged relationship with Sia, without admitting to anything, that Sia, for a time, may have lived in his and Rosa's conjugal house, staying at the maids' quarters. However, at no instance did he keep Sia as his mistress in the conjugal dwelling.

6. As regards the dates of December 23, 24, 30 and 31, 2004 when he supposedly stayed with de Leon in the conjugal room, Alfredo pointed out that said dates were busiest days of the year in the hospital where his presence as Chief of Hospital is most required.

7. By Rosa's own admission, she first learned of Alfredo's alleged concubinage in 1997, and yet she still continued with her yearly visits to Alfredo in Davao City. Those instances ought to be construed as condonation of the concubinage.

8. Significantly, the alleged concubines, Sia and de Leon, were not impleaded along with Alfredo as party-respondents in the complaint in violation of Article 344 of the Revised Penal Code.

Alfredo made short shrift of Rosa's charges of violation of Republic Act No. 9262 and Grave Threats. He claimed that, at no time, did he threaten, the lives or, to harm his wife, their family and members of their household. He only berated the help for perpetrating gossip about his behavior and conduct.

In their subsequent exchange of responsive pleadings, Rosa maintained Alfredo's culpability, and naturally, Alfredo claimed innocence.

In the course thereof, the procedural issue of Rosa's failure to implead Sia and de Leon as respondents cropped up. Alfredo insisted that Rosa's complaint ought to be dismissed for failure to implead his alleged concubines as respondents.

Specifically to dispose of that issue, the Ombudsman scheduled a clarificatory hearing where both Rosa and Alfredo were represented by their respective counsels:

> x x x [Rosa] was apprised of the need to implead the two alleged mistresses in the complaint for Concubinage pursuant to Article 344 of the Revised Penal Code. Although [Alfredo] objected to the amendment of the complaint, at this point in time, due to the alleged procedural lapse committed by [Rosa], this Office explained to the parties that the position of [Alfredo] would just prolong the conduct of the preliminary investigation since [Rosa] can just re-file [her] complaint. The doctrine of *res judicata* does not apply in the preliminary investigation [stage]. Hence, the counsel for [Rosa] was directed to submit to this Office the addresses of the alleged mistresses so that they could be served with the Order directing them to file their counter-affidavits.
>
> [Rosa] submitted an *Ex-Parte* Manifestation on the last known addresses of Julie de Leon and Emy Sia. x x x.[3]

On 24 June 2008, the Ombudsman issued a Joint Order[4] impleading Sia and de Leon as party-respondents in the complaint for Concubinage and directing them to submit their respective counter-affidavits within a period of time. Copies of the Joint

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[3] *Id.* at 255-256.

[4] *Id.* at 233-236.

Order were mailed to Sia's and de Leon's last known addresses, as provided by Rosa to the Ombudsman.

Sia and de Leon did not submit their respective counter-affidavits: a copy of the Joint Order sent to Sia's last known address was returned to the Ombudsman with the notation on the Registry Return Receipt No. 1624 "Return to Sender; removed," while a copy thereof to de Leon was received on 3 September 2008 by Ananias de Leon.[5]

Apparently still opposed to the Ombudsman's ruling to simply amend the complaint and implead therein Alfredo's alleged mistresses, Alfredo filed his Comment to the 24 June 2008 Order with Motion to Dismiss and/or Refer the charges to the Appropriate Provincial/City Prosecutor[6] praying for dismissal of the complaint for: (1) failure to implead the two mistresses in violation of Article 344 of the Revised Penal Code; and in the alternative, (2) referral of the complaint to the Office of the City Prosecutor as provided in OMB-DOJ Circular No. 95-001.

Rosa filed a Reply to that latest pleading of Alfredo.

On 17 April 2009, the Ombudsman issued the herein assailed Resolution, disposing of the procedural issues:

> Before dwelling into the merits of the case, this Office finds an urgent need to resolve the ancillary issues raised by [petitioner] Dr. Busuego on: 1.) the alleged legal infirmity of [Rosas's] initiatory pleading by resorting to a procedural short cut which would result to the delay in the disposition of this case; and 2.) the criminal charges imputed are not in relation to office, hence, the Office of the Provincial/City Prosecutor shall investigate and prosecute this case pursuant to OMB-DOJ Joint Circular No. 95-001, Series of 1995.
>
> On the first issue, this Office observed that [Busuego] had already pointed out in his counter-Affidavit the alleged deficiency in the complaint. [Rosa] also explained in her Reply that the names of the mistresses were categorically mentioned in the complaint. She averred

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[5] *Id.* at 256.

[6] *Id.* at 237-241.

that this Office is empowered to investigate and prosecute any act or omission of a public official or employee to the exclusion of non-government employees. She stated that the inclusion of the alleged concubines in the Information to be filed in court is a matter of procedure, within the competence of the investigating prosecutor.

In order to clarify some matters, including the said issue, with the parties, the clarificatory hearing was conducted. It was explained in the said hearing the need to implead the alleged concubines in this case pursuant to Article 344 of the Revised Penal Code and to obviate the proceedings, [Rosa] was directed to submit the addresses of the alleged concubines. [Busuego's] position that the said short cut procedure would delay the proceedings is misplaced. If the case will be dismissed based on procedural infirmity, [Rosa] could still amend [her] complaint and re-file this case since the doctrine of *res judicata* does not apply in the preliminary investigation stage of the proceedings.

On the second issue, the motion of [Busuego] to refer this case to the Office of the City Prosecutor was belatedly filed. Record would show that the motion praying for the referral of this case to the Office of the City Prosecutor was filed on 17 July 2008, after the parties have already filed all their pleadings and the case is now ripe for resolution. Further, referral to the said office is not mandatory as cited in the said Joint Circular.[7]

In the same Resolution, the Ombudsman, ultimately, found probable cause to indict only Alfredo and Sia of Concubinage and directed the filing of an Information against them in the appropriate court:

WHEREFORE, in view of the foregoing, this Office finds a *prima facie* case for violation of Article 334 of the Revised Penal Code (concubinage) and that [petitioner] ALFREDO ROMULO BUSUEGO *y* ABRIO, and EMY SIA, are probably guilty thereof.

Let the herewith Information be filed in the appropriate court.

The charges for: 1.) Concubinage against Alfredo Romulo Busuego *y* Abrio and Julie de Leon; 2.) Grave Threats against Alfredo Romulo

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[7] *Id.* at 258-259.

y Abrio; and 3.) violation of RA 9262 (Anti-Violence Against Women and Children Act), are hereby DISMISSED for lack of merit.[8]

Alfredo filed a Partial Motion for Reconsideration excepting to the Ombudsman's ruling on the automatic inclusion of Sia as respondent in the complaint and their indictment for the crime of Concubinage. Alfredo is adamant that Rosa's complaint should have, at the outset, impleaded his alleged concubines. Failing such, the Ombudsman cannot resort to automatic inclusion of party-respondents, erroneously finding him and Sia *prima facie* culpable for Concubinage. For good measure, Alfredo pointed out that from Rosa's own allegations, she had condoned or pardoned Alfredo's supposed concubinage. Alfredo likewise submitted Liza S. Diambangan's affidavit, recanting her previous affidavit corroborating Rosa's charges.

Nonetheless, the Ombudsman stood pat on its ruling, declared that the Partial Motion for Reconsideration was filed out of time, and gave scant attention to Liza S. Diambangan's affidavit of recantation:

> WHEREFORE, all the foregoing considered, this instant Motion for Reconsideration is hereby DENIED. The findings in the questioned Resolution hereby remains undisturbed. Let the Information for Concubinage be filed in the proper court against herein [Busuego].[9]

Alfredo now comes to us on petition for *certiorari* alleging grave abuse of discretion in the Ombudsman's finding of probable cause to indict him and Sia for Concubinage. Alfredo's badges of grave abuse of discretion are the following:

1. The Ombudsman railroaded the inclusion of Sia and de Leon as party-respondents in the complaint;
2. The Ombudsman did not refer the complaint to the Department of Justice, considering that the offense of Concubinage is not committed in relation to his office as Chief of Hospital;

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[8] *Id.* at 270-271.

[9] *Id.* at 320.

3. The Ombudsman glossed over Rosa's condonation of Alfredo's supposed Concubinage when she alleged in the complaint that she had known of Alfredo's womanizing and believed him to have changed his ways;

4. The Ombudsman did not take into consideration the affidavit of recantation of Liza Diambangan; and

5. The Ombudsman found probable cause to indict Alfredo and Sia for Concubinage.

We sustain the Ombudsman.

The Ombudsman has full discretionary authority in the determination of probable cause during a preliminary investigation.[10] This is the reason why judicial review of the resolution of the Ombudsman in the exercise of its power and duty to investigate and prosecute felonies and/or offenses of public officers is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction. Courts are not empowered to substitute their judgment for that of the Ombudsman.[11]

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[12] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[13] In this regard, petitioner failed to demonstrate the Ombudsman's abuse, much less grave abuse, of discretion.

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[10] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, 23 April 2010, 619 SCRA 141, 148.

[11] *Asetre v. Asetre*, G.R. No. 171536, 7 April 2009, 584 SCRA 471, 483.

[12] *Casing v. Ombudsman*, G.R. No. 192334, 13 June 2012, 672 SCRA 500, 508.

[13] *Id.*

First. Alfredo insists that the Ombudsman's automatic inclusion, over his vehement objections of Sia and de Leon as party-respondents, violates Article 344 of the Revised Penal Code and Section 5, Rule 110 of the Rules of Court, which respectively provide:

> Art. 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.* — The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.
>
> The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.
>
> Section 5. *Who must prosecute criminal action.* – xxx.
>
> The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

We do not agree.

The submission of Alfredo is belied by the fact that the Ombudsman merely followed the provisions of its Rules of Procedure. Thus:

> Rule II
> PROCEDURE IN CRIMINAL CASES
>
> x x x x x x x x x
>
> Section 2. Evaluation – Upon evaluating the complaint, the investigating officer shall recommend whether it may be:
>
> a) dismissed outright for want of palpable merit;
> b) **referred to respondent for comment**;
> c) indorsed to the proper government office or agency which has jurisdiction over the case;
> d) forwarded to the appropriate office or official for fact-finding investigation;
> e) referred for administrative adjudication; or
> f) subjected to a preliminary investigation.
>
> x x x x x x x x x

Section 4. Procedure – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

a) x x x

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondents does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) **No motion to dismiss shall be allowed except for lack of jurisdiction.** Neither may a motion for a bill of particulars be entertained. **If respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of the clarificatory questioning in the manner provided in paragraph (f) of this section.**

e) If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

f) **If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned.** Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the

witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the ombudsman in cases falling within the jurisdiction of the Sandiganbyan, or of the proper Deputy Ombudsman in all other cases. (Emphasis supplied).

Notably, Rosa's complaint contained not just the Concubinage charge, but other charges: violation of Republic Act No. 9262 and Grave Threats. Upon the Ombudsman's perusal, the complaint was supported by affidavits corroborating Rosa's accusations. Thus, at that stage, the Ombudsman properly referred the complaint to Alfredo for comment. Nonetheless, while the Ombudsman found no reason for outright dismissal, it deemed it fit to hold a clarificatory hearing to discuss the applicability of Article 344 of the Revised Penal Code, the issue having been insisted upon by Alfredo.

Surely the procedural sequence of referral of the complaint to respondent for comment and thereafter the holding of a clarificatory hearing is provided for in paragraph b, Section 2 and paragraphs d and f, Section 4 of Rule II, which we have at the outset underscored. Thus did the Ombudsman rule:

In order to clarify some matters, including the said issue, with the parties, the clarificatory hearing was conducted. It was explained in the said hearing the need to implead the alleged concubines in this case pursuant to Article 344 of the Revised Penal Code and to obviate the proceedings, [Rosa] was directed to submit the addresses of the alleged concubines. [Busuego's] position that the said short cut procedure would delay the proceedings is misplaced. If the case will be dismissed based on procedural infirmity, [Rosa] could still amend [her] complaint and re-file this case since the doctrine of *res judicata* does not apply in the preliminary investigation stage of the proceedings.[14]

[14] *Rollo,* pp. 258-259.

The Ombudsman merely facilitated the amendment of the complaint to cure the defect pointed out by Alfredo. We agree with the Ombudsman that it would be superfluous to dismiss the complaint when amendment thereof is allowed by its Rules of Procedure[15] and the Rules of Court.[16]

Second. Alfredo claims that the Ombudsman should have referred Rosa's complaint to the Department of Justice (DOJ), since the crime of Concubinage is not committed in relation to his being a public officer. This is not a new argument.

The Ombudsman's primary jurisdiction, albeit concurrent with the DOJ, to conduct preliminary investigation of crimes involving public officers, without regard to its commission in relation to office, had long been settled in *Sen. Honasan II v. The Panel of Investigating Prosecutors of DOJ*,[17] and affirmed in subsequent cases:

[T]he Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees. The authority of the Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.

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[15] Rule V, Section 3. Rules of Court, application. In all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient.

[16] Rule 110, 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.

[17] G.R. No. 159747, 13 April 2004, 427 SCRA 46, 70-75.

In other words, respondent DOJ Panel is not precluded from conducting any investigation of cases against public officers involving violations of penal laws but if the cases fall under the exclusive jurisdiction of the Sandiganbayan, the respondent Ombudsman may, in the exercise of its primary jurisdiction take over at any stage.

Thus, with the jurisprudential declarations that the Ombudsman and the DOJ have concurrent jurisdiction to conduct preliminary investigation, the respective heads of said offices came up with OMB-DOJ Joint Circular No. 95-001 for the proper guidelines of their respective prosecutors in the conduct of their investigations, to wit:

OMB-DOJ JOINT CIRCULAR NO. 95-001
Series of 1995

	ALL GRAFT INVESTIGATION/SPECIAL PROSECUTION OFFICERS OF THE OFFICE OF THE OMBUDSMAN
TO:	ALL REGIONAL STATE PROSECUTORS AND THEIR ASSISTANTS, PROVINCIAL/CITY PROSECUTORS AND THEIR ASSISTANTS, STATE PROSECUTORS AND PROSECUTING ATTORNEYS OF THE DEPARTMENT OF JUSTICE.
SUBJECT:	HANDLING COMPLAINTS FILED AGAINST PUBLIC OFFICERS AND EMPLOYEES, THE CONDUCT OF PRELIMINARY INVESTIGATION, PREPARATION OF RESOLUTIONS AND INFORMATIONS AND PROSECUTION OF CASES BY PROVINCIAL AND CITY PROSECUTORS AND THEIR ASSISTANTS.

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In a recent dialogue between the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, discussion centered around the latest pronouncement of the SUPREME COURT on the extent to which the OMBUDSMAN may call upon the government prosecutors for assistance in the investigation and prosecution of criminal cases cognizable by his office and the conditions under which he may do so. Also discussed was Republic Act No. 7975 otherwise known as "AN ACT TO STRENGTHEN THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE

SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED" and its implications on the jurisdiction of the office of the Ombudsman on criminal offenses committed by public officers and employees.

Concerns were expressed on unnecessary delays that could be caused by discussions on jurisdiction between the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, and by procedural conflicts in the filing of complaints against public officers and employees, the conduct of preliminary investigations, the preparation of resolutions and informations, and the prosecution of cases by provincial and city prosecutors and their assistants as DEPUTIZED PROSECUTORS OF THE OMBUDSMAN.

Recognizing the concerns, the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, in a series of consultations, have agreed on the following guidelines to be observed in the investigation and prosecution of cases against public officers and employees:

1. Preliminary investigation and prosecution of offenses committed by public officers and employees IN RELATION TO OFFICE whether cognizable by the SANDIGANBAYAN or the REGULAR COURTS, and whether filed with the OFFICE OF THE OMBUDSMAN or with the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall be under the control and supervision of the office of the OMBUDSMAN.

2. Unless the Ombudsman under its Constitutional mandate finds reason to believe otherwise, offenses NOT IN RELATION TO OFFICE and cognizable by the REGULAR COURTS shall be investigated and prosecuted by the OFFICE OF THE PROVINCIAL/ CITY PROSECUTOR, which shall rule thereon with finality.

3. Preparation of criminal information shall be the responsibility of the investigating officer who conducted the preliminary investigation. Resolutions recommending prosecution together with the duly accomplished criminal informations shall be forwarded to the appropriate approving authority.

4. Considering that the OFFICE OF THE OMBUDSMAN has jurisdiction over public officers and employees and for effective monitoring of all investigations and prosecutions of cases involving public officers and employees, the OFFICE OF THE PROVINCIAL/ CITY PROSECUTOR shall submit to the OFFICE OF THE

OMBUDSMAN a monthly list of complaints filed with their respective offices against public officers and employees.

x x x x x x x x x

A close examination of the circular supports the view of the respondent Ombudsman that it is just an internal agreement between the Ombudsman and the DOJ.

Sections 2 and 4, Rule 112 of the Revised Rules on Criminal Procedure on Preliminary Investigation, effective December 1, 2000, to wit:

> SEC. 2. Officers authorized to conduct preliminary investigations –
>
> The following may conduct preliminary investigations:
>
> (a) Provincial or City Prosecutors and their assistants;
> (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;
> (c) National and Regional State Prosecutors; and
> (d) Other officers as may be authorized by law.
>
> Their authority to conduct preliminary investigation shall include all crimes cognizable by the proper court in their respective territorial jurisdictions.
>
> SEC. 4. Resolution of investigating prosecutor and its review. – If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.
>
> Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise

> of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.
>
> No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.
>
> Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.
>
> If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

confirm the authority of the DOJ prosecutors to conduct preliminary investigation of criminal complaints filed with them for offenses cognizable by the proper court within their respective territorial jurisdictions, including those offenses which come within the original jurisdiction of the Sandiganbayan; but with the qualification that in offenses falling within the original jurisdiction of the Sandiganbayan, the prosecutor shall, after their investigation, transmit the records and their resolutions to the Ombudsman or his deputy for appropriate action. Also, the prosecutor cannot dismiss the complaint without the prior written authority of the Ombudsman or his deputy, nor can the prosecutor file an Information with the Sandiganbayan without being deputized by, and without prior written authority of the Ombudsman or his deputy.

x x x x x x x x x

To reiterate for emphasis, the power to investigate or conduct preliminary investigation on charges against any public officers or employees may be exercised by an investigator or by any provincial or city prosecutor or their assistants, either in their regular capacities or as deputized Ombudsman prosecutors. The fact that all prosecutors are in effect deputized Ombudsman prosecutors under the OMB-DOJ circular is a mere superfluity. The DOJ Panel need not be authorized nor deputized by the Ombudsman to conduct the preliminary investigation for complaints filed with it because the DOJ's authority to act as the principal law agency of the government and investigate the commission of crimes under the Revised Penal Code is derived from the Revised Administrative Code which had been held in the *Natividad* case [citation omitted] as not being contrary to the Constitution. Thus, there is not even a need to delegate the conduct of the preliminary investigation to an agency which has the jurisdiction to do so in the first place. However, the Ombudsman may assert its primary jurisdiction at any stage of the investigation. (Emphasis supplied).

In *Honasan II*, although Senator Gregorio "Gringo" Honasan was a public officer who was charged with *coup d'etat* for the occupation of Oakwood on 27 July 2003, the preliminary investigation therefor was conducted by the DOJ. Honasan questioned the jurisdiction of the DOJ to do so, proferring that it was the Ombudsman which had jurisdiction since the imputed acts were committed in relation to his public office. We clarified that the DOJ and the Ombudsman have concurrent jurisdiction to investigate offenses involving public officers or employees. Nonetheless, we pointed out that the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases. **Plainly, applying that ruling in this case, the Ombudsman has primary jurisdiction, albeit concurrent with the DOJ, over Rosa's complaint, and after choosing to exercise such jurisdiction, need not defer to the dictates of a respondent in a complaint, such as Alfredo**. In other words, the Ombudsman may exercise jurisdiction to the exclusion of the DOJ.

Third. Alfredo next argues that Rosa had pardoned his concubinage, having admitted to knowing of his womanizing

and yet continuing with their relationship as demonstrated in Rosa's annual visits to him in Davao City.

We are not convinced.

Old jurisprudence has held that the cynosure in the question of whether the wife condoned the concubinage lies in the wife's "line of conduct under the assumption that [she] really believed [her husband] guilty of [concubinage]:"

> Condonation is the forgiveness of a marital offense constituting a ground for legal separation or, as stated in I Bouver's Law Dictionary, p. 585, condonation is the 'conditional forgiveness or remission, by a husband or wife of a matrimonial offense *which the latter has committed*.'
>
> x x x x x x x x x
>
> A detailed examination of the testimony of the plaintiff-husband, especially those portions quoted above, clearly shows that there was a condonation on the part of the husband for the supposed 'acts of rank infidelity amounting to adultery' committed by defendant-wife. Admitting for the sake of argument that the infidelities amounting to adultery were committed by the defendant, a reconciliation was effected between her and the plaintiff. The act of the latter in persuading her to come along with him, and the fact that she went with him and consented to be brought to the house of his cousin Pedro Bugayong and together they slept there as husband and wife for one day and one night, and the further fact that in the second night they again slept together in their house likewise as husband and wife — all these facts have no other meaning in the opinion of this court than that a reconciliation between them was effected and that there was a condonation of the wife by the husband. The reconciliation occurred almost ten months after he came to know of the acts of infidelity amounting to adultery.
>
> In Shackleton *vs.* Shackleton, 48 N. J. Eq. 364; 21 Atl. 935, it has been held that 'condonation is implied from sexual intercourse after knowledge of the other infidelity. Such acts necessarily implied forgiveness. It is entirely consonant with reason and justice that if the wife freely consents to sexual

> intercourse after she has full knowledge of the husband's guilt, her consent should operate as a pardon of his wrong.'
>
> In Tiffany's Domestic and Family Relations, Section 107 says:
>
> 'Condonation. Is the forgiveness of a marital offense constituting a ground for divorce and bars the right to a divorce. But it is on the condition, implied by the law when not express, that the wrongdoer shall not again commit the offense; and also that he shall thereafter treat the other spouse with conjugal kindness. A breach of the condition will revive the original offense as a ground for divorce. Condonation may be express or implied.'
>
> It has been held in a long line of decisions of the various supreme courts of the different states of the U. S. that 'a single voluntary act of sexual intercourse by the innocent spouse after discovery of the offense is ordinarily sufficient to constitute condonation, especially as against the husband'. (27 *Corpus Juris Secundum*, Section 61 and cases cited therein).
>
> In the lights of the facts testified to by the plaintiff-husband, of the legal provisions above quoted, and of the various decisions above-cited, the inevitable conclusion is that the present action is untenable.

Although no acts of infidelity might have been committed by the wife, We agree with the trial judge that the conduct of the plaintiff-husband above narrated despite his belief that his wife was unfaithful, deprives him, as alleged the offended spouse, of any action for legal separation against the offending wife, because his said conduct comes within the restriction of Article 100 of the Civil Code.

The only general rule in American jurisprudence is that any cohabitation with the guilty party, after the commission of the offense, and with the knowledge or belief on the part of the injured party of its commission, will amount to conclusive evidence of condonation; but this presumption may be rebutted by evidence (60 L. J. Prob. 73).[18]

Although the foregoing speaks of condonation of concubinage as a ground for legal separation, the holding therein applies

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[18] *Bugayong v. Ginez*, 100 Phil. 616, 620-623 (1956).

with equal force in a prosecution for concubinage as a felony. Indeed, Rosa's admission was that she believed her husband had stopped womanizing, not that she had knowledge of Alfredo's specific acts of concubinage with Sia and de Leon, specifically keeping them in the conjugal dwelling. This admission set against the specific acts of concubinage listed in Article 334[19] of the Revised Penal Code does not amount to condonation. Their continued cohabitation as husband and wife construed from Rosa's annual visits to Davao City is not acquiescence to Alfredo's relations with his concubines. On that score, we have succinctly held:

> We can find nothing in the record which can be construed as pardon or condonation. It is true that the offended party has to a considerable extent been patient with her husband's shortcomings, but that seems to have been due to his promises of improvement; nowhere does it appear that she has consented to her husband's immorality or that she has acquiesced in his relations with his concubine.[20]

Fourth. Alfredo next grasps at Liza S. Diambangan's affidavit of recantation to eliminate his probable culpability for concubinage.

Again, we are not swayed by Alfredo's asseverations.

We have generally looked with disfavor upon retraction of testimonies previously given in court. Affidavits of recantation are unreliable and deserve scant consideration. The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.[21]

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[19] Art. 334. *Concubinage*. — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of *destierro.*

[20] *People v. Francisco*, 55 Phil. 1008, 1011 (1930).

[21] *Firaza v. People*, 547 Phil. 572, 584 (2007).

In *Firaza v. People*, we intoned:

> Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement x x x not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, *i.e.*, that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. [Citations omitted].
>
> Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. Unless there be special circumstances which, coupled with the retraction of the witness, really raise doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction, or its elimination would lead the trial judge to a different conclusion, an acquittal of the accused based on such a retraction would not be justified.[22]

In this case, Liza S. Diambangan's testimony merely corroborates the still standing story of Robert and Melissa Diambangan, the other helper in the Busuego household. Clearly, the two's consistent story may still be the basis of the Ombudsman's finding of a *prima facie* case of concubinage against Alfredo and Sia.

Finally. Despite his vigorous arguments, Alfredo claims that there is simply no basis for indicting him and Sia for concubinage.

Article 334 of the Revised Penal Code lists three (3) specific acts of concubinage by a husband: (1) keeping a mistress in the

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[22] *Id.* at 584-585.

conjugal dwelling; (2) sexual intercourse, under scandalous circumstances, with a woman who is not his wife; and (3) cohabiting with [a woman who is not his wife] in any other place.

The Ombudsman found a *prima facie* case against Alfredo and Sia based on the testimony of Robert, Melissa S. Diambangan and Liza S. Diambangan that Alfredo had kept Sia in the conjugal dwelling where Sia even stayed at the conjugal room. We completely agree with the Ombudsman's disquisition:

> x x x. It is ingrained in human behavior that a child has love, respect and loyalty to his family and [would] strive to keep the family harmonious and united. This is the very reason why [Robert] did not inform his mother about his father's infidelities during the time when his father was keeping his mistress at the conjugal dwelling. A son would never turn against his father by fabricating such a serious story which will cause his home to crumble, if such is not true. His natural instinct is to protect his home, which he did when he kept silent for a long time. What broke the camel's back was the abusive treatment he allegedly suffered and the thought that things would change for the better if his mom would intervene.
>
> The story of [Robert] in his Affidavit was reinforced by the two house helpers Melissa S. Diambangan and Liza S. Diambangan, who were employed by the family. Melissa was with the Busuego family in their conjugal home in 1997. She left the family in 2005 but returned in 2006. Liza started working with the family in 2002. Melissa revealed that it was Emy Sia who recruited her to work with the Busuego family. They both attested to the fact that [Alfredo] and Emy Sia slept together in the bedroom of [Alfredo] but Emy Sia would sleep in the maid's quarter when [Rosa and Alfred] came home for a visit in 1997. They recalled that Emy Sia calls [Alfredo] "papa." They narrated that Emy Sia would even confide to them some private matters relating to [her] sexual [proclivities with Alfredo].[23]

We further note that the presence of Sia at the Busuego household and her *interim* residence thereat was not disputed nor explained. Alfredo just cavalierly declares that Sia may

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[23] *Rollo,* pp. 262-263.

have stayed in the conjugal dwelling, but never as his mistress, and Sia supposedly slept in the maids' quarters.

While such a claim is not necessarily preposterous, we hold that such is a matter of defense which Alfredo should raise in court given that Rosa's complaint and its accompanying affidavits have created a *prima facie* case for Concubinage against Alfredo and Sia.

WHEREFORE, the petition is **DISMISSED.** The Resolutions of the Ombudsman dated 17 April 2009 and 11 October 2010 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197028. October 9, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CARMEN VICTORIA BELMONTE represented by her Attorney-in-fact, DANIEL C. VICTORIA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL TO THE SUPREME COURT; AS A RULE IN A PETITION FOR REVIEW ON *CERTIORARI*, THE COURT IS LIMITED TO REVIEWING ONLY ERRORS OF LAW; EXCEPTIONS.— As a rule, the Court, in a petition for review on *certiorari*, is limited to reviewing only errors of law, as it is not a trier of facts. There are, however, exceptions to this rule such as when:

(1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. CIVIL LAW; PROPERTY; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); ALIENABILITY, POSSESSION AND OCCUPATION SINCE JUNE 12, 1945 OR EARLIER ARE INDISPENSBLE PREREQUISITES TO A FAVORABLE REGISTRATION OF TITLE TO THE PROPERTY; EXPLAINED.— P.D. No. 1529 or the Property Registration Decree specifies who are qualified to apply for registration of land. In particular, Section 14(1) thereof in relation to Section 48(b) of Commonwealth Act 141, as amended by Section 4 of P.D. No. 1073. x x x These triple requirements of alienability and possession and occupation since June 12, 1945 or earlier under Section 14(1) are indispensable prerequisites to a favorable registration of title to the property. Each element must necessarily be proven by no less than clear, positive and convincing evidence; otherwise, the application for registration should be denied. x x x Possession and occupation alone, for 30 years or more, does not suffice. As provided in P.D. No. 1073, it is mandatory that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, had commenced on June 12, 1945 or earlier. The burden of proving adverse, continuous, open, and public possession in the concept of an owner rests upon the applicant, by no less than clear, positive and convincing evidence. x x x Furthermore, the Court has held that intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive, and notorious possession and occupation.

3. ID.; ID.; ID.; ID.; NOT ESTABLISHED IN CASE AT BAR.— In this case, Belmonte's irregular and erratic declaration and payment of real property taxes belie her claim of open and continuous possession of the said lots. Corollarily, tax declarations are merely *indicia* of a claim of ownership. The subject lots may have been declared for taxation purposes in the name of Belmonte's predecessor-in-interest, but it does not automatically prove ownership especially when the details in the tax declarations do not match. x x x These inconsistencies coupled by the erratic declarations for tax, in the absence of other competent evidence, negate open and continuous possession in the concept of an owner. As to the requirement of possession and occupation, the Court is likewise of the view that these prerequisites were not sufficiently established. x x x Evidence to be acceptable must be credible, substantial and satisfactory. General, and often vague, statements as to how Belmonte, through her supposed tenant, possessed the land in question, are mere verbal assertions that do not satisfy possession and occupation as required by law. *Republic v. Alconaba* explained the indispensable requirement of possession and occupation. x x x A person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, that is, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors. Evidently, Belmonte's witnesses were not able to give a concrete, consistent and credible picture of how she exercised dominion or exercised control over the subject properties. This requirement of possession and occupation since June 12, 1945, or even earlier, is very fundamental that the Court, in its September 3, 2013 Resolution in *Heirs of Mario Malahanan vs. Republic of the Philippines,* emphasized that "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." Thus, absent clear and convincing evidence showing a valid claim of open, continuous, exclusive, and notorious possession and occupation since June 12, 1945 or earlier, the Court is constrained to deny Belmonte's application for registration of title.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Daniel B. Valdez for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, the Republic of the Philippines, through the Office of the Solicitor General *(OSG)*, assails the November 22, 2010 Decision[2] of the Court of Appeals *(CA)* as well as its May 18, 2011 Resolution,[3] in CA-G.R. CV No. 88363, affirming *in toto* the July 24, 2006 Decision[4] of the Regional Trial Court, Branch 267, Taguig City (*RTC*), granting the application for registration of respondent Carmen Victoria Belmonte *(Belmonte)*, represented by her attorney-in-fact, Daniel C. Victoria, Jr. *(Daniel, Jr.)*, in Land Registration Case *(LRC)* No. N-11489.

The Facts

On October 24, 2002, Belmonte filed before the RTC her Application for Registration and Confirmation of Titles of two (2) lots identified as Lot No. 3766, measuring around 5,817 square meters, and Lot No. 5194, with an approximate area of 7,123 square meters, located in Barangay Hagonoy and Barangay Bambang, Taguig City, respectively.

Daniel Victoria, Jr., Belmonte's attorney-in-fact and younger sibling, alleged that Belmonte inherited the subject properties

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[1] *Rollo*, pp. 8-35.

[2] *Id.* at 36-44a. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justice Andres B. Reyes, Jr. and Associate Justice Japar B. Dimaampao, concurring.

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

[4] *Id.* at 47-51.

from Daniel Osorio Victoria and Rufina Cruz Victoria, their parents, as evidenced by an extrajudicial settlement of estate. He presented a photocopy of the said document claiming that the original copy got lost. Belmonte narrated that her parents had been in possession of the said lots since the Japanese occupation in 1943. Accordingly, she attached the following documents in support of her application for registration:

Lot No. 3766

a. Approved Conversion Plan for Swo-00-001613;[5]

b. Technical Description of Lot No. 3766;[6]

c. Geodetic Engineer's Certificate;[7]

d. Tax Declaration No. EL-008-01718;[8]

Lot No. 5194

e. Approved Conversion Plan Swo-00-001752;[9]

f. Technical Description of Lot 5194-A;[10]

g. Geodetic Engineer's Certificate;[11]

h. Tax Declaration No. FL-010-00581;[12]

i. Extrajudicial Settlement of the Estate of the Deceased Daniel Osorio Victoria and Rufina Cruz Victoria;[13]

j. Special Power of Attorney.[14]

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[5] Records, p. 6.

[6] *Id.* at 7.

[7] *Id.* at 8.

[8] *Id.* at 9.

[9] *Id.* at 10.

[10] *Id.* at 11.

[11] *Id.* at 12.

[12] *Id.* at 13.

[13] *Id.* at 14.

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

The OSG opposed the application arguing that Belmonte failed to comply with the jurisdictional requirements of Presidential Decree *(P.D.)* No. 1529.

On July 24, 2006, the RTC granted Belmonte's application for registration of land title.[15] It held that she was able to successfully establish her ownership over the lots in question and that the land sought to be registered was the same land described in her application for registration.[16] Thus, the decretal portion of said decision reads:

> WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered granting the verified application for registration of land title under Property Registration Decree (P.D. 1529) filed by applicant Carmen Victoria Belmonte, represented by her Attorney-in-fact, Daniel C. Victoria, Jr., thereby confirming the title of the applicant to the subject properties.
>
> Furnish copy of the instant Decision the Office of the Solicitor General, the Provincial Prosecutor's Office of Rizal-Pasig, the Land Registration Authority (LRA) and the Adjoining Property Owners.
>
> SO ORDERED.[17]

On November 22, 2010, the CA affirmed the RTC decision. The CA explained that although Belmonte was not able to present the original tracing cloth plan, she sufficiently established the identity of the subject properties through the certified blueprint copies of the conversion plan, specifically: (1) Conversion Plan for Lot 3766 and (2) Conversion Plan of Lot 5194, which were prepared by Geodetic Engineer Emilia Rivera Sison and duly approved by the Department of Natural Resources Land Management Services. "The Conversion Plan for Lot 3766, was certified correct by Ernesto S. Erive, Chief, Regional Surveys Division and approved by Roquesta E. De Castro, Regional

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[15] *Rollo*, pp. 47-51.

[16] *Id.* at 51.

[17] *Id.*

Technical Director on July 29, 1996. Similarly, the Conversion Plan of Lot 5194 was approved on December 18, 1996."[18]

The CA further stated that Belmonte successfully established the possession and occupation of her predecessors-in-interest since 1943. The CA gave credence to the testimonies of (1) Daniel, Jr. who disclosed that, before the Japanese invasion, he used to come with his mother to survey the lots and they had a tenant, Reyes; and (2) Marietta Reyes *(Marietta)* who narrated that, from the Japanese period up to 1967, her father-in-law cultivated the subject lots, which was continued by her husband up to 1995.

The OSG moved for a reconsideration[19] but the motion was denied by the CA in its May 18, 2011 Resolution.

Hence, this petition.[20]

In advocacy of its position, the OSG submits this lone issue:

THE RECORD IS BEREFT OF PROOF THAT PRIVATE RESPONDENT HAS BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION OF THE SUBJECT LAND SINCE JUNE 12, 1945, OR EARLIER.[21]

The OSG argued that Belmonte failed to prove open, continuous, exclusive and notorious possession of the subject properties since June 12, 1945 or earlier. The tax declarations she submitted for the lots did not indicate possession since June 12, 1945 or earlier. The earliest tax declaration for Lot No. 5194 was dated 1949 and that for Lot No. 3766 only showed 1969. The OSG likewise called the attention of the Court to the fact that the payments of real estate taxes for the subject properties were intermittent. As to the size or the actual area

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[18] *Id.* at 42.

[19] *Id.* at 52-59.

[20] *Id.* at 8-35.

[21] *Id.* at 19.

of the subject properties, according to the OSG, there were discrepancies which created doubt as to the identities of the properties being sought to be registered. The OSG wrote that "[t]he tax declaration for Lot No. 3766 for the year 1966 describes the area as six thousand eighty four (6,084) square meters. However, the tax declarations for the year 1974, 1979, 1985, 1991 and 1994 show that the area is measured at six thousand eight hundred eighty four (6,884) square meters. Finally, for 1998, the tax declaration reflects an area of five thousand eight hundred seventeen (5,817) square meters."[22]

The crux of the controversy before the Court now is whether Belmonte has successfully proven possession and occupation since June 12, 1945.

As a rule, the Court, in a petition for review on *certiorari*, is limited to reviewing only errors of law, as it is not a trier of facts.[23] There are, however, exceptions to this rule such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[24]

After a careful review of the records, the Court is of the considered view that the disputed decision should be revisited

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[22] *Id.* at 25-30.

[23] *Heirs of Simeon Borlado v. Court of Appeals,* 416 Phil. 257, 261 (2001).

[24] *International Container Terminal Services, Inc. v. FGU Insurance Corporation,* G.R. No. 161539, June 28, 2008, 556 SCRA 194, 119.

as it appears that the judgment is based on a misapprehension of facts;[25] and the CA manifestly overlooked certain relevant and undisputed facts, that if properly considered, would warrant a different conclusion.[26]

P.D. No. 1529[27] or the Property Registration Decree specifies who are qualified to apply for registration of land. In particular, Section 14(1) thereof in relation to Section 48(b) of Commonwealth Act 141, as amended by Section 4 of P.D. No. 1073,[28] states:

> SEC. 14. *Who may apply*.—The following persons may file in the proper Court of First Instance [now *Regional Trial Court*] 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
>
> 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 [now Regional Trial Court] 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:

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[25] Exception No. 4.

[26] Exception No. 5.

[27] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES.

[28] EXTENDING THE PERIOD OF FILING APPLICATIONS FOR ADMINISTRATIVE LEGALIZATION (FREE PATENT) AND JUDICIAL CONFIRMATION OF IMPERFECT AND INCOMPLETE TITLES TO ALIENABLE AND DISPOSABLE LANDS IN THE PUBLIC DOMAIN UNDER CHAPTER VII AND CHAPTER VIII OF COMMONWEALTH ACT NO. 141, AS AMENDED, FOR ELEVEN (11) YEARS COMMENCING JANUARY 1, 1977.

x x x x x x x x x

(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, **since June 12, 1945, or earlier**, immediately preceding the filing of the application 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.

Based on these legal parameters, applicants for registration of title under Section 14(1) must sufficiently establish: (*1*) that the subject land forms part of the disposable and alienable lands of the public domain; (*2*) that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and (*3*) that his possession has been under a *bona fide* claim of ownership since June 12, 1945, or earlier.

These triple requirements of alienability and possession and occupation since June 12, 1945 or earlier under Section 14(1) are indispensable prerequisites to a favorable registration of title to the property. Each element must necessarily be proven by no less than clear, positive and convincing evidence;[29] otherwise, the application for registration should be denied.

To prove the triple requirements, Belmonte submitted the following:

A. Lot No. 3766 - Tax Declarations 4292[30] for 1966, 8966[31] for 1974, 120-008-01828[32] and 120-008-01382[33] for 1979,

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[29] *Alfredo, Preciosa, Angelita & Crisostomo, all surnamed Buenaventura v. Amparo Pascual & Republic of the Phil.*, G.R. No. 168819, November 27, 2008, 572 SCRA 143, 159.

[30] Records, p. 223.

[31] *Id.* at 222.

[32] *Id.* at 220.

[33] *Id.* at 221.

B-008-01186[34] for 1985, C-008-00648[35] for 1991, D-008-00622[36] for 1994, D-008-02083[37] for 1998, EL-008-01718[38] for 2000 and Tax Clearance[39] for 2003.

B. Lot No. 5194 – Tax Declarations 4108[40] for 1949, 10825[41] for 1962, 3016[42] for 1966, 6832[43] for 1974, 120-010-006[44] and 120-010-00437[45] for 1979, B-010-00464[46] for 1985, C-010-00227[47] for 1991, D-010-00231[48] for 1994, D-010-00801[49] for 1998, EL-010-00581[50] for 2000, FL-010-00581[51] for 2002 and Tax Clearance[52] for 2003.

Belmonte, however, failed to convince the Court that she has met the indispensable requirements of possession since June 12, 1945 or earlier to merit the registration of the title in her

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[34] *Id.* at 219.

[35] *Id.* at 218.

[36] *Id.* at 217.

[37] *Id.* at 216.

[38] *Id.* at 9.

[39] *Id.* at 224.

[40] *Id.* at 237.

[41] *Id.* at 236.

[42] *Id.* at 235.

[43] *Id.* at 234.

[44] *Id.* at 232.

[45] *Id.* at 233.

[46] *Id.* at 231.

[47] *Id.* at 230.

[48] *Id.* at 229.

[49] *Id.* at 228.

[50] *Id.* at 227.

[51] *Id.* at 13.

[52] *Id.* at 238.

name. Possession and occupation alone, for 30 years or more, does not suffice. As provided in P.D. No. 1073, it is mandatory that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, had commenced on June 12, 1945 or earlier.[53] The burden of proving adverse, continuous, open, and public possession in the concept of an owner rests upon the applicant, by no less than clear, positive and convincing evidence.[54]

The earliest tax declaration[55] that Belmonte showed for Lot No. 5194 was dated **1949**. Evidently, it falls short of the time requirement of possession since 1945 or earlier. More importantly, the Court cannot give any probative value to the 1949 tax declaration because the property was declared in the name of a certain Francisca Osorio *(Osorio)*. Belmonte failed to establish the connection between Francisca Osorio and her father and predecessor-in-interest, Daniel Victoria *(Daniel)*. Hence, the Court cannot tack the possession of Osorio, the name entered in the earliest tax declaration with that of Daniel, which was the name entered in later tax declarations. As to Lot No. 3766, records show that Belmonte's predecessor-in-interest started declaring the property for tax purposes only in **1966**.

Furthermore, the Court has held that intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive, and notorious possession and occupation. In this case, Belmonte's irregular and erratic declaration and payment of real property taxes belie her claim of open and continuous possession of the said lots.[56]

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[53] *Republic of the Philippines v. Hanover Worldwide Trading Corporation*, G.R. No. 172102, July 02, 2010, 622 SCRA 730, 739.

[54] *Republic of the Philippines v. East Silverlane Realty Development Corporation*, G.R. No. 186961, February 20, 2012, 666 SCRA 401, 421.

[55] Tax Declaration No. 4108, Records, p. 237.

[56] *Wee v. Republic of the Philippines*, G.R. No. 177384, December 8, 2009, 608 SCRA 72, 83.

Corollarily, tax declarations are merely *indicia* of a claim of ownership.[57] The subject lots may have been declared for taxation purposes in the name of Belmonte's predecessor-in-interest, but it does not automatically prove ownership especially when the details in the tax declarations do not match. As aptly observed by the OSG, some tax declarations contain discrepancies in the area. With regard to Lot No. 3766, several tax declarations indicated the area as measuring 5,817 sq.m., while the other tax declarations showed the area as 6,884 sq.m. With Lot No. 5194, some tax declarations stated an area of 7,123 sq.m., while others had 4,235 sq.m. These inconsistencies coupled by the erratic declarations for tax, in the absence of other competent evidence, negate open and continuous possession in the concept of an owner.

As to the requirement of possession and occupation, the Court is likewise of the view that these prerequisites were not sufficiently established. It is undisputed that Belmonte resides outside the country and is not in actual possession of the said lots. Daniel, Jr. testified that his sister, Belmonte, had a tenant who cultivated the land on her behalf. To establish the tenancy, a certain Marietta took the witness stand to corroborate his statement. She was allegedly the widow of the land's previous tenant. Unfortunately, her testimony was not persuasive enough to prove the open and notorious possession and occupation of Belmonte over the disputed lots. She did not even know the sharing arrangement between her husband and Belmonte as tenant and landlord.[58] She was not able to describe how her husband tended the subject lots. Other equally relevant details as to what crops were planted, the frequency of crop planting and harvest or how her husband and his ancestors took care of the land on behalf of Belmonte were not supplied. Evidence to be acceptable must be credible, substantial and satisfactory. General, and often vague, statements as to how Belmonte, through her supposed tenant, possessed

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[57] *Valiao v. Republic*, G.R. No. 170757, November 28, 2011, 661 SCRA 299, 309-310, citing *Arbias v. Republic*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 596.

[58] TSN dated May 26, 2005, p. 5.

the land in question, are mere verbal assertions that do not satisfy possession and occupation as required by law. *Republic v. Alconaba*[59] explained the indispensable requirement of possession and occupation in this manner:

> The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.

Assuming *arguendo* that somebody cultivated the land, mere casual cultivation of the land does not amount to exclusive and notorious possession that would give rise to ownership.[60] Except as to the self-serving declaration made by Marietta, no other evidence was shown by Belmonte to substantiate her statements.

Moreover, Daniel, Jr. admitted that he did not know the sharing arrangement between Belmonte and the supposed tenant, creating a cloud of doubt as to whether there was really a tenancy at all. He even conceded that the subject properties were, at that time, idle which admission, all the more weakens Belmonte's claim of possession in the concept of an owner. Vital portions of Daniel, Jr.'s testimony are herein reproduced:

> Atty. Elias: And for the guidance of this Court, who is the present tenant, if any, on this property, is there any tenant?

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[59] 471 Phil. 607, 620 (2004).

[60] *Wee v. Republic*, G.R. No. 177384, December 8, 2009, 608 SCRA 72, 83, citing *Director of Lands v. Judge Reyes*, 160-A Phil. 832, 851 (1975) and *Ramirez and Bayot de Ramirez v. Director of Lands*, 60 Phil. 114 (1934).

Daniel Jr.:	Now, no more, sir.
Atty. Elias:	Since when?
Daniel Jr.:	Because it (sic) always submerged in the water, if it rains real hard, it's under water, sir.
Atty. Elias:	But you mentioned a while ago that there's somebody in the name of Reyes attended to it?
Daniel Jr.:	Yes, attended to it.
Atty. Elias:	Would you know the agreement relative to the fielding of the land?
Daniel Jr.:	Some sort of so much will go to them and some go to my parents, *mas malaki sa kanila*.[61]

A person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, that is, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors.[62] Evidently, Belmonte's witnesses were not able to give a concrete, consistent and credible picture of how she exercised dominion or exercised control over the subject properties.

This requirement of possession and occupation since June 12, 1945, or even earlier, is very fundamental that the Court, in its September 3, 2013 Resolution in *Heirs of Mario Malabanan vs. Republic of the Philippines*,[63] emphasized that "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."

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[61] TSN dated June 24, 2004, pp. 20-21.

[62] *Arbias v. Republic*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 597, citing *Republic v. Intermediate Appellate Court*, 217 Phil. 374, (1984), cited in *Edaño v. Court of Appeals*, G.R. No. 83995, September 4, 1992, 213 SCRA 585, 592.

[63] G.R. No. 179987, page 12.

Thus, absent clear and convincing evidence showing a valid claim of open, continuous, exclusive, and notorious possession and occupation since June 12, 1945 or earlier, the Court is constrained to deny Belmonte's application for registration of title.

WHEREFORE, the petition is **GRANTED.** The November 22, 2010 Decision and the May 18, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 88363 are **REVERSED and SET ASIDE.** The Application for Registration of Title of respondent Carmen Victoria Belmonte in Land Registration Case No. N-11489 is **DENIED** for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197842. October 9, 2013]

JAIME P. ADRIANO and LEGASPI TOWERS 300, INC., *petitioners, vs.* **ALBERTO LASALA and LOURDES LASALA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL TO THE SUPREME COURT; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY BINDING ON THE SUPREME COURT; EXCEPTIONS.— In the case of *Engr. Apolinario Dueñas v. Alice Guce-Africa*, it was held that the determination of the existence of a breach of contract is a factual matter not

usually reviewable in a petition filed under Rule 45. The philosophy behind this rule is that the Court is not a trier of facts. There are, however, well-established exceptions, as reiterated by this Court in *Development Bank of the Philippines v. Traders Royal Bank*. x x x In several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. CIVIL LAW; DAMAGES; MORAL DAMAGES; TO RECOVER MORAL DAMAGES IN AN ACTION FOR BREACH OF CONTRACT, THE BREACH MUST BE PALPABLY WANTON, RECKLESS AND MALICIOUS, IN BAD FAITH, OPPRESSIVE, OR ABUSIVE; ELUCIDATED.— To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless and malicious, in bad faith, oppressive, or abusive. Hence, the person claiming bad faith must prove its existence by clear and convincing evidence for the law always presumes good faith. Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.

3. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER WHEN THE WRONGFUL ACT IS ACCOMPANIED BY BAD FAITH; CASE AT BAR.— To warrant the award of exemplary damages, "[t]he wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner." As bad faith attended the termination of the service contract agreement, there is no reason to reverse the award for exemplary damages.

4. ID.; ID.; TEMPERATE DAMAGES; AWARD OF TEMPERATE DAMAGES IS ALLOWED IN CASES WHERE DEFINITE PROOF OF PECUNIARY LOSS CANNOT BE ADDUCED; PROPER IN CASE AT BAR.— Under Article 2224 of the Civil Code, when pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss. Indisputably, respondents in this case suffered pecuniary loss because of the untimely termination of their services for no cause at all. As there is no proof capable of ascertaining the actual loss, the CA rightfully awarded temperate damages, in lieu of actual damages. The Court finds the amount of ₱200,000.00 by way of temperate damages as just and reasonable.

APPEARANCES OF COUNSEL

Gimenez Mayuga Gatmaytan & Associates for petitioners.
Salva Salva and Associates for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the September 13,

2010 Decision[1] and the July 18, 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 70768, which denied the appeal of Legaspi Towers 300, Inc. *(LT300)* and affirmed with modification the March 9, 2001 Decision[3] of the Regional Trial Court of Manila, Branch 46 *(RTC)*, holding the petitioners liable for the illegal termination of the Security Service Contract entered into with Alberto and Lourdes Lasala acting in the name of Thunder Security and Investigation Agency *(respondents)*.

The Facts

On September 25, 1992, in order to protect and secure its premises against theft, pilferage, arson, robbery, vandalism, and other illegal acts directed at unit owners, officers and personnel, petitioner entered into a security service contract with respondents for a period of one year ending on September 25, 1993.

On October 18, 1992, respondents received a letter signed by petitioner Jaime P. Adriano *(Adriano)*, the building administrator, reminding them of their non-compliance with the security services agreement, among which were the failure to assign security guards with the required height and educational attainment, and the failure to provide the agreed service vehicle. In compliance, respondents relieved and replaced the unqualified personnel with Adriano's recommendees. A Ford Fiera was also produced although parked in a nearby area as no space in the building was available.

Despite their positive responses, respondents received another letter, dated October 21, 1992, reiterating the same instances of non-compliance. Dismayed, they talked to Adriano who replied with an invitation to hold a meeting. Respondents agreed.

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[1] *Rollo*, pp. 34-52. Penned by Associate Justice Bienvenido L. Reyes (now member of this Court), with Associate Justice Estela M. Perlas-Bernabe (now member of this Court) and Associate Justice Elihu A. Ybanez, concurring.

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

[3] *Id.* at 115-141. Penned by Judge Artemio S. Tipon.

In the scheduled meeting, Adriano mentioned that the differences could only be settled by cooperating with each other. He then requested from respondents the payment of ₱18,000.00, of which ₱5,000 would be given to petitioner Emmanuel Santos, the LT300 President; ₱3,000.00 to Captain Perez; and the rest to Adriano himself. These payments were requested in return for acting as the bridge in resolving the issues. The respondents came across, but the petitioners demanded another equivalent amount in another meeting in November.

Thereafter, a series of correspondence between the parties took place, with the petitioners constantly reiterating respondents' alleged violations of the service contract. In the last letter, they added another grievance – non-payment of the minimum wage. In an attempt to finally settle the issues, respondents sought audience before the LT300 Board but to no avail. The Board, without giving respondents an opportunity to explain, terminated the contract as voted upon in a meeting held on January 28, 1993.

On February 8, 1993, respondents filed a complaint for damages alleging that LT300 and Adriano illegally terminated their services.

On March 9, 2001, the RTC ruled in favor of respondents. It held that the September 25, 1992 agreement could only be terminated for a valid cause; that respondents neither committed any violation nor failed to give security services to LT300; that respondents were not given their right to be heard under the fundamental principle of due process of law; and that respondents were entitled to all the benefits and considerations due them. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered:

I. holding that plaintiffs have not violated the AGREEMENT dated September 25, 1992 that would constitute a valid cause for termination of said AGREEMENT before its expiration date on September 25, 1993.

II. ordering the defendants to pay jointly and severally the plaintiffs the following damages:

a) the shortage of the salary given to plaintiffs for the period from Feb. 16-26, 1993 ……..……₱19,549.89;

b) the benefit/compensation of plaintiffs from Feb. 26, 1993 to Sept. 25, 1993 (7 ½ months) to which they are entitled. ……..……..……₱1,604,362.50;

c) moral damages ……..…..…… ₱500,000.00; and

d) exemplary damages .....…..…..…. ₱250,000.00; [and]

e) attorney's fees ……₱50,000.00 with interest at the legal rate on letters (a) and (b) from the filing of the complaint on February 8, 1993.

III. Costs shall be paid by the defendants jointly and severally; and

IV. The counterclaims of defendants are dismissed for lack of merit.

IT IS SO ORDERED.[4]

On appeal, the CA categorized as baseless and flimsy all the allegations thrown against respondents thereby affirming the RTC ruling but with modification as to the award of damages, to wit:

WHEREFORE, considering the foregoing premises, the Decision of the Regional Trial Court of Manila (Branch 46) dated March 9, 2001 is AFFIRMED with modifications, to wit:

"WHEREFORE, judgment is hereby ordered:

V. holding that plaintiffs have not violated the AGREEMENT dated September 25, 1992, that would constitute a valid cause for termination of said AGREEMENT before its expiration date on September 25, 1993.

VI. ordering the defendant-appellant LT300 with defendants Jaime P. Adriano and Emmanuel T. Santos to pay jointly and severally the plaintiffs the following damages:

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[4] *Id.* at 140-141.

a) the shortage of the salary given to plaintiffs for the period from Feb. 16 – 26, 1993……..…..₱19,549.89
b) temperate damages…….....…. ₱200,000.00
c) moral damages……..... ₱100,000.00
d) exemplary damages…..….....… ₱50,000.00
e) attorney's fees……..... ₱50,000.00

with interest at the legal rate on letter(a) from the filing of the complaint on February 8, 1993;

VII. Costs shall be paid by the defendant-appellant jointly and severally with defendants Jaime P. Adriano and Emmanuel T. Santos.

VIII. The counterclaims of defendants are dismissed for lack of merit."

SO ORDERED.[5]

The petitioners filed their motion for reconsideration but it was denied by the CA on July 18, 2011.

Hence, this petition.

The petitioners present for evaluation the following errors:

I.

The Honorable Court of Appeals seriously erred in holding that no breach, substantial or otherwise, was committed by the respondents that would warrant the pre-termination of the Security Service Contract (Agreement) with the petitioner LT 300.

II.

The Honorable Court of Appeals gravely erred in awarding temperate damages as there is clearly no pecuniary loss, from the facts of the case, suffered by the respondents as a direct consequence of the termination of the Security Service Contract (Agreement).

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[5] *Id.* at 52-53.

III.

The Honorable Court of Appeals gravely erred in awarding moral and exemplary damages as well as attorney's fees considering that the circumstances as laid down by law that would warrant such award are not present in the instant case.

In advocacy of their position, petitioner LT300 argues (1) that the failure to provide the service vehicle was not a baseless allegation culled out of thin air as respondents' lack of parking space argument was unbelievable and should not have been given credence; (2) that the failure to pay the minimum wage, as allegedly proven during trial, was a substantial violation of the agreement; (3) that the award of temperate damages was not in order as the CA even found that the award of actual damages had no basis; (4) that no sufficient proof of bad faith was provided as to warrant the award of moral and exemplary damages; and (5) that ample opportunity to rectify was given to respondents, but they ignored the same.

Respondents counter that the alleged violation in the hiring of unqualified personnel could not be their fault because it was made at the behest and recommendation of Adriano under the instructions of the LT300 Board. As to the lack of an agreed service vehicle, respondents explain that the Ford Fiera's parking at a distance of about five (5) meters from Marina Subdivision was sufficient compliance already considering that no parking space was provided by LT300. Regarding the charge of non-payment of minimum wage, respondents aver that it was unsubstantiated as no document of complaint was presented. With regard to the award of damages, respondents echo the ruling of the CA.[6]

The Issues

Thus, the following issues remain to be resolved by this Court:

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[6] *Id.* at 84.

Whether the CA erred in holding the petitioners liable for illegal pre-termination of contract.

and

Whether the CA erred in awarding temperate damages, moral damages, exemplary damages, and attorney's fees to respondents.

The Court's Ruling

This Court finds no merit in the petition.

No Violation of the Contract by Respondents

In this case, the petition is primarily anchored on whether respondents breached the subject security services agreement. In the case of *Engr. Apolinario Dueñas v. Alice Guce-Africa*,[7] it was held that the determination of the existence of a breach of contract is a factual matter not usually reviewable in a petition filed under Rule 45. The philosophy behind this rule is that the Court is not a trier of facts. There are, however, well-established exceptions, as reiterated by this Court in *Development Bank of the Philippines v. Traders Royal Bank*,[8] to wit:

> The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions

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[7] G.R. No. 165679, October 5, 2009, 603 SCRA 11.

[8] G.R. No. 171982, August 18, 2010, 628 SCRA 404.

of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

The petitioners failed to cite in their petition the presence of any of the above circumstances to warrant the factual re-evaluation of this case. The Court, therefore, will not review, much less reverse, the factual findings of the CA especially where such findings coincide with those of the RTC.

Aside from this point, the Court affirms the conclusion of the CA as to the first assignment of error for reasons hereinafter recited.

First, respondents cannot be faulted for the absorption of personnel who failed to meet the minimum qualifications of at least 2nd year of college and 5'6" in height. As observed by the RTC, two letters containing a list of recommended individuals were sent on various dates to respondents.[9] On the representation that it was made with the approval of the Board, which was even confirmed during the trial as true by petitioner and LT300 President Santos, respondents readily hired Adriano's recommendees even if they lacked the qualifications stated in the agreement.[10] Obviously, this hiring was strongly influenced by the petitioners and as such respondents cannot be blamed for giving in to their behests. To this Court, it is ridiculous and unfair to allow the petitioners to use this ground in terminating respondents' services when, in truth, they were active participants in the selection and hiring process.

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[9] *Rollo,* p. 128.

[10] *Id.*

Second, the CA was correct in ruling that the petitioners' complaints as to the non-provision of service vehicle and non-payment were groundless and flimsy. Evidence on record does not support the position that the minimum wage of the security guards were not being paid. No proof, such as documented complaints filed by the affected employees showing non-compliance, was adduced during the trial. There is no evidence either that the non-parking of the vehicle within the LT300 premises hampered the effective delivery of security services. In fact, no untoward incident in the entire duration of the agreement was reported or proven on account of its distance. For lack of material evidence, the Court cannot bestow credence on the petitioners' position.

Third, the petitioners were the ones who committed the breach by their abrupt and groundless termination of the agreement. Although pre-termination was allowed under the contract, the petitioners could not just invoke and exercise the same without a valid and legal ground. Turning a blind eye to the compliance already effected and subsequently terminating respondents' services smack of high handedness especially when no single incident of robbery, theft, drug addiction or prostitution was reported for the entire duration of the contract.[11]

The petitioners are, thus, reminded that "every person must, in the exercise of his right and in the performance of his duty, act with justice, give everyone his due, and observe honesty and good faith."[12] Respondents clearly complied with their part of the obligation under the security services agreement but it appeared that whatever they did, the petitioners were bent on ending it. This exercise by petitioners of their right to pre-terminate the contracted services without a just cause was nothing but a flagrant violation of the contract.

Hence, no reversible error was committed by the CA in declaring the respondents free from any violation of the subject contract.

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[11] *Id.* at 138.

[12] Article 19, New Civil Code.

Moral and Exemplary Damages

Doubtless, a breach was committed by the petitioners. The question now is whether the commission was attended by bad faith or malice.

Under Article 2220 of the Civil Code, moral damages may be awarded in cases of breach of contract provided that there was fraud or bad faith, to wit:

> Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless and malicious, in bad faith, oppressive, or abusive.[13] Hence, the person claiming bad faith must prove its existence by clear and convincing evidence for the law always presumes good faith.[14]

Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud.[15] It is, therefore, a question of intention,[16] which can be inferred from one's conduct and/or contemporaneous statements.

Being a question of intention, it is necessary for this Court to examine the records to determine if the courts below indeed found bad faith in the termination of the agreement.

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[13] *Erlando Francisco v. Ricardo Ferrer, Jr.*, 405 Phil. 745 (2001), citing *Magat v. Court of Appeals*, 392 Phil. 63 (2000); *Far East Bank & Trust Company v. Court of Appeals*, 311 Phil. 783 (1995).

[14] *Id.*, citing *Ace Haulers Corporation v. Court of Appeals*, 393 Phil. 220, 230 (2000).

[15] *Id.*, citing *Tan v. Northwest Airlines, Inc.*, 383 Phil. 1028 (2000), citing further *Ford Philippines, Inc. v. Court of Appeals*, 335 Phil. 1 (1997); and *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820, 843 (1998).

[16] *Millena v. Court of Appeals*, 381 Phil. 132, 143 (2000).

The CA decision to grant moral damages was grounded on the fact that the termination was effected without valid reason. The Court finds more to what the CA had observed. The inappropriate dealings of Adriano to acquire financial gain at the expense of respondents, with the approval or acquiescence of the Board; the hiring of unqualified personnel being used as a ground for termination despite the fact that such hiring was upon their recommendation; and the repeated allegations of non-compliance even if respondents had corrected already what were complained of, constituted unjust and dishonest acts schemed by the petitioners to provide an appearance of validity to the termination. These mischievous insinuations cannot escape the Court's attention as they manifested petitioners' malicious and unjust intent to do away with respondents' services. It must be noted that respondents, in the course of their engagement, were even commended for efficiency and service.

Noteworthy also is the fact that respondents were not even given time to respond to the allegations as their repeated demand for an audience before the Board went unheeded. In fact, their last request was met with an unexpected notice of termination.

With these in mind, the Court is convinced that the petitioners acted in bad faith and are, thus, liable for moral damages.

To warrant the award of exemplary damages, "[t]he wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner."[17] As bad faith attended the termination of the service contract agreement, there is no reason to reverse the award for exemplary damages.

Temperate Damages and Attorney's Fees

Under Article 2224 of the Civil Code, when pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, temperate damages may be

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[17] *Erlando Francisco v. Ricardo Ferrer, Jr., supra* note 13, citing *Cervantes v. Court of Appeals*, 363Phil. 399 (1999).

recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.[18]

Indisputably, respondents in this case suffered pecuniary loss because of the untimely termination of their services for no cause at all. As there is no proof capable of ascertaining the actual loss, the CA rightfully awarded temperate damages, in lieu of actual damages. The Court finds the amount of ₱200,000.00 by way of temperate damages as just and reasonable.

As to attorney's fees, suffice it to say that because respondents were constrained to litigate to protect their interests, the award was proper.

WHEREFORE, the Court **DENIES** the petition.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198699. October 9, 2013]

REXIE A. HORMILLOSA, *petitioner, vs.* **COCA-COLA BOTTLERS PHILS., INC., represented by its Iloilo Plant Human Resource Head, ROBERT RICHARD H. DOLAR,** *respondent.*

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[18] *Premiere Development Bank v. Court of Appeals*, 471 Phil. 704, 719 (2004).

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY THE EMPLOYER; LOSS OF TRUST AND CONFIDENCE AS A JUST CAUSE; REQUISITES, CLARIFIED.— Article 282 of the Labor Code enumerates the just causes for the termination of employment of an employee by the employer, to wit: x x x (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; x x x The rule is that, in labor cases, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. x x x In *Bristol Myers Squibb (Phils.), Inc. v. Baban*, the Court discussed the requisites for a valid dismissal on the ground of loss of trust and confidence as follows: x x x The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. x x x The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary. x x x In *Tiu and/or Conti Pawnshop v. National Labor Relations Commission*, the Court ruled that the language of Article 282(c) of the Labor Code requires that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by the employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.

2. ID.; ID.; ID.; AS A RULE, AN EMPLOYEE WHO IS DISMISSED FOR A JUST AND LAWFUL CAUSE IS NOT ENTITLED TO SEPARATION PAY; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— "The only cases when separation pay shall be paid, although the employee was lawfully dismissed, are when the cause of termination was not attributable to the employee's fault but due to: (1) the installation of labor saving devices, (2) redundancy, (3) retrenchment, (4) cessation

of employer's business, or (5) when the employee is suffering from a disease and his continued ernployment is prohibited by law or is prejudicial to his health and to the health of his co-employees (Articles 283 and 284, Labor Code.) Other than these cases, an employee who is dismissed for a just and lawful cause is not entitled to separation pay even if the award were to be called by another name." In the case at bench, the cause for the dismissal from employment of Hormillosa clearly falls under Article 282 of the Labor Code. Therefore, he is not entitled to any separation pay.

APPEARANCES OF COUNSEL

Jagna-an Belloga Agot & Associates for petitioner.
Hector P. Teodosio for respondent.

D E C I S I O N

MENDOZA, *J.*:

Through this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Rexie A. Hormillosa *(Hormillosa)* assails the April 29, 2011 Decision[1] and the September 5, 2011 Resolution[2] of the Court of Appeals *(CA)*, in CA G.R. SP No. 05062, which nullified and set aside the October 26, 2009 Decision[3] and the January 15, 2010 Resolution[4] of the National Labor Relations Commission *(NLRC)*. The dispositive portion of the questioned CA decision reads:

WHEREFORE, premises considered, the petition is hereby **GRANTED** and the Decision and Resolution of public respondent (insofar as to the pronouncements relating to private respondent

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[1] *Rollo*, pp. 26-38. Penned by Associate Justice Pampio A. Abarintos with Associate Justice Gabriel T. Ingles and Associate Justice Victoria Isabel A. Paredes, concurring.

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

[3] *Id.* at 53-86.

[4] *Id.* at 87-95.

only) which were respectively promulgated on 26 October 2009 and 15 January 2010 relative to NLRC Case No. V-000528-00(AE-05-09) [SRAB Case No. VI-05050210-99] are **NULLIFIED** and **SET ASIDE**. In their stead, a new one is entered declaring private respondent's dismissal from his employment as valid.

SO ORDERED.[5]

The Facts

On November 1, 1996, Hormillosa was employed as a route salesman by Coca-Cola Bottlers Phils., Inc. *(CBPI)*. His duties included, among others, selling CBPI's soft drink products, either on cash or on credit basis; receiving payments from proceeds of the sale or payments of past due or current accounts; issuing sales invoices; and receiving empty bottles and cases of soft drinks *(empties)*.

Concerning the sales invoices, he was authorized to issue them on a cash and credit basis. He prepared the invoices stating the names of the customers, the quantity and kind of merchandise purchased, and the corresponding amounts. He was required to make the customers sign the invoices, especially in cases they were on credit basis, and leave copies with them. The invoices were then submitted to the Finance Department for accounting and auditing.

Due to their delicate position, route salesmen, like Hormillosa, were given a handbook entitled, CCBPI Employee Code of Disciplinary Rules and Regulations. This set of rules and regulations served as their guide in the performance of their duties. Hormillosa received his copy.[6]

Sometime in the early part of 1999, the then CBPI District Sales Supervisor, Raul S. Tiosayco III *(Tiosayco)*, conducted a verification and audit of the accounts handled by Hormillosa. He discovered transactions in violation of CCBPI Employee Code of Disciplinary Rules and Regulations, specifically

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[5] *Id.* at 37.

[6] Position Paper of for the Respondent, CA records, p. 42.

"Fictitious sales transactions; Falsification of company records/data/documents/invoices/reports; fictitious issuances of TCS/COL (Temporary Credit Sales/Container on Loan); non-issuance or mis-issuance of invoices and receipts as well as commercial documents to dealers; forgery; misuse, abuse or defalcation of funds form market development program."[7] On March 8, 1999, Tiosayco issued a memorandum to Hormillosa informing him that he was being placed on grounded status and would be subjected to an investigation.

On March 11, 1999, Tiosayco informed the Regional Sales Manager of the initial results of his verification and audit, through an inter-office memorandum,[8] which detailed the following findings:

> 1. As reflected in an invoice, Shirley Jardeleza (Jardeleza) had an outstanding container on loan (COL). Upon verification, however, this account was denied by Jardeleza. According to her, they would always buy in cash and this statement was substantiated by an attached affidavit signed by her;
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> 2. Mrs. Feby Panerio, who was previously served by Hormillosa, denied her indebtedness as reflected in her COL account. Mrs. Panerio admitted that she was personally requested by Hormillosa to sign the COL issuance with the promise that he would settle it himself;
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> 3. Hormillosa also issued a temporary credit sale (TCS) and COL in the name of Arnold Store but used the outlet number of Virgie Bucaes (Bucaes) who happened to be not one of Coca-Cola's authorized credit outlets. Bucaes acknowledged that she received 50 cases but her understanding was that when she received the cases, they were part of her market development program product assistance; and
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> 4. Mrs. Cecilia Palmes (Palmes) denied her indebtedness and complained that her signature was forged as shown in the invoice.

On March 15, 1999, Tiosayco issued another memorandum[9] directing Hormillosa to report on March 17, 1999 for a question-

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[7] *Id.*

[8] CA *rollo*, p. 60.

[9] *Id.* at 61.

and-answer investigation relative to the findings. Hormillosa, however, asked for a deferment which request was granted.

On March 16, 1999, Hormillosa was issued another memorandum[10] directing him again to report on March 19, 1999. It contained a warning that failure on his part to appear on the said date would be deemed a waiver of his right to be heard and his case would be submitted for resolution based on the evidence of CBPI. Hormillosa again moved for the postponement of the investigation.

On March 17, 1999, Tiosayco issued another memorandum giving Hormillosa until March 20, 1999 to submit his written explanation on his alleged violations but the latter did not heed it. Instead, he sent Tiosayco a letter[11] informing him that the investigation was already "moot and academic" on the pretense that he had already filed a case against CBPI for Unfair Labor Practice *(ULP)*.

On March 22, 1999, Tiosayco submitted his findings and recommendations to the Regional Sales Manager, proposing the termination of Hormillosa. CBPI gave credence to the report and approved his recommendation. Subsequently, a termination letter[12] was issued informing Hormillosa that he was being terminated effective March 29, 1999. The letter reads:

Dear Mr. Hormillosa,

This is to inform you that effective March 29, 1999, you are hereby terminated from employment with Coca-Cola Bottlers Philippines, Inc.

The grounds for your termination among others are as follows:

1. Issuance of fictitious and falsified COL invoices particularly to named outlets or customers namely Shirley Jardeleza, Cecilia Palmes, Feby Panerio, and Virgie Bañares

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[10] *Id.* at 62.

[11] *Id.* at 63.

[12] *Id.* at 138.

2. Misappropriation of Company Funds
3. Violation of Company Rules and Regulations
4. Loss of Trust and Confidence

The decision to terminate you came up after a thorough investigation against you.

Please be guided accordingly.

In addition to his termination, CBPI also filed several criminal cases against him citing his fraudulent acts.

Even after terminating Hormillosa, Tiosayco uncovered more anomalies committed by him. He found out that Hormillosa tampered a sales invoice issued to Aurelia and Cedy Tafida *(Tafida Store)* by placing an amount different from that which he had submitted to the Finance Department.

Another anomaly committed by Hormillosa was against one Winnie Pajarillo *(Pajarillo)* who purchased soft drinks and deposited an amount representing the empties. It was agreed that the deposit would be refunded to Pajarillo upon the return of the empties. When Pajarillo returned the empties and asked for a refund, he only made a partial payment.

On May 24, 1999, Hormillosa filed a complaint for ULP (harassment due to union activities and union busting), Illegal Dismissal, Illegal Deduction, Illegal Grounding, Non-payment of Commission, Non-payment of 13th Month pay, Violation of CBA, Damages, and Attorney's Fees against CBPI before the Sub-Regional Arbitration Branch No. VI *(SRAB).* Thereafter, a preliminary conference was conducted and both parties were directed to file their respective position papers.

Hormillosa averred in his position paper that prior to his dismissal, he was a member of the Board of Directors of CBPI's employees union and he became its secretary on March 7, 1999. As secretary, he sent a copy of the new list of union officers to the management with a warning that if CBPI would not stop harassing the members of the union, it would declare a strike.

He further alleged that on March 8, 1999, he was immediately placed on grounded status by Tiosayco supposedly on the basis of some anomalous transactions conducted by him per verification and audit. He claimed however, that the verification and audit were contrary to Section 2(d), Article III of the Collective Bargaining Agreement *(CBA)* which provides: "The Company shall coordinate with the Union authorized representative to witness the account verification that the company will conduct with respect to questionable accounts issued to Company customers by route salesman or relief salesmen under investigation." He likewise alleged that as part of the design to destroy the union, CBPI discriminated against the officers until they were pressured to resign.

On April 28, 2000, Labor Arbiter Rodolfo G. Lagoc *(LA Lagoc)* dismissed Hormillosa's complaint for illegal dismissal, ruling that his termination was proper. According to LA Lagoc, the provision cited by Hormillosa, as a violation of the CBA, was only a portion and was taken out of context. It explained that Hormillosa was just using the union to thwart management's exercise of its legal prerogative. LA Lagoc, however, awarded Hormillosa a separation pay, citing the case of *Magos v. NLRC*,[13] where it was stated that separation pay could be granted as a form of equitable relief even if the dismissal was for a just cause. Thus, he ordered CBPI to pay Hormillosa a separation pay equivalent to one-half (½) month salary for every year of service, that is, ₱9,037.50 (₱6,025.00 salary per month divided by 2 then multiplied by 3 years).

On appeal, the NLRC, on January 17, 2002, ordered the remand of the case to the SRAB to give Hormillosa the opportunity to confront the witnesses and evidence against him. Moreover, it stated that Section 5(b), Rule V of the 1990 NLRC Rules was not observed. The said section provides:

If the Labor Arbiter finds no necessity of further hearing after the parties have submitted their position papers and supporting

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[13] 360 Phil. 670 (1998).

documents, he shall issue an Order to that effect and shall inform the parties, stating the reason therefor. x x x.

The NLRC explained that the above rule was mandatory because of the word "shall." It found that the LA failed to issue the said order despite the fact that he found no necessity of holding a trial on the merits and that the case would be resolved on the basis of the pleadings. The absence of this order deprived Hormillosa, who could have opted for a trial, his right to due process. Even though the discretion whether to hold a trial was with the LA, the rule should have been observed.

On December 24, 2008, the SRAB, this time through LA Danilo Acosta *(LA Acosta)*, ruled that Hormillosa was illegally dismissed but did not order his reinstatement due to strained relations. It was decreed that he was entitled to backwages from the date of his dismissal up to December 24, 2008 plus a separation pay equivalent to one month pay for every year of service with a fraction of six months being considered one whole month. It likewise awarded attorney's fees equivalent to 10% of the total award which reached ₱1,257,590.11, broken down as follows:

Backwages	₱1,070,963.83
Separation Pay	₱72,300.00
10% Attorney's Fees	₱114,326.38
Total	**₱1,257,590.11**

LA Acosta explained that because the witnesses of CBPI did not appear in the hearings as ordered, it had no other alternative but to give Hormillosa the "benefit of the doubt" and decide the case in his favor.

Aggrieved, CBPI appealed to the NLRC, arguing that the decision of LA Acosta was bereft of factual findings, applicable laws and legal principles. It insisted that the dismissal of Hormillosa was proper considering that the charges against him were proven by substantial evidence.

On October 30, 2009, the NLRC upheld the decision of LA Acosta, reasoning out that they found no substantial evidence that Hormillosa falsified and issued fictitious invoices and CBPI

failed to "unleash the burden of proof"[14] to justify his termination. Regarding CBPI's total liability, the NLRC, however, arrived at a different figure. Its computation was as follows:

Backwages: 3/29/1999 – 9/30/2009

₱6,025.00 x 126 months = ₱759,150.00

+

Separation Pay: 11/1996 – 9/30/2009

₱6,025.00 x 13 years = ₱78,325.00

₱837,475.00

10% Attorney's Fees: x .10

₱83,747.50

₱837,475.00 + 83,747.50 = **₱921,222.50**

CBPI moved for reconsideration but its motion was denied.

Finding the NLRC decision still unacceptable, CBPI elevated the matter to the CA via a petition for *certiorari* under Rule 65.

On April 29, 2011, the CA *nullified* and *set aside* the NLRC decision and held that the dismissal of Hormillosa was valid. According to the CA, the NLRC ignored the fact that the decision of LA Acosta did not conform to Section 14, Rule V of the 2005 Revised Rules of Procedure of the NLRC, which reads:

> SECTION 14. Contents of Decisions. — The decisions and orders of the Labor Arbiter shall be clear and concise and shall include a brief statement of the: a) facts of the case; b) issues involved; c) applicable laws or rules; d) conclusions and the reasons therefor; and e) specific remedy or relief granted. In cases involving monetary awards, the decision or orders of the Labor Arbiter shall contain the amount awarded.

The CA stated that the NLRC decision did not contain a recital of the facts of the case, applicable laws or rules and the conclusions and reasons therefor. It did not relate how the case

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[14] *Rollo*, p. 84.

started, what the case was all about, and while the decision concluded that Hormillosa had been illegally dismissed, it did not contain any explanation as to why and how the dismissal became invalid or illegal. LA Acosta stated that the case was decided in favor of Hormillosa based on "benefit of the doubt," but no law, jurisprudence or facts were supplied to justify his conclusion. The CA considered that it was in contravention of Section 14, Article VIII of the 1987 Constitution which states that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it was based.

Moreover, the CA observed, the NLRC whimsically exercised its judgment when it disregarded the evidence of CBPI, which substantially proved the valid dismissal of Hormillosa. According to the CA, Hormillosa was validly dismissed under Article 282 (c) of Labor Code, as amended. It states that loss of confidence applies to cases involving employees who occupy positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property.[15] The CA pointed out that there were established circumstances proving such breach of trust and confidence. Thus:

> In the extant case, private respondent's breach of the trust reposed on him by petitioner is duly proven. The verification and audit conducted by Tiosayco on the accounts handled by private respondent revealed some anomalous transactions which certainly erode the trust and confidence reposed on him by petitioner. Even when the transactions uncovered by Tiosayco were obviously questionable, private respondent did not bother to explain them. On the contrary, he skirted the question and answer investigation and filed a complaint against petitioner instead with the SRAB No. VI.
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> This act of private respondent only reinforced petitioner's distrust and apprehension on private respondent's conduct in handling his accounts. The question and answer investigation would have been the right forum for private respondent to explain the accounts he

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[15] Citing *Renita del Rosario v. Makati Cinema Square Corp.*, G.R. No. 170014, July 3, 2009, 591 SCRA 608.

handled, disprove the initial findings of anomalous transactions uncovered by Tiosayco, and clear his name in the process. Regrettably, private respondent carelessly ignored the opportunity.

Public respondent anchored its Decision on the denial of Cecilia Palmes and Feby Panerio of their signatures in the affidavits presented by petitioner and the affidavit of Virgie Bucaes *(Bucaes)* which stated that she denied the signatures of Sales Invoices Nos. 79872 E and 79873 E because she knew they were the signatures of Arnold Segaya, owner of Arnold Store; she allowed Arnold Store to use her account so that when her stock is fully consumed, she can buy from Arnold Store; and she never signed an affidavit before Hector Teodosio, a notary public.

While Cecilia Palmes and Feby Panerio denied that the signatures appearing in their supposed affidavits were theirs, the other evidence presented by petitioner were not rebutted by private respondent. Although these evidence were not testified to, they are still deemed admissible and worthy of evidentiary value. "Indeed, hearings and resolutions of labor disputes are not governed by the strict and technical rules of evidence and procedure observed in the regular courts of law. Technical rules of procedure are not applicable in labor cases, but may apply only by analogy or in a suppletory character, for instance, when there is a need to attain substantial justice and an expeditious, practical and convenient solution to a labor problem."

It is undisputed in the present case that private respondent issued sales invoices to Arnold Store using the account number of Bucaes. Private respondent was in bad faith when he booked this account because he made it appear that the account was for Bucaes. Even if Bucaes consented to this transaction, private respondent was aware that this was a prohibited practice. Also undisputed is the fact that Shirley Jardeleza *(Jardeleza)* categorically denied that she signed the sales invoice purportedly stating that she had an obligation with petitioner in the amount of ₱810.00. Although the challenged Decision stated that private respondent was able to explain that it was the helper of Jardeleza who signed the sales invoice, there was no showing that Jardeleza authorized the same.

Private respondent likewise did not refute the evidence presented by petitioner regarding the tampering of a sales invoice (Invoice No. 101193) issued to Tadifa Store. The sales invoice and its duplicate copy revealed different amounts when supposedly they should bear

the same. He also did not explain why the amount deposited by Pajarillo for the empties was not refunded back to the latter when the empties were already returned. As agreed, private respondent should have already made the refund once the empties were returned. However, private respondent delayed the refund and even paid for it only partially. This is seriously dubious. Paying partially only indicated that private respondent appropriated the deposit for himself in violation of petitioner's code of conduct.

In sum, these proofs, taken collectively, are more than enough to constitute willful breach by private respondent of the trust reposed on him by petitioner. They undoubtedly create a reasonable ground for petitioner to believe that private respondent could not longer be trusted. Hence, the latter is validly dismissed from his employment. Without finding of illegal dismissal, the monetary awards bestowed on him by the SRAB No. VI and modified by public respondent have no basis.[16]

Not in conformity, Hormillosa elevated his complaint to this Court via Rule 45 of the Rules of Court, questioning the following:

1. **The finding of the Court of Appeals that the NLRC committed grave abuse of discretion in affirming the decision of SRAB No. VI despite the alleged fact that the latter did not conform to the guidelines set forth in the 2005 Revised Rules of Procedure of the NLRC; and**
2. **The finding of the Court of Appeals that the NLRC whimsically exercised its judgment when it disregarded the evidence of Coca-Cola which substantially proved the valid dismissal of Hormillosa from work.**

Regarding the CA pronouncement that the NLRC decision did not contain the facts of the case, applicable laws or rules and the conclusions and reasons therefor, Hormillosa argues that the decision of LA Acosta substantially complied with the requirements of the NLRC Rules of Procedure. He explains

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[16] *Rollo*, pp. 35-36.

that the NLRC had the occasion to exhaustively go over the records of the case and so it cannot be said that it arbitrarily affirmed the decision of LA Acosta.

Hormillosa also opines that the remand of the case to the LA was precisely for the purpose of giving him the opportunity to confront the witnesses and evidence against him. He pointed out that because those who attended the hearing (Palmes and Panerio) denied their signatures and the rest of the witnesses (Pajarillo and Jardeleza) did not appear, LA Acosta had no recourse but to disregard any evidence bearing their signatures. It was for those reasons that LA Acosta gave the "benefit of the doubt" in favor of Hormillosa and such was in accord with Article 4 of the Labor Code, to wit:

> Art. 4. Construction in Favor of Labor. - All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations shall be resolved in favor of labor.

CBPI counters that Hormillosa failed to show that the CA committed any reversible error when it rendered the April 29, 2011 Decision. Such failure is fatal because it is the burden of every party seeking review of any decision of the CA or other lower tribunal to persuade this Court not only of the existence of questions of law fairly and logically arising therefrom, which he must distinctly set forth in his petition for review, but also that those questions are substantial enough to merit consideration, or that there are special and important reasons warranting the review he seeks.[17]

CBPI also stresses that, although Palmes and Panerio denied that the signatures appearing in their supposed affidavits were theirs, the other evidence it presented were not rebutted by Hormillosa. Specifically, he did not refute the evidence regarding the tampering of a sales invoice and its duplicate copy that revealed different amounts when supposedly they should bear

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[17] *Chua Giok Ong v. Court of Appeals*, 233 Phil. 110, cited in Bersamin, Appeal and Review in the Philippines, page 86, 1999 Ed.

the same. He did not explain either why the amount deposited by Pajarillo for the empties was not refunded to him when said empties were already returned.

Hormillosa, on the other hand, asserts that he had refuted all the evidence presented by CBPI against him, citing the denial by Palmes and Panerio of their purported signatures. He also explains that he was not able to confront the other witnesses for CBPI because they failed to appear during the scheduled hearings.

With respect to the tampering of a sales invoice issued to Tafida Store and the delayed refund of the deposit on empties to Pajarillo, he claims that those were not brought to his attention and were not mentioned in the termination letter sent to him.

Ruling of the Court

Article 282 of the Labor Code enumerates the just causes for the termination of employment of an employee by the employer, to wit:

Art. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

The rule is that, in labor cases, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient

to support a conclusion is required.[18] The CA was correct when it ruled that Hormillosa's employment was validly terminated under paragraph (c) of the above provision. There was substantial evidence to justify his dismissal.

In *Bristol Myers Squibb (Phils.), Inc. v. Baban*,[19] the Court discussed the requisites for a valid dismissal on the ground of loss of trust and confidence as follows:

> It is clear that Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. The right of employers to dismiss employees by reason of loss of trust and confidence is well established in jurisprudence.
>
> The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Verily, We must first determine if respondent holds such a position.
>
> There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, *etc*. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.
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> x x x x x x x x x
>
> The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[20]

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[18] *Crew and Ship Management International, Inc. v. Jina T. Soria*, G.R. No. 175491, December 10, 2012, 687 SCRA 491.

[19] G.R. No. 167449, December 17, 2008, 574 SCRA 198.

[20] *Id.* at 205-206, citing *Garcia v. National Labor Relations Commission*, G.R. No. 113774, April 15, 1998, 351 Phil. 960.

Hormillosa, being a route salesman, falls under the second class. By selling soft drink products and collecting payments for the same, he was considered an employee who regularly handled significant amounts of money and property in the normal and routine exercise of his functions. The nature of the position of a route salesman was described in *Coca-Cola Bottlers, Phils. V. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW and Florention Ramirez,*[21] where it was written:

> We agree that route salesmen are likely individualistic personnel who roam around selling softdrinks, deal with customers and are entrusted with large asset and funds and property of the employer. There is a high degree of trust and confidence reposed on them, and when confidence is breached, the employer may take proper disciplinary action on them. The work of a salesman exposes him to voluminous financial transactions involving his employer's goods. The life of the soft drinks company depends not so much on the bottling or production of the product since this is primarily done by automatic machines and personnel who are easily supervised but upon mobile and far-ranging salesmen who go from store to store all over the country or region. Salesmen are highly individualistic personnel who have to be trusted and left essentially on their own. A high degree of confidence is reposed on them because they are entrusted with funds or properties of their employer.

Clearly, Hormillosa occupies a position of trust. As correctly pointed out by the CA, there was a high degree of trust and confidence reposed on him and when this confidence was breached, the employer was justified in taking the appropriate disciplinary action.

With regard to the second requisite for dismissal on the ground of loss of trust and confidence, the Court finds that Hormillosa committed acts which warranted his dismissal from employment.

Although the case was remanded to the SRAB, it was not for the purpose of conducting a new trial or hearing, but for Hormillosa to confront the witnesses against him and refute the evidence on record against him. The remand order did not

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[21] 492 Phil. 570, 589 (2005) [also cited by the CA].

vacate the earlier hearings and the evidence earlier adduced by both parties.

Except for the affidavits of Cecilia Palmes, Fely Paneiro and Shirley Jardeleza, the evidence against him remained in the records, particularly the documents and invoices he submitted to CBPI. The falsified invoices remained unexplained by him.

Hormillosa cannot deny that fact that he issued sales invoices to Arnold Store, a store unregistered or unaccredited with CBPI. He transacted with the said store using the account of Virgie Bucaes, proprietor of Virgie's Eatery. Bucaes, who had an outlet profile with CBPI, was assigned with Control No. 0027069.[22] Hormillosa extended credit to Arnold Store, an unknown customer to CBPI, as documented by two credit sales invoices, Invoice Nos. 79872 and 79873, amounting to ₱5,600.00 and ₱4,806.00 respectively. By doing so, he gave a false and misleading representation that the account was that of Bucaes. CBPI had a set of rules and regulations, one of which was that only those outlets, which had outlet control, were entitled to enjoy credit from CBPI. Salesmen were not allowed to extend credit to those who had no outlet numbers or outlet profiles from CBPI. Evidently, Hormillosa disregarded and disobeyed the company rules.

As earlier stated, the evidence in this regard was supplied by Hormillosa himself when he submitted copies of the sales invoices. For this reason, the stipulation under Section 2(d), Article III of the CBA, which provides that the company shall coordinate with the Union's authorized representative to witness the account verification that the company would conduct with respect to questionable accounts issued to Company customers by route salesman or relief salesmen under investigation, is not applicable.

In *Tiu and/or Conti Pawnshop v. National Labor Relations Commission*,[23] the Court ruled that the language of Article 282(c) of the Labor Code requires that the loss of trust and confidence

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[22] Annex T, Position Paper of Respondent, CA records, p. 74.

[23] G.R. No. 83433, November 12, 1992, 215 SCRA 540.

must be based on willful breach of the trust reposed in the employee by the employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.

In the case at bench, Hormillosa's act of issuing sales invoices to Arnold Store could not have been performed without intent and knowledge on his part as such act could not have been done without planning or merely through negligence. Hence, the breach was willful.

Indeed, the tampering of the sales invoice and the matter of the empties which Hormillosa claimed were never brought to his attention nor mentioned in his termination letter, were discovered after he had already been terminated. CBPI, however, raised them as an issue in its position paper[24] to prove that he could no longer be trusted. Hormillosa should have addressed these issues. At any rate, considering that he had already been dismissed, CBPI no longer conducted another hearing. It can only be surmised that CBPI mentioned the newly discovered anomalies to bolster its position that he could not be trusted. Nevertheless, as pointed out earlier, the tampering of the invoices were clear enough.

Worth mentioning is the fact that Hormillosa did not deal with his employer in good faith. The records show that when Tiosayco, on March 17, 1999, directed Hormillosa to submit his written explanation on March 20, 1999, he sent instead a letter stating that the investigation would be moot and academic because he had already filed a case against the company for ULP. As can be gleaned from the records, he filed a complaint against CBPI only on March 24, 1999, negating his earlier statement that he had supposedly filed a case before Tiosayco sent the memorandum.

As keenly noted by the CA, Hormillosa's act of "filing a complaint" to skirt the question-and-answer investigation only

[24] CA records, pp. 37-154 (including annexes).

reinforced CBPI's apprehension on his conduct in handling his accounts and eroded its trust and confidence in him. The said investigation would have been the right forum for him to explain the accounts he mishandled and disprove the findings of the verification and audit team. Instead, he passed up the opportunity to clear his name by refusing to submit himself to the investigation and explain the anomalies discovered.

Regarding the issue of separation pay, the case of *Central Philippines Bandag Retreaders, Inc. vs. Prudecio J. Diasnes*[25] is instructive:

> The award of separation pay is authorized in the situations dealt with in Article 283 and Art. 284 of the Labor Code, but not in terminations of employment based on instances enumerated in Art. 282.
>
> "The only cases when separation pay shall be paid, although the employee was lawfully dismissed, are when the cause of termination was not attributable to the employee's fault but due to: (1) the installation of labor saving devices, (2) redundancy, (3) retrenchment, (4) cessation of employer's business, or (5) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees (Articles 283 and 284, Labor Code.) Other than these cases, an employee who is dismissed for a just and lawful cause is not entitled to separation pay even if the award were to be called by another name."[26]

In the case at bench, the cause for the dismissal from employment of Hormillosa clearly falls under Article 282 of the Labor Code. Therefore, he is not entitled to any separation pay.

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[25] 580 Phil. 177 (2008), citing *San Miguel Corporation v. Lao*, 433 Phil. 890 (2002).

[26] *Eastern Paper Mills, Inc. v. NLRC*, 252 Phil. 618, 621 (1989).

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199901. October 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GARYZALDY GUZON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CONVICTION MUST STAND ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE, NOT ON THE WEAKNESS OF THE DEFENSE WHICH THE ACCUSED PUT UP.— In *Reyes v. CA*, the Court emphasized that a "[c]onviction must stand on the strength of the [p]rosecution's evidence, not on the weakness of the defense which the accused put up. Evidence proving the guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course."

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SALE OF ILLEGAL DRUGS; ELEMENTS.— Guzon was accused of violating Section 5, Article II of R.A. No. 9165 which prohibits the sale of illegal drugs. The elements of the crime include: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. The Court explained in *People v. Bautista* that in drug-related prosecutions, the State bears the burden not only of proving these elements

of the offense under R.A. No. 9165, but also of proving the *corpus delicti*, the body of the crime. The dangerous drug is itself the very *corpus delicti* of the violation of the law.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; COMPLIANCE WITH THE CHAIN OF CUSTODY RULE IS CRUCIAL IN ANY PROSECUTION THAT FOLLOWS A BUY-BUST OPERATION; RATIONALE.— "[A] buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors." As in all drugs cases, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt. To eliminate doubt, and even abuse, in the handling of seized substances, some safeguards for compliance by law enforcement officers are established by law and jurisprudence.

4. ID.; ID.; ID.; ID.; STRICT DEMANDS AND SIGNIFICANT VALUE OF THE CHAIN OF CUSTODY RULE, EXPLAINED.— The Implementing Rules and Regulations (IRR) of R.A. No. 9165, particularly Section 21 thereof, further provides the guidelines in the custody and control of confiscated drugs: x x x The rule includes the *proviso* that procedural lapses in the handling of the seized drugs are not *ipso facto* fatal to the prosecution's cause, provided that the integrity and the evidentiary value of the seized items are preserved. In each case, courts are nonetheless reminded to thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards that are drawn by the law for the protection of the *corpus delicti*. The strict demands and significant value of the chain of custody rule were emphasized in the oft-cited *Malillin v. People* x x x In a line of cases, the Court explained that the failure to comply with the indispensable requirement of *corpus delicti* happens

not only when it is missing, but also where there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court. x x x In drugs cases, the prosecution must show that the integrity of the *corpus delicti* has been preserved. This is crucial in drugs cases because the evidence involved – the seized chemical – is not readily identifiable by sight or touch and can easily be tampered with or substituted. "Proof of the *corpus delicti* in a buy-bust situation requires not only the actual existence of the transacted drugs but also the certainty that the drugs examined and presented in court were the very ones seized. This is a condition *sine qua non* for conviction since drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist." The flagrant lapses committed in handling the alleged confiscated drug in violation of the chain of custody requirement even effectively negate the presumption of regularity in the performance of the police officers' duties, as any taint of irregularity affects the whole performance and should make the presumption unavailable.

5. ID.; ID.; ID.; BUY-BUST OPERATION; FAILURE TO PRESENT THE POSEUR BUYER IS EXCUSABLE ONLY WHEN HIS TESTIMONY IS MERELY CORROBORATIVE, THERE BEING OTHER WITNESS WHO IS COMPETENT TO TESTIFY ON THE SALE TRANSACTION; NOT APPLICABLE IN CASE AT BAR.— In the absence of neither the poseur-buyer's nor of any eyewitness' testimony on the transaction, the prosecution's case fails. In *People v. Tadepa*, the Court explained that the failure of the prosecution to present in court the alleged poseur-buyer is fatal to its case. x x x The Court also ruled in *People v. Olaes*, that the non-presentation of the poseur-buyer was fatal to the prosecution's case, since the alleged sale transaction happened inside the accused's house; hence, it was supposedly witnessed only by the poseur-buyer, who then was the only person who had personal knowledge of the transaction. While the Court, in several instances, has affirmed an accused's conviction notwithstanding the non-presentation of the poseur-buyer in the buy-bust operation, such failure is excusable only when the poseur-buyer's testimony is merely corroborative, there being some other eyewitness who is competent to testify on the sale transaction.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

This is an appeal from the Decision[1] dated June 29, 2010 of the Court of Appeals (CA) in CA-G.R. CR HC No. 02890, which affirmed the Decision[2] dated June 15, 2007 of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Criminal Case No. 11968-13, finding accused-appellant Garyzaldy Guzon (Guzon) guilty beyond reasonable doubt of the crime of illegal sale of *shabu*.

The Facts

Guzon was accused of violating Section 5, Article II of Republic Act (R.A.) No. 9165, also known as the Comprehensive Dangerous Drugs Act of 2002, in an Information[3] dated November 23, 2005, the accusatory portion of which reads:

> That on or about November 22, 2005 at 3:00 o'clock in the afternoon, in the municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed plastic sachet of methamphetamine hydrochloride otherwise known as "*shabu*", a dangerous drug, weighing 0.06 gram to a police asset of PNP San Nicolas, Ilocos Norte, who posed as buyer in a buy[-]bust operation without authority to do so.

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[1] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Remedios Salazar-Fernando and Celia C. Librea-Leagogo, concurring; *rollo*, pp. 2-14.

[2] Issued by Presiding Judge Philip G. Salvador; CA *rollo*, pp. 27-41.

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

CONTRARY TO LAW.[4]

Upon arraignment, Guzon entered a plea of "not guilty."[5] After pre-trial, trial on the merits ensued.

Version of the Prosecution

PO2 Elyzer Tuzon (PO2 Tuzon) testified for the prosecution. He claimed that on November 22, 2005, at around 11:00 o'clock in the morning, he was on duty at the police station of San Nicolas, Ilocos Norte, when he received a telephone call from an unknown tipper that Guzon was engaged in drug-pushing activity at Nalupta Street, *Barangay* 3, San Nicolas, Ilocos Norte. PO2 Tuzon relayed the information to Officer-In-Charge Chief Police Inspector Jerico Baldeo (OIC Baldeo), who ordered PO2 Tuzon and PO3 Cesar Manuel (PO3 Manuel) to verify the report. When PO2 Tuzon and PO3 Manuel failed to find Guzon at Nalupta Street, OIC Baldeo instructed them to seek the aid of an asset.[6]

After an unnamed asset identified Guzon's location, the police planned a buy-bust operation. PO2 Tuzon gave marked money to the asset designated to be the poseur-buyer of *shabu*. The asset was instructed to remove his cap to signal that he had received the *shabu* from Guzon.[7]

The buy-bust operation ensued at Nalupta Street, where the asset approached Guzon. From afar, PO2 Tuzon saw the asset hand three (3) marked ₱100.00 bills to Guzon, who then handed something to the asset.[8] After the asset removed his cap, the police ran towards Guzon to arrest him. PO3 Manuel recovered the marked ₱100 bills from Guzon, while PO2 Tuzon received from the asset the item purchased from Guzon.[9] Guzon was

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[4] *Id.* at 9.

[5] *Id.* at 27.

[6] TSN, February 28, 2006, pp. 3-6.

[7] *Id.* at 5-6, 8-9.

[8] *Id.* at 11.

[9] *Id.* at 12.

brought to the San Nicolas Police Station, where PO2 Tuzon prepared a Certification/Inventory of Seized/Confiscated Items,[10] marked the seized sachet with his initials "EAT",[11] and then delivered the sachet to the police crime laboratory for chemical examination.[12] The sachet was received by PO3 Nolie Domingo (PO3 Domingo).[13]

Given a stipulation by the prosecution and the defense during the pre- trial, PO3 Domingo and Police Senior Inspector Mary Ann Cayabyab (PSI Cayabyab), the Forensic Chemical Officer of the Ilocos Norte Provincial Crime Laboratory Office who conducted the chemical examination, no longer testified in court. The RTC's pre-trial Order[14] provides:

> [T]he parties stipulated on the gist of the testimony of PO3 Nolie Domingo to the effect that as per request for laboratory examination, he was the one who received the specimen from Elyzer Tuzon and that he delivered the same to PSI Mary Ann Cayabyab. They also stipulated on the testimony of PSI Cayabyab to the effect that after receiving the said specimen and found the specimen to be shabu, thus, she issued her initial report and confirmatory report under Chemistry Report No. D-090-2005 which were marked as Exhibits F and G, respectively. They further agreed that said forensic chemical officer and PO3 Domingo could identify the said specimen and the labels as appearing therein. The defense admitted the proffer without admitting that the specimen came from the accused. The testimonies of PO3 Nolie Domingo and PSI Mary Ann Cayabyab were therefore dispensed with. x x x.[15]

The Initial Laboratory Report[16] and Chemistry Report[17] referred to in the pre-trial Order both state that the specimen,

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[10] Records, p. 5.

[11] TSN, February 28, 2006, p. 13.

[12] *Id.* at 15.

[13] *Id.* at 16.

[14] Records, p. 24.

[15] *Id.*

[16] CA *rollo*, p. 54.

[17] *Id.* at 55.

weighing 0.06 grams, that was submitted to the crime laboratory for examination contained methamphetamine hydrochloride, otherwise known as *shabu*.

Version of the Defense

The defense presented the testimonies of Guzon, his friend Jesus Guira, Jr. (Guira) and brother Edwin Guzon (Edwin).

Guzon denied the charge against him. He claimed that on the early afternoon of November 22, 2005, he had a drinking spree with Guira at the latter's house in *Barangay* San Nicolas, Ilocos Norte.[18] At past 3:00 o'clock in the afternoon, his brother Edwin arrived and told him that PO3 Manuel wanted to talk to him. Guzon approached PO3 Manuel, who invited him to the municipal hall but would not say the reason therefor.[19] Guzon insisted that the matter be instead discussed near Guira's house, but PO3 Manuel declined. Thereafter, PO2 Tuzon arrived[20] and upon his prodding, Guzon agreed to go with them to the municipal hall.[21] Only PO2 Tuzon went with Guzon inside the municipal hall.[22]

PO2 Tuzon later brought Guzon to a police camp in Laoag City. While on board a patrol car on their way to the camp, PO2 Tuzon realized that he forgot the *shabu* in his office drawer so they went back to the municipal hall. Thereafter, they headed back to the police camp where, upon their arrival, PO2 Tuzon handcuffed Guzon before proceeding to the camp's second floor.[23]

While at the second floor, PO2 Tuzon took a sachet from his pocket then handed it to a desk officer. Guzon was instructed

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[18] TSN, September 18, 2006, p. 3.

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

[20] *Id.* at 7.

[21] *Id.* at 8, 10.

[22] *Id.* at 12.

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

by a woman to fill a small bottle with his urine. After he complied, PO2 Tuzon brought him back to San Nicolas.[24]

On the morning of November 23, 2005, Guzon was brought by PO2 Tuzon, PO3 Manuel and another policeman to a place south of the City Hall of Laoag, near the corner of the Laoag-Solsona terminal. There, Guzon saw PO3 Manuel take out three ₱100.00 bills from his wallet then hand them to PO2 Tuzon. PO2 Tuzon left and when he returned, he handed photocopies of the ₱100.00 bills to PO3 Manuel.[25]

Guira and Edwin also testified for Guzon's defense. Guira claimed that at about 1:00 o'clock in the afternoon on November 22, 2005, he was having a drinking session outside his house with Guzon and several other persons.[26] At around 3:00 o'clock in the afternoon, Edwin arrived to inform Guzon that PO3 Manuel was looking for him.[27] Guzon then left the place with PO3 Manuel, PO2 Tuzon and one George.[28] Edwin's testimony also corroborated the account of Guzon, having testified that on November 22, 2005, he was asked by PO3 Manuel on the whereabouts of Guzon.[29] When he saw his brother at Guira's house, he approached him to say that PO3 Manuel was looking for him.[30]

The testimony of one Ronnie Dimaya was dispensed with after the prosecution admitted that the gist of his testimony would be merely corroborative of the testimonies of Guira and Guzon.[31]

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

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

[26] TSN, August 3, 2006, pp. 3-4.

[27] *Id.* at 6-7.

[28] *Id.* at 8.

[29] TSN, August 15, 2006, p. 4.

[30] *Id.* at 7.

[31] TSN, September 7, 2006, p. 4.

The RTC's Ruling

On June 15, 2007, the RTC rendered its Decision[32] finding Guzon guilty as charged. The dispositive portion of its Decision reads:

> WHEREFORE, judgment is hereby rendered finding accused Garyzaldy Guzon GUILTY beyond reasonable doubt as charged of illegal sale of *shabu* and is therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of [₱]500,000.00.
>
> The contraband subject hereof is hereby confiscated, the same to be disposed of as the law prescribes.
>
> SO ORDERED.[33]

Feeling aggrieved, Guzon appealed to the CA. Notwithstanding the RTC's findings, he denied the charge against him. He also questioned the credibility of PO2 Tuzon as a witness for the prosecution and the police officers' non-compliance with the chain of custody rule in handling the confiscated *shabu*.

The CA's Ruling

On June 29, 2010, the CA rendered its Decision[34] denying the appeal. It reasoned that Guzon's defenses of denial and frame-up are common and could easily be fabricated; they could not prevail over the positive identification of the accused by the police officer who testified for the prosecution.

In affirming Guzon's conviction, the CA also cited the presumption of regularity in the performance of official duty by the police operatives who conducted the buy-bust operation. As to the issue of chain of custody, the CA rejected Guzon's argument, and maintained that based on the evidence, the integrity and evidentiary value of the confiscated *shabu* were preserved.

Hence, this appeal.

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[32] CA *rollo*, pp. 27-41.

[33] *Id.* at 41.

[34] *Rollo*, pp. 2-14.

The Present Petition

Guzon seeks his acquittal mainly on the basis of the prosecution's failure to establish the chain of custody of the subject drug. He argues[35] that: (1) the evidence allegedly seized from Guzon could have been planted; it was not immediately marked at the place of seizure; (2) there were no photographs and physical inventory of the confiscated drug; (3) the prosecution failed to offer justification for the absence of photographs and inventory; (4) the asset who acted as the poseur-buyer was not identified; and (5) the prosecution failed to establish that the integrity of the seized item was sufficiently preserved through an unbroken chain of custody.

This Court's Ruling

The appeal is meritorious. The Court acquits Guzon for the prosecution's failure to prove his guilt beyond reasonable doubt. In *Reyes v. CA*,[36] the Court emphasized that a "[c]onviction must stand on the strength of the [p]rosecution's evidence, not on the weakness of the defense which the accused put up. Evidence proving the guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course."[37]

In the instant case, Guzon was accused of violating Section 5, Article II of R.A. No. 9165 which prohibits the sale of illegal drugs. The elements of the crime include: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.[38] The Court explained in *People v.*

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[35] *Id.* at 47-49.

[36] G.R. No. 180177, April 18, 2012, 670 SCRA 148.

[37] *Id.* at 164-165, citing *People v. Obeso*, 460 Phil. 625, 641 (2003).

[38] *People v. Lorenzo*, G.R. No. 184760, April 23, 2010, 619 SCRA 389, 400, citing *People v. Villanueva*, 536 Phil. 998, 1004 (2006).

Bautista[39] that in drug-related prosecutions, the State bears the burden not only of proving these elements of the offense under R.A. No. 9165, but also of proving the *corpus delicti*, the body of the crime. The dangerous drug is itself the very *corpus delicti* of the violation of the law.[40]

"[A] buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors."[41] As in all drugs cases, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[42] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[43]

To eliminate doubt, and even abuse, in the handling of seized substances, some safeguards for compliance by law enforcement officers are established by law and jurisprudence. For one, Section 21 of R.A. No. 9165, upon which Guzon anchors his appeal, reads in part:

Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*— The PDEA shall

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[39] G.R. No. 177320, February 22, 2012, 666 SCRA 518.

[40] *Id.* at 531-532.

[41] *People v. Mantalaba*, G.R. No. 186227, July 20, 2011, 654 SCRA 188, 199, citing *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

[42] *People v. Dumaplin*, G.R. No. 198051, December 10, 2012, 687 SCRA 631.

[43] *People v. Remigio*, G.R. No. 189277, December 5, 2012, 687 SCRA 336.

take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official **who shall be required to sign the copies of the inventory and be given a copy thereof**;

x x x x x x x x x (Emphasis ours)

The Implementing Rules and Regulations (IRR) of R.A. No. 9165, particularly Section 21 thereof, further provides the following guidelines in the custody and control of confiscated drugs:

x x x x x x x x x

(a) The apprehending officer/team having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**: Provided, that the physical inventory and photograph shall be conducted at the **place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable**, in case of warrantless seizures; Provided, further, **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**;

x x x x x x x x x (Emphasis ours)

The rule includes the *proviso* that procedural lapses in the handling of the seized drugs are not *ipso facto* fatal to the prosecution's cause, provided that the integrity and the evidentiary value of the seized items are preserved. In each case, courts are nonetheless reminded to thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards that are drawn by the law[44] for the protection of the *corpus delicti.* The strict demands and significant value of the chain of custody rule were emphasized in the oft-cited *Malillin v. People*[45] wherein the Court held:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then **describe the precautions taken to ensure that there had been no change in the condition** of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, **an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical**, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is **susceptible to alteration, tampering, contamination and even substitution and exchange**. In other words, **the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether**

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[44] *People v. Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 355.

[45] 576 Phil. 576 (2008).

the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.[46] (Citations omitted and emphasis supplied)

As Guzon correctly pointed out in his Supplemental Brief, there were several lapses in the law enforcers' handling of the seized item which, when taken collectively, render the standards of chain of custody seriously breached. In a line of cases, the Court explained that the failure to comply with the indispensable requirement of *corpus delicti* happens not only when it is missing, but also where there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court.[47] Upon review, the Court has determined that such lapses and doubt mar the instant case.

First, the police officers who took part in the buy-bust operation failed to mark the seized item immediately after its confiscation from Guzon. The Court explained in *People v. Coreche*[48] the importance in the chain of custody of the immediate marking of an item that is seized from an accused, to wit:

> 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 contraband 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 at the end of criminal proceedings, **obviating switching, "planting," or contamination of evidence**.[49] (Citation omitted and emphasis ours)

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[46] *Id.* at 587-588.

[47] *People v. Umipang*, *supra* note 44, 355-356; *People v. Relato*, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 270; *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 365.

[48] G.R. No. 182528, August 14, 2009, 596 SCRA 350.

[49] *Id.* at 357.

Here, instead of immediately marking the subject drug upon its confiscation, PO2 Tuzon marked it with his initials "EAT" only upon arrival at the police station.[50] While the failure of arresting officers to mark the seized items at the place of arrest does not, by itself, impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence,[51] such circumstance, when taken in light of the several other lapses in the chain of custody that attend the present case, forms part of a gross, systematic, or deliberate disregard of the safeguards that are drawn by the law,[52] sufficient to create reasonable doubt as to the culpability of the accused.

The Court has determined that although a physical inventory of the items seized during the buy-bust operation forms part of the case records, the buy-bust team failed to fully comply with the requirements under Section 21 of R.A. No. 9165 for its preparation and execution. Under the law, the inventory must be made "in the presence of the accused or the person/s from whom [the] items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." These requirements are reiterated in Section 21, IRR of R.A. No. 9165. Non-compliant with such rules, however, the Certification/Inventory of Seized/Confiscated Items[53] in this case only bears the signatures of PO3 Manuel and PO2 Tuzon as apprehending officers. Although the Certification indicates the name of Guzon under the section "With Conformity," it includes neither his signature nor of any other person who is allowed by law to witness the required inventory. There is also no proof that a copy of the inventory was received by any of the persons enumerated under the law.

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[50] CA *rollo*, p. 29.

[51] *People v. Umipang, supra* note 44, at 351, citing *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826.

[52] *Id.* at 355.

[53] CA *rollo*, p. 52.

Besides these deficiencies in the preparation of the inventory, no photograph of the seized item, which is also required under Section 21 of R.A. No. 9165, forms part of the case records.

The saving clause in Section 21, IRR of R.A. No. 9165 fails to remedy the lapses and save the prosecution's case. We have emphasized in *People v. Garcia*[54] that the saving clause applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds.[55] Failure to follow the procedure mandated under R.A. No. 9165 and its IRR must be adequately explained.[56] Equally important, the prosecution must establish that the integrity and the evidentiary value of the seized item are properly preserved. The prosecution failed in this regard. Taking into account the several rules and requirements that were not followed by the law enforcers, there was an evident disregard on their part of the established legal requirements. Their breach of the chain of custody rule, magnified by the prosecution's failure to explain the deficiencies during the trial, casts doubt on whether the item claimed to have been sold by Guzon to the police asset was the same item that was brought for examination by the police crime laboratory and eventually presented in court as evidence.

As further proof that the chain of custody rule was breached in this case, the Court points out the discrepancy in the weight of the item that was supposedly seized following the buy-bust operation, and that examined by PSI Cayabyab. We refer to the inventory prepared by PO3 Manuel and PO2 Tuzon on the items that were confiscated after the buy-bust operation:

> One (1) piece small heat[-]sealed plastic sachet containing white crystalline granules believed to be methamphetamine hydrochloride locally known as "*SHABU*," **weighing more or less .01 gram including plastic material.**

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[54] G.R. No. 173480, February 25, 2009, 580 SCRA 259.

[55] *Id.* at 272, citing *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[56] *People v. Lorenzo*, *supra* note 38, at 404.

x x x x x x x x x

The above enumerated and described items were properly marked with capital letters EAT representing the name Elyzer Agarma Tuzon who was one of the apprehending police officers x x x.[57] (Emphasis ours)

The fact that the item sold by Guzon to the police asset weighed only 0.01 gram is provided in several other documents: *first*, in the Joint Affidavit[58] dated November 22, 2005 executed by PO3 Manuel and PO2 Tuzon; *second*, the September 22, 2005 entry in the San Nicolas Municipal Police Station's Temporary Police Blotter, as provided in a Certification[59] dated November 22, 2005 issued by OIC Baldeo; and *third*, the Memorandum[60] requesting for laboratory examination signed by OIC Baldeo and which reads in part:

EXHIBIT:

a) One (1) piece of small heat[-]sealed transparent plastic sachet containing crystalline substance suspected to be *shabu* **weighing more or less .01 gram including plastic sachet** marked hereto as exhibit EAT[.][61] (Emphasis ours)

Clearly, the specimen submitted to the police crime laboratory weighed only 0.01 gram, even including the plastic sachet that contained the substance.

It appears, however, that the specimen examined by PSI Cayabyab of the police crime laboratory differed from the specimen allegedly seized by the police and brought for examination. The Initial Laboratory Report[62] prepared by PSI Cayabyab indicates that the specimen examined weighed more,

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[57] Records, p. 5.

[58] *Id.* at 3-4.

[59] *Id.* at 7.

[60] *Id.* at 10.

[61] *Id.*

[62] *Id.* at 11.

specifically at 0.06 gram, excluding its plastic container. Chemistry Report No. D-090-2005[63] issued by PSI Cayabyab likewise provides the following details:

> SPECIMEN SUBMITTED:
>
> A – One (1) heat-sealed transparent plastic bag with markings containing **0.06 gram** of white crystalline substance. xxx
>
> x x x x x x x x x
>
> REMARKS:
>
> Weight do[es] **not** include plastic container. xxx[.][64] (Emphasis ours)

Clearly from the foregoing, the item that was allegedly obtained by the police from Guzon during the buy-bust operation differed or, at the very least, was no longer in its original condition when examined in the crime laboratory. The variance in the weight of the seized item *vis-à-vis* the examined specimen and, ultimately, the detail provided in the Information, remained unaddressed by the prosecution. The testimony of PO2 Tuzon offered no explanation for the difference. PO3 Domingo and PSI Cayabyab could have provided the clarification, but their testimonies were dispensed with following the parties' agreement during the pre-trial.[65] The identity of the item examined by PSI Cayabyab could have also been verified from the markings "EAT" that was made by PO2 Tuzon on the plastic sachet. Her reports, however, made no specific reference to such markings, as they merely described the subject specimen as "one (1)-heat-sealed transparent plastic bag **with markings** containing 0.06g of white crystalline substance."[66]

The Court is mindful of the stipulations that were entered into by the parties during the pre-trial[67] to the effect that:

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[63] *Id.* at 19.

[64] *Id.*

[65] *Id.* at 24.

[66] *Id.* at 11, 19; emphasis ours.

[67] *Id.* at 24.

(a) PO3 Domingo received the specimen from PO2 Tuzon and then delivered it to PSI Cayabyab; (b) PSI Cayabyab received the specimen and when she found the specimen to be *shabu*, she issued her initial and confirmatory reports; and (c) PSI Cayabyab and PO3 Domingo could identify the specimen and the labels appearing thereon. These bare stipulations, however, merely address the matter of the specimen's transfer from one police officer to the next, without offering any explanation as to the specimen's condition during the transfers, how each person made sure that the item was not tampered with or substituted, and an indication of the safeguards that were employed to prevent any tampering or substitution. Given the considerable difference between the specimen's weight upon its seizure and its weight at the time of its examination, with the seized item's weight being a mere 16% of the examined specimen's weight, the determination in this case of whether the rationale for the chain of custody rule was duly satisfied necessitated a more intensive inquiry. The prosecution's failure to do so was fatal to its case. It failed to prove beyond reasonable doubt that the integrity and evidentiary value of the substance claimed to be seized during the buy-bust operation was preserved. The doubt is resolved in Guzon's favor, as the Court rules on his acquittal.

In drugs cases, the prosecution must show that the integrity of the *corpus delicti* has been preserved. This is crucial in drugs cases because the evidence involved — the seized chemical — is not readily identifiable by sight or touch and can easily be tampered with or substituted.[68] "Proof of the *corpus delicti* in a buy-bust situation requires not only the actual existence of the transacted drugs but also the certainty that the drugs examined and presented in court were the very ones seized. This is a condition *sine qua non* for conviction since drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist."[69] The

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[68] *People v. Peralta*, G.R. No. 173472, February 26, 2010, 613 SCRA 763, 768-769.

[69] *People v. Nandi*, G.R. No. 188905, July 13, 2010, 625 SCRA 123, 130, citing *People v. Zaida Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 303.

flagrant lapses committed in handling the alleged confiscated drug in violation of the chain of custody requirement even effectively negate the presumption of regularity in the performance of the police officers' duties, as any taint of irregularity affects the whole performance and should make the presumption unavailable.[70]

In addition to the foregoing, the Court finds merit in Guzon's argument that the non-presentation of the poseur-buyer to the witness stand was fatal to the prosecution's cause. We emphasize that in a prosecution for illegal sale of dangerous drugs, the prosecution must convincingly prove that the transaction or sale actually transpired.[71] In the instant case, the poseur- buyer in the buy-bust operation, a civilian, was the witness competent to prove such fact, given the testimony of PO2 Tuzon that at time the supposed sale happened, he and PO3 Manuel were positioned about 20 meters away from Guzon and the poseur-buyer. Although PO2 Tuzon testified during the trial on the supposed sale, such information he could offer was based only on **conjecture**, as may be derived from the supposed actions of Guzon and the poseur-buyer, or at most, **hearsay**, being information that was merely relayed to him by the alleged poseur-buyer. Given the 20-meter distance, it was unlikely for PO2 Tuzon to have heard the conversations between the alleged buyer and seller. True enough, his testimony provided that he and PO3 Manuel merely relied on an agreed signal, *i.e.*, the poseur-buyer's removal of his cap, to indicate that the sale had been consummated. On cross-examination, PO2 Tuzon even admitted:

> [ATTY. BALUCIO:]
>
> Q And Mr. Witness, when you allegedly arrived at the target place, you were at a distance far away from the alleged transaction, is it not?
>
> A More or less twenty (20) meters, sir.

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[70] *People v. Mendoza,* G.R. No. 186387, August 31, 2011, 656 SCRA 616, 628.

[71] *People v. Orteza,* 555 Phil. 700, 706 (2007).

Q And that if any transaction have been (sic) transpired at that time, you did not hear it Mr. Witness?

A Yes, sir.

Q And you did not also see if what was being handed at that time was *shabu* Mr. Witness?

A Yes, sir.[72]

In the absence of neither the poseur-buyer's nor of any eyewitness' testimony on the transaction, the prosecution's case fails. In *People v. Tadepa*,[73] the Court explained that the failure of the prosecution to present in court the alleged poseur-buyer is fatal to its case. Said the Court in that case, the police officer, who admitted that he was seven (7) to eight (8) meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime. The Court held, *viz*:

In *People v. Polizon*[,] we said —

> We agree with the appellant's contention that the non-presentation of Boy Lim, the alleged poseur-buyer, weakens the prosecution's evidence. Sgt. Pascua was not privy to the conversation between Lim and the accused. He was merely watching from a distance and he only saw the actions of the two. As pointed out by the appellant, Sgt. Pascua **had no personal knowledge of the transaction that transpired between Lim and the appellant**. Since appellant insisted that he was forced by Lim to buy the marijuana, it was essential that Lim should have been presented to rebut accused's testimony.

The ruling in *People v. Yabut* is further instructive —

> Well established is the rule that when the inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. In the present case, accused-appellant's

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[72] TSN, May 9, 2006, p. 9.

[73] 314 Phil. 231 (1995).

version of the circumstances leading to his apprehension constitutes a total denial of the prosecution's allegations. In this regard this Court has ruled that when there is such a divergence of accounts —

> x x x it becomes incumbent upon the prosecution to rebut appellant's allegation by presenting x x x the alleged poseur-buyer. This it failed to do giving rise to the presumption that evidence wilfully suppressed would be adverse if produced (Rule 131, Sec. 5 [e]). **This failure constitutes a fatal flaw in the prosecution's evidence since the so-called (poseur-buyer) who was never presented as a witness x x x is the best witness for the prosecution x x x**[.][74] (Emphasis ours)

The Court also ruled in *People v. Olaes*,[75] that the non-presentation of the poseur-buyer was fatal to the prosecution's case, since the alleged sale transaction happened inside the accused's house; hence, it was supposedly witnessed only by the poseur-buyer, who then was the only person who had personal knowledge of the transaction.[76]

While the Court, in several instances, has affirmed an accused's conviction notwithstanding the non-presentation of the poseur-buyer in the buy-bust operation, such failure is excusable only when the poseur-buyer's testimony is merely corroborative, there being some other eyewitness who is competent to testify on the sale transaction.[77]

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the Decision dated June 29, 2010 of the Court of Appeals in CA-G.R. CR HC No. 02890, which affirmed the Decision dated

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[74] *Id.* at 239-240, citing *People v. Polizon*, G.R. No. 84917, September 18, 1992, 214 SCRA 56 and *People v. Yabut*, G.R. No. 82263, June 26, 1992, 210 SCRA 394.

[75] G.R. No. 76547, July 30, 1990, 188 SCRA 91.

[76] *Id.* at 95.

[77] See *People v. Orteza*, *supra* note 71, at 709, citing *People v. Uy*, 392 Phil. 773, 786 (2000), *People v. Ambrosio*, 471 Phil. 241 (2004).

June 15, 2007 of the Regional Trial Court of Laoag City, Branch 13, in Criminal Case No. 11968-13; and **ACQUITS** accused-appellant **GARYZALDY GUZON** of the crime charged in Criminal Case No. 11968-13 on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately release Garyzaldy Guzon from custody, unless he is detained for some other lawful cause.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 202842. October 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORENTINO GALAGAR, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; DELAY IN REVEALING THE COMMISSION OF A CRIME SUCH AS RAPE DOES NOT NECESSARILY RENDER SUCH CHARGE UNWORTHY OF BELIEF; RATIONALE.— The failure of AAA to report her ordeal is not unique in her case. Many victims of rape would choose to suffer in silence rather than put the life of their loved ones in danger. "'[I]t is well entrenched that delay in reporting rape cases does not by itself undermine the charge, where the delay is grounded in threats from the accused.' Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to

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[*] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant."

2. ID.; ID.; ID.; THE MEDICAL EXAMINATION OF THE VICTIM AND THE CORRESPONDING MEDICAL CERTIFICATE ARE MERELY CORROBORATIVE PIECES OF EVIDENCE IN PROVING RAPE.— As to the failure of AAA to present a medical certificate or report, the Court has consistently held that in proving rape the medical examination of the victim or the presentation of a medical report is not essential. The victim's testimony alone, if credible, is sufficient to convict the accused of the crime. The medical examination of the victim and the corresponding medical certificate are merely corroborative pieces of evidence.

3. ID.; ID.; ID.; PENALTY AND AWARD OF DAMAGES, SUSTAINED.— The Court sustains the penalty of *reclusion perpetua* but modifies the award of damages in this case. x x x Accordingly, the civil indemnity should be reduced to ₱50,000.00. Likewise, moral damages should only be ₱50,000.00. In line with recent jurisprudence on the matter, the accused-appellant is not eligible for parole considering the penalty imposed upon him; and that the amounts awarded to the victim shall earn interest at the rate of six percent (6%) *per annum*, to earn from the date of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

Before the Court is an appeal from the Decision[1] dated December 20, 2011 of the Court of Appeals (CA) in CA-G.R.

[1] Penned by Associate Justice Abraham B. Borreta, with Associate Justices Romulo V. Borja and Melchor Q.C. Sadang, concurring; CA *rollo*, pp. 81-96.

CR-HC No. 00620-MIN, affirming with modification the Judgment[2] dated May 26, 2008 of the Regional Trial Court (RTC) of Gingoog, Branch 43, which found Florentino Galagar, Jr. (accused-appellant) guilty of rape under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353.

The Information charging the accused-appellant reads as follows:

> That on April 13, 2003, at more or less 8:00 o'clock in the evening, in [S]itio Taon-Taon, Bal-ason, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, did then and there wilfully, unlawfully and feloniously force and intimidate [AAA][3], by threatening to kill her and then forcibly committed sexual intercourse with the said [AAA], against her will.
>
> Contrary to and in violation of Article 266-A of the Revised Penal Code in relation to Republic Act No. 8353.[4]

AAA testified that on April 13, 2003 at around 8:00 p.m., while she was inside her house with her children, the accused-appellant called her from outside, informing her that he brought a letter from her husband, BBB, who was then working in a sugar plantation in Bukidnon. When AAA opened the door, the accused-appellant pulled a kitchen knife and pointed it to her. He grabbed her hand and bumped her head against the wall, making her dizzy. The accused-appellant then forced AAA to lie on the floor, forcibly pulled down her jogging pants and panty, pinned her down while he was on top of her, inserted his

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[2] Issued by Acting Presiding Judge/Executive Judge Dan R. Calderon; *id.* at 28-40.

[3] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of their immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

[4] CA *rollo*, p. 28.

penis in her vagina, and subsequently ejaculated therein. He did all these while pointing the knife at her.[5]

After having carnal knowledge with her, the accused-appellant threatened to kill AAA and her whole family, including her special child, if she would report to the authorities. AAA's special child could not talk but she witnessed the incident from the upper portion of the house. AAA claimed she decided to keep her silence to protect her family from harm's way.[6]

However, when BBB returned home from Bukidnon on April 30, 2003, he noticed a sudden change in AAA who was always crying and was withdrawn. BBB asked AAA what was troubling her. The latter revealed what transpired — how the accused-appellant violated her person and threatened to kill her and her loved ones. Thereafter, AAA and her husband confronted the accused-appellant. The accused-appellant's wife begged for forgiveness but AAA and BBB refused. They reported the incident to the *barangay*. *Barangay* Captain Regino Tecson called the parties to a meeting in order to convince them to settle the matter by signing an agreement called "*Malinawon Nga Kasabutan*" dated May 24, 2003, but AAA refused to sign the same.[7]

On May 14, 2003, AAA went to a doctor at Gingoog District Hospital for a medical examination. The doctor, however, refused to conduct the examination, explaining that it would only be useless since she already had her menstruation and thus semen could no longer be found in her organ.[8]

For his defense, the accused-appellant presented three (3) witnesses: Bonifacio Palma (Palma) who was the Chief of the *Barangay Tanod* of *Barangay* Bal-ason from 1996 to 2004; Regino Tecson (Tecson) who was the *Barangay* Captain of *Barangay* Bal-ason, Gingoog City from 1994 until 2007; and the accused-appellant himself.

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[5] *Id.* at 29-30; 82-83.

[6] *Id.* at 30, 83.

[7] *Id.* at 30-31, 83.

[8] *Id.* at 30, 83-84.

The accused-appellant denied the charge against him. He claimed that on April 13, 2003 at about 6:00 p.m., he was at the Civilian Volunteer Organization (CVO) outpost to conduct a roving operation. He alleged that he was with *Lupon* member Rosendo Labadan (Labadan), *Barangay Kagawad* Raymund Capito (Capito), and three other members of the CVO, namely, Mariano Badana, Rolando Bonbon and Palma. They divided themselves into two (2) groups and the accused-appellant was grouped with Capito and Palma. He claimed staying with his companions, Capito and Palma at the outpost up to 10:00 p.m., after which, they started their roving operation in the six (6) *puroks* of their *barangay*. The accused-appellant and his companions roved around *Purok* Lipunan, Sugma and Sun Flower-A. They finished roving before midnight and returned to their outpost and stayed there until 2:00 a.m. Thereafter, they exchanged areas with the other group and thus inspected the *Centro* of the *barangay* and ended at *Purok* Lapak. At 3:30 a.m. of April 14, 2003, the group of the accused-appellant ended their roving operation and stayed at the outpost until 5:00 a.m. Subsequently, they went to their respective homes.[9]

The accused-appellant stated that aside from being the *Lupon* member of *Barangay* Balason, Gingoog City, he was also the *Purok* Chairman of *Sitio* Taon-taon. He claimed that during the confrontation meeting at the *barangay*, BBB's complaint was not about the rape of AAA. The document named "*Malinawon Nga Kasabutan*" contained a promise that he would not pass by or go to the house of AAA and BBB, nor buy cigarettes from the couple's store. However, the said document was signed only by the accused-appellant, while AAA and BBB did not sign it. He admitted that his house was only fifty (50) meters away from the house of AAA and BBB and that they have been neighbors for nine (9) years. He also admitted knowing that BBB went to work in a farm in Bukidnon. He testified that in the afternoon of March 18, 2003, he bought cigarettes from the store of AAA and asked for a light, which AAA who was in the kitchen supplied. AAA actually complained about being embraced

[9] *Id.* at 31-32, 84.

by him on this occasion. He further testified that on March 25, 2003, he went to the house of the couple to negate their claim of his alleged molestation of AAA, and countered that when he was lighting his cigarette from the lamp given by AAA, the light was put out, and AAA even jokingly knocked his head, saying that his nostrils are so big.[10]

To corroborate the testimony of the accused-appellant, Palma testified that on April 13, 2003, his companions, including the accused-appellant, started their duty at 6:00 p.m. until 4:00 a.m. of the following day. He testified that the accused-appellant was at the outpost with them from 6:00 p.m. to 10:00 p.m.; and at 10:00 p.m., he was in one group while the accused-appellant was with another group (Capito and Labadan). They then returned to the outpost at 11:00 p.m. for coffee break and then went back to roving. After which, they returned to the outpost at 3:00 a.m. and thereafter they went home. When asked about the logbook of the CVO outpost where the presence and duty hours of the members were recorded, he alleged that it could not longer be found.[11]

Witness Tecson also testified for the accused-appellant. He claimed that on May 24, 2003 a confrontation meeting between the spouses AAA and BBB and the accused-appellant transpired. He alleged that the complaint of the couple concerned trespass to dwelling, and not rape. He also confirmed the existence of "*Malinawon Nga Kasabutan*"; that the accused-appellant in the confrontation meeting asked for the couple's forgiveness because of the charge of trespass to dwelling and not for rape; that when he executed the certification marked as Exhibit "D" for the prosecution, certifying that Palma was on duty on April 13, 2003, the same was not based on the records of the CVO because these were lost; that he was only told by Capito of the accused-appellant's presence and duty schedule on April 13, 2003; that the records of the *Barangay* concerning night-guard duty on April 13, 2003 had been lost; that the houses of the complaining couple and of the accused-appellant, who were

[10] *Id.* at 32-33, 84-85.

[11] *Id.* at 33-34, 85.

neighbors in *Sitio* Taon-taon, were about one (1) kilometer away from the CVO outpost, and could be reached by walking for ten (10) to fifteen (15) minutes.[12]

On May 26, 2008, the RTC of Gingoog City, Branch 43, rendered Judgment[13] finding the accused-appellant guilty of violating Article 266-A of the RPC, as amended by R.A. No. 8353.

The RTC gave credence to the testimony of the victim AAA who narrated her ordeal in a straightforward, convincing, and consistent manner. She was unshaken even under rigid cross-examination. The accused- appellant's *alibi* that he was with his companions from the CVO at the time of rape did not convince the trial court despite the testimonies of Palma and Tecson. *First*, the trial court found contradictions in the testimonies of the accused-appellant and Palma. The accused-appellant claimed to belong to the group of Palma, while Palma testified that he belonged to another group. *Second*, the trial court took note of the fact that neither Capito nor Labadan, the alleged companions of the accused-appellant in the team, testified on his presence in the roving activity. *Third*, the testimony of Tecson as to the presence of the accused-appellant was hearsay since the same information was relayed to him only by Capito and the accused-appellant himself. In fact, he admitted that he did not base his certification about Palma's duty schedule on any record or logbook of attendance or duty schedule of the CVO because such record was lost. *Last*, the distance between the outpost and the house of AAA was mere 10 to 15-minute walk and that there was no testimony to the effect that the accused-appellant never left his station. Thus, there was no physical impossibility for the accused-appellant to be present at the scene of the crime. Indeed, the trial court held that for *alibi* to prosper it must be so convincing so as to preclude any doubt of the accused- appellant's physical presence at the crime scene at the time of the incident.[14]

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[12] *Id.* at 34-35, 86.

[13] *Id.* at 28-39.

[14] *Id.* at 35-38.

The trial court sentenced the accused-appellant to suffer the penalty of *reclusion perpetua* and to pay the offended party the amount of ₱75,000.00 as indemnity *ex delicto* and another ₱75,000.00 for moral damages. The *fallo* of the decision reads as follows:

> **WHEREFORE,** finding that Prosecution evidence has established the guilt of the accused beyond reasonable doubt, the accused **FLORENTINO GALAGAR, JR.** is adjudged **GUILTY** of the crime charged and he is sentenced to suffer the penalty of ***RECLUSION PERPETUA.*** The accused is likewise ordered to pay the private offended party the amount of [₱]75,000.00 as indemnity *ex deli[c]to,* and another [₱]75,000.00 for moral damages in light of prevailing jurisprudence that the victim is assumed to have suffered such damages.
>
> **SO ORDERED.**[15]

The accused-appellant appealed to the CA. He questioned the credibility of AAA who failed to immediately report the incident to authorities and to present a medical certificate supporting her claim of rape. Addressing these issues, the CA gave weight to the findings of the trial court, explaining "that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court."[16] The CA found that the trial court did not overlook or disregard material facts and circumstances which when considered would change the result of the decision. In fact, it agreed with the trial court that AAA "was able to, in simple yet positive language, give details of her sexual abuse."[17] The CA also ruled that AAA's failure to immediately report her ordeal did not diminish her credibility, considering the fear that the accused-appellant instilled in her. Likewise, the absence of a medical examination did not affect AAA's credibility since the medical examination of the victim is not indispensable in the prosecution for rape. It is not essential to prove rape; it is in fact merely corroborative

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[15] *Id.* at 39.

[16] *Id.* at 91.

[17] *Id.* at 92.

evidence.[18] Finally, the CA found the accused-appellant's defense of *alibi* weak in the light of AAA's positive identification pointing to the accused-appellant as the perpetrator of the crime.[19]

The CA affirmed the trial court's ruling but modified it by awarding exemplary damages in the amount of ₱30,000.00.[20]

Hence, the instant appeal.

After a careful review of the records of this case, we see no reason to reverse or modify the findings of the RTC, as affirmed by the CA, albeit with modification as to the award of exemplary damages.

Both the RTC and the CA gave credence to the testimony of the victim who narrated her ordeal in a straightforward, convincing, and consistent manner. The Court also agrees with the observations of the RTC and the CA regarding the contradictions in the testimonies of the accused- appellant and Palma, the absence of documentary records to prove the accused-appellant's claim, and the proximity of the outpost to the house of AAA, which all lead to the guilt of the accused-appellant.

The failure of AAA to report her ordeal is not unique in her case. Many victims of rape would choose to suffer in silence rather than put the life of their loved ones in danger. "'[I]t is well entrenched that delay in reporting rape cases does not by itself undermine the charge, where the delay is grounded in threats from the accused.' Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant."[21]

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[18] *Id.* at 93.

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

[20] *Id.* at 95.

[21] *People v. Navarette, Jr.*, G.R. No. 191365, February 22, 2012, 666 SCRA 689, citing *People v. Ariola*, 418 Phil. 808, 821 (2001).

As to the failure of AAA to present a medical certificate or report, the Court has consistently held that in proving rape the medical examination of the victim or the presentation of a medical report is not essential. The victim's testimony alone, if credible, is sufficient to convict the accused of the crime. The medical examination of the victim and the corresponding medical certificate are merely corroborative pieces of evidence.[22]

All things considered, AAA was able to prove that the accused-appellant is guilty of the crime charged.

The Court sustains the penalty of *reclusion perpetua* but modifies the award of damages in this case. As aptly explained in *People v. Macapanas*,[23]:

> Articles 266-A and 266-B of the Revised Penal Code, as amended, respectively provide:
>
> "Art. 266-A. *Rape, When and How Committed*.—Rape is committed—
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> x x x x x x x x x
>
> Art. 266-B. *Penalties*.—Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> Whenever the rape is committed with the **use of a deadly weapon** or by two or more persons, the penalty shall be *reclusion perpetua* to death.
>
> x x x x x x x x x"

For one (1) to be convicted of qualified rape, at least one (1) of the aggravating/qualifying circumstances mentioned in Article 266-B of the Revised Penal Code, as amended, must be alleged in the

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[22] *People v. Dion*, G.R. No. 181035, July 4, 2011, 653 SCRA 117, 137, citing *People v. Ferrer*, 415 Phil. 188, 199 (2001).

[23] G.R. No. 187049, May 4, 2010, 620 SCRA 54.

Information and duly proved during the trial. In the case at bar, appellant used a sharp- pointed bolo locally known as *sundang* in consummating the salacious act. This circumstance was alleged in the Information and duly proved during trial. Being in the nature of a qualifying circumstance, "use of a deadly weapon" increases the penalties by degrees, and cannot be treated merely as a generic aggravating circumstance which affects only the period of the penalty. This so-called qualified form of rape committed with the use of a deadly weapon carries a penalty of *reclusion perpetua* to death. As such, the presence of generic aggravating and mitigating circumstances will determine whether the lesser or higher penalty shall be imposed. When, as in this case, neither mitigating nor aggravating circumstance attended the commission of the crime, the minimum penalty, *i.e., reclusion perpetua*, should be the penalty imposable pursuant to Article 63 of the Revised Penal Code. Thus, both trial and appellate courts properly imposed on appellant the penalty of *reclusion perpetua*.

As to the award of damages, the trial court awarded ₱50,000.00 as civil indemnity. The Court of Appeals, in addition thereto, awarded moral damages in the amount of ₱50,000.00. Under the present law, an award of ₱50,000.00 as civil indemnity is mandatory upon the finding of the fact of rape. This is exclusive of the award of moral damages of ₱50,000.00, without need of further proof. The victim's injury is now recognized as inherently concomitant with and necessarily proceeds from the appalling crime of rape which *per se* warrants an award of moral damages.

Exemplary damages should likewise be awarded pursuant to Article 2230 of the Civil Code since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified. This kind of damages is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.[24] (Citations omitted and emphasis supplied)

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[24] *Id.* at 75-77.

Accordingly, the civil indemnity should be reduced to ₱50,000.00. Likewise, moral damages should only be ₱50,000.00. In line with recent jurisprudence on the matter, the accused-appellant is not eligible for parole considering the penalty imposed upon him;[25] and that the amounts awarded to the victim shall earn interest at the rate of six percent (6%) *per annum*, to earn from the date of finality of judgment until fully paid.[26]

WHEREFORE, the Decision dated December 20, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 00620-MIN is hereby **AFFIRMED with modifications**. Accused-appellant Florentino Galagar, Jr. is **ORDERED** to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.

The penalty of *reclusion perpetua* imposed on accused-appellant Florentino Galagar, Jr. shall be without eligibility for parole. Moreover, the damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of this resolution until fully paid.

SO ORDERED.

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

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[25] *People v. Subesa*, G.R. No. 193660, November 16, 2011, 660 SCRA 390, 403, citing *People v. Ortiz,* G.R. No. 179944, September 4, 2009, 598 SCRA 452, 463.

[26] *People of the Philippines v. Rolando Cabungan*, G.R. No. 189355, January 23, 2013.

[*] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

FIRST DIVISION

[A.M. No. P-13-3153. October 14, 2013]
(Formerly A.M. No. 13-9-88-MeTC)

ATTY. VLADIMIR ALARIQUE T. CABIGAO, *complainant, vs.* **NEPTALI ANGELO V. NERY, SHERIFF III, BRANCH 30, METROPOLITAN TRIAL COURT, MANILA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; DUTY TO SERVE SUMMONS TO THE DEFENDANT EFFICIENTLY AND EXPEDITIOUSLY, REQUIRED; FAILURE TO DO SO CONSTITUTES SIMPLE NEGLECT OF DUTY.— Summons to the defendant in a case shall forthwith be issued by the clerk of court upon the filing of the complaint and the payment of the requisite legal fees. Once issued by the clerk of court, it is the duty of the sheriff, process server or any other person serving court processes to serve the summons to the defendant efficiently and expeditiously. Failure to do so constitutes simple neglect of duty, which is the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.

2. ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE PROCEDURE TO BE OBSERVED IN DEFRAYING THE ACTUAL TRAVEL EXPENSES IN SERVING SUMMONS WARRANTS DISCIPLINARY MEASURE; PRESENT IN CASE AT BAR.— "Sheriffs are not allowed to receive any payments from the parties in the course of the performance of their duties. They cannot just unilaterally demand sums of money from the parties without observing the proper procedural steps." Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, outlines the procedure to be observed in defraying the actual travel expenses in serving summons. x x x Accordingly, the plaintiff in a case is required to deposit the amount of ₱1,000.00 with the clerk of court, which would

be used to defray the actual travel expenses in serving the summons. The sheriff, process server or any other person authorized to serve court processes would then submit to the court a statement of estimated travel expenses for the service of the summons. Once the court approves the statement of estimated travel expenses, the clerk of court shall release the money to the sheriff, process server or any other person authorized to serve court processes. Nery failed to follow the foregoing procedure and, instead, opted to ask Vision Automotive to defray the actual travel expenses that would be incurred in serving the summons to the defendant. His failure to strictly comply with the provisions of Section 10, Rule 141 of the Rules of Court warrants the imposition of disciplinary measure. Considering that Nery demanded from Vision Automotive only the amount needed to actually defray his actual travel expenses, the Court agrees with the OCA that he should be held administratively liable for less serious dishonesty.

3. ID.; ID.; ID.; ID.; SHERIFFS MUST ALWAYS DEMONSTRATE INTEGRITY IN THEIR CONDUCT; RATIONALE.— The Court "cannot overemphasize that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. As a court employee, it therefore behooves respondent sheriff to act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on his conduct." "Sheriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court." As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary.

4. ID.; ID.; ID.; ID.; WHEN GUILTY OF TWO OR MORE OFFENSES; IMPOSABLE PENALTY, DISCUSSED; APPLICATION IN CASE AT BAR.— The most serious charge against Nery is less serious dishonesty, which merits

the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense. The offense of simple neglect of duty shall be taken as an aggravating circumstance against Nery. "However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy." x x x Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty." x x x Length of service and the fact that this is Nery's first offense are considered mitigating circumstances under Section 48(l) and (n), Rule 10 of the RRACCS. Under the peculiar circumstances of this case, the complainant's withdrawal of his letter complaint, taken together with the fact that this is his first offense in his more than ten (10) years of service in the judiciary, serves to temper the penalty to be imposed on Nery.

5. ID.; ID.; ID.; ID.; THE PENALTY OF FINE MAY BE IMPOSED IN LIEU OF SUSPENSION FROM OFFICE IF THE SHERIFF IS ACTUALLY DISCHARGING FRONTLINE FUNCTION; SUSTAINED IN CASE AT BAR.— It bears stressing that Nery, as a sheriff, is actually discharging frontline functions. Under Section 47(1)(b), Rule 10 of the RRACCS, the penalty of fine may be imposed in lieu of suspension from office if the respondent is actually discharging frontline functions. x x x Accordingly, considering that Nery is performing frontline functions and that there is a great probability that his work would be left unattended by reason of his suspension, and considering that this is his first offense in his more than ten (10) years of service in the judiciary, the Court deems it proper to impose the straight penalty of fine against Nery in the amount of Twenty Thousand Pesos (₱20,000.00) in lieu of the penalty of suspension from office.

R E S O L U T I O N

REYES, *J.*:

This resolves the administrative complaint filed by Atty. Vladimir Alarique T. Cabigao (complainant) against Sheriff Neptali Angelo V. Nery (Nery), Sheriff III of the Metropolitan Trial Court (MeTC) of Manila, Branch 30.

The complainant is the counsel of Vision Automotive Technology, Inc. (Vision Automotive), the plaintiff in Civil Case No. 01785-SC entitled *Vision Automotive Technology, Inc. v. Sound and Beyond Autoworks* which was then pending before the MeTC of Manila, Branch 30. On March 15, 2012, the complainant sent a letter-complaint[1] to the Presiding Judge of the MeTC of Manila, Branch 30, alleging that Nery called Vision Automotive and asked for money to cover the transportation expenses in serving the summons to the defendant in New Manila, Quezon City.

He claimed that, on February 20, 2012, Vision Automotive deposited the amount of One Thousand Pesos (₱1,000.00) in the account of Nery with the Land Bank of the Philippines under account number 1987-1141-90.[2] However, despite receipt of the money deposited by Vision Automotive, Nery still failed to serve the summons to the defendant in Civil Case No. 01785-SC.

The complainant furnished the Office of the Court Administrator (OCA) with a copy of his letter-complaint. On March 30, 2012, then Assistant Court Administrator[3] Thelma C. Bahia directed Nery to comment on the allegations contained in the complainant's letter-complaint.[4]

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[1] *Rollo,* pp. 6-7.

[2] *Id.* at 8.

[3] Now Deputy Court Administrator.

[4] *Id.* at 10.

In his comment[5] dated May 9, 2012, Nery denied that he asked for money from Vision Automotive. He averred that Civil Case No. 01785-SC was raffled to their branch on January 13, 2012; that a month after it was filed, Vision Automotive has yet to coordinate with him as regards the service of summons to the defendant. He admitted having called a representative of Vision Automotive, but clarified that he only did so to request Vision Automotive to defray the transportation expenses for the service of summons as it was burdensome to withdraw the amount of ₱1,000.00 from the Sheriff's Trust Fund. He claimed that it was the representative of Vision Automotive who insisted on depositing the amount of ₱1,000.00 in his bank account to defray the expenses in serving the summons on the defendant.

Nery further claimed that he never intended to tarnish the image of the judiciary when he accepted the money from Vision Automotive; that there were instances in the past when he used his own money in order to expedite court processes. Nery likewise claimed that the complainant had already manifested to the OCA that he is already withdrawing his complaint.[6] He further alleged that he had already served the summons to the defendant in Civil Case No. 01785-SC on March 16, 2012. After which, Nery returned the remaining balance of the ₱1,000.00 given by Vision Automotive to defray the expenses in serving the summons.

On August 6, 2013, the OCA issued its evaluation and recommendation on the case.[7] In its evaluation, the OCA found that there is sufficient evidence to hold Nery administratively liable, pointing out that the latter did not categorically deny having asked and received money from Vision Automotive. The OCA further opined that Nery should have served the summons to the defendant in Civil Case No. 01785-SC within fifteen (15) days from his receipt thereof pursuant to the 2002 Revised Manual for Clerks of Court; that his failure to do so constituted simple neglect of duty.

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[5] *Id.* at 12-14.

[6] *Id.* at 9.

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

As regards Nery's demand and subsequent receipt of money from Vision Automotive, the OCA found him liable for less serious dishonesty, pointing out that only the payment of sheriff's fees can be lawfully received by a sheriff and the acceptance of any other amount is improper even if it were to be applied for a lawful purpose. Accordingly, the OCA recommended that:

> **RECOMMENDATION:** It is respectfully recommended for the consideration of the Honorable Court that:
>
> 1. the instant complaint against Neptali Angelo V. Nery, Sheriff, Branch 30, Metropolitan Trial Court, Manila, be **DOCKETED** as a regular administrative matter; and
>
> 2. respondent Nery be found ***GUILTY*** of less serious dishonesty and be ***FINED*** in an amount equivalent to his six (6) months salary to be paid to the Court within thirty (30) days from notice.[8]

After a careful review of the records of this case, the Court adopts the findings and recommendation of the OCA albeit with modification as regards the sanction to be imposed.

Summons to the defendant in a case shall forthwith be issued by the clerk of court upon the filing of the complaint and the payment of the requisite legal fees.[9] Once issued by the clerk of court, it is the duty of the sheriff, process server or any other person serving court processes to serve the summons to the defendant efficiently and expeditiously. Failure to do so constitutes simple neglect of duty, which is the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[10]

It took Nery more than two months to serve the summons to the defendant in Civil Case No. 01785-SC from the time the

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[8] *Id.* at 5.

[9] RULES OF COURT, Rule 14, Section 1.

[10] See *Atty. Laguio, Jr. v. Amante-Casicas*, 537 Phil. 180, 185 (2006), citing *Dr. Dignum v. Diamla*, 522 Phil. 369, 378 (2006); *Collado-Lacorte v. Rabena*, A.M. No. P-09-2665, August 4, 2009, 595 SCRA 15, 22.

same was raffled to their branch. Civil Case No. 01785-SC was raffled to the MeTC of Manila, Branch 30, on January 13, 2012; Nery was only able to serve the summons on the defendant therein only on March 16, 2012.

Explaining the delay in the service of the summons, Nery claims that Vision Automotive, from the time it deposited the ₱1,000.00 in his bank account, no longer coordinated with him as regards the service of the summons. Nery's reasoning is flawed. The supposed lack of coordination on the part of Vision Automotive would not hinder the service of the summons to the defendant in Civil Case No. 01785-SC. To stress, once issued by the clerk of court, it becomes the duty of the sheriff, process server or any other person serving court processes to promptly serve the summons on the defendant in a case.

There being no sufficient justification for his delay in serving the summons on the defendant in the said case, Nery clearly disregarded his duty to promptly serve the summons on the defendant in Civil Case No. 01785-SC and should thus be held liable for simple neglect of duty.

It is likewise improper for Nery to ask and actually receive money from Vision Automotive, even if the money would be used to defray the expenses in serving the summons to the defendant in Civil Case No. 01785 SC. "Sheriffs are not allowed to receive any payments from the parties in the course of the performance of their duties. They cannot just unilaterally demand sums of money from the parties without observing the proper procedural steps."[11]

Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, outlines the procedure to be observed in defraying the actual travel expenses in serving summons, *viz*:

Sec. 10. *Sheriffs, Process Servers and other persons serving processes.*—

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[11] *Hofer v. Tan*, 555 Phil. 168, 179 (2007), citing *Judge Tan v. Paredes*, 502 Phil. 305, 313 (2005).

(a) For serving summons and copy of complaint, for each defendant, Two Hundred ([₱]200.00) Pesos;

x x x x x x x x x

In addition to the fees hereinabove fixed, the amount of One Thousand ([₱]1,000.00) Pesos shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of One Thousand ([₱]1,000.00) Pesos is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the Clerk of Court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit.

Accordingly, the plaintiff in a case is required to deposit the amount of ₱1,000.00 with the clerk of court, which would be used to defray the actual travel expenses in serving the summons. The sheriff, process server or any other person authorized to serve court processes would then submit to the court a statement of estimated travel expenses for the service of the summons. Once the court approves the statement of estimated travel expenses, the clerk of court shall release the money to the sheriff, process server or any other person authorized to serve court processes.

Nery failed to follow the foregoing procedure and, instead, opted to ask Vision Automotive to defray the actual travel expenses that would be incurred in serving the summons to the defendant. His failure to strictly comply with the provisions of Section 10, Rule 141 of the Rules of Court warrants the imposition of disciplinary measure. Considering that Nery demanded from Vision Automotive only the amount needed to actually defray his actual travel expenses, the Court agrees with the OCA that

he should be held administratively liable for less serious dishonesty.

The Court "cannot overemphasize that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. As a court employee, it therefore behooves respondent sheriff to act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on his conduct."[12]

"Sheriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court."[13] As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary.[14]

Section 50 of the Revised Rules on Administrative Cases in the Civil Service[15] (RRACCS) mandates that:

> Sec. 50. *Penalty for the Most Serious Offense*.— If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

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[12] See *Macinas v. Arimado*, 508 Phil. 161, 165 (2005), citing *Balajadia v. Gatchalian*, 484 Phil. 27, 32 (2004), and Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), Section 4(B).

[13] *LBC Bank v. Marquez*, 514 Phil. 352, 361 (2005).

[14] See *Geronca v. Magalona*, 568 Phil. 564, 570 (2008), citing *Visitacion, Jr. v. Ediza*, 414 Phil. 699 (2001).

[15] Promulgated by the Civil Service Commission through Resolution No. 1101502 dated November 18, 2011.

The most serious charge against Nery is less serious dishonesty, which merits the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense.[16] The offense of simple neglect of duty shall be taken as an aggravating circumstance against Nery.

"However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy."[17] "In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty."[18]

The complainant already retracted his allegations against Nery, pointing out that this case simply arose from miscommunication between Vision Automotive and Nery.[19] The Court also notes that this is Nery's first offense in his more than ten (10) years in the service, having been initially appointed as Court Interpreter on May 23, 2002.[20] Length of service and the fact that this is Nery's first offense are considered mitigating circumstances under Section 48(l) and (n), Rule 10 of the RRACCS.[21] Under

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[16] RRACCS, Rule 10, Section 46(B)(1).

[17] *Baculi v. Ugale*, A.M. No. P-08-2569, October 30, 2009, 604 SCRA 685, 689, citing *De Leon-Dela Cruz v. Recacho*, 554 Phil. 490, 499 (2007).

[18] *Office of the Court Administrator v. Aguilar*, A.M. No. RTJ-07-2087, June 7, 2011, 651 SCRA 13, 25.

[19] *Rollo*, p. 9.

[20] *Id.* at 4.

[21] Sec. 48. *Mitigating and Aggravating Circumstances*.— In the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

the peculiar circumstances of this case, the complainant's withdrawal of his letter- complaint, taken together with the fact that this is his first offense in his more than ten (10) years of service in the judiciary, serves to temper the penalty to be imposed on Nery.

It bears stressing that Nery, as a sheriff, is actually discharging frontline functions. Under Section 47(1)(b), Rule 10 of the RRACCS, the penalty of fine may be imposed in lieu of suspension from office if the respondent is actually discharging frontline functions, *viz*:

Sec. 47. *Penalty of Fine*.— The following are the guidelines for the penalty of fine:

1. **Upon the request of the head of the office or the concerned party and when supported by justifiable reason/s**, the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:

a. When the functions/nature of the office is impressed with national interest such as those involved in the maintenance of peace and order, health and safety, education; or

b. **When the respondent is actually discharging frontline functions** or those directly dealing with the public and the personnel complement of the office is insufficient to perform such functions; and

c. When the respondent committed the offense without utilizing or abusing the powers of his/her position or office.

x x x x x x x x x (Emphasis ours)

The following circumstances shall be appreciated:

x x x x x x x x x

l. First offense;

x x x x x x x x x

n. length of service; or

x x x x x x x x x

In *Mariñas v. Florendo*,[22] the Court imposed the penalty of fine in lieu of suspension from office, declaring that:

> While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, **considering that his work would be left unattended by reason of his absence**. Furthermore, he may use his suspension as another excuse to justify his inaction and inefficiency in other matters pending before his office. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writs and perform the other duties of his office.[23] (Citation omitted and emphasis ours)

Accordingly, considering that Nery is performing frontline functions and that there is a great probability that his work would be left unattended by reason of his suspension, and considering that this is his first offense in his more than ten (10) years of service in the judiciary, the Court deems it proper to impose the straight penalty of fine against Nery in the amount of Twenty Thousand Pesos (₱20,000.00) in lieu of the penalty of suspension from office.[24]

WHEREFORE, respondent Neptali Angelo V. Nery, Sheriff III of the Metropolitan Trial Court of Manila, Branch 30, is found **GUILTY** of less serious dishonesty, and is hereby ordered

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[22] A.M. No. P-07-2304, February 12, 2009, 578 SCRA 502.

[23] *Id.* at 511.

[24] Section 47(2) of the RRACCS provides that:

> Section 47. *Penalty of Fine*.— x x x
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> x x x x x x x x x
>
> 2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day suspension from the service to one (1) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.
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> x x x x x x x x x

to pay a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00). Neptali Angelo V. Nery is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this Resolution be attached to his personal record.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 162826. October 14, 2013]

NARCISO DEGAÑOS,[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. CIVIL LAW; AGENCY; A CONTRACT OF AGENCY IS CREATED WHEN THE TRANSACTION WAS A CONSIGNMENT UNDER THE OBLIGATION TO ACCOUNT FOR THE PROCEEDS OF SALE, OR TO RETURN THE UNSOLD ITEMS; CASE AT BAR.— Based on the express terms and tenor of the *Kasunduan at Katibayan*, Degaños received and accepted the items under the obligation to sell them in behalf of the complainants ("*ang mga hiyas (jewelries) na natatala sa ibaba nito upang ipagbili ko sa kapakanan ng nasabing Ginang*"), and he would be compensated with the overprice as his commission ("*Ang bilang kabayaran o pabuya sa akin ay ano mang halaga na aking mapalabis na*

[1] Also spelled as Deganos in the original records.

mga halagang nakatala sa ibaba nito.”). Plainly, the transaction was a consignment under the obligation to account for the proceeds of sale, or to return the unsold items. As such, he was the agent of the complainants in the sale to others of the items listed in the *Kasunduan at Katibayan*. In contrast, according the first paragraph of Article 1458 of the *Civil Code*, one of the contracting parties in a contract of sale obligates himself to transfer the ownership of and to deliver a determinate thing, while the other party obligates himself to pay therefor a price certain in money or its equivalent. Contrary to the contention of Degaños, there was no sale on credit to him because the ownership of the items did not pass to him.

2. ID.; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; DEFINED AND CONSTRUED.— Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one that terminates the first, either by (*a*) changing the object or principal conditions; or (*b*) substituting the person of the debtor; or (*c*) subrogating a third person in the rights of the creditor. In order that an obligation may be extinguished by another that substitutes the former, it is imperative that the extinguishment be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. Obviously, in case of only slight modifications, the old obligation still prevails.

3. ID.; ID.; ID.; ID.; THE ROLE OF NOVATION MAY ONLY BE EITHER TO PREVENT THE RISE OF CRIMINAL LIABILITY OR TO CAST DOUBT ON THE TRUE NATURE OF THE ORIGINAL BASIC TRANSACTION; NOT PRESENT IN CASE AT BAR.— Novation is not a ground under the law to extinguish criminal liability. Article 89 (on total extinguishment) and Article 94 (on partial extinguishment) of the *Revised Penal Code* list down the various grounds for the extinguishment of criminal liability. Not being included in the list, novation is limited in its effect only to the civil aspect of the liability, and, for that reason, is not an efficient defense in *estafa*. This is because only the State may validly waive the criminal action against an accused. The role of novation may only be either to prevent the rise of criminal liability, or to cast doubt on the true nature of the original basic transaction, whether or not it was such

that the breach of the obligation would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to. Although the novation of a contract of agency to make it one of sale *may* relieve an offender from an incipient criminal liability, that did not happen here, for the partial payments and the proposal to pay the balance the accused made during the *barangay* proceedings were not at all incompatible with Degaños' liability under the agency that had already attached. Rather than converting the agency to sale, therefore, he even thereby confirmed his liability as the sales agent of the complainants.

APPEARANCES OF COUNSEL

Mark C. Arcilla for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Novation is not a mode of extinguishing criminal liability under the penal laws of the country. Only the State may validly waive the criminal action against an accused. Novation is relevant only to determine if the parties have meanwhile altered the nature of the obligation prior to the commencement of the criminal prosecution in order to prevent the incipient criminal liability of the accused.

Antecedents

In an amended information dated March 23, 1994, the Office of the Provincial Prosecutor of Bulacan charged Brigida D. Luz, *alias* Aida Luz, and Narciso Degaños in the Regional Trial Court in Malolos, Bulacan with *estafa* under Article 315 paragraph 1(*b*) of the *Revised Penal Code*, allegedly committed as follows:

That on or about the 27th day of April, 1987 until July 20, 1987, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named

accused conspiring, confederating and helping one another, received from Spouses Atty. Jose Bordador and Lydia Bordador gold and pieces of jewelry worth ₱438,702.00, under express obligation to sell the same on commission and remit the proceeds thereof or return the unsold gold and pieces of jewelry, but the said accused, once in possession of the said merchandise and far from complying with their aforesaid obligation, inspite of repeated demands for compliance therewith, did then and there willfully, unlawfully and feloniously, with intent of gain and grave abuse of confidence misapply, misappropriate and convert to their own use and benefit the said merchandise and/or the proceeds thereof, to the damage and prejudice of said Sps. Atty. Jose Bordador and Lydia Bordador in the said amount of ₱438,702.00.

Contrary to law.[2]

The decision of the Court of Appeals (CA) summarized the evidence of the parties as follows:

Prior to the institution of the instant case, a separate civil action for the recovery of sum of money was filed on June 25, 1990 by the private complainants spouses Jose and Lydia Bordador against accused Brigida D. Luz *alias* Aida D. Luz and Narciso Degaños. In an amended complaint dated November 29, 1993, Ernesto Luz, husband of Brigida Luz, was impleaded as party defendant. The case docketed as Civil Case No. 412-M-90 was raffled to Branch 15, RTC of Malolos, Bulacan. On June 23, 1995, the said court found Narciso Degaños liable and ordered him to pay the sum of ₱725,463.98 as actual and consequential damages plus interest and attorney's fees in the amount of ₱10,000.00. On the other hand, Brigida Luz *alias* Aida Luz was ordered to pay the amount of ₱21,483.00, representing interest on her personal loan. The case against Ernesto Luz was dismissed for insufficiency of evidence. Both parties appealed to the Court of Appeals. On July 9, 1997, this Court affirmed the aforesaid decision. On further appeal, the Supreme Court on December 15, 1997 sustained the Court of Appeals. Sometime in 1994, while the said civil case was pending, the private complainants instituted the present case against the accused.

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[2] CA *rollo*, p. 17.

EVIDENCE FOR THE PROSECUTION

The prosecution evidence consists of the testimonies of the private complainants-spouses, Jose and Lydia Bordador.

Private complainant Lydia Bordador, a jeweler, testified that accused Narciso Degaños and Brigida/Aida Luz are brother and sister. She knew them because they are the relatives of her husband and their *Kumpadre/kumadre*. Brigida/Aida Luz was the one who gave instructions to Narciso Degaños to get gold and jewelry from Lydia for them to sell. Lydia came to know Narciso Degaños because the latter frequently visited their house selling religious articles and books. While in their house, Narciso Degaños saw her counting pieces of jewelry and he asked her if he could show the said pieces of jewelry to his sister, Brigida/Aida Luz, to which she agreed. Thereafter, Narciso Degaños returned the jewelry and Aida/Brigida Luz called her to ask if she could trust Narciso Degaños to get the pieces of jewelry from her for Aida/Brigida Luz to sell. Lydia agreed on the condition that if they could not pay it in cash, they should pay it after one month or return the unsold jewelry within the said period. She delivered the said jewelry starting sometime in 1986 as evidenced by several documents entitled "*Katibayan at Kasunduan*," the earliest of which is dated March 16, 1986. Everytime Narciso Degaños got jewelry from her, he signed the receipts in her presence. They were able to pay only up to a certain point. However, receipt nos. 614 to 745 dated from April 27, 1987 up to July 20, 1987 (Exhs. "A"-"O") were no longer paid and the accused failed to return the jewelry covered by such receipts. Despite oral and written demands, the accused failed and refused to pay and return the subject jewelry. As of October 1998, the total obligation of the accused amounted to ₱725,000.00.

Private complainant Atty. Jose Bordador corroborated the testimony of his wife, Lydia. He confirmed that their usual business practice with the accused was for Narciso Degaños to receive the jewelry and gold items for and in behalf of Brigida/Aida Luz and for Narciso Degaños to sign the "*Kasunduan at Katibayan*" receipts while Brigida/Aida Luz will pay for the price later on. The subject items were usually given to Narciso Degaños only upon instruction from Brigida/Aida Luz through telephone calls or letters. For the last one year, the "*Kasunduan at Katibayan*" receipts were signed in his presence. Said business arrangement went on for quite sometime since Narciso Degaños and Brigida/Aida Luz had been paying religiously. When

the accused defaulted in their payment, they sent demand letters. It was the accused's sister, Julie dela Rosa, who responded, seeking an extension of time for the accused to settle their obligation.

EVIDENCE FOR THE DEFENSE

The defense presented accused Brigida/Aida Luz, who testified that she started transacting business of selling gold bars and jewelry with the private complainants sometime in 1986 through her brother, Narciso Degaños. It was the usual business practice for Narciso Degaños to get the gold bars and pieces of jewelry from the private complainants after she placed orders through telephone calls to the private complainants, although sometimes she personally went to the private complainants' house to get the said items. The gold bars and pieces of jewelry delivered to her by Narciso Degaños were usually accompanied by a pink receipt which she would sign and after which she would make the payments to the private complainants through Narciso Degaños, which payments are in the form of postdated checks usually with a thirty-day period. In return, the private complainants would give the original white receipts to Narciso Degaños for him to sign. Thereafter, as soon as the postdated checks were honored by the drawee bank, the said white receipts were stamped "paid" by Lydia Bordador, after which the same would be delivered to her by Narciso Degaños.

On September 2, 1987, she sent a letter to private complainant Lydia Bordador requesting for an accounting of her indebtedness. Lydia Bordador made an accounting which contained the amount of ₱122,673.00 as principal and ₱21,483.00 as interest. Thereafter, she paid the principal amount through checks. She did not pay the interest because the same was allegedly excessive. In 1998, private complainant Atty. Jose Bordador brought a ledger to her and asked her to sign the same. The said ledger contains a list of her supposed indebtedness to the private complainants. She refused to sign the same because the contents thereof are not her indebtedness but that of his brother, Narciso Degaños. She even asked the private complainants why they gave so many pieces of jewelry and gold bars to Narciso Degaños without her permission, and told them that she has no participation in the transactions covered by the subject "*Kasunduan at Katibayan*" receipts.

Co-accused Narciso Degaños testified that he came to know the private complainants when he went to the latter's house in 1986 to sell some Bible books. Two days later he returned to their house

and was initially given a gold bracelet and necklace to sell. He was able to sell the same and paid the private complainants with the proceeds thereof. Since then he started conducting similar business transactions with the private complainants. Said transactions are usually covered by receipts denominated as "*Kasunduan at Katibayan.*" All the "*Kasunduan at Katibayan*" receipts were issued by the private complainants and was signed by him. The phrase "for Brigida Luz" and for "Evely Aquino" were written on the receipts so that in case he fails to pay for the items covered therein, the private complainants would have someone to collect from. He categorically admitted that he is the only one who was indebted to the private complainants and out of his indebtedness, he already made partial payments in the amount of ₱53,307.00. Included in the said partial payments is the amount of ₱20,000.00 which was contributed by his brothers and sisters who helped him and which amount was delivered by Brigida Luz to the private complainants.[3]

Ruling of the RTC

On June 23, 1999, the RTC found Degaños guilty as charged but acquitted Luz for insufficiency of evidence, imposing on Degaños twenty years of *reclusion temporal*, *viz*:

WHEREFORE, judgment is hereby rendered as follows:

1. finding accused Narciso Degaños GUILTY beyond reasonable doubt of the crime of estafa penalized under Article 315, Subsection 1, paragraph (b) of the Revised Penal code and hereby sentences him to suffer the penalty of TWENTY YEARS (20) of *reclusion temporal*;

2. finding accused Brigida Luz NOT GUILTY and is hereby ACQUITTED on the ground of insufficiency of evidence.

SO ORDERED.[4]

Decision of the CA

On appeal, Degaños assailed his conviction upon the following grounds, to wit:

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[3] *Rollo,* pp. 13-16.

[4] CA *rollo,* pp. 27-28.

I

THE HONORABLE COURT *A QUO* ERRED IN NOT FINDING THAT THE AGREEMENT BETWEEN THE PRIVATE COMPLAINANT LYDIA BORDADOR AND THE ACCUSED WAS ONE OF SALE ON CREDIT.

II

THE HONORABLE COURT *A QUO* ERRED IN NOT FINDING THAT NOVATION HAD CONVERTED THE LIABILITY OF THE ACCUSED INTO A CIVIL ONE.

III

THE HONORABLE COURT ERRED IN NOT APPLYING THE INDETERMINATE SENTENCE LAW.[5]

On September 23, 2003, however, the CA affirmed the conviction of Degaños but modified the prescribed penalty,[6] thusly:

> **WHEREFORE**, the appealed Decision finding the accused-appellant Narciso Degaños guilty beyond reasonable doubt of the crime of Estafa under Article 315 (1) par. *b* of the Revised Penal code is hereby **AFFIRMED** with the **modification** that the accused-appellant is sentenced to suffer **an indeterminate penalty of imprisonment of four (4) years and two (2) months of *prision correccional* in its medium period, as the minimum, to twenty (20) years of *reclusion temporal* as maximum**.
>
> **SO ORDERED**.[7]

Issues

Hence, Degaños has appealed, again submitting that:

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[5] *Id.* at 49.

[6] *Rollo*, pp. 12-22, penned by Associate Justice Delilah Vidallon-Magtolis (retired), with the concurrence of Associate Justice Jose L. Sabio, Jr. (retired/deceased) and Associate Justice Hakim S. Abdulwahid.

[7] Bold underscoring is in the original text.

I.

THE HONORABLE COURT *A QUO* ERRED IN NOT FINDING THAT THE AGREEMENT BETWEEN THE PRIVATE COMPLAINANT LYDIA BORDADOR AND THE ACCUSED WAS ONE OF SALE ON CREDIT;

II.

THE HONORABLE COURT *A QUO* ERRED IN NOT FINDING THAT NOVATION HAD CONVERTED THE LIABILITY OF THE ACCUSED INTO A CIVIL ONE.[8]

Ruling

The appeal lacks merit.

I.

Transaction was an agency, not a sale on credit

Degaños contends that his agreement with the complainants relative to the items of jewelry and gold subject of the amended information as embodied in the relevant *Kasunduan at Katibayan* was a sale on credit, not a consignment to sell on commission basis.

The contention of Degaños is devoid of factual and legal bases.

The text and tenor of the relevant *Kasunduan at Katibayan* follow:

KASUNDUAN AT KATIBAYAN

x x x x x x x x x

Akong nakalagda sa ibaba nito ay nagpapatunay na tinanggap ko kay Ginang LYDIA BORDADOR ng Calvario, Meycauayan, Bulacan ang mga hiyas (jewelries) [sic] na natatala sa ibaba nito upang ipagbili ko sa kapakanan ng nasabing Ginang. Ang pagbibilhan ko sa nasabing mga hiyas ay aking ibibigay sa nasabing Ginang, sa loob ng _____ araw at ang hindi mabili ay aking isasauli sa kanya sa loob din ng nasabing taning na panahon sa mabuting kalagayan katulad ng aking tanggapin. Ang bilang kabayaran o pabuya sa akin ay ano mang halaga na aking mapalabis na mga halagang nakatala sa ibaba nito. Ako ay walang karapatang

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[8] *Rollo*, p. 6.

magpautang o kaya ay magpalako sa ibang tao ng nasabing mga hiyas.[9]

x x x x x x x x x

Based on the express terms and tenor of the *Kasunduan at Katibayan*, Degaños received and accepted the items under the obligation to sell them in behalf of the complainants ("*ang mga hiyas (jewelries) na natatala sa ibaba nito upang ipagbili ko sa kapakanan ng nasabing Ginang*"), and he would be compensated with the overprice as his commission ("*Ang bilang kabayaran o pabuya sa akin ay ano mang halaga na aking mapalabis na mga halagang nakatala sa ibaba nito*."). Plainly, the transaction was a consignment under the obligation to account for the proceeds of sale, or to return the unsold items. As such, he was the agent of the complainants in the sale to others of the items listed in the *Kasunduan at Katibayan*.

In contrast, according the first paragraph of Article 1458 of the *Civil Code*, one of the contracting parties in a contract of sale obligates himself to transfer the ownership of and to deliver a determinate thing, while the other party obligates himself to pay therefor a price certain in money or its equivalent. Contrary to the contention of Degaños, there was no sale on credit to him because the ownership of the items did not pass to him.

II.
Novation did not transpire as to prevent the incipient criminal liability from arising

Degaños claims that his partial payments to the complainants novated his contract with them from agency to loan, thereby converting his liability from criminal to civil. He insists that his failure to complete his payments prior to the filing of the complaint-affidavit by the complainants notwithstanding, the fact that the complainants later required him to make a formal proposal before the *barangay* authorities on the payment of the balance of his outstanding obligations confirmed that novation had occurred.

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[9] Original Records, Volume I, pp. 378-393.

The CA rejected the claim of Degaños, opining as follows:

> Likewise untenable is the accused-appellant's argument that novation took place when the private complainants accepted his partial payments before the criminal information was filed in court and therefore, his criminal liability was extinguished.
>
> Novation is not one of the grounds prescribed by the Revised Penal Code for the extinguishment of criminal liability. It is well settled that criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party. A criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense. The criminal liability for estafa already committed is not affected by the subsequent novation of the contract.[10]

We sustain the CA.

Degaños' claim was again factually unwarranted and legally devoid of basis, because the partial payments he made and his purported agreement to pay the remaining obligations did not equate to a novation of the original contractual relationship of agency to one of sale. As we see it, he misunderstands the nature and the role of novation in a criminal prosecution.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one that terminates the first, either by (*a*) changing the object or principal conditions; or (*b*) substituting the person of the debtor; or (*c*) subrogating a third person in the rights of the creditor. In order that an obligation may be extinguished by another that substitutes the former, it is imperative that the extinguishment be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.[11]

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[10] *Rollo,* pp. 18-19.

[11] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation,* G.R. No. 144792, January 31, 2006, 481 SCRA 209, 221.

Obviously, in case of only slight modifications, the old obligation still prevails.[12]

The Court has further pointed out in *Quinto v. People*:[13]

> Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.
>
> The extinguishment of the old obligation by the new one is necessary element of novation which may be effected either expressly or impliedly. The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts. While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrarity, however would be an irreconcilable incompatibility between the old and the new obligations.
>
> There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The *first* is when novation has been explicitly stated and declared in unequivocal terms. The *second* is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.
>
> The changes alluded to by petitioner consists only in the manner of payment. There was really no substitution of debtors since private

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[12] *Heirs of Servando Franco v. Gonzales*, G.R. No. 159709, June 27, 2012, 675 SCRA 96, 97.

[13] G.R. No. 126712, April 14, 1999, 305 SCRA 708.

complainant merely acquiesced to the payment but did not give her consent to enter into a new contract.[14] x x x

The legal effects of novation on criminal liability were explained by the Court, through Justice J.B.L. Reyes, in *People v. Nery*,[15] *viz*:

> The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it (*People vs. Gervacio*, 54 Off. Gaz. 2898; *People vs. Velasco*, 42 Phil. 76; *U.S. vs. Montañes*, 8 Phil. 620).
>
> It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil. 581; *U.S. vs. Villareal*, 27 Phil. 481).
>
> Even in Civil Law the acceptance of partial payments, without further change in the original relation between the complainant and the accused, can not produce novation. For the latter to exist, there must be proof of intent to extinguish the original relationship, and such intent can not be inferred from the mere acceptance of payments on account of what is totally due. Much less can it be said that the acceptance of partial satisfaction can effect the nullification of a criminal liability that is fully matured, and already in the process of enforcement. Thus, this Court has ruled that the offended party's

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[14] *Id.* at 714-716, as cited in *Milla v. People*, G.R. No. 188726, January 25, 2012, 664 SCRA 309, 318-319.

[15] No. L-19567, February 5, 1964, 10 SCRA 244, 247-248.

acceptance of a promissory note for all or part of the amount misapplied does not obliterate the criminal offense (*Camus vs. Court of Appeals*, 48 Off. Gaz. 3898).

Novation is not a ground under the law to extinguish criminal liability. Article 89 (on total extinguishment)[16] and Article 94 (on partial extinguishment)[17] of the *Revised Penal Code* list down the various grounds for the extinguishment of criminal liability. Not being included in the list, novation is limited in its effect only to the civil aspect of the liability, and, for that reason, is not an efficient defense in *estafa*. This is because only the State may validly waive the criminal action against an accused.[18] The role of novation may only be either to prevent the rise of criminal liability, or to cast doubt on the true nature of the original basic transaction, whether or not it was such that the breach of the obligation would not give rise to penal

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[16] Article 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

[17] Article 94. *Partial extinction of criminal liability*. — Criminal liability is extinguished partially:

1. By conditional pardon;
2. By commutation of the sentence; and
3. For good conduct allowances which the culprit may earn while he is serving his sentence.

[18] The *Civil Code* provides:

Article 2034. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty. (1813)

responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to.[19]

Although the novation of a contract of agency to make it one of sale *may* relieve an offender from an incipient criminal liability, that did not happen here, for the partial payments and the proposal to pay the balance the accused made during the *barangay* proceedings were not at all incompatible with Degaños' liability under the agency that had already attached. Rather than converting the agency to sale, therefore, he even thereby confirmed his liability as the sales agent of the complainants.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on September 23, 2003; and **ORDERS** petitioner 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. 190650. October 14, 2013]

ANTONIO JAMES, GERTRUDES JAMES, BEATRIZ JAMES, JERRY JAMES, CECILIA JAMES and HEIRS OF GORGONIO JAMES, JR. namely: BOND JAMES, SAINT JAMES and MAY JAMES VARGAS, *petitioners, vs.* **EUREM REALTY DEVELOPMENT CORPORATION,** *respondent.*

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[19] *People v. Nery, supra* note 15, at 247.

SYLLABUS

1. REMEDIAL LAW; APPEALS; DISMISSAL OF APPEAL; *RES JUDICATA* AS A GROUND THEREFOR; REQUISITES.— The question of whether *res judicata* serves as a bar to the filing of a case is unquestionably one of law. For a question to be one of law, the same must not involve an examination of the probative value of the pertinent evidence presented by the litigants or any of them. All the court has to do in resolving the applicability of *res judicata* is apply the undisputed facts of the two cases pitted against each other and determine whether: (a) the former judgment is final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it is a judgment on the merits; and (d) there is as between the first and second actions identity of parties, subject matter and causes of action.

2. ID.; ID.; APPEAL TO THE COURT OF APPEALS; THE QUESTION OF WHETHER PRESCRIPTION IS APPLICABLE CAN BE EITHER ONE OF LAW OR FACT; CAN BE PROPERLY RAISED IN CASE AT BAR.— [T]he question of whether prescription is applicable can be either one of law or fact. In *Macababbad, Jr. v. Masirag*, the Court stated that it is a question of fact when the doubt or difference arises as to the truth or falsity of an allegation of fact; it is a question of law when there is doubt or controversy as to what the law is on a given state of facts. x x x While the existence of different titles over the same property is an established fact, the allegations in the petitioners' complaint and appellants' brief as to the antecedent facts that led to the issuance of the titles create an uncertainty regarding the applicability of prescription and call for a calibration of the evidence on hand. This constitutes a question of fact and not a run-of-the-mill question of law as the CA would like to present it; more so since the petitioners charge the respondent and its predecessors-in-interest with bad faith. "[**T]he question of whether a person acted with good faith or bad faith in purchasing and registering real property is a question of fact, x x x**." It is evidentiary and has to be established by the claimant with clear and convincing evidence, and this necessitates an examination of the evidence of all the parties. In *Macababbad, Jr.*, the Court also ruled that **prescription is a question of**

fact where there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run. Given the mixed question of fact and law raised, the petitioners properly elevated the RTC decision to the CA on ordinary appeal under Rule 41, Section 2 of the Rules of Court. The CA, therefore, committed a reversible error in dismissing the petitioners' appeal.

3. ID.; CIVIL PROCEDURE; ANSWER TO COMPLAINT; PRESCRIPTION AS AN AFFIRMATIVE DEFENSE; NOT PROPER IN ACTIONS TO DECLARE THE NULLITY OF A VOID TITLE; RATIONALE.— The Court has already ruled that the "affirmative defense of prescription does not automatically warrant the dismissal of a complaint, x x x." While trial courts have authority and discretion to dismiss an action on the ground of prescription, it may only do so when the parties' pleadings or other facts on record show it to be indeed time-barred. "If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss." x x x As basis for their claim, the petitioners claimed that the respondent's title over the property is void *ab initio*, having acquired the same from Lopez who, in turn, acquired it from Primitivo with the knowledge that the latter's title was void. **An action to declare the nullity of a void title does not prescribe**.

4. CIVIL LAW; PRESCRIPTION; TWO KINDS OF PRESCRIPTION, DISTINGUISHED.— There are two kinds of prescription provided in the Civil Code. One is acquisitive, *i.e.*, the acquisition of a right by the lapse of time; the other is extinctive, whereby rights and actions are lost by the lapse of time. The kind of prescription raised by the respondent pertains to extinctive prescription.

5. ID.; PROPERTY; OWNERSHIP; QUIETING OF TITLE; AN ACTION TO QUIET TITLE IS A COMMON LAW REMEDY DESIGNED FOR THE REMOVAL OF ANY CLOUD UPON, OR DOUBT, OR UNCERTAINTY AFFECTING TITLE TO REAL PROPERTY; APPLICATION IN CASE AT BAR.— An action to quiet title is a common law remedy designed for the removal of any cloud upon, or doubt, or uncertainty affecting title to real property. The pleadings filed in this case show that both the

petitioners and respondent have title over the same property, albeit the petitioners' title covers 448 sq m, while that of the respondent's covers a 344-sq m portion thereof. It likewise appears from the records that both parties are in possession of their respective portions of the property. In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to the immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will 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.

APPEARANCES OF COUNSEL

Benedicto O. Cainta for petitioners.
Mejorada Mejorada & Mejorada Law Firm for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review[1] of the Decision[2] dated January 29, 2009 and Resolution[3] dated November 17, 2009 of the Court of Appeals (CA) in CA-G.R. CV. No. 00119-MIN, which dismissed the petitioners' appeal from the Resolution[4] dated February 24, 2004 of the Regional Trial Court (RTC) of Dipolog City, Branch 6 in Civil Case No. 5877 for Declaration of Nullity of Title and Ownership of Real Property with Damages.

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[1] *Rollo*, pp. 11-28.

[2] Penned by Associate Justice Mario V. Lopez, with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring; CA *rollo*, pp. 56-66.

[3] *Id.* at 92-93.

[4] Issued by Judge Primitivo S. Abarquez, Jr.; records, pp. 109-113.

Facts of the Case

On September 17, 2003, the heirs of Gorgonio James (Gorgonio), namely, Antonio, Gertrudes, Beatriz, Gorgonio, Jr., Cecilia and Jerry (herein petitioners) filed **Civil Case No. 5877** against Eurem Realty Development Corporation (respondent). The petitioners alleged in their complaint that: (1) they are the registered owners and possessors of a property in Dipolog City containing an area of 448 square meters covered by Transfer Certificate of Title (TCT) No. T-18833 (Lot 1, Pcs-09-002753); (2) the respondent, on the other hand, is the registered owner of a 344-sq m portion of the same property owned by the petitioners, and covered by TCT No. T-10713 (Lot 1, Pcs-8080); (3) the respondent derived its title from Eufracio Lopez (Lopez) who executed in its favor a Deed of Assignment and Exchange on September 6, 1990, as annotated in TCT No. (T-19539) 12386 in the name of Lopez; (4) Lopez, in turn, derived his title from Primitivo James (Primitivo), who was Gorgonio's brother; (3) in the same title, TCT No. (T-19539) 12386, there is an annotation made on April 20, 1992 of a final decision by the CA in CA-G.R. No. 50208-R (**Civil Case No. 1447**), declaring TCT Nos. T-6272 and T-6273 in the name of Primitivo as null and void, and ordering the partition of Lots 854-C-1 and 854-C-2 among the heirs of Butler James in accordance with the terms of "Partition Extrajudicially" executed on October 21, 1949; (4) said annotation was not carried on to TCT No. T-10713 in the respondent's name; (5) the respondent's title is void *ab initio* as its predecessor-in-interest Lopez derived his title from Primitivo's void title; (6) Lopez acted in bad faith in assigning the property to the respondent as he knew fully well that he had no right or interest over said property; (7) the respondent has knowledge of Lopez's bad faith since it is a corporation organized by Lopez; and (8) there is a need to declare TCT No. T-10713 in the respondent's name as null and void and the petitioners be declared as the lawful owner of the entire Lot 1, among others.[5]

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

Respondent, in its answer, argued that the complaint is barred by prior judgment (*res judicata*) and that prescription has already set in. On the ground of *res judicata*, the respondent argued that: (1) the petitioners are the heirs of Gorgonio who was the defendant in **Civil Case No. 2503** for recovery of possession and damages filed by Lopez; (2) the RTC of Dipolog City, Branch 1, in its Decision dated November 27, 1975, declared Lopez as the lawful and absolute owner and possessor of Lot 1, Pcs-8080; and (3) Gorgonio's appeal was dismissed by the CA in CA-G.R. No. SP-05553 and said dismissal became final on August 17, 1978; entry of judgment was already made in due course. The respondent also argued that since the petitioners filed the complaint in **Civil Case No. 5877** on September 17, 2003, or more than thirty (30) years after its predecessor-in-interest Lopez bought the property from Primitivo way back in April 25, 1972. Hence, such action was barred by prescription, which under Article 1141 of the New Civil Code provides for a 30-year period for the filing of a real action involving an immovable property.[6]

On February 24, 2004, the RTC sustained the respondent's defenses and dismissed the complaint.[7] According to the RTC, *res judicata* does not apply because the causes of action involved in Civil Case No. 2503 and Civil Case No. 5877 are different. As to the ground of prescription, however, the RTC agreed with the respondent that the petitioners' action had already prescribed. The RTC noted that the title of the respondent's predecessor-in-interest, Lopez, was issued on October 11, 1972 and has not been judicially declared null and void by any competent court up to the present, while the complaint for the declaration of nullity of the respondent's title was filed only on September 26, 2003. Hence, more than 30 years have lapsed before the petitioners decided to question the legality of the respondent's title over the property.

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[6] *Id.* at 24-27; Article 1141 of the NEW CIVIL CODE states: Real actions over immovables prescribe after thirty years.

x x x x x x x x x

[7] *Id.* at 109-113.

Aggrieved, the petitioners appealed to the CA contending that: (1) the RTC erred in dismissing the case on the ground of prescription; and (2) the RTC erred in not declaring TCT No. T-10713 covering Lot 1, Pcs-8080 in the respondent's name as null and void.

In the Decision[8] dated January 29, 2009, the CA dismissed the appeal. The CA ruled that the issues of *res judicata* and prescription, and the determination of the nullity of the respondent's TCT No. T-10713 are questions of law that should have been raised *via* a petition for review under Rule 45 of the Rules of Court before the Supreme Court. The petitioners sought reconsideration[9] but their motion was denied per Resolution[10] dated November 17, 2009.

Hence, this petition.

The petitioners posed the issues to be resolved as follows:

1. Whether or not the issues raised by the petitioners in their appeal are purely questions of law or mixed questions of facts and law;
2. Whether or not petitioners' action is barred by prescription; [and]
3. Whether or not the summary dismissal of the case constitutes a denial of due process.[11]

The Court's Ruling

Propriety of the dismissal of the petitioners' appeal

The question of whether *res judicata* serves as a bar to the filing of a case is unquestionably one of law. For a question to be one of law, the same must not involve an examination of

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[8] CA *rollo*, pp. 56-66.

[9] *Id.* at 70-80.

[10] *Id.* at 92-93.

[11] *Rollo*, p. 18.

the probative value of the pertinent evidence presented by the litigants or any of them.[12] All the court has to do in resolving the applicability of *res judicata* is apply the undisputed facts of the two cases pitted against each other and determine whether: (a) the former judgment is final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it is a judgment on the merits; and (d) there is as between the first and second actions identity of parties, subject matter and causes of action.[13] But the question of whether prescription is applicable can be either one of law or fact. In *Macababbad, Jr. v. Masirag,*[14] the Court stated that it is a question of fact when the doubt or difference arises as to the truth or falsity of an allegation of fact; it is a question of law when there is doubt or controversy as to what the law is on a given state of facts.[15]

In this case, the RTC dismissed the petitioners' complaint with the bare statement that "the title of the [respondent's] predecessor Eufracio Lopez was issued on October 11, 1972 and the same has not as yet been judicially declared null and void by any competent court up to the present, as against [petitioners'] complaint which was filed with [the RTC] only on September 26, 2003, or more than thirty (30) years have lapsed before [petitioners] instituted [the] present action."[16] The RTC simply reckoned the commencement of the prescriptive period on the issuance of Lopez's title on October 11, 1972, as alleged by the respondent in its answer. In their complaint, however, the petitioners disputed the validity of the respondent's title, alleged bad faith on the part of Lopez and the respondent, and reiterated the existence of the final and executory

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[12] *Tongonan Holdings and Development Corporation v. Escaño, Jr.*, G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314.

[13] *S.L. Teves, Inc./Hacienda Nuestra Señora Del Pilar and/or Teves v. Eran*, 576 Phil. 570, 574 (2008), citing *Aldovino v. NLRC*, 359 Phil. 54, 61 (1998).

[14] G.R. No. 161237, January 14, 2009, 576 SCRA 70.

[15] *Id.* at 82, citing *Crisostomo v. Garcia, Jr.*, 516 Phil. 743, 749 (2006).

[16] Records, p. 113. (Emphasis omitted)

decision of the CA in Civil Case No. 1447. The petitioners also alleged in their complaint and appellants' brief that they are holders of TCT No. 18833 issued on September 20, 1999 pursuant to the CA decision in Civil Case No. 1447.[17] Thus, the petitioners prayed, both in their complaint and in their appellant's brief, that the respondent's title be set aside and their own title upheld. While the existence of different titles over the same property is an established fact, the allegations in the petitioners' complaint and appellants' brief as to the antecedent facts that led to the issuance of the titles create an uncertainty regarding the applicability of prescription and call for a calibration of the evidence on hand. This constitutes a question of fact and not a run-of-the-mill question of law as the CA would like to present it; more so since the petitioners charge the respondent and its predecessors-in-interest with bad faith. "[**T]he question of whether a person acted with good faith or bad faith in purchasing and registering real property is a question of fact, x x x**."[18] It is evidentiary and has to be established by the claimant with clear and convincing evidence, and this necessitates an examination of the evidence of all the parties.[19] In *Macababbad, Jr.*, the Court also ruled that **prescription is a question of fact where there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run**.[20]

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[17] CA *rollo*, pp. 9-10.

[18] *Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 643, 652, citing *Sps. Bautista v. Silva*, 533 Phil. 627 (2006).

[19] *Belle Corporation v. De Leon-Banks*, G.R. No. 174669, September 19, 2012, 681 SCRA 351, 362, citing *NM Rothschild and Sons, (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328; *Magaling v. Ong*, G.R. No. 173333, August 13, 2008, 562 SCRA 152, 169; *Gubat v. National Power Corporation*, G.R. No. 167415, February 26, 2010, 613 SCRA 742, 757.

[20] *Supra* note 14, at 82, citing *Crisostomo v. Garcia, Jr.*, 516 Phil. 743, 749-750 (2006).

Given the mixed question of fact and law raised, the petitioners properly elevated the RTC decision to the CA on ordinary appeal under Rule 41, Section 2 of the Rules of Court.[21] The CA, therefore, committed a reversible error in dismissing the petitioners' appeal.

Normally, the Court would remand the case to the CA for proper disposition of the petitioners' appeal. Considering, however, that a remand would further delay Civil Case No. 5877 which is yet to reach the trial stage, the Court will resolve the issue of whether the RTC committed a reversible error in dismissing the same on ground of prescription without touching on the substantial merits of the case.[22]

The period for the filing of Civil Case No. 5877 has not yet prescribed

The Court notes that the RTC's dismissal was triggered by the defenses raised by the respondent in its answer. There was yet to be a trial on the merits but the RTC merely relied on the averments in the complaint and answer and forthwith dismissed the case. On this point, the Court has already ruled that the "affirmative defense of prescription does not automatically warrant the dismissal of a complaint, x x x.[23]" While trial courts have authority and discretion to dismiss an action on the ground of prescription, it may only do so when the parties' pleadings or other facts on record show it to be indeed time-barred.[24] "If

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[21] Sec. 2. *Modes of appeal*. (a) Ordinary appeal — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

[22] *Heirs of the Late Ruben Reinoso, Sr. v. Court of Appeals*, G.R. No. 116121, July 18, 2011, 654 SCRA 1, 12.

[23] *Heirs of Tomas Dolleton v. Fil-Estate Management, Inc.*, G.R. No. 170750, April 7, 2009, 584 SCRA 409, 428.

[24] *Heirs of the Late Fernando S. Falcasantos v. Tan*, G.R. No. 172680, August 28, 2009, 597 SCRA 411, 415, citing *Gicano v. Gegato*, 241 Phil. 139, 145 (1988).

the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss."[25]

Parenthetically, there are two kinds of prescription provided in the Civil Code. One is acquisitive, *i.e.*, the acquisition of a right by the lapse of time; the other is extinctive, whereby rights and actions are lost by the lapse of time.[26] The kind of prescription raised by the respondent pertains to extinctive prescription.

As previously noted, Civil Case No. 5877 is one for the declaration of nullity of TCT No. T-10713 in the name of the respondent, which covers a portion of Lot 1, Pcs-09-02753 under TCT No. T-18833 in the name of the petitioners, and for the declaration of the petitioners' absolute ownership over said property. As basis for their claim, the petitioners claimed that the respondent's title over the property is void *ab initio*, having acquired the same from Lopez who, in turn, acquired it from Primitivo with the knowledge that the latter's title was void. **An action to declare the nullity of a void title does not prescribe**.[27]

Moreover, the action filed by the petitioners is essentially one for quieting of title. An action to quiet title is a common law remedy designed for the removal of any cloud upon, or doubt, or uncertainty affecting title to real property.[28] The pleadings filed in this case show that both the petitioners and respondent have title over the same property, albeit the petitioners'

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[25] *Supra* note 23, at 428-429, citing *Pineda v. Heirs of Eliseo Guevarra*, 544 Phil. 554, 563 (2007).

[26] *De Morales v. CFI of Misamis Occidental, Br. 11, Ozamis City*, 186 Phil. 596, 598 (1980). See also *Mercado v. Espinocilla*, G.R. No. 184109, February 1, 2012, 664 SCRA 724, 730-732.

[27] *Spouses De Guzman v. Agbagala*, 569 Phil. 607, 614 (2008).

[28] *Green Acres Holding, Inc. v. Victoria P. Cabral, Sps. Enrique T. Moraga and Victoria Soriano, Filcon Ready Mixed, Inc., Department of Agrarian Reform Adjudication Board (DARAB), and Registry of Deeds of Bulacan, Meycauayan, Branch*, G.R. No. 175542, June 5, 2013.

title covers 448 sq m, while that of the respondent's covers a 344-sq m portion thereof. It likewise appears from the records that both parties are in possession of their respective portions of the property. In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to the immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will 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.[29]

An action to quiet title is a real action over immovables, which prescribes after thirty years.[30] Thus, even assuming that the petitioners' action is subject to extinctive prescription, it was error for the RTC to reckon the date when prescription began to run solely on the date of the issuance of Lopez's title on October 11, 1972. The petitioners cannot be expected to file the action after the issuance of Lopez's title since at that time, the appeal in Civil Case No. 1447, the case between their predecessor Gorgonio and his siblings as against their other sibling Primitivo, was still pending and was only resolved with finality by the CA only on November 7, 1978. The appeal in Civil Case No. 2503 between Lopez and Gorgonio, meanwhile, was dismissed by the CA with finality only on August 17, 1978. It should also be noted that what is being attacked is the respondent's TCT No. T-10713, which was issued on **March 2, 1992**. Thus, reckoning the prescriptive period from said date, the 30-year period clearly has not yet lapsed since the complaint was filed only on September 17, 2003.

WHEREFORE, the petition is **GRANTED.** The Decision dated January 29, 2009 and Resolution dated November 17, 2009 of the Court of Appeals in CA-G.R. CV. No. 00119-MIN

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[29] *Id.*

[30] CIVIL CODE OF THE PHILIPPINES, Article 1141. See also *Republic v. Mangotara*, G.R. No. 170375, July 7, 2010, 624 SCRA 360, 455.

are **REVERSED and SET ASIDE**. Consequently, Civil Case No. 5877 is **REINSTATED.** Let records of the case be **REMANDED** to the Regional Trial Court of Dipolog City, Branch 6, which is **DIRECTED** to proceed with the case with dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185728. October 16, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs*. **TeaM (PHILIPPINES) OPERATIONS CORPORATION [Formerly MIRANT (PHILIPPINES) OPERATIONS CORPORATION],** *respondent*.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (REPUBLIC ACT NO. 8424); CLAIM FOR TAX CREDIT OR TAX REFUND; REQUISITES.— A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites: 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax; 2) It must be shown on the return of the recipient that the income received was declared as part of the gross income; and 3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax

withheld. The first requirement is based on Section 229 of the National Internal Revenue Code of 1997. x x x The second and third conditions are specifically imposed under Section 10 of Revenue Regulation No. 6-85 (as amended).

2. ID.; ID.; ID.; THE COPIES OF THE CERTIFICATES OF CREDITABLE TAX WITHHELD AT SOURCE WHEN FOUND BY THE DULY COMMISSIONED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (ICPA) TO BE FAITHFUL REPRODUCTIONS OF THE ORIGINAL COPIES WOULD SUFFICE TO ESTABLISH THE FACT OF WITHHOLDING; SUSTAINED.— It should be stressed that respondent presented the original copies of the Certificates of Creditable Tax Withheld at Source to the court-commissioned ICPA who examined the original copies and certified that the copies submitted to the CTA as evidence were faithful reproductions of the original certificates. Said procedure was in accordance with Rule 13 of the Revised Rules of the Court of Tax Appeals. x x x Thus, we are in accord with the findings of the CTA First Division and the CTA *En Banc* that respondent complied with the substantiation requirements for refund of creditable withholding tax. Here, respondent was able to establish the fact of withholding by submitting a copy of the withholding tax certificates duly issued by MPagC and MSC, as the withholding agent, indicating the name of the payor and showing the income payment basis of the tax withheld and the amount of the tax withheld. Contrary to petitioner's assertion, it is not necessary for the person who executed and prepared the Certificates of Creditable Tax Withheld at Source to be presented and to testify personally as to the authenticity of the certificates. The copies of the Certificates of Creditable Tax Withheld at Source when found by the duly commissioned ICPA to be faithful reproductions of the original copies would suffice to establish the fact of withholding. This was our ruling in the case of *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation.*

3. ID.; COURT OF TAX APPEALS (CTA); THE COURT WILL NOT LIGHTLY SET ASIDE THE CONCLUSIONS REACHED BY THE COURT OF TAX APPEALS; RATIONALE; APPLICATION IN CASE AT BAR.— Both the CTA First Division and the CTA *En Banc* ruled that respondent

has sufficiently established the fact of withholding by presenting the Certificates of Creditable Tax Withheld at Source issued by MPagC and MSC for the year 2002. We find no cogent reason to deviate from these findings. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. After a thorough review of the case, we find no abuse or improvident exercise of authority on the part of the CTA in granting respondent's claim for tax refund.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose R. Matibag for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal under Rule 45 is the August 27, 2008 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 369 which affirmed the August 29, 2007 Decision[2] of the CTA First Division in CTA Case No. 6970 ordering petitioner Commissioner of Internal Revenue (CIR) to refund, or in the alternative, issue a tax credit certificate, in favor of respondent TeaM (Philippines) Operations Corporation[3] the amount of ₱23,053,919.22 representing excess/unutilized creditable

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[1] *Rollo,* pp. 40-49. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[2] *Id.* at 100-110. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

[3] Formerly Mirant (Philippines) Operations Corporation.

withholding taxes for the taxable year 2002. Petitioner likewise assails the November 28, 2008 Resolution[4] of the CTA *En Banc* denying its motion for reconsideration from the assailed decision.

The facts as summarized in the assailed CTA *En Banc* decision are as follows:

> Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.
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> Respondent, on the other hand, is duly licensed to do business in the Philippines and is primarily engaged in the business of designing, construction, erecting, assembling, commissioning, operating, maintaining, rehabilitating and managing gas turbine and other power generating plants and related facilities for the conversion into electricity of coal, distillate and other fuel provided by and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporations or other entity engaged in the development, supply or distribution of energy.
>
> Respondent entered into Operating and Management Agreements with Mirant Pagbilao Corporation [formerly Southern Energy Quezon, Inc.] or (MPagC) and Mirant Sual Corporation [formerly Southern Energy Pangasinan, Inc.] or (MSC) to provide these corporations with maintenance and management services in connection with the operation, construction and commissioning of the coal-fired power stations situated in Pagbilao, Province of Quezon and Sual, Province of Pangasinan, respectively. Payments received by respondent for the operating and management services rendered to MPagC and MSC were allegedly subjected to creditable withholding tax.
>
> On April 15, 2003, respondent filed with the Bureau of Internal Revenue (BIR) its original Annual Income Tax Return (ITR) for the calendar year ended December 31, 2002 declaring zero taxable income and unutilized tax credits of ₱23,108,689.00, detailed as follows:

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

Gross Income	₱ 82,732,818.00
Add: Non-operating & Other Income	172,834.00
Total Gross Income	₱ 82,905,652.00
Less: Deductions	82,905,652.00
Taxable Income	₱ NIL
Tax Rate	32%
Minimum Corporate Income Tax (MCIT)	₱ 1,658,113.00
Income Tax Due	₱ 1,658,113.00
Less: Prior Years' Excess Credits	NIL
Tax Payments for 1st 3 Quarters	NIL
Creditable Tax Withheld for 1st 3 Quarters	₱ 24,766,802.00
Total Tax Credits/Payments	₱ 24,766,802.00
Tax Overpayment	**(₱ 23,108,689.00)**

In its ITR for the year 2002, respondent indicated its option to refund its alleged excess creditable withholding tax when it marked "X" the box corresponding to the option "To be refunded" under line 30 of said ITR.

On March 17, 2004, respondent filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount of ₱23,108,689.00, allegedly representing overpaid income tax or excess creditable withholding tax for calendar year ended December 31, 2002.

As the two-year prescriptive period for the filing of a judicial claim under Section 229 of the National Internal Revenue Code (NIRC) of 1997 was about to lapse without action on the part of petitioner, respondent elevated its case before the Court in Division by way of Petition for Review on April 27, 2004, docketed as C.T.A. Case No. 6970.[5]

On August 29, 2007, the CTA First Division rendered a Decision[6] partially granting respondent's petition and ordered petitioner to refund or issue a tax credit certificate in the reduced amount of ₱23,053,919.22 representing excess/unutilized creditable withholding taxes for the taxable year 2002. The CTA First Division found that respondent complied with the

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

[6] *Supra* note 2.

substantiation requirements for it to be entitled to a claim of excess/unutilized tax credits for the said taxable year. It observed that respondent presented Certificates of Creditable Tax Withheld at Source issued to it by Mirant Pagbilao Corporation (MPagC) and Mirant Sual Corporation (MSC) for the year 2002 and which were found by the court-commissioned auditing firm, SGV & Co., to be faithful reproductions of the original copies of the certificates, duly signed and prepared under the penalties of perjury and are presumed to be true and correct.

The CTA in Division, however, disallowed the amount of ₱54,769.78 from the amount claimed since respondent's Annual Income Tax Return only reflected an income of ₱247,120,318.00 although the income upon which taxes were withheld amounted to ₱247,668,015.80. Thus, the tax that corresponds to the difference of ₱547,697.80 was deducted from the tax claim because the income upon which it was withheld did not form part of the income as declared in respondent's 2002 ITR.

Petitioner filed a motion for partial reconsideration from the aforementioned decision but the motion was denied by the CTA First Division in a Resolution[7] dated February 4, 2008.

Petitioner appealed the decision of the CTA First Division to the CTA *En Banc* raising the sole issue of whether respondent is entitled to the refund of excess or unutilized creditable withholding taxes for the taxable year 2002 in the amount of ₱23,053,919.22.

On August 27, 2008, the CTA *En Banc* denied the petition for lack of merit and affirmed the ruling of the CTA First Division granting respondent's claim for refund or issuance of tax credit certificate in the amount of ₱23,053,919.22.

Petitioner's motion for reconsideration from the foregoing ruling was denied in a Resolution[8] dated November 28, 2008.

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[7] *Id.* at 118-120.

[8] *Supra* note 4.

Hence, petitioner filed the present petition insisting that—

RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS FOR REFUND OF CREDITABLE WITHHOLDING TAX.[9]

Petitioner CIR argues that the withholding of the subject taxes had not been duly proven by respondent. Petitioner posits that in order that the claim for refund of creditable withholding tax will be granted, the claimant must present an authentic certificate of creditable withholding tax. Petitioner points out that the original copies of the subject withholding tax certificates were not presented by respondent before the CTA. It only presented the testimony of the court-commissioned independent accountant (ICPA), Mr. Henry Tan, who merely identified the certificates and opined that said certificates were faithful reproductions of the original. Thus, petitioner claims that she was deprived of the opportunity to scrutinize the certificates to determine their authenticity.

Petitioner also assails the CTA *En Banc*'s ruling brushing aside the fact that mere photocopies were presented and holding that the documents were executed under the penalties of perjury pursuant to Section 267 of the National Internal Revenue Code of 1997. According to petitioner, even if the documents presented were executed under the penalties of perjury, it does not guarantee that the same were not perjured and does not dispense with the best evidence rule. She claims that the competent witness who can prove the truth of the contents of the certificates is the person who prepared the same.

In its Comment/Opposition,[10] respondent maintains that it had presented the original copies of the withholding tax certificates to the court-commissioned ICPA for examination under the procedures laid down in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97. Respondent avers that the original copies of those certificates were among the voluminous documents

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[9] *Id.* at 29.

[10] *Id.* at 147-153.

submitted by respondent for examination by the court-commissioned ICPA. Respondent asserts that under the aforementioned circulars, the duly commissioned ICPA was authorized to examine the original copies of the certificates, make photocopies thereof, and certify that the photocopies are faithful reproductions of the original. It contends that the original copies of the certificates need not be presented in court after the court-commissioned ICPA has submitted his report together with all the supporting documents and testified on his findings and conclusions. Respondent submits that it is enough that those certificates were properly pre-marked, introduced as evidence and made available to petitioner in case she wants to verify their authenticity.

In reply,[11] petitioner stresses that the presentation of Mr. Henry Tan, the court-commissioned ICPA, who identified the withholding tax certificates and testified that said certificates were faithful reproductions of the original, does not satisfy the requirements and conditions for tax refund. Petitioner adds that tax refunds, like tax exemptions are construed strictly against the taxpayer and a refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding.

The main issue to be resolved in this petition is whether respondent has complied with the requirements for refund or issuance of tax credit certificate of creditable withholding taxes for calendar year ended December 31, 2002.

We affirm the ruling of the CTA *En Banc* that respondent has complied with the requirements for refund of creditable withholding taxes and is therefore entitled to the ₱23,053,919.22 claim for refund or issuance of tax credit certificate.

A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

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[11] *Id.* at 205-211.

2) It must be shown on the return of the recipient that the income received was declared as part of the gross income; and

3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.[12]

The first requirement is based on Section 229 of the National Internal Revenue Code of 1997 which provides that:

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underscoring supplied.)

The second and third conditions are specifically imposed under Section 10 of Revenue Regulation No. 6-85 (as amended), which provides:

Section 10. *Claims for tax credit or refund.* — (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only **when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established**

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[12] *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands),* G.R. No. 173854, March 15, 2010, 615 SCRA 417, 424, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,* 548 Phil. 32, 36-37 (2007).

by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom xxx.[13] (Emphasis supplied.)

There is no dispute that respondent has complied with the first requirement when it filed its administrative claim for tax refund on March 17, 2004 and thereafter filed a petition for review with the CTA on April 27, 2004 or within two years from April 15, 2003, the date of filing of its Annual Income Tax Return.[14] Respondent was also able to prove the second requirement by showing in its ITR that the income upon which the creditable withholding taxes were paid was declared as part of its gross income for the taxable year 2002.

As to the third condition, both the CTA First Division and the CTA *En Banc* ruled that respondent has sufficiently established the fact of withholding by presenting the Certificates of Creditable Tax Withheld at Source issued by MPagC and MSC for the year 2002. We find no cogent reason to deviate from these findings. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[15] After a thorough review of the case, we find no abuse or improvident exercise of authority on the part of the CTA in granting respondent's claim for tax refund.

In the present case, petitioner insists that the fact of withholding had not been established since the original copies of the Certificates of Creditable Tax Withheld at Source were not submitted to the CTA and that the payors or withholding agents or the persons who prepared and executed the Certificates of

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[13] As cited in *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands), id.* at 425 and *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, id.* at 37.

[14] Exhibit "D".

[15] *Commissioner of Internal Revenue v. Asian Transmission Corporation,* G.R. No. 179617, January 19, 2011, 640 SCRA 189, 200.

Creditable Tax Withheld at Source were not presented to prove the authenticity of the certificates.

Petitioner's contention fails to persuade us. It should be stressed that respondent presented the original copies of the Certificates of Creditable Tax Withheld at Source to the court-commissioned ICPA who examined the original copies and certified that the copies submitted to the CTA as evidence were faithful reproductions of the original certificates. Said procedure was in accordance with Rule 13 of the Revised Rules of the Court of Tax Appeals which provides, to wit:

SEC. 2. *Duties of independent CPA.* — The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:

(a) Examination and verification of receipts, invoices, vouchers and other long accounts;

(b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents;

(c) Preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid;

(d) Making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence;

(e) Submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit;

(f) Testifying on such formal report; and

(g) Performing such other functions as the Court may direct. (Underscoring supplied.)

Pursuant to the foregoing provision, respondent presented the pre-marked copies of the Certificates of Creditable Tax Withheld at Source (Exhibits "G", "H", "I" and "J") issued by MPagC and MSC for the year 2002 together with other pertinent

documents and which was identified and verified by the court-commissioned ICPA to be faithful reproductions of the original documents which it had examined and scrutinized. In the succeeding section, Section 3 of the same rule, it was provided that the submission by the independent CPA of pre-marked documentary evidence shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA.

After the pre-marked certificates and other documentary evidence are submitted by respondent to the CTA, respondent's counsel manifested that the original copies of the documents are available at the respondent's office in case petitioner wants to verify the existence of the original documents.[16] However, petitioner never signified any intention to verify the authenticity of the withholding tax certificates. It did not interpose any objection when the certificates were formally offered in court as part of respondent's evidence. Petitioner made no effort to examine the original certificates to determine its authenticity and to ascertain that the photocopies are faithful reproductions by comparing it with the original copies. Hence, it cannot now claim that it was deprived of the opportunity to examine and scrutinize the certificates and other documents submitted by respondent. There was nothing in the records which would cast doubt on the authenticity of the certificates.

Thus, we are in accord with the findings of the CTA First Division and the CTA *En Banc* that respondent complied with the substantiation requirements for refund of creditable withholding tax. Here, respondent was able to establish the fact of withholding by submitting a copy of the withholding tax certificates duly issued by MPagC and MSC, as the withholding agent, indicating the name of the payor and showing the income payment basis of the tax withheld and the amount of the tax withheld. Contrary to petitioner's assertion, it is not necessary for the person who executed and prepared the Certificates of

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[16] TSN, May 18, 2006, p. 17.

Creditable Tax Withheld at Source to be presented and to testify personally as to the authenticity of the certificates. The copies of the Certificates of Creditable Tax Withheld at Source when found by the duly commissioned ICPA to be faithful reproductions of the original copies would suffice to establish the fact of withholding. This was our ruling in the case of *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation,*[17] where this Court had agreed with the conclusion of the CTA *En Banc* stating that

> Contrary to petitioner CIR's contention, **the fact of withholding was likewise established through respondent's presentation of the Certificates of Creditable Tax Withheld At Source, duly issued to it by Southern Energy Pangasinan, Inc. and Southern Energy Quezon, Inc., for the year 2000** x x x. **These certificates were found by the duly commissioned independent CPA to be faithful reproductions of the original copies, as per his Supplementary Report dated March 24, 2003** x x x. (Emphasis supplied.)

As shown in the certificates, respondent's creditable withholding tax amounted ₱24,766,801.58, broken down as follows:

Exh.	Period Covered	Withholding Agent	Income Amount	Tax Rate	Tax Withheld
H	Jan. 2002 to Mar. 2002	Mirant Sual Corporation	81,694,812.20	10%	8,169,481.22
J	April 2002 to June 2002	Mirant Sual Corporation	32,835,093.20	10%	3,283,509.32
G	Jan. 2002 to March 2002	Mirant Pagbilao Corporation	132,590,415.80	10%	13,259,041.58
I	April 2002 to June 2002	Mirant Pagbilao Corporation	547,694.60	10%	54,769.46
			247,668,015.80		24,766,801.58

However, its 2002 ITR reflected only the amount of ₱247,120,318 out of the total income of ₱247,668,015.80 or a difference of ₱547,697.80. Thus, the tax that corresponds to

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[17] G.R. Nos. 171742 & 176165, June 15, 2011, 652 SCRA 80, 98.

the said amount (₱54,769) was properly disallowed by the CTA First Division and CTA *En Banc* in the determination of respondent's tax claim since the income upon which it was withheld did not form part of the income declared in the 2002 ITR.

In fine, we find no reason to reverse or modify the findings of the CTA *En Banc* which granted respondent's claim for tax refund in the amount of ₱23,053,919.22.

WHEREFORE, the present petition for review on *certiorari* is **DENIED.** The Decision dated August 27, 2008 and Resolution dated November 28, 2008 of the Court of Tax Appeals *En Banc* in C.T.A. E.B. No. 369 are hereby **AFFIRMED and UPHELD.**

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189827. October 16, 2013]

GERSIP ASSOCIATION, INC., LETICIA ALMAZAN, ANGELA NARVAEZ, MARIA B. PINEDA, LETICIA DE MESA and ALFREDO D. PINEDA, *petitioners, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondent.*

SYLLABUS

1. CIVIL LAW; TRUST; TRUSTS ARE CLASSIFIED AS EITHER EXPRESS OR IMPLIED; DISTINGUISHED.—

Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. A *trust fund* refers to money or property set aside as a trust for the benefit of another and held by a trustee. Under the Civil Code, trusts are classified as either express or implied. An express trust is created by the intention of the trustor or of the parties, while an implied trust comes into being by operation of law.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8291 (THE GOVERNMENT SERVICE SYSTEM ACT OF 1997); PROVIDENT FUND RULES AND REGULATIONS (PFRR); THE GENERAL RESERVE FUND (GRF) IS ALLOCATED FOR SPECIFIC PURPOSES AND NOT INTENDED FOR DISTRIBUTION TO MEMBERS; SUSTAINED.— Republic Act No. 8291, otherwise known as "The Government Service Insurance System Act of 1997," mandated respondent (GSIS) to maintain a provident fund subject to rules and regulations it may adopt. x x x Under the PFRR (Provident Fund Rules and Regulations), however, the GRF (General Reserve Fund) is allocated for specific purposes and not intended for distribution to members. x x x It is clear that while respondent's monthly contributions are credited to the account of each member, and the same were received by petitioners upon their retirement, they were entitled to only a proportionate share of the earnings thereon. x x x We find nothing illegal or anomalous in the creation of the GRF to address certain contingencies and ensure the Fund's continuing viability. Petitioners' right to receive retirement benefits under the Plan was subject to well-defined rules and regulations that were made known to and accepted by them when they applied for membership in the Fund.

3. ID.; ID.; ID.; THE PREPARATION OF AN ANNUAL REPORT SHOWING THE INCOME AND EXPENSES AND THE FINANCIAL CONDITION OF THE FUND AS OF THE END OF EACH CALENDAR YEAR IS REQUIRED; CASE AT BAR.— Under Section 5, Article VIII of the PFRR, the Committee is required to prepare an annual report showing the income and expenses and the financial condition of the Fund as of the end of each calendar year.

Said report shall be submitted to the GSIS Board and shall be available to members. There is, however, no allegation or evidence that the Committee failed to comply with the submission of such annual report, or that such report was not made available to members.

APPEARANCES OF COUNSEL

Agustin Sundiam for petitioners.
GSIS Law Office for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 are the Decision[1] dated June 30, 2009 and Resolution[2] dated September 29, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 93342 which affirmed the Decision[3] dated October 27, 2004 and Resolution[4] dated December 8, 2005 of the Board of Trustees of respondent Government Service Insurance System (GSIS).

Respondent GSIS is a social insurance institution created under Commonwealth Act No. 186,[5] tasked with providing and administering a pension fund for government employees and managing the General Insurance Fund.

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[1] *Rollo,* pp. 53-65. Penned by Associate Justice Romeo F. Barza with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok concurring.

[2] *Id.* at 76-77.

[3] *Id.* at 96-101.

[4] *Id.* at 112-113.

[5] AN ACT TO CREATE AND ESTABLISH A "GOVERNMENT SERVICE INSURANCE SYSTEM," TO PROVIDE FOR ITS ADMINISTRATION, AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR [Amended by Presidential Decree (PD) No. 1146 and Republic Act No. 8291, otherwise known as The Government Service Insurance System Act of 1997].

On March 19, 1981, the GSIS Board of Trustees (GSIS Board) approved the proposed GSIS Provident Fund Plan (Plan) to provide supplementary benefits to GSIS employees upon their retirement, disability or separation from the service, and payment of definite amounts to their beneficiaries in the event of death. It likewise adopted the "Provident Fund Rules and Regulations" (PFRR) which became effective on April 1, 1981.[6]

Under the Plan, employees who are members of the Provident Fund (Fund) contribute through salary deduction a sum equivalent to five percent (5%) of their monthly salary while respondent's monthly contribution is fixed at 45% of each member's monthly salary. A Committee of Trustees (Committee) appointed by respondent administers the Fund by investing it "in a prudent manner to ensure the preservation of the Fund capital and the adequacy of its earnings."[7]

Out of the earnings realized by the Fund, twenty percent (20%) of the proportionate earnings of respondent's contributions is deducted and credited to a General Reserve Fund (GRF) and the remainder is credited to the accounts of the members in proportion to the amounts standing to their credit at the beginning of each quarter. Upon retirement, members are entitled to withdraw the entire amount of their contributions and proportionate share of the accumulated earnings thereon, and 100% of respondent's contributions with its proportionate earnings.[8]

On March 30, 2001, petitioner GERSIP Association, Inc.[9] (GERSIP), composed of retired GSIS employees and officers, wrote the President and General Manager of respondent requesting

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[6] *Rollo*, pp. 206 to 209-P.

[7] PROVIDENT FUND RULES AND REGULATIONS, Article IV, Sections 1, 2 and 7, *id.* at 209-D to 209-E.

[8] *Id.*, Article IV, Section 8, *id.* at 209-E to 209-F; Article V, Section 1(b), *id.* at 209-I.

[9] Now GSIS Retirees' Association, Inc., *rollo*, pp. 277 & 331.

the liquidation and partition of the GRF. In his letter-reply[10] dated August 14, 2001, then President and General Manager Winston F. Garcia explained that there exists a trust relation rather than co-ownership with respect to the Fund. He stressed that the PFRR authorizes a reduction of 20% earnings for the GRF, not a total liquidation of the fund itself. Moreover, the GRF, being an integral part of the Fund, must be maintained as a general policy to serve its purpose of providing supplementary benefits to retired, separated and disabled GSIS employees and, in the event of death, payment of definite amounts to their beneficiaries.

Petitioners initially filed a civil suit before the Regional Trial Court (RTC) of Quezon City (Civil Case No. Q-01-45533) but on motion of respondent said case was dismissed on the ground that it is the GSIS Board which has jurisdiction over the controversy.[11]

On October 30, 2002, petitioners filed a Petition[12] with the GSIS Board alleging that they have not been paid their portion of the GRF upon their retirement, to which they are entitled as "co-owners" of the Fund. They thus prayed for a judgment: (1) ordering respondent to render and/or submit a report of accounting of the Fund and the GRF and to furnish copies thereof to petitioners, pursuant to Section 5, Article VIII of the PFRR; (2) directing respondent to partition, settle, release and pay to the members of petitioner GERSIP their proportionate share of the GRF, or their corresponding share of the accumulated earnings thereon, and in addition, 100% of respondent's contributions to the Fund, plus the proportionate earnings thereon, all with interests at the legal rate computed from the retirement dates of each individual member until fully paid, conformably with Section 1(b), Article V of the PFRR; and (3) holding respondent liable for reasonable attorney's fees equivalent to 15% of the

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[10] CA *rollo*, pp. 131-135.

[11] *Id.* at 128-130.

[12] *Rollo*, pp. 78-84.

total amount claimed, appearance fee of ₱3,000 per appearance and cost of suit.

In its Answer,[13] respondent asserted that petitioners as retiring members of the Fund were entitled only to the benefits provided in Section 1(b), Article V of the PFRR and that their claim is not covered by Section 8(a) to (d), Article IV which enumerates the purposes for which the GRF is allocated. Respondent further contended that there is no legal basis for petitioners' theory that they are co-owners and not just beneficiaries of the Fund.

On October 27, 2004, the GSIS Board denied the petition for lack of merit. It held that the execution of the Trust Agreement[14] between respondent and the Committee is a clear indication that the parties intended to establish an express trust, not a co-ownership, with respondent as Trustor, the Committee as Trustee of the Fund and the members as Beneficiaries. As to the GRF, the Board said that it answers only for the contingent claims mentioned in Section 8, Article IV and there is no requirement in the PFRR for the accounting and partition of GRF.[15]

When their motion for reconsideration was denied by the GSIS Board, petitioners filed a petition for review in the CA under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

By Decision dated June 30, 2009, the CA affirmed the ruling of the GSIS Board. Petitioners' motion for reconsideration was likewise denied.

Hence, this petition arguing that:

1) The GSIS Provident fund is not a "trust" but a co-ownership.

2) The Reserve Fund of the GSIS Provident Fund is not required by law; there is no necessity for it.

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[13] *Id.* at 85-94.

[14] *Id.* at 158-165.

[15] *Id.* at 96-101.

3) Partial partition of the Reserve Fund is not inconsistent with maintaining the GSIS Provident Fund.

4) The petitioners, as members of the Provident Fund, are legally entitled to accounting and audit of the Fund.[16]

Petitioners assert that since the GSIS Provident Fund is an employee fringe benefit package incorporated in the collective bargaining agreements (CBA), the members own not only their personal contributions to the Fund but also 100% of GSIS management contributions remitted in their names and for their benefit, plus all the earnings of both personal contributions and the earnings of the management contribution, 20% of which is allotted by respondent to the GRF. Upon the remittance by respondent of its contributions to the Fund, the same ceased to be part of management funds but becomes part of the equity of the members for whom they were remitted as a contractual obligation.

As to the GRF, petitioners contend that unlike modern insurance companies, there is no law or rule requiring the GSIS Provident Fund to maintain a Reserve Fund. Hence, upon their retirement, members are entitled also to that part of earnings from respondent's contributions which are remitted to the GRF, or at least the remaining balance thereof pertaining to the share of each member.

Petitioners further argue that the Trust Agreement cited by the respondent is a misnomer. They point out that such contract was entered only between the respondent and the first trustees, and it merely defined the latter's functions in running the affairs of the Fund. As a contractual obligation of the respondent under the CBA, its contributions to the Fund become part of the equity of the member in whose name it was remitted. Respondent thus has no legal title to the funds and it has no basis to impose any condition on how to avail of the Fund benefits, or to refuse its accounting and audit.

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[16] *Id.* at 257-265.

Resolution of the present controversy hinges on the determination of the nature of the funds contributed and its accumulated earnings under the Plan.

A provident fund is a type of retirement plan where both the employer and employee make fixed contributions. Out of the accumulated fund and its earnings, employees receive benefits upon their retirement, separation from service or disability.

The GSIS Provident Fund was established through Resolution No. 201 of the GSIS Board. The GSIS Board likewise adopted a set of rules and regulations (PFRR) to govern the membership, fund contributions and investment, payment of benefits and the trustees.

On July 23, 1981, a Trust Agreement[17] was executed between respondent and the Committee. The latter was tasked to administer, manage and invest the Fund, out of which it shall pay the benefits due to members or their beneficiaries in accordance with the policies, rules and regulations approved by respondent. The Agreement likewise explicitly declares:

> SECTION 2. — The COMMITTEE OF TRUSTEES shall **hold title and manage the FUND in trust for the exclusive benefit of the members and their beneficiaries** as provided for in the PLAN. No part of the FUND shall be used for, or diverted to any purpose or purposes other than for the exclusive benefits of such members and their beneficiaries[.][18] (Emphasis supplied.)

Respondent's contention that it had thereby created an express trust was upheld by the GSIS Board and the CA. The appellate court further ruled that the rules on co-ownership do not apply and there is nothing in the PFRR that allows the distribution of the GRF in proportion to the members' share therein.

We sustain the rulings of the GSIS Board and CA.

Trust is the legal relationship between one person having an equitable ownership in property and another person owning the

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[17] *Supra* note 14.

[18] *Id.* at 159.

legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter.[19] A *trust fund* refers to money or property set aside as a trust for the benefit of another and held by a trustee.[20] Under the Civil Code, trusts are classified as either express or implied. An express trust is created by the intention of the trustor or of the parties, while an implied trust comes into being by operation of law.[21]

There is no doubt that respondent intended to establish a trust fund from the employees' contributions (5% of monthly salary) and its own contributions (45% of each member's monthly salary and all unremitted Employees Welfare contributions). We cannot accept petitioners' submission that respondent could not impose terms and conditions on the availment of benefits from the Fund on the ground that members already own respondent's contributions from the moment such was remitted to their account. Petitioners' assertion that the Plan was a purely contractual obligation on the part of respondent is likewise mistaken.

Republic Act No. 8291, otherwise known as "The Government Service Insurance System Act of 1997," mandated respondent to maintain a provident fund subject to rules and regulations it may adopt. Thus:

SECTION 41. *Powers and Functions of the GSIS*. — The GSIS shall exercise the following powers and functions:

x x x x x x x x x

(s) **to maintain a provident fund**, which consists of contributions made by both the GSIS and its officials and employees and their earnings, for the payment of benefits to such officials and employees or their heirs **under such terms and conditions as it may prescribe**; (Emphasis supplied.)

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[19] IV A. M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 669 (1991).

[20] H. C. BLACK, *BLACK'S LAW DICTIONARY* 1357 (5th ed., 1979).

[21] *Torbela v. Rosario,* G.R. Nos. 140528 & 140553, December 7, 2011, 661 SCRA 633, 661, citing *Heirs of Tranquilino Labiste v. Heirs of Jose Labiste,* G.R. No. 162033, May 8, 2009, 587 SCRA 417, 425.

In *Development Bank of the Philippines v. Commission on Audit*,[22] this Court recognized DBP's establishment of a trust fund to cover the retirement benefits of certain employees. We noted that as the trustor, DBP vested in the trustees legal title over the Fund as well as control over the investment of the money and assets of the Fund. The Trust Agreement therein also stated that the principal and income must be used to satisfy all of the liabilities to the beneficiary officials and employees under the Gratuity Plan.[23]

Here, petitioners as beneficiaries of the Fund contend that they became co-owners of the entire Fund including respondent's contributions and its accumulated earnings. On this premise, they demand a proportionate share in the GRF which was deducted from the earnings on respondents' contributions.

Under the PFRR, however, the GRF is allocated for specific purposes and not intended for distribution to members. Section 8,[24] Article IV thus provides:

> Section 8. *Earnings.* At the beginning of each quarter, the earnings realized by the Fund in the previous quarter just ended shall be credited to the accounts of the members in proportion to the amounts standing to their credit as of the beginning of the same quarter after deducting therefrom twenty per cent (20%) of the proportionate earnings of the System's contributions, which deduction shall be credited to a General Reserve Fund. Whenever circumstances warrant, however, the Committee may reduce the percentage to be credited to the General Reserve Fund for any given quarter; provided that in no case shall such percentage be lower than five per cent (5%) of the proportionate earnings of the System's contributions for the quarter. When and as long as the total amount in the General Reserve Fund is equivalent to at least ten per cent (10%) of the total assets of the Fund, the Committee may authorize all the earnings for any given quarter to be credited to the members.

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[22] 467 Phil. 62 (2004).

[23] *Id.* at 78-79.

[24] *Rollo*, pp. 209-E to 209-F.

The General Reserve Fund shall be used for the following purposes:

(a) To cover the deficiency, if any, between the amount standing to the credit of a member who dies or is separated from the service due to permanent and total disability, and the amount due him under Article V Section 4[25];

(b) To make up for any investment losses and write-offs of bad debts, in accordance with policies to be promulgated by the Board;

(c) To pay the benefits of separated employees in accordance with Article IV, Section 3[26]; and

(d) For other purposes as may be approved by the Board, provided that such purposes is consistent with Article IV, Section 4[27].

It is clear that while respondent's monthly contributions are credited to the account of each member, and the same were received by petitioners upon their retirement, they were entitled

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[25] Section 4. *Death, Incapacity.* In the event of death or upon separation from the service due to permanent and total disability, a member or his beneficiaries, regardless of such member's length of service or membership in the Fund, shall be paid the entire amount standing to his credit, provided, however, that the minimum amount paid to such member shall be equal to at least one (1) year of his salary at the time of death or separation, and provided, further, that should the total amount standing to his credit be less than one year's salary, the difference shall be paid out of the outstanding balance of the General Reserve Fund. *Id.* at 209-J.

[26] Section 3. *Additional System's Contributions.* Upon effectivity of this Plan, the System shall also pay into the Provident Fund all its unremitted EWF contributions. Those contributions creditable under EWF rules to present employees of the System shall be credited to each one's individual account in the Provident Fund. All contributions creditable under EWF rules to accounts of employees who have, as of the effectivity of this Plan, separated from the System shall be credited to the General Reserve Fund pending its disbursement to the employees concerned, in accordance with Article V, Section 6. *Id.* at 209-D to 209-E.

[27] Section 4. *Irrevocability and Exclusivity.* All contributions made by the System to the Fund shall be held, solely and exclusively, for the exclusive benefit of the members or their beneficiaries, and no part of said contributions or its income shall be used for, or diverted to, purposes other than for the exclusive benefit of such members and their beneficiaries. *Id.* at 209-E.

to only a proportionate share of the earnings thereon. The benefits of retiring members of the Fund are covered by Section 1(b), Article V which states:

> (b) *Retirement.* In the event the separation from the System is due to retirement under existing laws, such as P.D. 1146, R.A. 660 or R.A. 1616, irrespective of the length of membership to the Fund, the retiree shall be entitled to withdraw the entire amount of his contributions to the Fund, as well as the corresponding proportionate share of the accumulated earnings thereon, and in addition, 100% of the System's contributions, plus the proportionate earnings thereon.

We find nothing illegal or anomalous in the creation of the GRF to address certain contingencies and ensure the Fund's continuing viability. Petitioners' right to receive retirement benefits under the Plan was subject to well-defined rules and regulations that were made known to and accepted by them when they applied for membership in the Fund.

Petitioners have the right to demand for an accounting of the Fund including the GRF. Under Section 5,[28] Article VIII of the PFRR, the Committee is required to prepare an annual report showing the income and expenses and the financial condition of the Fund as of the end of each calendar year. Said report shall be submitted to the GSIS Board and shall be available to members. There is, however, no allegation or evidence that the Committee failed to comply with the submission of such annual report, or that such report was not made available to members.

WHEREFORE, the petition is **DENIED.** The Decision dated June 30, 2009 and Resolution dated September 29, 2009 of the Court of Appeals in CA-G.R. SP No. 93342 are hereby **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

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

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[28] *Id.* at 209-N.

SECOND DIVISION

[G.R. No. 191263. October 16, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HADJI SOCOR CADIDIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION OF CREDIBILITY IS ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL JUDGE; RATIONALE.— The evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect because the judge has the direct opportunity to observe said witnesses on the stand and ascertain if they are telling the truth or not.

2. ID.; ID.; ID.; MINOR INCONSISTENCIES DO NOT NEGATE EYEWITNESSES' POSITIVE IDENTIFICATION OF THE APPELLANT AS THE PERPETRATOR OF THE CRIME.— We have consistently held time and again that minor inconsistencies do not negate the eyewitnesses' positive identification of the appellant as the perpetrator of the crime. As long as the testimonies as a whole presented a coherent and believable recollection, the credibility would still be upheld. What is essential is that the witnesses' testimonies corroborate one another on material details surrounding the commission of the crime.

3. ID.; ID.; ID.; IN CASES INVOLVING VIOLATIONS OF DANGEROUS DRUGS ACT, CREDENCE SHOULD BE GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS FOR THEY ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER UNLESS THERE IS EVIDENCE TO THE CONTRARY; APPLICATION IN CASE AT BAR.— In *People v. Unisa*, this Court held that "in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive

on the part of the police officers." In this case, the prosecution witnesses were unable to show ill-motive for the police to impute the crime against Cadidia. Trayvilla was doing her regular duty as an airport frisker when she handled the accused who entered the *x-ray* machine of the departure area. There was no pre-determined notice to particularly search the accused especially in her private area. The unusual thickness of the buttocks of the accused upon frisking prompted Trayvilla to notify her supervisor SPO3 Appang of the incident. The subsequent search of the accused would only show that the two female friskers were just doing their usual task when they found the illegal drugs inside accused's underwear. This is bolstered by the fact that the accused on the one hand and the two friskers on the other were unfamiliar to each other. Neither could they harbour any ill-will against each other. The allegation of frame-up and denial of the accused cannot prevail over the positive testimonies of three prosecution witnesses who corroborated on circumstances surrounding the apprehension.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; REQUIREMENTS TO ESTABLISH THE CHAIN OF CUSTODY, CLARIFIED.— The duty of seeing to the integrity of the dangerous drugs and substances is discharged when the arresting law enforcer ensures that the chain of custody is unbroken. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, defines the chain of custody. x x x In *Mallillin v. People*, the requirements to establish chain of custody were laid down by this Court. *First,* testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence. *Second,* witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item. The prosecution in this case was able to prove, through the testimonies of its witnesses, that the integrity of the seized item was preserved every step of the process.

5. ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9265; NON-COMPLIANCE WITH THE REQUIREMENTS UNDER JUSTIFIABLE GROUNDS SHALL NOT RENDER VOID AND INVALID

THE SEIZURE OF AND CUSTODY OF THE ITEMS AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER/TEAM.— As to non-compliance of all the requirements laid down by Section 21, paragraph 1, Article II of Republic Act No. 9165 regarding the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, the Implementing Rules and Regulations of Republic Act No. 9165 states that non-compliance with these requirements under justifiable grounds shall not render void and invalid such seizure of and custody over said items as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team. What is important is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The successful presentation of the prosecution of every link of chain of custody as discussed above is sufficient to hold the accused liable for the offense charged.

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST ILLEGAL SEARCH AND SEIZURE; AIRPORT FRISKING IS AN AUTHORIZED FORM OF SEARCH AND SEIZURE; SUSTAINED.— We held that airport frisking is an authorized form of search and seizure. As held in similar cases of *People v. Johnson* and *People v. Canton,* this Court affirmed the conviction of the accused Leila Reyes Johnson and Susan Canton for violation of drugs law when they were found to be in hiding in their body illegal drugs upon airport frisking. The Court in both cases explained the rationale for the validity of airport frisking thus: Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack or subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. x x x Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For review through this appeal[1] is the Decision[2] dated 28 August 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03316, which affirmed the conviction of herein accused-appellant Hadji Socor Cadidia (Cadidia) of violation of Section 5[3] of Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The factual antecedents of the case are as follows:

The prosecution presented Marilyn Trayvilla (Trayvilla), a Non-Uniformed Personnel of the Philippine National Police, who testified that on 31 July 2002 at around 6:30 in the morning, while performing her duty as a female frisker assigned at the Manila Domestic Airport Terminal I (domestic airport) in Pasay City, she frisked the accused Cadidia upon her entry at the departure area[4] and she noticed something unusual and thick in

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[1] *Via* a notice of appeal, Rules of Court, Rule 122, Section 2(c). *Rollo*, p. 24.

[2] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring. *Id.* at 2-23.

[3] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, **dispatch in transit or transport any dangerous drug,** including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphasis supplied).

[4] TSN, Testimony of Marilyn Trayvilla, 13 November 2002, pp. 2-4.

the area of Cadidia's buttocks. Upon inquiry, Cadidia answered that it was only her sanitary napkin which caused the unusual thickness.[5] Not convinced with Cadidia's explanation, Trayvilla and her female co-employee Leilani M. Bagsican (Bagsican) brought the accused to the comfort room inside the domestic airport to check. When she and Bagsican asked Cadidia to remove her underwear, they discovered that inside were two sachets of *shabu*. The two sachets of *shabu* were turned over to their supervisor SPO3 Musalli I. Appang (SPO3 Appang).[6] Trayvilla recalled that Cadidia denied that the two sachets of *shabu* were hers and said that she was only asked by an unidentified person to bring the same.[7] The accused was identified and found to be bound for Butuan City on board Cebu Pacific Airline as evidenced by her confiscated airline ticket.[8] In open court, Trayvilla identified the two sachets containing *shabu* previously marked as Exhibits "B-2" and "B-3". She also identified the signature placed by her co-employee, Bagsican, at the side of the items, as well as the picture of the sanitary napkin used by the accused to conceal the bags of *shabu*.[9]

The second prosecution witness, Bagsican, corroborated the testimony of Trayvilla. She testified that together with Trayvilla, she was also assigned as a frisker at the departure area of the domestic airport. While frisking the accused, Trayvilla noticed something bulky in her *maong* pants.[10] As a result, Trayvilla asked for her help and with the accused, they proceeded to the comfort room inside the domestic airport. While inside the cubicle of the comfort room, Bagsican asked the accused to open her pants and pull down her underwear. Inside the accused's sanitary

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[5] *Id.* at 5-6.

[6] *Id.* at 6-7.

[7] *Id.* at 8.

[8] *Id.* at 9.

[9] TSN, Re-Direct Examination of Marilyn Trayvilla, 16 January 2003, pp. 3 and 7.

[10] TSN, Testimony of Leilani Bagsican, 10 February 2003, pp. 4-5.

napkin were two plastic sachets of *shabu* which they confiscated. Thereafter, she reported the incident to their supervisor SPO3 Appang, to whom she endorsed the confiscated items. They then proceeded to their office to report to the Criminal Investigation and Detection Group.[11] In open court, she identified the accused Cadidia as the one whom they apprehended. She also identified the two plastic sachets of *shabu* they confiscated from Cadidia and pointed to her initials "LMB" she placed on the items for marking as well as the picture of the napkin likewise marked with her initials.[12]

Finally, the prosecution presented domestic airport Police Supervisor SPO3 Appang who testified that on 31 July 2002 at around 6:40 in the morning, the accused passed the walk-thru machine manned by two domestic airport friskers, Trayvilla and Bagsican. When Trayvilla frisked the accused, she called his attention and informed him that something was kept inside the accused's private area. Accordingly, he instructed Trayvilla and Bagsican to proceed to the comfort room to check what the thing was.[13] Trayvilla and Bagsican recovered two plastic sachets containing *shabu* from the accused. The plastic sachets together with the sanitary napkin were turned over to him by the friskers Trayvilla and Bagsican. Subsequently, he turned over the two plastic sachets and sanitary napkin to the Intelligence and Investigation Office of the 2nd Regional Aviation Security Office (RASO), Domestic International Airport.[14] The seized items were then turned over to SPO4 Rudy Villaceran of NAIA-DITG.[15] SP03 Appang placed his initials on the confiscated items at the Philippine Drug Enforcement Agency Office (PDEA) located at the Ninoy Aquino International Airport.[16]

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[11] *Id.* at 6.

[12] *Id.* at 7-11.

[13] TSN, Testimony of SPO3 Musalli T. Appang, 8 April 2003, pp. 2-6.

[14] TSN, 25 September 2003, p. 5.

[15] *Id.* at 8.

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

The specimens in turn were referred by PO2 Samuel B. Cobilla (PO2 Cobilla) of the NAIA-DITG to Forensic Chemist Elisa G. Reyes (Forensic Chemist Reyes) of the Crime Laboratory at Camp Crame, Quezon City for examination.[17]

Due to the loss of the stenographic notes regarding the latter part of the direct testimony of SPO3 Appang and of Forensic Chemist Reyes, the prosecution and the accused agreed to dispense with their testimonies and agreed on the following stipulation of facts:

a. The prosecution will no longer recall SPO3 Appang to the witness stand in view of his retirement from service;[18]

b. The parties agreed on Forensic Chemist Reyes' competence and expertise in her field;[19]

c. That she was the one who examined the specimen in this case against Hadji Socor Cadidia, consisting of one (1) heat-sealed transparent plastic sachet, previously marked as Exhibit "1" containing 48.48 grams of white crystalline substance of *Shabu,* and, one (1) knot-tied transparent plastic bag with marking "Exhibit-2 LMB, RSA containing 98.29 grams white crystalline substance of *Shabu* or *Methamphetamine Hydrochloride*;[20]

d. That after conducting laboratory examination on the two (2) specimens, she prepared the document and reduced her findings into writing which is Chemistry Report No. D-364-02 which is the Initial Laboratory Report marked as Exhibit "C"[21]; and,

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[17] TSN, Testimony of Forensic Chemist Elisa G. Reyes, 18 October 2002, p. 11; As evidenced by Initial Laboratory Report. Records, p. 157.

[18] TSN/Stipulation of Facts, 11 February 2008, p. 3.

[19] *Id.*

[20] *Id.* at 2.

[21] *Id.* at 3.

e. That thereafter, Forensic Chemist Reyes likewise prepared the Final Chemistry Report marked as Exhibit "D".[22]

The accused, of course, has a different story to tell.

Cadidia testified that on 31 July 2002, at around 8:15 in the morning, she proceeded to the departure area of the domestic airport at Pasay City to board a Cebu Pacific plane bound for Butuan City. When she passed-by the *x-ray* machine, two women, whom she later identified as Trayvilla and Bagsican, apprehended her.[23] Trayvilla and Bagsican held her arms and asked her if she was a Muslim. When she replied in the affirmative, the two women said that she might be carrying gold or jewelries.[24] Despite her denial, Trayvilla and Bagsican brought her to the comfort room and told her she might be carrying *shabu*. She again denied the allegation but the two women told her to undress.[25] When she asked why, they answered that her back was bulging. In reply, she told them that she was having her menstrual period. Trayvilla and Bagsican did not believe her and proceeded to ask her to remove her underwear. They later frisked her body but failed to recover anything.[26] Thereafter, the two women asked for money as they allegedly recovered two plastic sachets containing *shabu* from her.[27] At this moment, Cadidia became afraid and called her relatives for money, particularly her female relative Dam Bai.[28] Her relatives arrived at the airport at around 1 o'clock in the afternoon of the same day but she failed to talk to them because she has already been brought to Camp Crame

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[22] *Id.*

[23] TSN, Testimony of Hadji Socor Cadidia, 8 August 2005, pp. 4-7.

[24] *Id.* at 7.

[25] *Id.* at 8.

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

[27] *Id.* at 10-11.

[28] TSN, 1 September 2005, p. 9.

for drug examination.[29] She called her relatives again to ask for ₱200,000.00 and to bring the amount at 7 o'clock in the morning of the next day. Her relatives arrived on the agreed day and time but managed to bring only ₱6,000.00 which the police officers found unacceptable.[30] As a consequence, Cadidia was subjected to inquest proceedings.[31] In her re-direct, she testified that at that time, she was engaged in selling compact discs in Quiapo, Manila. She recalled that the names of the relatives she called for money were a certain Lani and Andy.[32]

The defense presented its next witness Haaji Mohamad Domrang (Domrang) to corroborate the statement of accused Cadidia that she called up her relatives including him to bring money to the airport and give the same to the police officers.[33] Domrang testified that he knew Cadidia as a jeweller with a place of business in Greenhills. He recalled at around 9 o'clock in the morning of 31 July 2002, he was with his nephew when the latter received a call from Cadidia and was told by the accused that she needed money amounting to ₱200,000.00.[34] His nephew told him that he would go to the airport, so he accompanied him. They arrived there at around one o'clock in the afternoon but failed to see Cadidia. However, they were able to talk to the police officers at the airport and inquired about the accused. The police officers replied that she was brought to Camp Crame but will be brought back to the airport at 7:00 o'clock in the evening.[35] The police officers told Domrang and Andy that if they would not be able to raise the ₱200,000.00, they would

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[29] TSN, 8 August 2005, pp. 12-13.

[30] *Id.* at 14-16.

[31] TSN, 1 September 2005, p. 7.

[32] *Id.* at 16 and 18.

[33] TSN, Testimony of Hadji Mohamad Domrang, 14 November 2005, p. 2.

[34] *Id.* at 3-4.

[35] *Id.* at 4.

file a case against Cadidia. Since they were able to raise ₱6,000.00 only, the police officers rejected the money.[36]

After the arrest, the following Information was filed in Criminal Case No. 02-1464 for violation of Sec. 5, Art. II of Republic Act No. 9165:

> That on or about the 31st of July 2002, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously transport 146.77 grams of *Methylamphetamine Hydrochloride*, a dangerous drug.[37]

Upon arraignment on 12 August 2002, Cadidia entered a plea of "not guilty."[38]

On 7 April 2008, the trial court found the accused-appellant guilty as charged. The disposition reads:

> **WHEREFORE,** this Court finds accused HADJI SOCOR CADIDIA guilty beyond reasonable doubt of violation of Section 5 of Republic Act [No.] 9165, she is hereby sentenced to suffer life imprisonment and to pay the fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> The methamphetamine hydrochloride recovered from the accused is considered confiscated in favor of the government and to be turned to the Philippine Drug Enforcement Agency for its disposal.[39]

On appeal, the accused-appellant, contended that the trial court gravely erred when it failed to consider the conflicting testimonies of the prosecution witnesses' Trayvilla and Bagsican as to who among them instructed the accused-appellant to bring out the contents of her underwear.[40] Another contradiction pressed on by the defense was the recollection of Bagsican that when

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[36] *Id.* at 5.

[37] Records, p. 1.

[38] *Id.* at 10.

[39] Penned by Judge Pedro De Leon Gutierrez. *Id.* at 330.

[40] Appellant's Brief. CA *rollo*, p. 59.

she and Trayvilla found the illegal drugs, Bagsican placed it inside her blazer for safekeeping, in contrast with statement of SPO3 Appang that when Bagsican and Trayvilla went out of the comfort room, they immediately handed him the *shabu* allegedly taken from the accused-appellant.[41] Appellant likewise argued against her conviction by the trial court despite the fact that the identity of the illegal drugs allegedly seized was not proven with moral certainty due to the broken chain of custody of evidence.[42]

The People, through the Office of the Solicitor General (OSG) countered that the inconsistencies of the prosecution's witnesses did not touch on material points. Hence, they can be disregarded for they failed to affect the credibility of the evidence as a whole. The alleged inconsistencies failed to diminish the fact that the accused-appellant was caught *in flagrante delicto* at the departure area of the domestic airport transporting *shabu*. The defenses of frame-up and alibi cannot stand against the positive testimonies of the witnesses absent any showing that they were impelled with any improper motive to implicate her of the offense charged.[43] Finally, the OSG posited that the integrity of evidence is presumed to be preserved unless there is any showing of bad faith, and accused-appellant failed to overcome this presumption.[44]

In its decision, the Court of Appeals affirmed the ruling of the trial court. The appellate court ruled that the alleged contradictory statements of the prosecution's witnesses did not diminish their credibility as they pertained only to minor details and did not dwell on the principal elements of the crime. It emphasized that the more important matter was the positive identification of the accused-appellant as the perpetrator of the crime of illegal transportation of dangerous drug.[45] Further, it

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[41] *Id.* at 61.

[42] *Id.* at 64.

[43] *Id.* at 103-105.

[44] *Id.* at 107.

[45] *Rollo,* p. 17.

upheld the trial court's ruling that the prosecution satisfactorily preserved the chain of custody of evidence over the seized drugs as well as the integrity of the specimen confiscated from the accused-appellant.[46]

In this instant appeal, the accused-appellant manifested that she would no longer file her Supplemental Brief as she had exhaustively discussed her assignment of errors in her Appellant's Brief.[47]

Before this Court for resolution are the two assigned errors raised by the accused-appellant:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUG.[48]

We uphold the ruling of both the trial and the appellate courts.

At the outset, We find it unnecessary to discuss the propriety of the charge of violation of Section 5 of Republic Act No. 9165 against Cadidia for illegal transportation of 146.77 grams of *Methylamphetamine Hydrochloride* by the prosecution. As elucidated by the trial court, "[t]here is no doubt that the accused [had] the intention to board the flight bound for Butuan as per her plane ticket and had submitted herself to body frisking at the final check-in counter at the airport when she was found to be carrying prohibited drugs in her persons (*sic*). In like manner,

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[46] *Id.* at 20.

[47] *Id.* at 33-34.

[48] CA *rollo*, p. 54.

considering the weight of the "*shabu*" and the intention of the accused to transport the same to another place or destination, she must be accordingly penalized under Section 5 of Republic Act No. 9165, x x x.[49]"

Now to the issues presented before this Court.

As to the first assignment of error, the accused casts doubt on the set of facts presented by the prosecution particularly the narration of Trayvilla, Bagsican and SPO3 Appang. She alleges that since the testimonies given by the witnesses were conflicting, the same should not be given credit and should result in her acquittal. She cited two instances as examples of inconsistencies. *First,* Trayvilla in her testimony recalled that she was the one who asked the accused to bring out the contents of her underwear. However, in her re-direct, she clarified that it was Bagsican who asked the accused. Bagsican, in turn testified that she was the one who asked the accused while Trayvilla was beside her.[50] *Second,* Bagsican in her testimony recalled that after confiscation of the alleged illegal drugs, she placed the items inside her blazer for safekeeping. However, SPO3 Appang testified that when the two female friskers came out from the comfort room, they immediately handed to him the seized illegal drugs allegedly taken from Cadidia.[51]

In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[52] Further, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight

[49] Records, p. 328.

[50] CA *rollo,* pp. 59-60.

[51] *Id.* at 61.

[52] *People v. Sembrano,* G.R. No. 185848, 16 August 2010, 628 SCRA 328, 342 citing *People v. Llamado,* G.R. No. 185278, 13 March 2009, 581 SCRA 544, 552; *People v. Remerata,* 449 Phil. 813, 822 (2003).

and respect because the judge has the direct opportunity to observe said witnesses on the stand and ascertain if they are telling the truth or not. Applying the foregoing, we affirm the findings of the lower court in the appreciation of facts and credibility of the witnesses.[53]

Upon review of the records, we find no conflict in the narration of events of the prosecution witnesses. In her direct testimony, Trayvilla testified that both of them asked Cadidia to remove what was inside her underwear when she and Bagsican brought the accused to the comfort room to check what was hidden inside.[54] However, in her re-direct, she clarified that it was really Bagsican who particularly made the request but she was then also inside the cubicle with the accused.[55] This clarification is sufficient for the Court to conclude that the two of them were inside the cubicle when the request to bring out the contents of the underwear was made and the concealed illegal drug was discovered.

The other inconsistency alleged by the accused pertains to what happened during the confiscation of the illegal drug at the cubicle. The accused alleges that Bagsican and SPO3 Appang differed in their statements. Upon review, We find no such inconsistency. Bagsican testified that after confiscation, she put the two plastic sachets of *shabu* in her blazer for safekeeping. She further narrated that afterwards, she turned over the accused and the plastic sachets to SPO3 Appang.[56] SPO3 Appang, in turn, testified that when the two female friskers went out of the comfort room, they handed to him what was taken from the accused. The statements can be harmonized as a continuous and unbroken recollection of events.

Even assuming that the said set of facts provided conflicting statements, We have consistently held time and again that minor

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[53] *People v. Gustafsson*, G.R. No. 179265, 30 July 2012, 677 SCRA 612, 621 citing *People v. Sy*, 438 Phil. 383, 397-398 (2002).

[54] TSN, 12 November 2002, p. 6.

[55] TSN, 16 January 2003, pp. 6-7.

[56] TSN, 10 February 2003, p. 6-A.

inconsistencies do not negate the eyewitnesses' positive identification of the appellant as the perpetrator of the crime. As long as the testimonies as a whole presented a coherent and believable recollection, the credibility would still be upheld. What is essential is that the witnesses' testimonies corroborate one another on material details surrounding the commission of the crime.[57]

The accused also assails the application of presumption of regularity in the performance of duties of the witnesses. She claimed that the self-serving testimonies of Trayvilla and Bagsican failed to overcome her presumption of innocence guaranteed by the Constitution.[58]

Again, we disagree.

In *People v. Unisa*,[59] this Court held that "in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers."

In this case, the prosecution witnesses were unable to show ill-motive for the police to impute the crime against Cadidia. Trayvilla was doing her regular duty as an airport frisker when she handled the accused who entered the *x-ray* machine of the departure area. There was no pre-determined notice to particularly search the accused especially in her private area. The unusual thickness of the buttocks of the accused upon frisking prompted Trayvilla to notify her supervisor SPO3 Appang of the incident. The subsequent search of the accused would only show that the

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[57] *People v. Langcua*, G.R. No. 190343, 6 February 2013, 690 SCRA 123, 134 citing *People v. Gonzaga*, G.R. No. 184952, 11 October 2010, 632 SCRA 551, 570 further citing *People v. Daen, Jr.*, 314 Phil. 280, 292 (1995); *People v. Cruz*, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364; *People v. Alas*, G.R. Nos. 118335-36, 19 June 1997, 274 SCRA 310, 320-321.

[58] CA *rollo*, p. 63.

[59] G.R. No. 185721, 28 September 2011, 658 SCRA 305, 336.

two female friskers were just doing their usual task when they found the illegal drugs inside accused's underwear. This is bolstered by the fact that the accused on the one hand and the two friskers on the other were unfamiliar to each other. Neither could they harbour any ill-will against each other. The allegation of frame-up and denial of the accused cannot prevail over the positive testimonies of three prosecution witnesses who corroborated on circumstances surrounding the apprehension.

As final attempt at acquittal, the accused harps on the alleged broken chain of custody of the confiscated drugs. She casts doubt on the identity of the drugs allegedly taken from her and the one presented in open court to prove her guilt.[60] She also questions the lack of physical inventory of the confiscated items at the crime scene, the absence of photographs taken on the alleged illegal drugs and the failure to mark the seized items upon confiscation.[61]

The duty of seeing to the integrity of the dangerous drugs and substances is discharged when the arresting law enforcer ensures that the chain of custody is unbroken. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, defines the chain of custody as:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody [was] of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition.[62]

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[60] CA *rollo,* pp. 64-65.

[61] *Id.*

[62] *People v. Angkob*, G.R. No. 191062, 19 September 2012, 681 SCRA 414, 425-426.

In *Mallillin v. People*,[63] the requirements to establish chain of custody were laid down by this Court. *First*, testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence. *Second*, witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item.

The prosecution in this case was able to prove, through the testimonies of its witnesses, that the integrity of the seized item was preserved every step of the process.

As to the first link, Trayvilla and Bagsican testified that upon confiscation of the two plastic sachets of illegal drug from the accused, the seized items were transferred to SPO3 Appang, who himself confirmed such transfer. The second link pertains to the point when SPO3 Appang turned over the two plastic sachets and sanitary napkin to the RASO of the Domestic International Airport.[64] As to the marking, Bagsican testified that she put her initials and signature on the plastic sachet and the sanitary napkin at the Investigation Office. Afterwards, the seized items were turned over to SPO4 Rudy Villaceran of the NAIA-DITG.[65] SP03 Appang signed the confiscated items at the PDEA Office which is also located at the airport.[66]

As evidenced by the Initial Laboratory Report,[67] the specimens were referred by PO2 Cobilla of the NAIA-DITG to Forensic Chemist Reyes of the Crime Laboratory at Camp Crame, Quezon City for examination. Finally, based on the Chemistry Report[68] of Forensic Chemist Reyes and stipulation[69] of facts agreed upon

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[63] 576 Phil. 576, 587-588 (2008).

[64] TSN, 25 September 2003, p. 5.

[65] *Id.* at 8.

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

[67] TSN, 18 October 2002, p. 11.

[68] Records, p. 158.

[69] TSN/Stipulation of Facts, 11 February 2008, p. 3.

by both parties, the specimen submitted by PO2 Cobilla tested positive for *Methylamphetamine Hydrochloride* after qualitative testing. The same specimens contained in the two plastic sachets previously marked were identified by two female friskers Trayvilla and Bagsican in open court as the same ones confiscated from the accused.[70]

As to non-compliance of all the requirements laid down by Section 21, paragraph 1, Article II of Republic Act No. 9165 regarding the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs,[71] the Implementing Rules and Regulations of Republic Act No. 9165 states that non-compliance with these requirements under justifiable grounds shall not render void and invalid such seizure of and custody over said items as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team. What is important is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[72] The successful presentation of the prosecution of every link of chain of custody as discussed above is sufficient to hold the accused liable for the offense charged.

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[70] TSN, 12 November 2002, pp. 10-11; TSN, 10 February 2003, pp. 8-9.

[71] **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.

[72] *People v. Torres*, G.R. No. 191730, 5 June 2013.

On a final note, we held that airport frisking is an authorized form of search and seizure. As held in similar cases of *People v. Johnson*[73] and *People v. Canton*,[74] this Court affirmed the conviction of the accused Leila Reyes Johnson and Susan Canton for violation of drugs law when they were found to be in hiding in their body illegal drugs upon airport frisking. The Court in both cases explained the rationale for the validity of airport frisking thus:

> Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travellers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.[75]

WHEREFORE, the instant appeal is **DENIED.** Accordingly, the Decision of the Court of Appeals dated 28 August 2009 in CA-G.R. CR.-H.C. No. 03316 is hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[73] 401 Phil. 734 (2000).

[74] 442 Phil. 743 (2002).

[75] *People v. Johnson, supra* note 73 at 743; *Id.* at 758-759.

[*] Per Special Order No. 1564 dated 11 October 2013.

FIRST DIVISION

[G.R. No. 191594. October 16, 2013]

DAVID A. RAYMUNDO, *petitioner, vs.* **GALEN REALTY AND MINING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENT; A WRIT OF EXECUTION MUST CONFORM STRICTLY TO EVERY ESSENTIAL PARTICULAR OF THE JUDGMENT PROMULGATED.— The manner of execution of a final judgment is not a matter of "choice". It does not revolve upon the pleasure or discretion of a party as to how a judgment should be satisfied, unless the judgment expressly provides for such discretion. Foremost rule in execution of judgments is that "a writ of execution must conform strictly to every essential particular of the judgment promulgated, and may not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed." As a corollary rule, the Court has clarified that "a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto." x x x The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment.

2. CIVIL LAW; CONTRACTS; EQUITABLE MORTGAGE; IN AN EQUITABLE MORTGAGE, THE REAL INTENTION OF THE PARTIES IS TO CHARGE THE REAL PROPERTY AS SECURITY FOR A DEBT; PRESENT IN CASE AT BAR.— The principal obligation of Raymundo under the judgment is to reconvey the property to Galen; on the other hand, Galen's principal obligation is to pay its mortgage obligation to Raymundo. Performance of Raymundo's obligation to reconvey is upon Galen's payment of its mortgage obligation in the amount of ₱3,865,000.00 plus legal interest thereon from the date of the filing of the complaint, until fully paid. This is in accord with the nature

of the agreement as an equitable mortgage where the real intention of the parties is to charge the real property as security for a debt. It was wrong for the RTC to require Raymundo to show proof of his "willingness" to reconvey the property because as stressed earlier, their agreement was an equitable mortgage and as such, Galen retained ownership of the property. In *Montevirgen, et al. v. CA, et al.*, the Court was emphatic in stating that "the circumstance that the original transaction was subsequently declared to be an equitable mortgage must mean that the title to the subject land which had been transferred to private respondents actually remained or is transferred back to [the] petitioners herein as owners-mortgagors, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the ownership remains with the mortgagor." Thus, it does not devolve upon Raymundo to determine whether he is willing to reconvey the property or not because it was not his to begin with. x x x It also violates the very public policy that prohibits *pactum commissorium*.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENT; A PARTY CANNOT FRUSTRATE EXECUTION OF A JUDGMENT FOR A SPECIFIC ACT ON THE PRETEXT OF INABILITY TO DO SO AS THE RULES PROVIDE AMPLE MEANS BY WHICH IT CAN BE SATISFIED; APPLICATION IN CASE AT BAR.— If Raymundo refuses to reconvey the property, then the court may direct that the act be done by some other person appointed by it as authorized by Section 10 of Rule 39 of the Rules of Court. x x x The "some other person appointed by the court" can be the Branch Clerk of Court, the Sheriff, or even the Register of Deeds, and their acts when done under such authority shall have the effect of having been done by Raymundo himself. A party cannot frustrate execution of a judgment for a specific act on the pretext of inability to do so as the Rules provide ample means by which it can be satisfied. Conversely, Galen's obligation to pay the mortgage obligation is not subject to Raymundo's reconveyance of the property. If Galen refuses to pay, it is only then that the court may direct the foreclosure of the mortgage on the property and order its sale at public auction to satisfy Galen's judgment debt against Raymundo, pursuant to Rule 68 of the Rules of Court on Foreclosure. If Raymundo, meanwhile, unjustly refuses to accept

Galen's payment, the latter's remedy is to consign the payment with the court in accordance with the Civil Code provisions on consignment. **It is only when reconveyance is no longer feasible that Raymundo and Tensorex should pay Galen the fair market value of the property**. In other words, it is when the property has passed on to an innocent purchaser for value and in good faith, has been dissipated, or has been subjected to an analogous circumstance which renders the return of the property impossible that Raymundo and/or Tensorex, is obliged to pay Galen the fair market value of the property.

4. COMMERCIAL LAW; REPUBLIC ACT NO. 7653 (CREATION OF THE *BANGKO SENTRAL NG PILIPINAS* [BSP]); BSP CIRCULAR NO. 799, DATED JUNE 21, 2013, IMPLEMENTED THE REVISION OF THE INTEREST RATE TO BE IMPOSED FOR LOAN OR FORBEARANCE OF MONEY, GOODS OR CREDIT, IN THE ABSENCE OF AN EXPRESS CONTRACT, TO SIX PERCENT (6%) *PER ANNUM;* IMPOSITION IN CASE AT BAR.— The Monetary Board of the *Bangko Sentral ng Pilipinas* issued Resolution No. 796 dated May 16, 2013, revising the interest rate to be imposed for the loan or forbearance of any money, goods or credits, in the absence of an express contract, to six percent (6%) *per annum*. This was implemented by BSP Circular No. 799 dated June 21, 2013 and effective July 1, 2013. Applying the foregoing guidelines, the following rates are to be imposed on the parties' respective obligations: (a) Galen's mortgage indebtedness shall earn interest at the rate of 12% *per annum* from the date of the filing of the complaint on January 25, 1988 until June 30, 2013; thereafter, it shall earn six percent (6%) interest *per annum* until fully paid. The Court is constrained to retain the application of the interest rate from the filing of the complaint until full payment because the CA's judgment on this score has already attained finality and cannot be disturbed at this stage; and (b) The damages, attorney's fees and costs to be paid by Raymundo shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the CA Decision on May 7, 2004 until fully paid.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Offices for petitioner.
Villegas Gomos Dayao & Ricafrente for respondent.

D E C I S I O N

REYES, *J.*:

Assailed in the present Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court is the Decision[2] dated October 30, 2009 and Resolution[3] dated March 10, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 105401, which dismissed petitioner David A. Raymundo's (Raymundo) special civil action for *certiorari* for lack of merit.

Facts of the Case

Civil Case No. 18808 is an action for Reconveyance with Damages filed by respondent Galen Realty and Mining Corporation (Galen) against Raymundo and Tensorex Corporation (Tensorex). Subject of the case was a transaction between Galen and Raymundo over a house and lot located in Urdaneta Village, Makati City originally covered by Transfer Certificate of Title (TCT) No. S-105-651 in the name of Galen. By virtue of a Deed of Sale dated September 9, 1987 executed between Galen and Raymundo, title to the property was transferred to the latter, who later on sold the property to Tensorex, which caused the issuance of TCT No. 149755 in its name.

In a Decision dated April 12, 2000, the Regional Trial Court (RTC) of Makati City, Branch 62, in Civil Case No. 18808, ruled that the transaction between Raymundo and Galen was actually an equitable mortgage.[4] On appeal, the CA upheld the RTC decision but modified the loan obligation of Galen and

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[1] *Rollo,* pp. 11-39.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos (retired), with Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia, concurring; *id.* at 44-61.

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

[4] See CA Decision dated May 7, 2004 in CA-G.R. CV No. 68294; *id.* at 75-90.

reduced the same to ₱3,865,000.00. The dispositive portion of the CA Decision[5] dated May 7, 2004 provides:

WHEREFORE, PREMISES CONSIDERED, the Assailed Decision is hereby MODIFIED as follows:

V) the Deed of Absolute Sale between plaintiff-appellant and defendant-appellant David Raymundo is declared null and void, being a Deed of Equitable Mortgage;

VI) the Deed of Sale between defendant-appellant David Raymundo and defendant-appellant Tensorex [is] declared null and void;

VII) **defendant-appellant David Raymundo to reconvey the subject property to plaintiff-appellant's [sic] upon plaintiff-appellant['s] payment to defendant-appellant David Raymundo of [₱]3,865,000.00 plus legal interest thereon from the date of filing of the complaint, until it is fully paid, or if reconveyance is no longer feasible, for defendants-appellants Raymundo and Tensorex to solidarily pay plaintiff-appellant the fair market value of the subject property by expert appraisal**;

VIII) defendants-appellants Raymundo and Tensorex to solidarily pay plaintiff-appellant, as follows:

a) [₱]100,000.00 in exemplary damages;
b) [₱]100,000.00 in attorney's fees;
c) Cost[s] of suit.

Defendants-appellant's COUNTERCLAIM is hereby **DISMISSED**.

SO ORDERED.[6] (Emphasis ours)

Said CA decision eventually became final and executory on January 11, 2005, and entry of judgment was made.[7]

Galen moved for the execution of the CA decision, submitting that the writ of execution should order Raymundo and Tensorex

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[5] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Danilo B. Pine and Edgardo F. Sundiam, concurring; *id.*

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

[7] *Id.* at 92.

to solidarily pay the following: (1) the current fair market value of the property less Galen's mortgage debt of ₱3,865,000.00 with legal interest; and (2) the award of damages and costs of suit. Raymundo and Tensorex opposed the motion, arguing that the CA decision provides for two alternatives – one, for Raymundo to reconvey the property to Galen after payment of ₱3,865,000.00 with legal interest or, two, if reconveyance is no longer feasible, for Raymundo and Tensorex to solidarily pay Galen the fair market value of the property.[8]

In its Order[9] dated February 3, 2006, the RTC granted Galen's motion and ordered the issuance of a writ of execution. The property (land and improvements) was appraised by Asian Appraisal, Inc. at ₱49,470,000.00.[10] Subsequently, the appointed special sheriff issued a Notice of Reconveyance/Notice of Demand to Pay[11] on March 8, 2007. The sheriff also issued on April 4, 2007 a Notice of Levy on Execution[12] to the Register of Deeds of Makati City over the rights and interest of Tensorex over the property, including all buildings and improvements covered by TCT No. 149755.

On July 16, 2007, the special sheriff issued a Notice of Sheriff's Sale of Real Estate Property,[13] stating that "the total outstanding balance of mortgage indebtedness as of January 25, 1988 and interest for 225 months with 2.25% interest is [₱]37,108,750.00 plus costs x x x,"[14] and sale at public auction was set on August 8, 2007. Raymundo filed a Manifestation and Urgent Motion[15] objecting to the auction sale and expressing his willingness to

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[8] *Id.* at 97.

[9] *Id.* at 97-98.

[10] *Id.* at 96.

[11] *Id.* at 99.

[12] *Id.* at 100.

[13] *Id.* at 101-102.

[14] *Id.*

[15] *Id.* at 103-108.

reconvey the property upon payment in full by Galen of its indebtedness. Galen filed a Counter Manifestation and Opposition[16] claiming that reconveyance is no longer feasible as the property is heavily encumbered and title to the property is still in the name of Tensorex which had already gone out of operations and whose responsible officers are no longer accessible.

Raymundo also submitted on August 6, 2007 a duplicate copy of the Cancellation of the Real Estate Mortgages[17] over the property. As regards the other entries on the title, Raymundo stated that these do not affect his rights, interests and participation over the property as the Notice of *Lis Pendens* of Civil Case No. 18808 inscribed on September 27, 1990 was superior to these entries.[18] On the same date, the RTC issued an Order[19] noting Raymundo's motions, ordering him to show proof how his willingness to reconvey the property can be realized, and holding the auction sale in abeyance. The order also provided that "[c]ompliance herein is enjoined x x x, which proof shall consist primarily of a submission of the Transfer Certificate of Title covering the subject property duly registered in Raymundo's name."[20]

Raymundo filed a Compliance/Comment[21] to the RTC's order, contending that his obligation to reconvey is not yet due pending payment of Galen's own obligation.

On December 12, 2007, the RTC issued an Order[22] lifting the suspension of the auction sale and directing Galen to coordinate with the deputy sheriff for the enforcement of the decision. The

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[16] *Id.* at 185-188.

[17] *Id.* at 114.

[18] *Id.* at 111-113.

[19] *Id.* at 109-110.

[20] *Id.* at 110.

[21] *Id.* at 115-120.

[22] *Id.* at 130-131.

RTC ruled that Raymundo failed to show proof that the title was already registered in his name and thus, it resolves to deny his compliance/comment.

Raymundo filed a Motion for Reconsideration[23] of the RTC's order but it was denied per Order[24] dated August 15, 2008. As a result, the property was sold at a public auction on November 26, 2008 for ₱37,108,750.00, with Galen as the highest bidder, and a certificate of sale[25] was issued by the sheriff.

Raymundo then filed a special civil action for *certiorari* with the CA. In the assailed Decision[26] dated October 30, 2009, the petition was dismissed for lack of merit. His motion for reconsideration having been denied in the assailed CA Resolution[27] dated March 10, 2010, Raymundo is now seeking recourse with the Court on petition for review under Rule 45 of the Rules of Court.

Raymundo contends that the CA committed an error in upholding the validity of RTC's writ of execution. He argues that the writ changed the tenor of the final and executory CA decision as his obligation under said decision is to reconvey the property upon Galen's payment of its obligation. Raymundo also argues that the sale on public auction of the property was void inasmuch as the RTC's conclusion, as affirmed by the CA, that reconveyance is no longer feasible has no basis.[28]

Galen, on the other hand, claims that Raymundo was given the option to choose between reconveyance and payment of the fair market value of the property but did not manifest his choice. It was only when the property was set for sale at public auction that Raymundo manifested his choice of reconveyance, which

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[23] *Id.* at 132-136.

[24] *Id.* at 137-138.

[25] *Id.* at 139-140.

[26] *Id.* at 44-61.

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

[28] *Id.* at 33-37.

was opposed by Galen because by that time, the property was still in the name of Tensorex and was already heavily encumbered.[29] Galen maintains that the writ of execution and the auction sale was valid inasmuch as payment of the fair market value of the property is the only feasible way to satisfy the judgment.

Ruling of the Court

The manner of execution of a final judgment is not a matter of "choice". It does not revolve upon the pleasure or discretion of a party as to how a judgment should be satisfied, unless the judgment expressly provides for such discretion. Foremost rule in execution of judgments is that "a writ of execution must conform strictly to every essential particular of the judgment promulgated, and may not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed."[30] As a corollary rule, the Court has clarified that "a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto."[31]

In this case, the writ of execution issued by the RTC originated from Civil Case No. 18808, which is an action for Reconveyance with Damages filed by Galen against Raymundo and Tensorex, where Galen sought recovery of the property subject of the Deed of Absolute Sale between Galen and Raymundo. The RTC ruled in favor of Galen, finding that the transaction between them is an equitable mortgage, which was affirmed by the CA. Both the RTC and the CA, in the dispositive portions of their respective

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[29] *Id.* at 168-169.

[30] *Tumibay v. Soro*, G.R. No. 152016, April 13, 2010, 618 SCRA 169, 175-176, citing *Mahinay v. Asis*, G.R. No. 170349, February 12, 2009, 578 SCRA 562, 574 and *Ingles v. Cantos*, 516 Phil. 496, 506 (2006); *B.E. San Diego, Inc. v. Alzul*, 551 Phil. 841 (2007).

[31] *Tumibay v. Soro*, *id.* at 176, citing *DHL Philippines Corp. United Rank and File Asso. Federation of Free Workers v. Buklod ng Manggagawa ng DHL Philippines Corp.*, 478 Phil. 842, 853 (2004) and *Jaban v. CA*, 421 Phil. 896, 904 (2001).

decisions, ordered Raymundo to "**reconvey the subject property to [Galen] upon [Galen's] payment to x x x Raymundo** x x x plus legal interest thereon from the date of [the] filing of the complaint, until it is fully paid, **or if reconveyance is no longer feasible**, for x x x Raymundo and Tensorex **to solidarily pay [Galen] the fair market value of the subject property** by expert appraisal."[32] In implementing said judgment, the RTC should have considered the nature of the agreement between Galen and Raymundo. The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment.[33]

Nevertheless, the import of the dispositive portion of the CA Decision dated May 7, 2004 is clear. The principal obligation of Raymundo under the judgment is to reconvey the property to Galen; on the other hand, Galen's principal obligation is to pay its mortgage obligation to Raymundo. Performance of Raymundo's obligation to reconvey is upon Galen's payment of its mortgage obligation in the amount of ₱3,865,000.00 plus legal interest thereon from the date of the filing of the complaint, until fully paid. This is in accord with the nature of the agreement as an equitable mortgage where the real intention of the parties is to charge the real property as security for a debt.[34] It was wrong for the RTC to require Raymundo to show proof of his "willingness" to reconvey the property because as stressed earlier, their agreement was an equitable mortgage and as such, Galen retained ownership of the property.[35] In *Montevirgen, et al. v. CA, et al.*,[36] the Court was emphatic in stating that "the circumstance that the original transaction was subsequently declared to be an equitable mortgage must mean that the title to the subject land which had been transferred to private

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[32] *Rollo*, p. 48.

[33] *Pastor, Jr., et al. v. CA, et al.*, 207 Phil. 758, 767 (1983).

[34] *Muñoz, Jr. v. Ramirez*, G.R. No. 156125, August 25, 2010, 629 SCRA 38, 51.

[35] *Roberts v. Papio*, 544 Phil. 280, 300-301 (2007).

[36] 198 Phil. 338 (1982).

respondents actually remained or is transferred back to [the] petitioners herein as owners-mortgagors, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the ownership remains with the mortgagor."[37] Thus, it does not devolve upon Raymundo to determine whether he is willing to reconvey the property or not because it was not his to begin with. If Raymundo refuses to reconvey the property, then the court may direct that the act be done by some other person appointed by it as authorized by Section 10 of Rule 39 of the Rules of Court, to wit:

> Sec. 10. Execution of judgments for specific act. (a) conveyance, delivery of deeds, or other specific acts; vesting title.—If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, **and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party.** If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law. (Emphasis and underscoring ours)

The "some other person appointed by the court" can be the Branch Clerk of Court,[38] the Sheriff,[39] or even the Register of Deeds,[40] and their acts when done under such authority shall have the effect of having been done by Raymundo himself. A party cannot frustrate execution of a judgment for a specific act on the pretext of inability to do so as the Rules provide ample means by which it can be satisfied.

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[37] *Id.* at 348, citing CIVIL CODE, Article 2088.

[38] See *Balais-Mabanag v. Register of Deeds of Quezon City*, G.R. No. 153142, March 29, 2010, 617 SCRA 1, 10.

[39] *Tumibay v. Soro*, *supra* note 30, at 178-179, citing *Buñag v. CA*, 363 Phil. 216 (1999).

[40] *Cruz v. Court of Appeals*, 459 Phil. 264, 282 (2003).

Conversely, Galen's obligation to pay the mortgage obligation is not subject to Raymundo's reconveyance of the property. If Galen refuses to pay, it is only then that the court may direct the foreclosure of the mortgage on the property and order its sale at public auction to satisfy Galen's judgment debt against Raymundo, pursuant to Rule 68 of the Rules of Court on Foreclosure.[41] If Raymundo, meanwhile, unjustly refuses to accept Galen's payment, the latter's remedy is to consign the payment with the court in accordance with the Civil Code provisions on consignment.

It is only when reconveyance is no longer feasible that Raymundo and Tensorex should pay Galen the fair market value of the property. In other words, it is when the property has passed on to an innocent purchaser for value and in good faith, has been dissipated, or has been subjected to an analogous circumstance which renders the return of the property impossible that Raymundo and/or Tensorex, is obliged to pay Galen the fair market value of the property.

In this case, it appears that the RTC accommodated Galen's choice of payment of the fair market value of the property and it became the main obligation of Raymundo as well as Tensorex instead of being the alternative. Worse, it even considered the subject property as absolutely owned by Tensorex and levied upon the same to satisfy payment of the fair market value of the very property that has only been pledged as security of Galen's loan. While it indeed appears that Raymundo was able to transfer title of the property to Tensorex, it should be noted that the latter is a party to Civil Case No. 18808 and is necessarily bound by the judgment. The dissolution of Tensorex is not a valid reason to avoid reconveyance inasmuch as the court may order the transfer of title to Galen by some other person appointed by the court in accordance with Section 10, Rule 39 of the Rules of Court.

The existence of subsequent encumbrances on the property is also not a sufficient ground to insist on the payment of its

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[41] *Spouses Rosales v. Spouses Suba*, 456 Phil. 127, 133 (2003).

fair market value. To begin with, it was Galen which sought the return of the property by filing the civil case. Moreover, as correctly pointed out by Raymundo, whatever transactions Tensorex entered into is subject to the notice of *lis pendens* which serves as a constructive notice to purchasers or other persons subsequently dealing with the same property.[42] Further, having Raymundo and/or Tensorex keep the property (and later on levy upon the same) and order the payment of its fair market value virtually amounts to a sale, which goes against the RTC and CA's conclusion that the transaction subject of Civil Case No. 18808 is not a sale but an equitable mortgage. It also violates the very public policy that prohibits *pactum commissorium*.[43] In the early case of *Guanzon v. Hon. Argel*,[44] which also involves an equitable mortgage, the Court ruled —

> In no way can the judgment at bar be construed to mean that should the Dumaraogs fail to pay the money within the specified period then the party would be conveyed by the Sheriff to Guanzon. Any interpretation in that sense would contradict the declaration made in the same judgment that the contract between the parties was in fact a mortgage and not a *pacto de retro* sale. x x x The mortgagor's default does not operate to vest in the mortgagee the ownership of the encumbered property, for any such effect is against public policy, as enunciated by the Civil Code. **The court can not be presumed to have adjudged what would be contrary to law, unless it be plain and inescapable from its final judgment. No such purport appears or is legitimately inferable from the terms of the judgment aforequoted**. x x x.[45] (Citation omitted and emphasis ours)

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[42] *Mahinay v. Gako, Jr.*, G.R. No. 165338, November 28, 2011, 661 SCRA 274, 297, citing *Yu v. CA*, 321 Phil. 897, 901 (1995).

[43] Article 2088 of the CIVIL CODE provides that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and *void.*" See also *Briones-Vasquez v. Court of Appeals*, 491 Phil. 81, 94-95 (2005), which ruled that the principle of *pactum commissorium* is applicable to equitable mortgages.

[44] 144 Phil. 418 (1970).

[45] *Id.* at 423-424.

The RTC, therefore, committed grave abuse of discretion in ordering the payment of the fair market value of the subject property despite the fact that reconveyance is still feasible under the circumstances of this case. Consequently, the CA committed a reversible error in sustaining the assailed RTC orders and in dismissing Raymundo's special civil action for *certiorari* for lack of merit.

In *Muñoz v. Ramirez*,[46] the Court stated:

> In *Lustan v. CA*, where we established the reciprocal obligations of the parties under an equitable mortgage, we ordered the reconveyance of the property to the rightful owner therein upon the payment of the loan **within 90 days from the finality of this decision**.[47] (Emphasis ours)

Before concluding, the Court notes that under the final and executory CA Decision dated May 7, 2004, Galen was adjudged to pay Raymundo the sum of ₱3,865,000.00 with legal interest from the date of the filing of the complaint until fully paid. Raymundo, meanwhile, was ordered to pay damages, attorney's fees and costs of suit.

In *Sunga-Chan v. Court of Appeals*,[48] the Court, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[49] reiterated the rule on the rates and application of interests, *viz*:

> *Eastern Shipping Lines, Inc.* synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: **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**

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[46] G.R. No. 156125, August 25, 2010, 629 SCRA 38.

[47] *Id.* at 54, citing *Lustan v. CA*, 334 Phil. 609, 620 (1997). See also *Bacungan v. CA*, G.R. No. 170282, December 18, 2008, 574 SCRA 642, 650.

[48] 578 Phil. 262 (2008).

[49] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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."

Otherwise formulated, the norm to be followed in the future on the rates and application thereof is:

"x x x x x x x x x

II.— With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation [is] breached[, and it] consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. **In the absence of stipulation, the rate of interest shall be 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**.

x x x x x x x x x

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."[50] (Citations omitted and emphases and underscoring ours)

Recently, the Monetary Board of the *Bangko Sentral ng Pilipinas* issued Resolution No. 796 dated May 16, 2013, revising the interest rate to be imposed for the loan or forbearance of

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[50] *Supra* note 48, at 276-278.

any money, goods or credits, in the absence of an express contract, to six percent (6%) *per annum*. This was implemented by BSP Circular No. 799 dated June 21, 2013 and effective July 1, 2013.

Applying the foregoing guidelines, the following rates are to be imposed on the parties' respective obligations:

(a) Galen's mortgage indebtedness shall earn interest at the rate of 12% *per annum* from the date of the filing of the complaint on January 25, 1988[51] until June 30, 2013; thereafter, it shall earn six percent (6%) interest *per annum* until fully paid. The Court is constrained to retain the application of the interest rate from the filing of the complaint until full payment because the CA's judgment on this score has already attained finality and cannot be disturbed at this stage;[52] and

(b) The damages, attorney's fees and costs to be paid by Raymundo shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the CA Decision on May 7, 2004 until fully paid.

WHEREFORE, the petition is **GRANTED.** The Decision dated October 30, 2009 and Resolution dated March 10, 2010 of the Court of Appeals in CA-G.R. SP No. 105401 are **REVERSED** and **SET ASIDE.** Accordingly, the assailed Orders dated August 6, 2007, December 12, 2007 and August 15, 2008 of the Regional Trial Court of Makati City, Branch 62, as well as the writ of execution dated January 10, 2007 and all other orders, writs and processes issued pursuant thereto are **NULLIFIED.**

The RTC of Makati City, Branch 62 is **DIRECTED** to implement the Decision dated May 7, 2004 of the Court of Appeals in accordance with this Decision, and subject to the interest rates discussed herein.

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[51] *Rollo*, p. 47.

[52] See *Penta Capital Corporation v. Bay*, G.R. No. 162100, January 18, 2012, 663 SCRA 192, 213-214.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193000. October 16, 2013]

SPOUSES FELIPE and EVELYN SARMIENTO and SPOUSES GREG and FELIZA AMARILLO, *petitioners, vs.* **SPOUSES RODOLFO and CARMELITA MAGSINO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC CASES; THE COURT WILL REFRAIN FROM EXPRESSING ITS OPINION IN A CASE WHERE NO PRACTICAL RELIEF MAY BE GRANTED IN VIEW OF A SUPERVENING EVENT; APPLICATION IN CASE AT BAR.— This Petition has become moot and academic as the issue or issues to be resolved herein are merely in relation to the incidents of the main case filed before RTC Branch 31, which case has already been decided on the merits on 3 January 2013. In a catena of cases, this Court held that: It is a rule of universal application that courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition. **Thus, the Court will refrain from expressing its opinion in a case where no practical relief may be granted in view of a**

supervening event. In sum, the resolution of the issue or issues in this case would be of no practical use or value as the merits of the case has already been decided upon by RTC Branch 31 and the same has been decided in favor of petitioners.

APPEARANCES OF COUNSEL

Dolleton Cerdeña Law Office for petitioners.
Nelson A. Loyola for respondents.

R E S O L U T I O N

PEREZ, *J.*:

For this Court's resolution is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated 17 March 2010 of the Court of Appeals in CA-G.R. SP No. 106941 setting aside the Orders dated 22 September 2008[2] and 8 December 2008[3] of the Regional Trial Court of San Pedro, Laguna, Branch 31 (RTC Branch 31), in Civil Case No. SPL-1356-08, respectively, denying herein respondent spouses Rodolfo and Carmelita Magsino's (respondent spouses) (1) Motion to Dismiss the Complaint for Recovery of Possession and Ownership[4] (with application for temporary restraining order and preliminary injunction) filed by herein petitioners spouses Felipe and Evelyn Sarmiento and spouses Greg and Feliza Amarillo (collectively, petitioner); and (2) motion to reconsider such denial. In effect, RTC Branch 31 granted petitioners' application for writ of preliminary injunction and, accordingly,

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Portia Aliño-Hormachuelos and Mario V. Lopez, concurring. *Rollo*, pp. 39-47.

[2] Penned by Judge Sonia T. Yu-Casano. *Id.* at 106-109.

[3] *Id.* at 124-126.

[4] Involving two parcels of land with improvements located in Pacita Complex 1, San Pedro, Laguna, originally covered by Transfer Certificate of Title Nos. T-256745 and T-256746 and later by TCT Nos. T-670293 and T-670294.

issued a writ of preliminary mandatory injunction restoring the latter to the possession of two parcels of land with improvements located at Pacita Complex 1, San Pedro, Laguna, which were (originally covered by Transfer Certificate of Title (TCT) Nos. T-256745 and T-256746 and later by TCT Nos. T-670293[5] and T-670294[6] (subject properties), upon the posting of a bond, jointly and severally, in the amount of ₱400,000.00. Assailed as well is the Court of Appeals Resolution[7] dated 29 June 2010 denying respondent spouses' Motion for Reconsideration.

The facts of the case are as follows:

Initially, respondent spouses filed a **Complaint sfor Specific Performance and Damages (with application for writ of preliminary attachment)**[8] against Leopoldo and Elvira Calderon (spouses Calderon) **before the RTC of San Pedro, Laguna, Branch 93** (RTC Branch 93), **docketed as Civil Case No. SPL-0499**. In that Complaint, respondent spouses prayed, among others, that judgment be rendered ordering spouses Calderon to deliver the owner's duplicate copy of TCT Nos. T-256745 and T-256746 covering the subject properties and to execute a Deed of Absolute Sale over the said properties in their favor. In the alternative, respondent spouses prayed that spouses Calderon be ordered to reimburse the amount of ₱383,013.70 plus 12% interest per annum and the costs of suit should the execution of a Deed of Absolute Sale over the subject properties become legally impossible.[9]

On 17 December 2002, RTC Branch 93 rendered a Decision granting the alternative relief prayed for by respondent

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[5] *Rollo*, p. 341.

[6] *Id.* at 340.

[7] Penned by Associate Justice Portia Aliño-Hermachuelos with Associate Justices Magdangal M. De Leon and Mario V. Lopez, concurring. *Id.* at 48-49.

[8] *Id.* at 50-55.

[9] RTC Branch 93 Decision dated 17 December 2002, *id.* at 56 and 58; Complaint (Civil Case No. SPL-0499) dated 14 June 1999, *id.* at 54-55.

spouses, thus, ordering spouses Calderon, among others, to jointly and severally reimburse the sum of ₱383,013.70 plus 12% interest per annum from the filing of the Complaint until fully paid.[10] RTC Branch 93 explained its ruling in this wise:

> x x x Records further reveal that **[spouses Calderon] had in fact sold the [subject properties] to [herein petitioners]** considering that [spouses Calderon are] no longer interested in selling the [subject properties] to [herein respondent spouses].
>
> x x x [spouses Calderon] failed to comply with their obligation giving the option to [respondent spouses] to demand between the fulfillment of the obligation or the rescission of the obligation with payment of damages in either case. In the instant case, **fulfillment of the obligation had become impossible considering that [spouses Calderon] had sold the [subject properties] to third persons**.[11]
>
> **The Court therefore grants the alternative relief prayed for by [respondent spouses]** x x x.[12] (Emphasis and underscoring supplied).

The aforesaid RTC Branch 93 Decision had become final and executory. Respondent spouses, thus, moved for its execution, which was granted in an Order dated 5 January 2004[13] and the corresponding writ of execution[14] was thereafter issued on 15 March 2004. In view of this, the Clerk of Court and *Ex-Officio* Sheriff of San Pedro, Laguna enforced the writ by levying the subject properties, which were still registered in the names of spouses Calderon albeit the same were already sold to petitioners and the latter were in possession thereof. On 27 August 2004, the levied subject properties were sold at public auction to respondent spouses, who were the highest bidder, for the sum of ₱800,000.00.[15]

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[10] RTC Branch 93 Decision dated 17 December 2002. *Id.* at 61.

[11] Referring to herein petitioners.

[12] *Rollo*, pp. 60-61.

[13] Per Writ of Execution dated 15 March 2004. *Id.* at 331-332.

[14] *Id.*

[15] CA Decision dated 17 March 2010. *Id.* at 40.

The redemption period lapsed. Respondent spouses consequently requested for the issuance of a Certificate of Final Deed of Sale in their names.[16] On 24 October 2005, the sheriff issued the Deed,[17] which was subsequently confirmed by RTC Branch 93 in its Order dated 23 April 2007. RTC Branch 93 also declared lost the owner's duplicate copy of TCT Nos. T-256745 and T-256746 in the possession of petitioners and, accordingly, ordered the Register of Deeds of Calamba, Laguna to issue a new owner's duplicate copy in favor of respondent spouses upon payment of the prescribed legal fees.[18] In an Amended Order dated 5 June 2007,[19] RTC Branch 93 further declared null and void the owner's duplicate copy held by petitioners. In view thereof, TCT Nos. T-256745 and T-256746 in the names of spouses Calderon and in the possession of petitioners were cancelled and new TCTs were issued in the names of respondent spouses, *i.e.*, TCT Nos. T-670293 and T-670294.

Accordingly, on 22 June 2007, respondent spouses filed a Petition[20] for the issuance of a writ of possession directing the sheriff to place them in actual physical possession of the subject properties and ordering spouses Calderon and petitioners to turn over the possession thereof in their favor. Spouses Calderon did not oppose the same but petitioners filed an opposition thereto.[21] In an Order dated 3 July 2008,[22] RTC Branch 93 granted respondent spouses' Petition for Writ of Possession and the corresponding Writ of Possession[23] was thereafter issued on 28 July 2008. As a result, a Notice to Vacate[24] the subject

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

[17] *Id.* at 338-339.

[18] *Id.* at 41.

[19] *Id.* at 403.

[20] *Id.* at 64-68.

[21] *Id.* at 69-70.

[22] *Id.* at 71.

[23] *Id.* at 408-409.

[24] *Id.* at 369.

properties was served upon petitioners and they were subsequently evicted therefrom. The subject properties were then turned over to respondent spouses' possession.[25]

Petitioners moved to recall the Notice to Vacate and to declare it null and void[26] but respondent spouses expectedly opposed the same.

Nonetheless, prior to RTC Branch 93's resolution of petitioners' motion, the latter had already filed a separate Complaint for Recovery of Possession and Ownership of the Subject Properties (with application for temporary restraining order and preliminary injunction)[27] against respondent spouses **before the RTC Branch 31, docketed as Civil Case No. SPL-1356-08**. In their Complaint, petitioners prayed, among others: (1) for the issuance of a temporary restraining order (TRO) against respondent spouses to restrain them from occupying the subject properties and to order them vacate the same; (2) for the said TRO to be converted, thereafter, to preliminary injunction to permanently prevent respondent spouses from occupying the subject properties and to order them vacate the same so that possession thereof could be restored to petitioners; and (3) for the cancellation of TCT Nos. T-670293 and T-670294 in the names of respondent spouses.[28]

In turn, respondent spouses filed their Opposition to the Application for Writ of Preliminary Injunction (with Answer to the Complaint)[29] alleging that the acts sought to be restrained was already *fait accompli*. Stated otherwise, there was nothing else to perform regarding the act sought to be restrained because

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[25] Per Delivery of Possession dated 1 August 2008 and Officers Return on Possession dated 5 August 2008. *Id.* at 358 and 360.

[26] Per petitioners Urgent Motion to Recall Notice to Vacate and to Declare the Same as Null and Void dated 31 July 2008. *Id.* at 363-368.

[27] *Id.* at 75-89.

[28] Complaint (Civil Case No. SPL-1356-08) dated 4 August 2008. *Id.* at 86.

[29] *Id.* at 90-99.

as of 1 August 2008, the sheriff, upon the order of RTC Branch 93, had already placed respondent spouses in actual possession of the subject properties. Moreover, the Register of Deeds of Calamba City had already issued new TCTs over the subject properties in the names of respondent spouses. Respondent spouses also averred that the finality of the Decision of RTC Branch 93 is binding not only against spouses Calderon but also against petitioners, who are the successors-in-interest of the former.[30]

Respondent spouses also filed a Memorandum in Support of the Opposition to the Application for TRO with Motion to Dismiss Complaint[31] based on the following grounds: (1) RTC Branch 31 has no jurisdiction over the case; (2) there is another action pending between the same parties for the same cause; (3) the cause of action in the case before RTC Branch 31 is barred by the prior judgment of RTC Branch 93; (4) the case before RTC Branch 31 states no cause of action; (5) the claim or demand in the case before RTC Branch 31 has been abandoned or extinguished; and (6) the condition precedent for filing the claim has not been complied with.[32]

In an Order dated 22 September 2008, RTC Branch 31 denied respondent spouses' Motion to Dismiss but granted petitioners' application for writ of preliminary injunction and issued[33] the same to restore the possession of the subject properties to petitioners upon the latter's posting of a bond, jointly and severally, in the amount of ₱400,000.00. RTC Branch 31 justified its ruling with the following ratiocination:

> The motion to dismiss is bereft of merit. While the general rule is that no court has the authority to interfere with the judgment or decrees of another court of equal or concurrent or coordinate jurisdiction, it is not so when a third party claimant is involved.

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

[31] *Id.* at 100-105.

[32] *Id.* at 101-102.

[33] Per Writ of Preliminary Injunction dated 10 December 2008. *Id.* at 310.

The general rule is confined to cases were the property belongs to the defendant or one in which he has proprietary interest. But when the sheriff, acting beyond the bounds of his office seizes a stranger's property, the rule does not apply and interference with his custody is not interference with another court's order. x x x.

x x x x x x x x x

Prescinding from the foregoing and the present action being separate and distinct from that in which execution has been issued, there being no identity of parties and causes of action as to give rise to *res judicata* or *litis pendentia*, the allegation of forum shopping must perforce fail.

Anent [herein petitioners'] application for a writ of preliminary injunction, the Court is convinced that there is a *prima facie* evidence of the existence of a right in [petitioners'] favor and that said right had been violated. The decision in Civil Case No. SPL-[0499] by virtue of which [herein respondent spouses] obtained TCT No[s]. T-670293 and T-670294 expressly took notice that the properties subject of the aforesaid TCTs had already been sold to [petitioners] and for that reason, [respondent spouses] prayer for specific performance against the former owners, spouses Calderon was deemed no longer possible.

It may be argued that the dispossession of the [petitioners] is already a consummated act. However, it is a settled rule that even if the acts complained of have already been committed, but such acts are continuing in nature and were in derogation of [petitioners'] rights at the outset, preliminary mandatory injunction may be availed of to restore the parties to the status *quo*. x x x.

Furthermore, the restoration of the [petitioners] to the possession of the [subject properties] is not tantamount to the disposition of the main case. The Court is simply of the impression that based on the parties' presentations of their cases, there appears a probable violation of [petitioners'] rights and the injury [petitioners] have been suffering due to that violation is grave, serious and beyond pecuniary estimation. **Their restoration to possession pending litigation is a mere provisional remedy and is not determinative of the question of validity of the [respondent spouses'] titles which is the main issue in this case**.[34] (Emphasis and italics supplied).

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[34] *Id.* at 107-108.

Disgruntled, respondent spouses moved for reconsideration but was denied by RTC Branch 31 in another Order dated 8 December 2008.

Aggrieved, respondent spouses elevated the matter to the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court.

In a Decision dated 17 March 2010, the Court of Appeals granted respondent spouses' Petition and set aside RTC Branch 31 Orders dated 22 September 2008 and 8 December 2008. In so ruling, the Court of Appeals explained:

> It has time and again been reiterated that **no court has the power to interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction** [citation omitted]. The issuance by public respondent judge of the writ of preliminary mandatory injunction is a clear act of interference with the judgment and order of [RTC Branch 93], which is a co-equal court in Civil Case No. SPL-0499. The power and authority of the [RTC Branch 93] to issue the writ of possession is beyond cavil. The inevitable consequence of the issuance by public respondent of the assailed Orders is to effectively restrain the enforcement of the writ of execution and of possession issued by a court of co-equal and concurrent jurisdiction.[35] (Emphasis supplied).

Petitioners' Motion for Reconsideration thereof was denied in a Resolution dated 29 June 2010.

Dissatisfied with the adverse ruling thus handed down by the Court of Appeals, petitioners have come to this Court *via* the present Petition anchored on the following grounds:

> a. The Court of Appeals erred in applying against the petitioners the doctrine of finality of judgment and non-interference with a co-equal court and ignoring Rule 39, Sec. 16 on Third Party Claims which is the one applicable.
>
> b. The Court of Appeals has perverted, or otherwise sanctioned the perversion by the [respondent spouses] and their counsel of the rule of finality of judgment by applying the decision in Civil Case

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

No. SPL-0499 against the [p]etitioners who were not parties therein and have been expressly declared in the decision itself as third parties, instead of declaring that it is the [respondent spouses] who are bound by and ought to respect said decision declaring that delivery of the properties to them was no longer possible.

c. The Court of Appeals committed an evasion of a positive duty, tantamount to grave abuse of discretion, when it dismissed the [p]etitioners' Motion for Reconsideration on a one-liner that the arguments raised therein had been discussed and passed upon in the decision, even when nowhere in its decision appears a discussion, let alone, a distinction, between the principle of finality of judgment or *res judicata* and Rule 39, Sec. 16 on Third Party Claims.

d. The Court of Appeals' [D]ecision imputing to and severely castigating Judge Sonia Y. Casano of [RTC Branch 31] for supposed gross ignorance of the law and interference with a co-equal court is not only erroneous; worse, it is grossly unjust and destructive of the morale of those in the lower rank of the judiciary.[36] (Italics supplied).

The foregoing boil down to the issue of whether or not RTC Branch 31 interfered with the judgment and order of RTC Branch 93, a co-equal court, when it issued its Orders dated 22 September 2008 and 8 December 2008 granting and issuing a writ of preliminary injunction restraining respondent spouses from occupying the subject properties and ordering them to vacate the same, which in effect enjoined the enforcement of the writs of execution and possession issued by RTC Branch 93.

To begin with, pending resolution of this Petition, RTC Branch 31 has already decided petitioners' Complaint in their favor in its Decision dated 3 January 2013. It, thus, ordered the Registry of Deeds of Calamba, Laguna to cancel TCT Nos. T-670293 and T-670294 in the names of respondent spouses. It also made permanent the injunction against respondent spouses. It likewise ordered respondent spouses to pay petitioners the amount of ₱50,000.00 as attorney's fees and the cost of suit.[37]

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[36] Petition for Review on *Certiorari* dated 27 August 2010. *Id.* at 23-24.

[37] RTC Branch 31 Decision dated 3 January 2013. Temporary *rollo*, p. 14.

Moreover, in petitioners' Manifestation dated 9 May 2013 filed before this Court, they declared that they remained in possession of the subject properties.

With the foregoing developments, this Petition has become moot and academic as the issue or issues to be resolved herein are merely in relation to the incidents of the main case filed before RTC Branch 31, which case has already been decided on the merits on 3 January 2013.

In a catena of cases, this Court held that:

> It is a rule of universal application that courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition. **Thus, the Court will refrain from expressing its opinion in a case where no practical relief may be granted in view of a supervening event**.[38] (Emphasis supplied).

In sum, the resolution of the issue or issues in this case would be of no practical use or value as the merits of the case has already been decided upon by RTC Branch 31 and the same has been decided in favor of petitioners.

WHEREFORE, the Petition is **DENIED** for being moot and academic.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes,[*] and *Perlas-Bernabe, JJ.*, concur.

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[38] *Korea Exchange Bank v. Judge Gonzales,* 520 Phil. 690, 701 (2006); *Desaville, Jr. v. Court of Appeals,* 480 Phil. 21, 27 (2004); *Royal Cargo Corporation v. Civil Aeronautics Board,* 465 Phil. 719, 725 (2004).

[*] Per Special Order No. 1564 dated 11 October 2013.

FIRST DIVISION

[G.R. No. 196573. October 16, 2013]

VICTORINO OPINALDO, *petitioner, vs.* **NARCISA RAVINA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REVISED RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC); LIBERAL APPLICATION OF THE RULES IN DECIDING LABOR CASES; CIRCUMSTANCES IN CASE AT BAR WARRANTED THE NLRC'S EXERCISE OF LIBERALITY WHEN IT DECIDED RESPONDENT'S MOTION FOR RECONSIDERATION ON THE MERITS.— Time and again, we have ruled and it has become doctrine that the perfection of an appeal within the statutory or reglementary period and in the manner prescribed by law is mandatory and jurisdictional. Failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal. In labor cases, the underlying purpose of this principle is to prevent needless delay, a circumstance which would allow the employer to wear out the efforts and meager resources of the worker to the point that the latter is constrained to settle for less than what is due him. In the case at bar, the applicable rule on the perfection of an appeal from the decision of the NLRC is Section 15, Rule VII of the 2005 Revised Rules of Procedure of the National Labor Relations Commission. x x x We are not, however, unmindful that the NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the application of its rules in deciding labor cases. x x x The liberal interpretation stems from the mandate that the workingman's welfare should be the primordial and paramount consideration. We are convinced that the circumstances in the case at bar warranted the NLRC's exercise of liberality when it decided respondent's motion for reconsideration on the merits. The subject motion for reconsideration of the NLRC decision was filed on June 25,

2009. The evidence on record shows that the decision of the NLRC dated April 24, 2009 was received by respondent herself on June 17, 2009. The same decision was, however, earlier received on June 8, 2009 by respondent's former counsel who allegedly did not inform respondent of the receipt of such decision until respondent went to his office on June 23, 2009 to get the files of the case. If we follow a strict construction of the ten-day rule under the 2005 Revised Rules of Procedure of the National Labor Relations Commission and consider notice to respondent's former counsel as notice to respondent herself, the expiration of the period to file a motion for reconsideration should have been on June 18, 2009. The NLRC, however, chose a liberal application of its rules: it decided the motion on the merits. Nevertheless, it denied reconsideration.

2. ID.; ID.; ID.; THE NLRC ACTED IN THE PROPER EXERCISE OF ITS JURISDICTION WHEN IT LIBERALLY APPLIED ITS RULES AND RESOLVED THE MOTION FOR RECONSIDERATION ON THE MERITS; TO HOLD OTHERWISE WOULD NULLIFY THE LATITUDE OF DISCRETION GRANTED TO THE NLRC UNDER ITS RULES INCLUDING DECISIONS AND RESOLUTIONS RENDERED IN THE EXERCISE OF SUCH DISCRETION.— We defer to the exercise of discretion by the NLRC and uphold its judgment in applying a liberal construction of its procedural and technical rules to this case in order to ventilate and resolve the issues raised by respondent in the motion for reconsideration and fully resolve the case on the merits. It would be purely conjectural to challenge the NLRC's exercise of such liberality for being tainted with grave abuse of discretion especially that it did not reverse, but even affirmed, its questioned decision – which sustained the ruling of the Labor Arbiter – that respondent illegally dismissed petitioner. In view of such disposition, that the NLRC gave due course to the motion in the interest of due process and to render a full resolution of the case on the merits is the more palpable explanation for the liberal application of its rules. It is significant to note that neither did petitioner ever raise the issue of the NLRC's ruling on the merits of the subject motion for reconsideration. And the reason is clear: the motion for reconsideration was resolved in favor of petitioner. Furthermore, if the NLRC accorded credibility to the explanation proffered

by respondent for its belated filing of the motion, we cannot now second-guess the NLRC's judgment in view of the circumstances of the case and in the absence of any showing that it gravely abused its discretion. In light of the foregoing, we cannot uphold the stand of petitioner that the petition for *certiorari* before the CA was filed out of time, and at the same time rule that the NLRC acted in the proper exercise of its jurisdiction when it liberally applied its rules and resolved the motion for reconsideration on the merits. To so hold would nullify the latitude of discretion towards liberal construction granted to the NLRC under the 2005 Revised Rules of Procedure of the National Labor Relations Commission – including the decisions and resolutions rendered in the exercise of such discretion.

3. ID.; ID.; ID.; AS A MATTER OF PROCEDURAL CONSEQUENCE, THE DEFECT IN THE VERIFICATION OF THE PETITION IS MERELY A FORMAL DEFECT AND IS NEITHER JURISDICTIONAL NOR FATAL; ON SUBSTANTIVE GROUNDS, HOWEVER, THE COURT REVERSED THE APPELLATE COURT'S DECISION AND REINSTATED THE FINDING OF ILLEGAL DISMISSAL BY THE NLRC AND THE LABOR ARBITER.— It is a matter of procedural consequence in the case at bar that whether we strictly or liberally apply the technical rules on the requirement of verification in pleadings, the disposition of the case will be the same. If we sustain petitioner's stance that the petition before the CA should have been outrightly dismissed, the NLRC decision finding the dismissal of petitioner as illegal would have reached finality. On the other hand, if we adopt respondent's view that the defect in the verification of the petition is merely a formal defect and is neither jurisdictional nor fatal, we will be sustaining the appellate court's giving due course to the petition. However, on substantive grounds, we reverse the appellate court's decision and reinstate the finding of illegal dismissal by the NLRC and the Labor Arbiter.

4. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT IS A MANAGEMENT PREROGATIVE; EXERCISE THEREOF MUST ALWAYS BE FAIR AND REASONABLE.— Jurisprudence is replete with cases recognizing the right of the employer to have free reign and

enjoy sufficient discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative where the free will of management to conduct its own affairs to achieve its purpose takes form. Even labor laws discourage interference with the exercise of such prerogative and the Court often declines to interfere in legitimate business decisions of employers. However, the exercise of management prerogative is not unlimited. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice. Hence, in the exercise of its management prerogative, an employer must ensure that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.

5. ID.; ID.; ID.; ID.; WHILE IT IS A MANAGEMENT PREROGATIVE TO REQUIRE PETITIONER TO SUBMIT A MEDICAL CERTIFICATE, THE EMPLOYER CANNOT WITHHOLD THE EMPLOYEE'S EMPLOYMENT WITHOUT OBSERVING THE PRINCIPLES OF DUE PROCESS AND FAIR PLAY.— In the case at bar, we recognize, as did the appellate court, that respondent's act of requiring petitioner to undergo a medical examination and submit a medical certificate is a valid exercise of management prerogative. This is further justified in view of the letter-complaint from one of respondent's clients, PAIJR, opining that petitioner was "no longer physically fit to perform his duties and responsibilities as a company guard because of his health condition." To be sure, petitioner's job as security guard naturally requires physical and mental fitness under Section 5 of Republic Act No. 5487, as amended by Presidential Decree No. 100. While the necessity to prove one's physical and mental fitness to be a security guard could not be more emphasized, the question to be settled is whether it is a valid exercise of respondent's management prerogative to prevent petitioner's continued employment with the Agency unless he presents the required medical certificate. x x x It is utterly significant in the case at bar that a considerably long period has lapsed from petitioner's last day of recorded work on

September 21, 2006 until he was informed by respondent on December 22, 2006 that he was no longer an employee of the Agency. In the words of petitioner, he had been on a "floating status" for three months. Within this period, petitioner did not have any work assignment from respondent who proffers the excuse that he has not submitted the required medical certificate. While it is a management prerogative to require petitioner to submit a medical certificate, we hold that respondent cannot withhold petitioner's employment without observing the principles of due process and fair play.

6. ID.; ID.; ID.; ID.; ID.; THERE IS NO IOTA OF EVIDENCE THAT PETITIONER EMPLOYEE WAS NOTIFIED THAT FAILURE TO SUBMIT THE REQUIRED MEDICAL CERTIFICATE WILL RESULT IN HIS LACK OF WORK ASSIGNMENT AND EVENTUALLY HIS DISMISSAL.— What behooves the Court is the lack of evidence on record which establishes that respondent informed petitioner that his failure to submit the required medical certificate will result in his lack of work assignment. It is a basic principle of labor protection in this jurisdiction that a worker cannot be deprived of his job without satisfying the requirements of due process. Labor is property and the right to make it available is next in importance to the rights of life and liberty. As enshrined under the Bill of Rights, no person shall be deprived of life, liberty or property without due process of law. The due process requirement in the deprivation of one's employment is transcendental that it limits the exercise of the management prerogative of the employer to control and regulate the affairs of the business. In the case at bar, all that respondent employer needed to prove was that petitioner employee was notified that his failure to submit the required medical certificate will result in his lack of work assignment – and eventually the termination of his employment – as a security guard. There is no iota of evidence in the records, save for the bare allegations of respondent, that petitioner was notified of such consequence for non-submission. In truth, the facts of the case clearly show that respondent even reassigned petitioner to Gomez Construction from his PAIJR post despite the non-submission of a medical certificate. If it was indeed the policy of respondent not to give petitioner any work assignment without the medical certificate, why was petitioner reassigned despite his noncompliance?

7. ID.; ID.; ID.; EMPLOYER HAS THE *ONUS PROBANDI* TO SHOW THAT THE DISMISSAL WAS FOR A JUST AND AUTHORIZED CAUSE UNDER THE LABOR CODE; CASE AT BAR.— It is a time-honored legal principle that the employer has the *onus probandi* to show that the dismissal or termination was for a just and authorized cause under the Labor Code. Respondent failed to show that the termination was justified and authorized, nor was it done as a valid exercise of management prerogative. Given the circumstances in the case at bar, it is not fair to shift the burden to petitioner, and rule that he failed to prove his claim, when respondent had successfully terminated the employer-employee relationship without leaving a paper trail in a clear case of illegal dismissal.

8. ID.; ID.; ID.; ID.; ABANDONMENT; NOT ESTABLISHED IN CASE AT BAR.— Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. None of these elements is present in the case at bar.

APPEARANCES OF COUNSEL

Galicano M. Arriesgado, Jr. for petitioner.

Gica Del Socorro Espinoza Villarima Fernandez & Tan for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal under Rule 45 is the Decision[1] dated October 19, 2010 and Resolution[2] dated March 17, 2011 of the Court of Appeals (CA), Cebu City, in CA-G.R. SP No. 04479 which

[1] *Rollo*, pp. 31-41. Penned by Associate Justice Socorro B. Inting with Associate Justices Portia A. Hormachuelos and Edwin D. Sorongon concurring.

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

reversed and set aside the Decision[3] and Resolution[4] of the National Labor Relations Commission (NLRC), Cebu City, and dismissed petitioner's complaint for illegal dismissal against respondent.

The facts follow.

Respondent Narcisa Ravina (Ravina) is the general manager and sole proprietor of St. Louisse Security Agency (the Agency). Petitioner Victorino Opinaldo (Opinaldo) is a security guard who had worked for the Agency until his alleged illegal dismissal by respondent on December 22, 2006. The Agency hired the services of petitioner on October 5, 2005, with a daily salary of ₱176.66 and detailed him to PAIJR Furniture Accessories (PAIJR) in Mandaue City.[5]

In a letter dated August 15, 2006, however, the owner of PAIJR submitted a written complaint to respondent stating as follows:

> I have two guard[s] assigned here in my company[,] namely[,] SG. Opinaldo and SGT. Sosmenia. Hence, ... I hereby formalize our request to relieve one of our company guard[s] and I [choose] SG. VICTORINO B. OPINALDO[,] detailed/assigned at PAIJR FURNITURE ACCESSORIES located at TAWASON, MANDAUE CITY. For the reason: He is no longer physically fit to perform his duties and responsibilities as a company guard because of his health condition.
>
> Looking forward to your immediate action. Thank [y]ou.[6]

Acceding to PAIJR's request, respondent relieved petitioner from his work. Respondent also required petitioner to submit a medical certificate to prove that he is physically and mentally fit for work as security guard.

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[3] *Id.* at 44-47. The decision was dated April 24, 2009 and penned by NLRC Presiding Commissioner Violeta Ortiz-Bantug and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[4] *Id.* at 48-50.

[5] *Id.* at 12, 44, 55.

[6] *Id.* at 59.

On September 6, 2006, respondent reassigned petitioner to Gomez Construction at Mandaue City. After working for a period of two weeks for Gomez Construction and upon receipt of his salary for services rendered within the said two-week period, petitioner ceased to report for work.[7] The records show that petitioner's post at Gomez Construction was the last assignment given to him by respondent.

On November 7, 2006, petitioner filed a complaint[8] against respondent with the Department of Labor and Employment (DOLE) Regional Office in Cebu City for underpayment of salary and nonpayment of other labor standard benefits. The parties agreed to settle and reached a compromise agreement. On November 27, 2006, petitioner signed a Quitclaim and Release[9] before the DOLE Regional Office in Cebu City for the amount of ₱5,000.[10]

After almost four weeks from the settlement of the case, petitioner returned to respondent's office on December 22, 2006. Petitioner claims that when he asked respondent to sign an SSS[11] Sickness Notification which he was going to use in order to avail of the discounted fees for a medical check-up, respondent allegedly refused and informed him that he was no longer an employee of the Agency. Respondent allegedly told him that when he signed the quitclaim and release form at the DOLE Regional Office, she already considered him to have quit his employment.[12] Respondent, on the other hand, counterclaims that she did not illegally dismiss petitioner and that it was a valid exercise of management prerogative that he was not given any assignment pending the submission of the required medical certificate of his fitness to work.[13]

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[7] *Id.* at 32, 44.

[8] Records, p. 12.

[9] *Id.* at 13.

[10] *Rollo*, p. 32.

[11] Social Security System.

[12] *Rollo*, p. 13.

[13] *Id.* at 107-112.

On January 26, 2007, petitioner filed a Complaint[14] for Illegal Dismissal with a prayer for the payment of separation pay in lieu of reinstatement against respondent and the Agency before the NLRC Regional Arbitration Branch No. VII, Cebu City. After trial and hearing, Labor Arbiter Maria Christina S. Sagmit rendered a Decision[15] on June 18, 2008 holding respondent and the Agency liable for illegal dismissal and ordering them to pay petitioner separation pay and back wages. The Labor Arbiter ruled,

> In the instant case, respondents failed to establish that complainant was dismissed for valid causes. For one, there is no evidence that complainant was suffering from physical illness which will explain his lack of assignment. Further, there is no admissible proof that Ravina even required complainant to submit a medical certificate. Thus, complainant could not be deemed to have refused or neglected to comply with this order.
>
> x x x x x x x x x
>
> Considering that there is no evidence that complainant was physically unfit to perform his duties, respondents must be held liable for illegal dismissal. Ordinarily, complainant will be entitled to reinstatement and full backwages. However, complainant has expressed his preference not to be reinstated. Hence, respondents must be ordered to give complainant separation pay *in lieu* of reinstatement equivalent to one month's salary for every year of service. Complainant is also entitled to full backwages from the time he was terminated until the date of this Decision.
>
> WHEREFORE, respondents Narcisa Ravina and/or St. Louis[s]e Security Agency are ordered to pay complainant the total amount EIGHTY[-]TWO THOUSAND THREE HUNDRED FORTY PESOS (₱82,340.00), consisting of ₱22,500.00 in separation pay and ₱59,840.00 in full backwages.
>
> SO ORDERED.[16]

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[14] Records, p. 249. Entitled "*Victorino Opinaldo v. Narcisa Ravina/ St. Louisse Security Agency*," and docketed as NLRC RAB Case No. VII-01-0208-2007.

[15] *Rollo*, pp. 51-54.

[16] *Id.* at 53-54.

Respondent appealed to the NLRC which, however, affirmed the decision of the Labor Arbiter and dismissed the appeal for lack of merit.[17] The NLRC ruled that there was no just and authorized cause for dismissal and held that "[w]ithout a certification from a competent public authority that [petitioner] suffers from a disease of such nature or stage that cannot be cured within a period of six (6) months even with proper medical attendance, respondents are not justified in refusing [petitioner's] presence in [the] workplace."[18] The NLRC also ruled that neither did petitioner abandon his job as his failure to work was due to "respondents turn[ing] him down."[19] Respondent moved for reconsideration but the motion was denied in a Resolution[20] dated June 30, 2009 where the NLRC reiterated its finding of illegal dismissal given the absence of any just or authorized cause for the termination of petitioner and the failure to prove abandonment on his part.

Respondent elevated the case to the CA on a Petition for *Certiorari*.[21] On October 19, 2010, the appellate court ruled for respondent and reversed and set aside the decision and resolution of the NLRC. Ruling on the issue raised by petitioner that respondent's petition should have been dismissed outright as her motion for reconsideration before the NLRC was filed out of time, the appellate court held that the issue was rendered moot and academic when the NLRC gave due course to the motion and decided the case on the merits. The appellate court further held that petitioner should have filed his comment or opposition upon the filing of the subject motion for reconsideration and not after the termination of the proceedings before the NLRC. As to the issue of illegal dismissal, the appellate court ruled that it was petitioner himself who failed to report for work and therefore severed his employment with the Agency. The CA

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

[18] *Id.* at 46.

[19] *Id.* at 47.

[20] *Id.* at 48-50.

[21] CA *rollo*, pp. 4-36.

further held that petitioner's claims relative to his alleged illegal dismissal were not substantiated. The pertinent portions of the assailed Decision reads,

> Based from the evidence on record, the chain of events started when PAIJR sent to Ravina its 15 August 2006 letter-complaint to relieve Opinaldo. This led to Opinaldo's reassignment to work for Engr. Gomez on 06 September 2006. Upon his failure to continue working for Engr. Gomez due to his refusal to obtain a medical certificate, Opinaldo filed the complaint for money claims on 07 November 2006. This was however settled when Opinaldo and Ravina signed a quitclaim on 27 November 2006. Still, Opinaldo did not obtain the medical certificate required by Ravina. Then, Opinaldo's hasty filing of a complaint for illegal dismissal against Ravina on 26 January 2007.
>
> x x x x x x x x x
>
> The requirement to undergo a medical examination is a lawful exercise of management prerogative on Ravina's part considering the charges that Opinaldo was not only suffering from hypertension but was also sleeping while on duty. The management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, **supervision** of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers.
>
> Besides, as a security guard, the need to be physically fit cannot be downplayed. If at all, Opinaldo's obstinate refusal to submit his medical certificate is equivalent to willful disobedience to a lawful order. x x x.
>
> x x x x x x x x x
>
> Verily, the totality of Opinaldo's acts justifies the dismissal of his complaint for illegal dismissal against Ravina. While it is true that the state affirms labor as a primary social economic force, we are also mindful that the management has rights which must also be respected and enforced.[22]

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[22] *Rollo*, pp. 37-38, 40.

Petitioner moved for reconsideration of the Decision but his motion was denied in the questioned Resolution of March 17, 2011 on the ground that there are neither cogent reasons nor new and substantial grounds which would warrant a reversal of the appellate court's findings. Hence, petitioner filed this petition alleging that:

[I]

THE HONORABLE COURT OF APPEALS ERRED AND DECIDED THE CASE NOT IN ACCORDANCE WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT GAVE DUE COURSE TO THE RESPONDENT'S PETITION FOR *CERTIORARI* UNDER RULE 65 DESPITE BEING FILED OUT OF TIME AND NOT PROPERLY VERIFIED

[II]

THE HONORABLE COURT OF APPEALS ERRED AND DECIDED THE CASE NOT IN ACCORDANCE WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT REVERSED AND SET ASIDE THE DECISION AND RESOLUTION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, BY DECLARING THAT THE DISMISSAL OF PETITIONER WAS LEGAL AND PROPER[23]

We first rule on the procedural issue.

Petitioner questions the appellate court for ruling that the issue of the timeliness of the filing of respondent's motion for reconsideration of the NLRC decision has become moot and academic when the NLRC dismissed the said motion based on the merits and affirmed its decision. It is the opinion of petitioner that "[this] should not and cannot be understood to mean that the motion for reconsideration was filed within the period allowed," and that "[t]he Commission may have accommodated the motion for reconsideration although belatedly filed and had chosen to decide it based on its merits x x x but it does not change the fact that the motion for reconsideration before the Commission was filed beyond the reglementary period."[24]

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

[24] *Id.* at 17.

Petitioner believes that respondent's filing of the motion for reconsideration on time is a precondition to the application of the rule that a petition for *certiorari* must be filed within 60 days from the notice of the denial of the motion for reconsideration. As petitioner puts it, "the counting of the sixty (60)[-]day period from the notice of the denial of the motion for reconsideration is proper only when the motion was filed on time."[25]

The CA, ruling that the procedural issue is already moot and academic, ratiocinated as follows:

> Anent the first issue, Ravina argues that the issue of timeliness of filing a Motion for Reconsideration with the NLRC has been dispensed with when it resolved to dismiss said Motion based on the merits and not on the mere technical issue of timeliness. Ravina further insists that had the NLRC denied said Motion based on the issue of timeliness, it would have just outrightly dismissed it based on said ground and not on the merits she raised in her Motion for Reconsideration.
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> The period within which to file a *certiorari* petition is 60 days as provided under Section 4, Rule 65 of the 1997 Rules of Civil Procedure as amended by Circular No. 39-98 and further amended by A.M. No. 00-2-03-SC, thusly:
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> > SECTION 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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To reiterate, the NLRC promulgated its challenged Decision on 24 April 2009. Ravina alleged that her former counsel received a copy of said decision on 08 June 2009. However, she changed her counsel who, in turn, obtained a copy of the decision on 17 June 2009. The NLRC then promulgated its assailed Resolution on 30

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[25] *Id.* at 19.

June 2009 which Ravina received on 29 July 2009. Ravina's Petition for *Certiorari*, dated 28 August 2009, was filed on 09 September 2009.

The reckoning period for the filing of a *certiorari* petition is sixty (60) days counted from notice of the denial of said motion. **Prescinding from the foregoing, the Petition for *Certiorari* was filed within the 60-day period.**

At this stage of the proceeding, it is futile to belabor on the timeliness of the Motion for Reconsideration. This is due to the fact that the issue of timeliness has become moot and academic considering that Ravina's Motion for Reconsideration was given due course by the NLRC. In fact, the NLRC even decided the motion on the merits and not merely on technicality.

Moreover, Opinaldo should have filed a Comment or Opposition as soon as the Motion for Reconsideration was filed. Opinaldo should not have waited for the termination of the proceedings before the NLRC. In point of fact, the belated questioning of the issue of timeliness even operated to estop Opinaldo.[26] (Emphasis ours.)

Time and again, we have ruled and it has become doctrine that the perfection of an appeal within the statutory or reglementary period and in the manner prescribed by law is mandatory and jurisdictional. Failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal.[27] In labor cases, the underlying purpose of this principle is to prevent needless delay, a circumstance which would allow the employer to wear out the efforts and meager resources of the worker to the point that the latter is constrained to settle for less than what is due him.[28]

In the case at bar, the applicable rule on the perfection of an appeal from the decision of the NLRC is Section 15, Rule VII

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

[27] *Bunagan v. Sentinel Watchman & Protective Agency, Inc.*, 533 Phil. 283, 290-291 (2006).

[28] *Id.* at 291, citing *Kathy-O Enterprises v. NLRC*, 350 Phil. 380, 389 (1998).

of the 2005 Revised Rules of Procedure of the National Labor Relations Commission:

Section 15. Motions for Reconsideration. – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.

Should a motion for reconsideration be entertained pursuant to this SECTION, the resolution shall be executory after ten (10) calendar days from receipt thereof.

We are not, however, unmindful that the NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the application of its rules in deciding labor cases. Thus, under Section 2, Rule I of the 2005 Revised Rules of Procedure of the National Labor Relations Commission it is stated:

Section 2. Construction. – These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes.

It is significant that the 2011 NLRC Rules of Procedure, under Section 2, Rule I thereof, also carries exactly the same provision. Further, the 2005 Revised Rules and the 2011 Rules carry identical provisions appearing under Section 10, Rule VII of both laws:

Section 10. Technical rules not binding. – The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

In any proceeding before the Commission, the parties may be represented by legal counsel but it shall be the duty of the Chairman,

any Presiding Commissioner or Commissioner to exercise complete control of the proceedings at all stages.

All said, despite this jurisdiction's stance towards the exercise of liberality, the rules should not be relaxed when it would render futile the very purpose for which the principle of liberality is adopted.[29] The liberal interpretation stems from the mandate that the workingman's welfare should be the primordial and paramount consideration.[30] We are convinced that the circumstances in the case at bar warranted the NLRC's exercise of liberality when it decided respondent's motion for reconsideration on the merits.

The subject motion for reconsideration of the NLRC decision was filed on June 25, 2009. The evidence on record shows that the decision of the NLRC dated April 24, 2009 was received by respondent herself on June 17, 2009. The same decision was, however, earlier received on June 8, 2009 by respondent's former counsel who allegedly did not inform respondent of the receipt of such decision until respondent went to his office on June 23, 2009 to get the files of the case. If we follow a strict construction of the ten-day rule under the 2005 Revised Rules of Procedure of the National Labor Relations Commission and consider notice to respondent's former counsel as notice to respondent herself, the expiration of the period to file a motion for reconsideration should have been on June 18, 2009. The NLRC, however, chose a liberal application of its rules: it decided the motion on the merits. Nevertheless, it denied reconsideration.

We defer to the exercise of discretion by the NLRC and uphold its judgment in applying a liberal construction of its procedural and technical rules to this case in order to ventilate and resolve the issues raised by respondent in the motion for reconsideration and fully resolve the case on the merits. It would be purely conjectural to challenge the NLRC's exercise of such liberality for being tainted with grave abuse of discretion especially that it did not reverse, but even affirmed, its questioned decision –

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[29] *Supra* note 27, at 291.

[30] *Id.*, citing *Santos v. Velarde*, 450 Phil. 381, 390-391 (2003).

which sustained the ruling of the Labor Arbiter – that respondent illegally dismissed petitioner. In view of such disposition, that the NLRC gave due course to the motion in the interest of due process and to render a full resolution of the case on the merits is the more palpable explanation for the liberal application of its rules. It is significant to note that neither did petitioner ever raise the issue of the NLRC's ruling on the merits of the subject motion for reconsideration. And the reason is clear: the motion for reconsideration was resolved in favor of petitioner. Furthermore, if the NLRC accorded credibility to the explanation proffered by respondent for its belated filing of the motion, we cannot now second-guess the NLRC's judgment in view of the circumstances of the case and in the absence of any showing that it gravely abused its discretion.

In light of the foregoing, we cannot uphold the stand of petitioner that the petition for *certiorari* before the CA was filed out of time, and at the same time rule that the NLRC acted in the proper exercise of its jurisdiction when it liberally applied its rules and resolved the motion for reconsideration on the merits. To so hold would nullify the latitude of discretion towards liberal construction granted to the NLRC under the 2005 Revised Rules of Procedure of the National Labor Relations Commission – including the decisions and resolutions rendered in the exercise of such discretion.

Petitioner also claims that the verification in respondent's petition for *certiorari* before the CA suffers from infirmity because it was based only on "personal **belief** and information." As it is, petitioner argues that it does not comply with Section 4,[31]

[31] SEC. 4. *Verification.* – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

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.

A pleading is required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading." (As amended by A.M. No. 00-2-10-SC, May 1, 2000.)

Rule 7 of the 1997 Rules on Civil Procedure, as amended, which requires a pleading to be 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.[32] The petition must therefore be considered as an unsigned pleading producing no legal effect under Section 3,[33] Rule 7 of the Rules and should have resulted in the outright dismissal of the petition.

It is a matter of procedural consequence in the case at bar that whether we strictly or liberally apply the technical rules on the requirement of verification in pleadings, the disposition of the case will be the same. If we sustain petitioner's stance that the petition before the CA should have been outrightly dismissed, the NLRC decision finding the dismissal of petitioner as illegal would have reached finality. On the other hand, if we adopt respondent's view that the defect in the verification of the petition is merely a formal defect and is neither jurisdictional nor fatal, we will be sustaining the appellate court's giving due course to the petition. However, on substantive grounds, we reverse the appellate court's decision and reinstate the finding of illegal dismissal by the NLRC and the Labor Arbiter.

The appellate court reversed both the NLRC and the Labor Arbiter in consideration of the following factors: that petitioner

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[32] *Id.* Emphasis ours.

[33] SEC. 3. *Signature and address*. – Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

did not counter respondent's receipt of the letter-complaint of PAIJR relative to his work performance; that petitioner did not refute the fact that respondent required him to submit a medical certificate; and, that petitioner failed to comply with the requirement to submit the medical certificate. Hence, when petitioner failed to submit the required medical certificate, the appellate court found it to be a valid exercise of management prerogative on the part of respondent not to give petitioner any work assignment pending its submission.

We do not agree.

Jurisprudence is replete with cases recognizing the right of the employer to have free reign and enjoy sufficient discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative where the free will of management to conduct its own affairs to achieve its purpose takes form.[34] Even labor laws discourage interference with the exercise of such prerogative and the Court often declines to interfere in legitimate business decisions of employers.[35] However, the exercise of management prerogative is not unlimited. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[36] Hence, in the exercise of its management prerogative, an employer must ensure that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.[37]

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[34] *The Coca-Cola Export Corporation v. Gacayan,* G.R. No. 149433, December 15, 2010, 638 SCRA 377, 398-399, citing *St. Michael's Institute v. Santos,* G.R. No. 145280, December 4, 2001, 371 SCRA 383, 391.

[35] *Supreme Steel Corporation v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL),* G.R. No. 185556, March 28, 2011, 646 SCRA 501, 525.

[36] *Id.*, citing *Dole Philippines, Inc. v. Pawis ng Makabayang Obrero (PAMAO-NFL),* 443 Phil. 143, 149 (2003).

[37] *The Coca-Cola Export Corporation v. Gacayan, supra* note 34, at 399.

In the case at bar, we recognize, as did the appellate court, that respondent's act of requiring petitioner to undergo a medical examination and submit a medical certificate is a valid exercise of management prerogative. This is further justified in view of the letter-complaint from one of respondent's clients, PAIJR, opining that petitioner was "no longer physically fit to perform his duties and responsibilities as a company guard because of his health condition."[38] To be sure, petitioner's job as security guard naturally requires physical and mental fitness under Section 5 of Republic Act No. 5487,[39] as amended by Presidential Decree No. 100.[40]

While the necessity to prove one's physical and mental fitness to be a security guard could not be more emphasized, the question to be settled is whether it is a valid exercise of respondent's management prerogative to prevent petitioner's continued employment with the Agency unless he presents the required medical certificate. Respondent argues, *viz.*:

> Thus, respondents in the exercise of their MANAGEMENT PREROGATIVE required Complainant to submit a Medical Certificate to prove that he is "PHYSICALLY AND MENTALLY FIT" for work as Security Guard. Unfortunately, however, up to the present time, complainant failed to submit said Medical Examination and Findings giving him clean bill of health, to respondents. Herein respondents are ready and willing to accept him as such Security Guard once he could submit said Medical Examination and Findings.
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> The requirement anent the presentation of such MEDICAL CERTIFICATE by Complainant to Respondents is but a Management Measure of ensuring Respondents including Complainant that Complainant is physically and mentally fit for continued Employment

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[38] *Supra* note 6.

[39] Otherwise known as AN ACT TO REGULATE THE ORGANIZATION AND OPERATION OF PRIVATE DETECTIVE, WATCHMEN OR SECURITY GUARDS AGENCIES, as amended by Presidential Decree No. 11, October 3, 1972.

[40] Issued on January 17, 1973, entitled "AMENDING FURTHER CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED FIFTY-FOUR HUNDRED EIGHTY-SEVEN, OTHERWISE KNOWN AS 'THE PRIVATE SECURITY AGENCY LAW,' AS AMENDED BY PRESIDENTIAL DECREE NO. 11, DATED OCTOBER 3, 1972."

and will not in any manner pose a danger or, threat to the respondents' properties and lives of their customers and other employees as well as to the person and life of Complainant himself.[41]

It is utterly significant in the case at bar that a considerably long period has lapsed from petitioner's last day of recorded work on September 21, 2006 until he was informed by respondent on December 22, 2006 that he was no longer an employee of the Agency. In the words of petitioner, he had been on a "floating status"[42] for three months. Within this period, petitioner did not have any work assignment from respondent who proffers the excuse that he has not submitted the required medical certificate. While it is a management prerogative to require petitioner to submit a medical certificate, we hold that respondent cannot withhold petitioner's employment without observing the principles of due process and fair play.

The Labor Arbiter and the CA have conflicting findings with respect to the submission of the medical certificate. The Labor Arbiter observed that "there is no admissible proof that [respondent] even required [petitioner] to submit a medical certificate. Thus, [petitioner] could not be deemed to have refused or neglected to comply with this order."[43] The CA countered that while there is no documentary evidence to prove it, the admission of both parties establishes that there is a pending requirement for a medical certificate and it was not complied with by petitioner. We agree with the appellate court that despite the lack of documentary evidence, both parties have admitted to respondent's medical certificate requirement. We so hold despite petitioner's protestations that what respondent required of him was to submit himself to a medical check-up, and not to submit a medical certificate. Even if petitioner's allegation is to be believed, the fact remains that he did not undergo the medical check-up which he himself claims to have been required by respondent.

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[41] *Rollo*, p. 57.

[42] *Id.* at 13.

[43] *Id.* at 53.

All said, what behooves the Court is the lack of evidence on record which establishes that respondent informed petitioner that his failure to submit the required medical certificate will result in his lack of work assignment. It is a basic principle of labor protection in this jurisdiction that a worker cannot be deprived of his job without satisfying the requirements of due process.[44] Labor is property and the right to make it available is next in importance to the rights of life and liberty.[45] As enshrined under the Bill of Rights, no person shall be deprived of life, liberty or property without due process of law.[46] The due process requirement in the deprivation of one's employment is transcendental that it limits the exercise of the management prerogative of the employer to control and regulate the affairs of the business. In the case at bar, all that respondent employer needed to prove was that petitioner employee was notified that his failure to submit the required medical certificate will result in his lack of work assignment – and eventually the termination of his employment – as a security guard. There is no iota of evidence in the records, save for the bare allegations of respondent, that petitioner was notified of such consequence for non-submission. In truth, the facts of the case clearly show that respondent even reassigned petitioner to Gomez Construction from his PAIJR post despite the non-submission of a medical certificate. If it was indeed the policy of respondent not to give petitioner any work assignment without the medical certificate, why was petitioner reassigned despite his noncompliance?

That is not all. In addition to invoking management prerogative as a defense, respondent also alleges abandonment. Respondent claims that after petitioner received his last salary from his assignment with Gomez Construction, he no longer reported

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[44] *Polsotin, Jr. v. De Guia Enterprises, Inc.*, G.R. No. 172624, December 5, 2011, 661 SCRA 523, 524, citing the 1987 CONSTITUTION, Article III, Section 1.

[45] *Sagales v. Rustan's Commercial Corporation*, G.R. No. 166554, November 27, 2008, 572 SCRA 89, 91, citing *Slaughter House Cases*, 16 Wall. (83 US) 36, 127.

[46] *Supra* note 44.

for work. The assailed Decision found that petitioner indeed abandoned his work, *viz.*:

> It was only when Opinaldo refused to report for work on his assignment for Engr. Gomez after having received his salary for work rendered starting on 06 September 2006 that Ravina became firm that the medical certificate should be submitted. But, Opinaldo did not heed Ravina's order. It was Opinaldo who altogether failed to report for work.[47]

We disagree.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[48] To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[49] None of these elements is present in the case at bar. As succinctly stated by the NLRC:

> From respondents' own admission in their position paper, it is clear that they prevented [petitioner's] continued employment with them unless the latter presents a medical certificate that he is physically and mentally fit for work x x x.
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> x x x x x x x x x

Moreover, if it was really true that complainant abandoned his work, then why have not respondents sent him a notice to report back for work? It is evident then that respondents found an excuse to decline complainant's continued stay with them on the pretext that he has to submit first a medical certificate before he could be allowed to resume employment.[50]

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[47] *Rollo*, p. 39.

[48] *NEECO II v. National Labor Relations Commission*, 499 Phil. 777, 789 (2005).

[49] *Northwest Tourism Corporation v. Former Special 3rd Division of Court of Appeals*, 500 Phil. 85, 95 (2005).

[50] *Rollo*, pp. 45-46.

Finally, respondent harps that she could not be held liable for illegal dismissal because, in the first place, she did not dismiss petitioner. Respondent maintains that she merely refused to give petitioner any work assignment until the submission of a medical certificate. On this issue, the CA concurred with respondent and ruled that petitioner failed to "establish the facts which would paint the picture that [respondent] terminated him."[51]

We need not reiterate that respondent did not properly exercise her management prerogative when she withheld petitioner's employment without due process. Respondent failed to prove that she has notified petitioner that her continuous refusal to provide him any work assignment was due to his non-submission of the medical certificate. Had respondent exercised the rules of fair play, petitioner would have had the option of complying or not complying with the medical certificate requirement – having full knowledge of the consequences of his actions. Respondent failed to do so and she cannot now hide behind the defense that there was no illegal termination because petitioner cannot show proof that he had been illegally dismissed. It is a time-honored legal principle that the employer has the *onus probandi* to show that the dismissal or termination was for a just and authorized cause under the Labor Code. Respondent failed to show that the termination was justified and authorized, nor was it done as a valid exercise of management prerogative. Given the circumstances in the case at bar, it is not fair to shift the burden to petitioner, and rule that he failed to prove his claim, when respondent had successfully terminated the employer-employee relationship without leaving a paper trail in a clear case of illegal dismissal.

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** The assailed Decision dated October 19, 2010 and Resolution dated March 17, 2011 of the Court of Appeals in CA-G.R. SP No. 04479 dismissing petitioner's Complaint for Illegal Dismissal are hereby **REVERSED** and **SET ASIDE.** The Decision and Resolution dated April 24, 2009 and June 30,

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[51] *Id.* at 39.

2009, respectively, of the NLRC in NLRC Case No. VAC 01-000081-2009 (RAB Case No. VII-01-0208-2007) requiring respondent Narcisa Ravina and/or St. Louisse Security Agency to pay petitioner Victorino Opinaldo the total amount of ₱82,340 consisting of ₱22,500 in separation pay and ₱59,840 in full back wages, are hereby **REINSTATED and UPHELD.**

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 198261. October 16, 2013]

HECHANOVA BUGAY VILCHEZ LAWYERS, HECHANOVA & CO., INC., and ATTY. EDITHA R. HECHANOVA, *petitioners, vs.* **ATTY. LENY O. MATORRE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE RESIGNATION OF RESPONDENT WAS VOLUNTARY AND SHE WAS NOT CONSTRUCTIVELY DISMISSED.— The resignation of Atty. Matorre was voluntary and she was not constructively dismissed. Atty. Matorre failed to prove that her resignation was not voluntary, and that Atty. Hechanova and other members of HBV Law Firm committed acts against her that would constitute constructive dismissal. Atty. Matorre was not able to prove her allegations of harassment, insults, and verbal abuse on the part of Atty. Hechanova. The case of *Vicente v. Court of Appeals (Former 17th Div.)* is instructive on this matter. In the case at bar and in *Vicente*, the fact of

resignation is not disputed, but only the voluntariness thereof. In *Vicente*, the employee alleged that her employer forced her to resign. The Court held that she voluntarily resigned and was not constructively dismissed. The Court said, Hence, petitioner cannot take refuge in the argument that it is the employer who bears the burden of proof that the resignation is voluntary and not the product of coercion or intimidation. **Having submitted a resignation letter, it is then incumbent upon her to prove that the resignation was not voluntary but was actually a case of constructive dismissal with clear, positive, and convincing evidence.** Petitioner failed to substantiate her claim of constructive dismissal. x x x We agree with the Court of Appeals that it was grave error on the part of the NLRC to rely on the allegation that Mr. Tecson threatened and forced petitioner to resign. Other than being unsubstantiated and self-serving, the allegation does not suffice to support the finding of force, intimidation, and ultimately constructive dismissal. **Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence**.

2. **ID.; ID.; ID.; RESPONDENT'S CLAIMS OF VERBAL ABUSE AND INSULTS LACKS CORROBORATION AND ARE CONSIDERED SELF-SERVING WHICH SHOULD NOT BE GIVEN EVIDENTIARY WEIGHT.—** Atty. Matorre was not able to present a single witness to corroborate her claims of verbal abuse and insults from Atty. Hechanova. She was only able to adduce transcriptions of what she claims were conversations between her and Atty. Hechanova, and nothing more. These are indeed self-serving and uncorroborated and should not be given evidentiary weight. On the other hand, the body of evidence presented by HBV Law Firm would show affidavits demonstrating that the other personnel in the said law firm neither heard nor saw any inappropriate behavior on the part of Atty. Hechanova towards Atty. Matorre. The Affidavit of Gladies Nepomuceno, the secretary of HBV Law Firm, states that the said affiant did "not believe that Atty. Matorre was treated like a slave" by the firm, as Atty. Matorre argued. The Affidavit of Gladys C. Vilchez, a partner at HBV Law Firm, states that Atty. Vilchez, whose room was near Atty. Matorre's, never heard Atty. Hechanova shout at Atty. Matorre nor speak to her in an offensive manner.

3. ID.; ID.; ID.; THE EMPLOYER'S ACT OF MOVING THE EFFECTIVITY DATE OF RESPONDENT'S RESIGNATION IS NOT AN ACT OF HARASSMENT; THE 30-DAY NOTICE REQUIREMENT FOR AN EMPLOYEE'S RESIGNATION IS ACTUALLY FOR THE BENEFIT OF THE EMPLOYER WHO HAS THE DISCRETION TO WAIVE SUCH PERIOD.— The act of HBV Law Firm of moving the effectivity date of Atty. Matorre's resignation from September 30, 2008 to September 15, 2008 is not an act of harassment, as Atty. Matorre would have us believe. The 30-day notice requirement for an employee's resignation is actually for the benefit of the employer who has the discretion to waive such period. Its purpose is to afford the employer enough time to hire another employee if needed and to see to it that there is proper turn-over of the tasks which the resigning employee may be handling. As one author puts it, x x x The rule requiring an employee to stay or complete the 30-day period prior to the effectivity of his resignation becomes discretionary on the part of management as **an employee who intends to resign may be allowed a shorter period before his resignation becomes effective**. Moreover, the act of HBV Law Firm of moving the effectivity date of Atty. Matorre's resignation to an earlier date cannot be seen as a malicious decision on the part of the firm in order to deprive Atty. Matorre of an opportunity to seek new employment. This decision cannot be viewed as an act of harassment but rather merely the exercise of the firm's management prerogative. Surely, we cannot expect employers to maintain in their employ employees who intend to resign, just so the latter can have continuous work as they look for a new source of income.

4. ID.; ID.; ID.; THE FACT THAT THE EMPLOYER WAS NO LONGER ASSIGNING NEW WORK TO RESPONDENT AFTER HER RESIGNATION IS NOT AN ACT OF HARASSMENT, BUT AN EXERCISE OF MANAGEMENT PREROGATIVE.— The fact that HBV Law Firm was no longer assigning new work to Atty. Matorre after her resignation is not an act of harassment, but is also an exercise of management prerogative. Expecting that Atty. Matorre would no longer be working for HBV Law Firm after three to four weeks, she was no longer given additional assignments to ensure a smooth turn-over of duties and work. Indeed, having an employee focus on her remaining tasks and

not assigning new ones to her would be beneficial on the part of HBV Law Firm as there would in fact be less tasks to be turned over to Atty. Matorre's replacement. Said actuation is well within the ambit of the firm's management prerogative, and is certainly not an act of harassment.

5. ID.; ID.; ID.; SINCE RESPONDENT ADMITTEDLY RESIGNED, IT WAS INCUMBENT UPON HER TO PROVE HER RESIGNATION WAS NOT VOLUNTARY, BUT WAS ACTUALLY A CASE OF CONSTRUCTIVE DISMISSAL, WITH CLEAR, POSITIVE, AND CONVINCING EVIDENCE.— To reiterate, in line with settled jurisprudence, since Atty. Matorre admittedly resigned, it was incumbent upon her to prove that her resignation was not voluntary, but was actually a case of constructive dismissal, with clear, positive, and convincing evidence. As shown above, Atty. Matorre failed to present any evidence of constructive dismissal, such as proof of the alleged harassment, insults, and verbal abuse she allegedly received during her stay at HBV Law Firm that led her to terminate her employment. Thus, it can be concluded that she resigned voluntarily. Since Atty. Matorre failed to prove that she was illegally or constructively dismissed, there is no need to discuss the issue of her monetary claims due to her lack of entitlement thereto.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.
Froilan M. Bacungan & Associates for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal under Rule 45 is the March 14, 2011 Decision[1] of the Court of Appeals (CA) which upheld the Decision[2] of

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[1] *Rollo*, pp. 70-84. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Amelita G. Tolentino and Elihu A. Ybañez concurring. The assailed CA decision was rendered in CA-G.R. SP No. 115266.

[2] *Id.* at 416-430. The decision was rendered by the NLRC, Sixth Division, Quezon City in NLRC LAC No. 06-001574-09.

the National Labor Relations Commission (NLRC) that set aside the Decision[3] of the Labor Arbiter in NLRC-NCR Case No. 09-12260-08. Likewise challenged is the Resolution[4] denying reconsideration of the said CA decision.

The assailed CA decision upheld the finding of the NLRC that respondent Atty. Leny O. Matorre (Atty. Matorre) was constructively dismissed by petitioners Hechanova Bugay Vilchez Lawyers (HBV Law Firm), Hechanova & Co., Inc. and Atty. Editha R. Hechanova (Atty. Hechanova). The Labor Arbiter, whose decision was overturned by the NLRC had earlier dismissed the complaint filed by Atty. Matorre alleging that she was constructively dismissed.[5]

The facts follow:

Atty. Matorre claimed that on August 1, 2008, she was employed by HBV Law Firm as a Senior Associate Attorney. Due to her work experience, her probationary period was waived and she was immediately employed as a regular employee of the said law firm with a monthly salary of ₱40,000, consultancy fee of ₱5,000, and an incentive pay equivalent to 8% of ₱1,500 per billable hour.[6]

As the managing partner of HBV Law Firm, Atty. Hechanova was the one who supervised Atty. Matorre and gave her work assignments.

On August 11, 2008, Atty. Matorre, orally or through e-mails, started to express her feelings of being harassed by Atty. Hechanova.

In an e-mail[7] sent to Atty. Hechanova on August 11, 2008, Atty. Matorre wrote:

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[3] *Id.* at 371-379.

[4] *Id.* at 86-87.

[5] *Id.* at 379.

[6] See Employment Contract and Consultancy Contract, *rollo*, pp. 123-127.

[7] *Id.* at 146-147.

Ma'am Edith,

I cannot register yet the corporate name of Big Flick Animation with SEC online because the steps to be done require a lot of time and its system or our system is very slow before I proceed to the next step [sic].

I regret to realize [sic] that you seem to be not pleased with my work output so far, even if I am trying and doing my best to adjust with your work style here, x x x.

Honestly, I get seriously offended every time you speak to me because you always get irritated about the things I say, that I hesitate now to approach you personally to find out what I need to know about a certain assignment.

I feel so humiliated whenever you scold me or whenever you raise your voice within the hearing [sic] of x x x other associate lawyers at a distance [sic]. I feel so embarrassed because it seems that you make it appear I am so stupid x x x.

x x x x x x x x x

Hoping for your understanding and I pray that you would have a not-so-stressful work schedule, so that you can keep your cool at all times.

Thanks a lot.
[L]eny

Atty. Matorre also explained[8] that she intended to improve her work and that she was not making excuses when she could not accomplish assigned tasks on time.

During a meeting between Atty. Matorre and Atty. Hechanova on August 19, 2008,[9] Atty. Matorre told Atty. Hechanova that since she (Atty. Hechanova) was not satisfied with her work and because they were frequently arguing with each other, it would be best if she (Atty. Matorre) resigns from the firm.[10] Atty. Matorre requested that her resignation be made effective

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[8] *Id.* at 148.

[9] August 16, 2008 and August 18, 2008 in some parts of the records.

[10] *Rollo*, p. 73.

on September 30, 2008, but thinking that the said date was too far off, Atty. Hechanova accepted the resignation, with the condition that it be made effective on September 15, 2008.[11]

Atty. Matorre, in her own Position Paper[12] which she submitted to the NLRC, admitted to the fact of her resignation. She recalled the conversation between her and Atty. Hechanova thus:

Complainant [Atty. Matorre]: *Ma'am kung sa tingin po ninyo, wala akong ginagawa o nagagawang trabaho, kahit na kung tutuusin araw-araw akong may natatapos na trabaho,* ***mas mabuti pa po sigurong mag-resign na lang ho ako, kasi lagi na lang po ninyo akong hinahanapan ng mali at kinagagalitan kahit hindi naman kailangang pagalitan. Hindi po tayo nagkakasundo sa trabaho****.*

Respondent [Atty. Hechanova]: *Okay, if that is what you like!*

Complainant [Atty. Matorre]: *Pero Ma'am kung pwede po sana sa katapusan na lang ang effectivity, sa katapusan po ng September, kasi alanganin po kung katapusan ng August, para may enough time pa po ako maghanap ng new job.*

Respondent [Atty. Hechanova]: *No, you make it earlier! Pumunta ka na ng SEC habang maaga pa kasi almost 2:00 p.m. na!*

Complainant [Atty. Matorre]: *Sige po*.[13]

On September 1, 2008, Atty. Matorre received a letter[14] from Atty. Hechanova conveying the latter's acceptance of her oral resignation. Atty. Hechanova's secretary, Gladies Nepomuceno, attested[15] that when Atty. Matorre received the aforementioned letter, Atty. Matorre merely said "okay" without displaying any sign of protest.

On September 1, 2008, Atty. Matorre filed a complaint for constructive illegal dismissal, nonpayment of separation pay,

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[11] *Id.*

[12] *Id.* at 155-184.

[13] *Id.* at 162-163.

[14] *Id.* at 141.

[15] *Id.* at 75, 139-140.

and for payment of moral and exemplary damages and attorneys' fees against HBV Law Firm.

During the mandatory conference on September 18, 2008, Atty. Matorre stated that her demands consist of damages in the amount of ₱850,000 and a public apology.[16]

During the conciliation conference on October 23, 2008, HBV Law Firm stated that it has no offer for settlement.[17]

On November 13, 2008, during the conciliation conference, upon previous order of the Labor Arbiter, HBV Law Firm gave Atty. Matorre's last pay, consultancy fee, and incentive pay in the total amount of ₱48,492.35.[18]

In a Decision[19] dated April 22, 2009, the Labor Arbiter rendered judgment in favor of HBV Law Firm by dismissing Atty. Matorre's complaint for lack of merit. It held that Atty. Matorre voluntarily resigned from her employment on August 19, 2008, and that Atty. Hechanova readily accepted Atty. Matorre's oral resignation "when [as Atty. Matorre was] in the [process] of orally tendering her resignation, [Atty. Hechanova] intimated her intention of shortening the period of effectivity of [Atty. Matorre's] resignation from 30 September 2008 to 15 September 2008."[20]

The Labor Arbiter cited jurisprudence stating that "[o]nce resignation is accepted, the employee no longer has any right to the job. It, therefore, goes without saying that resignation terminates the employer-employee relationship."[21]

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[16] *Id.* at 374.

[17] *Id.*

[18] *Id.*

[19] *Supra* note 3.

[20] *Id.* at 377.

[21] *Id.* at 378, citing *Philippine National Construction Corporation v. National Labor Relations Commission,* G.R. No. 117240, October 2, 1997, 280 SCRA 109, 113 and *Intertrod Maritime, Inc. v. NLRC*, G.R. No. 81087, June 19, 1991, 198 SCRA 318, 324.

The Labor Arbiter also denied Atty. Matorre's monetary claims since she was not illegally dismissed, holding that these claims could not be awarded because of her "failure to prove that she was terminated from her employment with the requisite malice and/or bad faith."[22]

On May 13, 2010, the NLRC reversed[23] the Decision of the Labor Arbiter and declared that Atty. Matorre was illegally dismissed.

The NLRC held *inter alia* that a written resignation is the proper proof of her alleged voluntary resignation.[24] The NLRC also reasoned that Atty. Hechanova's act of moving Atty. Matorre's last day of employment with HBV Law Firm from September 30, 2008 to September 15, 2008 is an act of harassment.[25] This act, according to the NLRC, pushed Atty. Matorre, leaving her with no other option or time to save her job or look for another one.[26] The NLRC stated that this, along with Atty. Hechanova's refusal to give Atty. Matorre any assignment, her assignment of a subordinate to perform Atty. Matorre's function while the latter was still in the office, and Atty. Hechanova's continuing harassment are "all clear acts constituting constructive dismissal."[27]

The NLRC thus awarded to Atty. Matorre full back wages and benefits from the time of illegal dismissal amounting to ₱936,000, separation pay amounting to ₱90,000, moral damages amounting to ₱200,000, exemplary damages amounting to ₱100,000, and attorney's fees equivalent to 10% of the monetary award.[28]

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[22] *Id.* at 379.

[23] See NLRC Decision, *supra* note 2.

[24] *Id.* at 423.

[25] *Id.* at 424.

[26] *Id.*

[27] *Id.*

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

Aggrieved, HBV Law Firm filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion in holding that Atty. Matorre was constructively dismissed.

The CA posed this query to resolve the matter: Whether Atty. Matorre's utterance during her conversation with Atty. Hechanova on August 19, 2008 constitutes voluntary resignation on her part.[29] If said resignation was a forced one, the CA continued, it is a clear case of constructive dismissal equivalent to illegal dismissal.[30]

On March 14, 2011, the CA upheld the ruling of the NLRC and held that no voluntary resignation took place.[31] It ruled in favor of Atty. Matorre, saying that she was illegally dismissed in light of the circumstances surrounding the supposed resignation.[32]

The CA cited jurisprudence saying that constructive dismissal is a cessation of work because continued employment has been rendered impossible, unreasonable, or unlikely, as when there is a demotion in rank or diminution in pay or both or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[33]

The CA justified the existence of constructive dismissal by arguing that ***first***, Atty. Hechanova belittled Atty. Matorre regarding her work performance thus causing her emotional strain; ***second***, when Atty. Matorre allegedly tendered her resignation, HBV Law Firm moved the period of effectivity thereof to an earlier date, thus making it more difficult for Atty. Matorre to find employment elsewhere; and ***third***, the refusal of HBV Law

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[29] *Id.* at 78.

[30] *Id.*

[31] See CA Decision, *supra* note 1.

[32] *Id.* at 79.

[33] *Id.* at 81-82, citing *CRC Agricultural Trading v. National Labor Relations Commission*, G.R. No. 177664, December 23, 2009, 609 SCRA 138, 149.

Firm to give assignments to Atty. Matorre while she was still at the office is indicative of harassment on their part.[34] The CA held that all these circumstances, taken together, constitute constructive dismissal.[35]

Petitioners are now before this Court asserting that the CA erred in not finding that Atty. Matorre's resignation was voluntary and that she was not constructively dismissed.

It should be noted that the fact of resignation is now undisputed. What remains to be determined is whether Atty. Matorre voluntarily resigned or was constructively dismissed by petitioners.

We find the petition meritorious. The resignation of Atty. Matorre was voluntary and she was not constructively dismissed.

Atty. Matorre failed to prove that her resignation was not voluntary, and that Atty. Hechanova and other members of HBV Law Firm committed acts against her that would constitute constructive dismissal.

Atty. Matorre was not able to prove her allegations of harassment, insults, and verbal abuse on the part of Atty. Hechanova.

The case of *Vicente v. Court of Appeals (Former 17th Div.)*[36] is instructive on this matter. In the case at bar and in *Vicente*, the fact of resignation is not disputed, but only the voluntariness thereof. In *Vicente*, the employee alleged that her employer forced her to resign. The Court held that she voluntarily resigned and was not constructively dismissed. The Court said,

> Hence, petitioner cannot take refuge in the argument that it is the employer who bears the burden of proof that the resignation is voluntary and not the product of coercion or intimidation. **Having submitted a resignation letter, it is then incumbent upon her to**

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

[35] *Id.* at 83.

[36] 557 Phil. 777 (2007).

prove that the resignation was not voluntary but was actually a case of constructive dismissal with clear, positive, and convincing evidence. Petitioner failed to substantiate her claim of constructive dismissal.

x x x x x x x x x

We agree with the Court of Appeals that it was grave error on the part of the NLRC to rely on the allegation that Mr. Tecson threatened and forced petitioner to resign. Other than being unsubstantiated and self-serving, the allegation does not suffice to support the finding of force, intimidation, and ultimately constructive dismissal.

Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[37] (Emphases supplied.)

Digitel Telecommunications Philippines, Inc. v. Soriano[38] is similarly enlightening. In that case, the employee, a Director for Market and Communications, claimed that her employers harassed her to compel her to resign. This Court found that the employee failed to present a single witness to substantiate her claims of harassment and that her narration of events was unbelievable and contrary to human experience. It was then held that she failed to prove that she was constructively dismissed.

In relation to the two abovementioned decided cases, in the case of Atty. Matorre, she also presented no evidence of constructive dismissal, apart from her self-serving and uncorroborated allegations.

First, Atty. Matorre was not able to present a single witness to corroborate her claims of verbal abuse and insults from Atty. Hechanova. She was only able to adduce transcriptions[39] of what she claims were conversations between her and Atty. Hechanova, and nothing more. These are indeed self-serving and uncorroborated and should not be given evidentiary weight.

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[37] *Id.* at 786-787.

[38] 525 Phil. 765 (2006).

[39] See Position Paper and Comment, *rollo*, pp. 155-184, 583-599.

On the other hand, the body of evidence presented by HBV Law Firm would show affidavits demonstrating that the other personnel in the said law firm neither heard nor saw any inappropriate behavior on the part of Atty. Hechanova towards Atty. Matorre.

The Affidavit of Gladies Nepomuceno,[40] the secretary of HBV Law Firm, states that the said affiant did "not believe that Atty. Matorre was treated like a slave" by the firm, as Atty. Matorre argued.

The Affidavit of Gladys C. Vilchez,[41] a partner at HBV Law Firm, states that Atty. Vilchez, whose room was near Atty. Matorre's, never heard Atty. Hechanova shout at Atty. Matorre nor speak to her in an offensive manner.

Second, the act of HBV Law Firm of moving the effectivity date of Atty. Matorre's resignation from September 30, 2008 to September 15, 2008 is not an act of harassment, as Atty. Matorre would have us believe. The 30-day notice requirement for an employee's resignation is actually for the benefit of the employer who has the discretion to waive such period. Its purpose is to afford the employer enough time to hire another employee if needed and to see to it that there is proper turn-over of the tasks which the resigning employee may be handling. As one author[42] puts it,

> x x x The rule requiring an employee to stay or complete the 30-day period prior to the effectivity of his resignation becomes discretionary on the part of management as **an employee who intends to resign may be allowed a shorter period before his resignation becomes effective**. (Emphasis supplied.)

Moreover, the act of HBV Law Firm of moving the effectivity date of Atty. Matorre's resignation to an earlier date cannot be

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[40] *Id.* at 225-227.

[41] *Id.* at 266.

[42] II C.A. Azucena, Jr., *THE LABOR CODE WITH COMMENTS AND CASES*, 888 (2007, 6th ed.).

seen as a malicious decision on the part of the firm in order to deprive Atty. Matorre of an opportunity to seek new employment. This decision cannot be viewed as an act of harassment but rather merely the exercise of the firm's management prerogative. Surely, we cannot expect employers to maintain in their employ employees who intend to resign, just so the latter can have continuous work as they look for a new source of income.

Third, the fact that HBV Law Firm was no longer assigning new work to Atty. Matorre after her resignation is not an act of harassment, but is also an exercise of management prerogative.

Expecting that Atty. Matorre would no longer be working for HBV Law Firm after three to four weeks, she was no longer given additional assignments to ensure a smooth turn-over of duties and work. Indeed, having an employee focus on her remaining tasks and not assigning new ones to her would be beneficial on the part of HBV Law Firm as there would in fact be less tasks to be turned over to Atty. Matorre's replacement. Said actuation is well within the ambit of the firm's management prerogative, and is certainly not an act of harassment.

To reiterate, in line with settled jurisprudence,[43] since Atty. Matorre admittedly resigned, it was incumbent upon her to prove that her resignation was not voluntary, but was actually a case of constructive dismissal, with clear, positive, and convincing evidence.

As shown above, Atty. Matorre failed to present any evidence of constructive dismissal, such as proof of the alleged harassment, insults, and verbal abuse she allegedly received during her stay at HBV Law Firm that led her to terminate her employment. Thus, it can be concluded that she resigned voluntarily.

Since Atty. Matorre failed to prove that she was illegally or constructively dismissed, there is no need to discuss the issue of her monetary claims due to her lack of entitlement thereto.

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[43] See *Vicente v. Court of Appeals (Former 17th Div.)*, *supra* note 36, at 787.

WHEREFORE, the petition is **GRANTED.** The Decision dated March 14, 2011 and Resolution dated August 12, 2011 of the Court of Appeals in CA-G.R. SP No. 115266 are **REVERSED and SET ASIDE.** The Decision of the Labor Arbiter dated April 22, 2009 is hereby **REINSTATED.** The complaint of respondent Atty. Leny O. Matorre for illegal dismissal is **DISMISSED** in its entirety for lack of merit.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198780. October 16, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LIBERTY D. ALBIOS,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ESSENTIAL REQUISITES OF A VALID MARRIAGE; CONSENT; MUST BE FREELY GIVEN AND MUST ALSO BE CONSCIOUS OR INTELLIGENT, IN THAT THE PARTIES MUST BE CAPABLE OF INTELLIGENTLY UNDERSTANDING THE NATURE OF, AND BOTH THE BENEFICIAL OR UNFAVORABLE CONSEQUENCES OF THEIR ACT.— Under said Article 2, for consent to be valid, it must be (1) freely given and (2) made in the presence of a solemnizing officer. A "freely given" consent requires that the contracting parties willingly and deliberately enter into the marriage. Consent must be *real* in the sense that it is not vitiated nor rendered defective by any of the vices of consent under

Articles 45 and 46 of the Family Code, such as fraud, force, intimidation, and undue influence. Consent must also be *conscious or intelligent*, in that the parties must be capable of intelligently understanding the nature of, and both the beneficial or unfavorable consequences of their act. Their understanding should not be affected by insanity, intoxication, drugs, or hypnotism.

2. ID.; ID.; ID.; ID.; CONSENT WAS NOT LACKING BETWEEN RESPONDENT AND HER ESTRANGED HUSBAND'S MARRIAGE; THAT THEIR CONSENT WAS FREELY GIVEN IS BEST EVIDENCED BY THEIR CONSCIOUS PURPOSE OF ACQUIRING AMERICAN CITIZENSHIP THROUGH MARRIAGE WHICH PLAINLY DEMONSTRATES THAT THEY WILLINGLY AND DELIBERATELY CONTRACTED THE MARRIAGE.— Consent was not lacking between Albios and Fringer. In fact, there was *real* consent because it was not vitiated nor rendered defective by any vice of consent. Their consent was also *conscious and intelligent* as they understood the nature and the beneficial and inconvenient consequences of their marriage, as nothing impaired their ability to do so. That their consent was freely given is best evidenced by their conscious purpose of acquiring American citizenship through marriage. Such plainly demonstrates that they willingly and deliberately contracted the marriage. There was a clear intention to enter into a real and valid marriage so as to fully comply with the requirements of an application for citizenship. There was a full and complete understanding of the legal tie that would be created between them, since it was that precise legal tie which was necessary to accomplish their goal.

3. ID.; ID.; ID.; ID.; RESPONDENT'S MARRIAGE IS NOT AT ALL ANALOGOUS TO A MARRIAGE IN JEST AS GENUINE CONSENT WAS CLEARLY PRESENT.— In ruling that Albios' marriage was void for lack of consent, the CA characterized such as akin to a marriage by way of jest. A marriage in jest is a pretended marriage, legal in form but entered into as a joke, with no real intention of entering into the actual marriage status, and with a clear understanding that the parties would not be bound. x x x Marriages in jest are void *ab initio,* not for vitiated, defective, or unintelligent consent, but for a complete absence of consent. There is no

genuine consent because the parties have absolutely no intention of being bound in any way or for any purpose. The respondent's marriage is not at all analogous to a marriage in jest. Albios and Fringer had an undeniable intention to be bound in order to create the very bond necessary to allow the respondent to acquire American citizenship. Only a genuine consent to be married would allow them to further their objective, considering that only a valid marriage can properly support an application for citizenship. There was, thus, an apparent intention to enter into the actual marriage status and to create a legal tie, albeit for a limited purpose. Genuine consent was, therefore, clearly present.

4. **ID.; ID.; ID.; ID.; THE POSSIBILITY THAT THE PARTIES IN A MARRIAGE MIGHT HAVE NO REAL INTENTION TO ESTABLISH A LIFE TOGETHER IS INSUFFICIENT TO NULLIFY A MARRIAGE FREELY ENTERED INTO IN ACCORDANCE WITH LAW.—** The avowed purpose of marriage under Article 1 of the Family Code is for the couple to establish a conjugal and family life. The possibility that the parties in a marriage might have no real intention to establish a life together is, however, insufficient to nullify a marriage freely entered into in accordance with law. The same Article 1 provides that the nature, consequences, and incidents of marriage are governed by law and not subject to stipulation. A marriage may, thus, only be declared void or voidable under the grounds provided by law. There is no law that declares a marriage void if it is entered into for purposes other than what the Constitution or law declares, such as the acquisition of foreign citizenship. Therefore, so long as all the essential and formal requisites prescribed by law are present, and it is not void or voidable under the grounds provided by law, it shall be declared valid.

5. **ID.; ID.; ID.; ID.; THOUGH RESPONDENT'S MARRIAGE MAY BE CONSIDERED A SHAM OR FRAUDULENT FOR PURPOSES OF IMMIGRATION, IT IS NOT VOID *AB INITIO* AND CONTINUES TO BE VALID AND SUBSISTING.—** Motives for entering into a marriage are varied and complex. The State does not and cannot dictate on the kind of life that a couple chooses to lead. Any attempt to regulate their lifestyle would go into the realm of their right to privacy and would raise serious constitutional questions.

The right to marital privacy allows married couples to structure their marriages in almost any way they see fit, to live together or live apart, to have children or no children, to love one another or not, and so on. Thus, marriages entered into for other purposes, limited or otherwise, such as convenience, companionship, money, status, and title, provided that they comply with all the legal requisites, are equally valid. Love, though the ideal consideration in a marriage contract, is not the only valid cause for marriage. Other considerations, not precluded by law, may validly support a marriage. Although the Court views with disdain the respondent's attempt to utilize marriage for dishonest purposes, It cannot declare the marriage void. Hence, though the respondent's marriage may be considered a sham or fraudulent for the purposes of immigration, it is not void *ab initio* and continues to be valid and subsisting.

6. ID.; ID.; ID.; ID.; NEITHER CAN THEIR MARRIAGE BE CONSIDERED VOIDABLE ON THE GROUND OF FRAUD UNDER ARTICLE 45 (3) OF THE FAMILY CODE; ONLY THE CIRCUMSTANCES LISTED UNDER ARTICLE 46 OF THE SAME CODE MAY CONSTITUTE FRAUD.— Neither can their marriage be considered voidable on the ground of fraud under Article 45 (3) of the Family Code. Only the circumstances listed under Article 46 of the same Code may constitute fraud, namely, (1) non-disclosure of a previous conviction involving moral turpitude; (2) concealment by the wife of a pregnancy by another man; (3) concealment of a sexually transmitted disease; and (4) concealment of drug addiction, alcoholism, or homosexuality. No other misrepresentation or deceit shall constitute fraud as a ground for an action to annul a marriage. Entering into a marriage for the sole purpose of evading immigration laws does not qualify under any of the listed circumstances. Furthermore, under Article 47 (3), the ground of fraud may only be brought by the injured or innocent party. In the present case, there is no injured party because Albios and Fringer both conspired to enter into the sham marriage.

7. POLITICAL LAW; CONSTITUTION; STATE POLICY ON THE SACRED INSTITUTION OF MARRIAGE; UNSCRUPULOUS INDIVIDUALS CANNOT BE ALLOWED TO MISUSE THE COURT TO ENTER INTO A MARRIAGE OF CONVENIENCE; CASE AT BAR.—

> Albios has indeed made a mockery of the sacred institution of marriage. Allowing her marriage with Fringer to be declared void would only further trivialize this inviolable institution. The Court cannot declare such a marriage void in the event the parties fail to qualify for immigration benefits, after they have availed of its benefits, or simply have no further use for it. These unscrupulous individuals cannot be allowed to use the courts as instruments in their fraudulent schemes. Albios already misused a judicial institution to enter into a marriage of convenience; she should not be allowed to again abuse it to get herself out of an inconvenient situation. No less than our Constitution declares that marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State. It must, therefore, be safeguarded from the whims and caprices of the contracting parties. This Court cannot leave the impression that marriage may easily be entered into when it suits the needs of the parties, and just as easily nullified when no longer needed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Albert T. Villaseca for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 29, 2011 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. CV No. 95414, which affirmed the April 25, 2008 Decision[2] of the Regional Trial Court, Imus, Cavite *(RTC),* declaring the marriage of Daniel Lee Fringer *(Fringer)* and respondent Liberty Albios *(Albios)* as void from the beginning.

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[1] *Rollo*, pp. 26-32; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Ramon M. Bato, Jr. and Associate Justice Florito S. Macalino of the Fifth Division, Manila.

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

The Facts

On October 22, 2004, Fringer, an American citizen, and Albios were married before Judge Ofelia I. Calo of the Metropolitan Trial Court, Branch 59, Mandaluyong City (*MeTC*), as evidenced by a Certificate of Marriage with Register No. 2004-1588.[3]

On December 6, 2006, Albios filed with the RTC a petition for declaration of nullity[4] of her marriage with Fringer. She alleged that immediately after their marriage, they separated and never lived as husband and wife because they never really had any intention of entering into a married state or complying with any of their essential marital obligations. She described their marriage as one made in jest and, therefore, null and void *ab initio*.

Summons was served on Fringer but he did not file his answer. On September 13, 2007, Albios filed a motion to set case for pre-trial and to admit her pre-trial brief. The RTC ordered the Assistant Provincial Prosecutor to conduct an investigation and determine the existence of a collusion. On October 2, 2007, the Assistant Prosecutor complied and reported that she could not make a determination for failure of both parties to appear at the scheduled investigation.

At the pre-trial, only Albios, her counsel and the prosecutor appeared. Fringer did not attend the hearing despite being duly notified of the schedule. After the pre-trial, hearing on the merits ensued.

Ruling of the RTC

In its April 25, 2008 Decision,[5] the RTC declared the marriage void *ab initio*, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the marriage of Liberty Albios and Daniel Lee Fringer as

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[3] *Id.* at 37.

[4] *Id.* at 33-35.

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

void from the very beginning. As a necessary consequence of this pronouncement, petitioner shall cease using the surname of respondent as she never acquired any right over it and so as to avoid a misimpression that she remains the wife of respondent.

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SO ORDERED.[6]

The RTC was of the view that the parties married each other for convenience only. Giving credence to the testimony of Albios, it stated that she contracted Fringer to enter into a marriage to enable her to acquire American citizenship; that in consideration thereof, she agreed to pay him the sum of $2,000.00; that after the ceremony, the parties went their separate ways; that Fringer returned to the United States and never again communicated with her; and that, in turn, she did not pay him the $2,000.00 because he never processed her petition for citizenship. The RTC, thus, ruled that when marriage was entered into for a purpose other than the establishment of a conjugal and family life, such was a farce and should not be recognized from its inception.

Petitioner Republic of the Philippines, represented by the Office of the Solicitor General (*OSG*), filed a motion for reconsideration. The RTC issued the Order,[7] dated February 5, 2009, denying the motion for want of merit. It explained that the marriage was declared void because the parties failed to freely give their consent to the marriage as they had no intention to be legally bound by it and used it only as a means to acquire American citizenship in consideration of $2,000.00.

Not in conformity, the OSG filed an appeal before the CA.

Ruling of the CA

In its assailed decision, dated September 29, 2011, the CA affirmed the RTC ruling which found that the essential requisite

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[6] *Id.* at 39.

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

of consent was lacking. The CA stated that the parties clearly did not understand the nature and consequence of getting married and that their case was similar to a marriage in jest. It further explained that the parties never intended to enter into the marriage contract and never intended to live as husband and wife or build a family. It concluded that their purpose was primarily for personal gain, that is, for Albios to obtain foreign citizenship, and for Fringer, the consideration of $2,000.00.

Hence, this petition.

Assignment of Error

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT HELD THAT A MARRIAGE CONTRACTED FOR THE PURPOSE OF OBTAINING FOREIGN CITIZENSHIP WAS DONE IN JEST, HENCE, LACKING IN THE ESSENTIAL ELEMENT OF CONSENT.[8]

The OSG argues that albeit the intention was for Albios to acquire American citizenship and for Fringer to be paid $2,000.00, both parties freely gave their consent to the marriage, as they knowingly and willingly entered into that marriage and knew the benefits and consequences of being bound by it. According to the OSG, consent should be distinguished from motive, the latter being inconsequential to the validity of marriage.

The OSG also argues that the present case does not fall within the concept of a marriage in jest. The parties here intentionally consented to enter into a real and valid marriage, for if it were otherwise, the purpose of Albios to acquire American citizenship would be rendered futile.

On October 29, 2012, Albios filed her Comment[9] to the petition, reiterating her stand that her marriage was similar to a marriage by way of jest and, therefore, void from the beginning.

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[8] *Id.* at 13.

[9] *Id.* at 61-71.

On March 22, 2013, the OSG filed its Reply[10] reiterating its arguments in its petition for review on *certiorari*.

Ruling of the Court

The resolution of this case hinges on this sole question of law: Is a marriage, contracted for the sole purpose of acquiring American citizenship in consideration of $2,000.00, void *ab initio* on the ground of lack of consent?

The Court resolves in the negative.

Before the Court delves into its ruling, It shall first examine the phenomenon of marriage fraud for the purposes of immigration.

Marriage Fraud in Immigration

The institution of marriage carries with it concomitant benefits. This has led to the development of marriage fraud for the sole purpose of availing of particular benefits. In the United States, marriages where a couple marries only to achieve a particular purpose or acquire specific benefits, have been referred to as "limited purpose" marriages.[11] A common limited purpose marriage is one entered into solely for the legitimization of a child.[12] Another, which is the subject of the present case, is for

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[10] *Id.* at 89-95.

[11] Abrams, Kerry. *Marriage Fraud*. 100 Cal. L. Rev. 1 (2012); http://papers.ssrn.com/sol3/papers.cfm? abstract_id=2000956. *Lutwak v. United States*, 344 U.S. 604, 612-613 (U.S. 1953).

[12] Abrams, Kerry. *Marriage Fraud*. 100 Cal. L. Rev. 1 (2012); http://papers.ssrn.com/sol3/papers.cfm? abstract_id=2000956; citing *Schibi v. Schibi*, 69 A.2d 831 (Conn. 1949) (denying annulment where parties married only to give a name to a prospective child); *Bishop v. Bishop*, 308 N.Y.S.2d 998 (Sup. Ct. 1970); *Erickson v. Erickson*, 48 N.Y.S.2d 588 (Sup. Ct. 1944) (holding similarly to *Schibi*); *Delfino v. Delfino*, 35 N.Y.S.2d 693 (Sup. Ct. 1942) (denying annulment where purpose of marriage was to protect the girl's name and there was an understanding that the parties would not live together as man and wife); *Bove v. Pinciotti*, 46 Pa. D. & C. 159 (1942); *Campbell v. Moore*, 189 S.E.2d 497 (S.C.1939) (refusing an annulment where parties entered marriage for the purpose of legitimizing

immigration purposes. Immigration law is usually concerned with the intention of the couple at the time of their marriage,[13] and it attempts to filter out those who use marriage solely to achieve immigration status.[14]

In 1975, the seminal case of *Bark v. Immigration and Naturalization Service*,[15] established the principal test for determining the presence of marriage fraud in immigration cases. It ruled that a "marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married." This standard was modified with the passage of the Immigration Marriage Fraud Amendment of 1986 (*IMFA*), which now requires the couple to instead demonstrate that the marriage was *not "entered into for the purpose of evading the immigration laws* of the United States." The focus, thus, shifted from determining the intention to establish a life together, to determining the intention of evading immigration laws.[16] It must be noted, however, that this standard is used purely for immigration purposes and, therefore, does not purport to rule on the legal validity or existence of a marriage.

The question that then arises is whether a marriage declared as a sham or fraudulent for the limited purpose of immigration

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a child); *Chander v. Chander*, No. 2937-98-4, 1999 WL 1129721 (Va. Ct. App. June 22, 1999) (denying annulment where wife married husband to get his pension with no intention to consummate marriage because husband knew that was the purpose of the marriage).

[13] Abrams, Kerry. *Immigration Law and the Regulation of Marriage*; 91 Minn. L. Rev. 1625 (2007); http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Abrams_Final.pdf; citing Immigration and Nationality Act (INA), § 237(a)(1)(G), 8 U.S.C. § 1227(a)(1)(G) (2000).

[14] Abrams, Kerry. *Immigration Law and the Regulation of Marriage*; 91 Minn. L. Rev. 1625 (2007); http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Abrams_Final.pdf; citing 132 CONG. REC. 27,012, 27,015 (1986) (statement of Rep McCollum) (promoting the Immigration Marriage Fraud Amendments of 1986).

[15] 511 F.2d 1200, 1201 (9th Cir. 1975).

[16] Abrams, Kerry. *Immigration Law and the Regulation of Marriage*; 91 Minn. L. Rev. 1625 (2007); http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Abrams_Final.pdf.

is also legally void and inexistent. The early cases on limited purpose marriages in the United States made no definitive ruling. In 1946, the notable case of *United States v. Rubenstein*[17] was promulgated, wherein in order to allow an alien to stay in the country, the parties had agreed to marry but not to live together and to obtain a divorce within six months. The Court, through Judge Learned Hand, ruled that a marriage to convert temporary into permanent permission to stay in the country was not a marriage, there being no consent, to wit:

> x x x But, that aside, Spitz and Sandler *were never married at all.* Mutual consent is necessary to every contract; and no matter what forms or ceremonies the parties may go through indicating the contrary, they do not contract if they do not in fact assent, which may always be proved. x x x Marriage is no exception to this rule: *a marriage in jest is not a marriage at all.* x x x It is quite true that a marriage without subsequent consummation will be valid; but *if the spouses agree to a marriage only for the sake of representing it as such to the outside world and with the understanding that they will put an end to it as soon as it has served its purpose to deceive, they have never really agreed to be married at all. They must assent to enter into the relation as it is ordinarily understood, and it is not ordinarily understood as merely a pretence, or cover, to deceive others.*[18]
>
> (Italics supplied)

On the other end of the spectrum is the 1969 case of *Mpiliris v. Hellenic Lines*,[19] which declared as *valid* a marriage entered into solely for the husband to gain entry to the United States, stating that a valid marriage could not be avoided "merely because the marriage was entered into for a limited purpose."[20] The 1980

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[17] 151 F.2d 915 (2d Cir. 1945).

[18] *United States v. Rubenstein*, 151 F.2d 915 (2d Cir. 1945).

[19] *Mpiliris v. Hellenic Lines, Ltd.*, 323 F. Supp. 865 (S.D. Tex. 1969), *aff'd,* 440 F.2d 1163 (5th Cir. 1971).

[20] Abrams, Kerry. *Marriage Fraud*. 100 Cal. L. Rev. 1 (2012); http://papers.ssrn.com/sol3/papers.cfm? abstract_id=2000956; citing *Mpiliris v. Hellenic Lines, Ltd.*, 323 F. Supp. 865 (S.D. Tex. 1969), *aff'd*, 440 F.2d 1163 (5th Cir. 1971).

immigration case of *Matter of McKee*,[21] further recognized that a fraudulent or sham marriage was intrinsically different from a nonsubsisting one.

Nullifying these limited purpose marriages for lack of consent has, therefore, been recognized as problematic. The problem being that in order to obtain an immigration benefit, a legal marriage is first necessary.[22] At present, United States courts have generally denied annulments involving "limited purpose" marriages where a couple married only to achieve a particular purpose, and have upheld such marriages as *valid*.[23]

The Court now turns to the case at hand.

Respondent's marriage not void

In declaring the respondent's marriage void, the RTC ruled that when a marriage was entered into for a purpose other than the establishment of a conjugal and family life, such was a farce and should not be recognized from its inception. In its resolution denying the OSG's motion for reconsideration, the RTC went on to explain that the marriage was declared void because the parties failed to freely give their consent to the marriage as they had no intention to be legally bound by it and used it only as a means for the respondent to acquire American citizenship.

Agreeing with the RTC, the CA ruled that the essential requisite of consent was lacking. It held that the parties clearly did not understand the nature and consequence of getting married. As in the *Rubenstein* case, the CA found the marriage to be similar to a marriage in jest considering that the parties only entered into the marriage for the acquisition of American citizenship in exchange of $2,000.00. They never intended to enter into a marriage contract and never intended to live as husband and wife or build a family.

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[21] *Matter of McKee*, 17 I. & N. Dec. 332, 333 (B.I.A. 1980).

[22] Lynn D. Wardle and Laurence C. Nolan, Family Law in the USA, (The Netherlands: Kluwer Law International, 2011) p. 86.

[23] Abrams, Kerry. *Marriage Fraud*. 100 Cal. L. Rev. 1 (2012); http://papers.ssrn.com/sol3/papers.cfm? abstract_id=2000956.

The CA's assailed decision was, therefore, grounded on the parties' supposed lack of consent. Under Article 2 of the Family Code, consent is an essential requisite of marriage. Article 4 of the same Code provides that the absence of any essential requisite shall render a marriage void *ab initio*.

Under said Article 2, for consent to be valid, it must be (1) freely given and (2) made in the presence of a solemnizing officer. A "freely given" consent requires that the contracting parties willingly and deliberately enter into the marriage. Consent must be *real* in the sense that it is not vitiated nor rendered defective by any of the vices of consent under Articles 45 and 46 of the Family Code, such as fraud, force, intimidation, and undue influence.[24] Consent must also be *conscious or intelligent*, in that the parties must be capable of intelligently understanding the nature of, and both the beneficial or unfavorable consequences of their act.[25] Their understanding should not be affected by insanity, intoxication, drugs, or hypnotism.[26]

Based on the above, consent was not lacking between Albios and Fringer. In fact, there was *real* consent because it was not vitiated nor rendered defective by any vice of consent. Their consent was also *conscious and intelligent* as they understood the nature and the beneficial and inconvenient consequences of their marriage, as nothing impaired their ability to do so. That their consent was freely given is best evidenced by their conscious purpose of acquiring American citizenship through marriage. Such plainly demonstrates that they willingly and deliberately contracted the marriage. There was a clear intention to enter into a real and valid marriage so as to fully comply with the

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[24] Alicia V. Sempio-Diy, Handbook on the Family Code of the Philippines, (Quezon City, Philippines: Joer Printing Services, 2005), p. 4.

[25] Melencio S. Sta. Maria, Jr., Persons and Family Relations Law, (Quezon City, Philippines: Rex Printing Company, Inc., 2010), Fifth Edition, p. 121.

[26] Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, (Manila, Philippines: Central Book Supply, Inc., 2004), Volume I, p. 231.

requirements of an application for citizenship. There was a full and complete understanding of the legal tie that would be created between them, since it was that precise legal tie which was necessary to accomplish their goal.

In ruling that Albios' marriage was void for lack of consent, the CA characterized such as akin to a marriage by way of jest. A marriage in jest is a pretended marriage, legal in form but entered into as a joke, with no real intention of entering into the actual marriage status, and with a clear understanding that the parties would not be bound. The ceremony is not followed by any conduct indicating a purpose to enter into such a relation.[27] It is a pretended marriage not intended to be real and with no intention to create any legal ties whatsoever, hence, the absence of any genuine consent. Marriages in jest are void *ab initio*, not for vitiated, defective, or unintelligent consent, but for a complete absence of consent. There is no genuine consent because the parties have absolutely no intention of being bound in any way or for any purpose.

The respondent's marriage is not at all analogous to a marriage in jest. Albios and Fringer had an undeniable intention to be bound in order to create the very bond necessary to allow the respondent to acquire American citizenship. Only a genuine consent to be married would allow them to further their objective, considering that only a valid marriage can properly support an application for citizenship. There was, thus, an apparent intention to enter into the actual marriage status and to create a legal tie, albeit for a limited purpose. Genuine consent was, therefore, clearly present.

The avowed purpose of marriage under Article 1 of the Family Code is for the couple to establish a conjugal and family life. The possibility that the parties in a marriage might have no real intention to establish a life together is, however, insufficient to nullify a marriage freely entered into in accordance with law.

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[27] Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, (Manila, Philippines: Central Book Supply, Inc., 2004), Volume I, p. 231; citing *McClurg v. Terry*, 21 N.J. 225.

The same Article 1 provides that the nature, consequences, and incidents of marriage are governed by law and not subject to stipulation. A marriage may, thus, only be declared void or voidable under the grounds provided by law. There is no law that declares a marriage void if it is entered into for purposes other than what the Constitution or law declares, such as the acquisition of foreign citizenship. Therefore, so long as all the essential and formal requisites precribed by law are present, and it is not void or voidable under the grounds provided by law, it shall be declared valid.[28]

Motives for entering into a marriage are varied and complex. The State does not and cannot dictate on the kind of life that a couple chooses to lead. Any attempt to regulate their lifestyle would go into the realm of their right to privacy and would raise serious constitutional questions.[29] The right to marital privacy allows married couples to structure their marriages in almost any way they see fit, to live together or live apart, to have children or no children, to love one another or not, and so on.[30] Thus, marriages entered into for other purposes, limited or otherwise, such as convenience, companionship, money, status, and title, provided that they comply with all the legal requisites,[31] are equally valid. Love, though the ideal consideration in a marriage contract, is not the only valid cause for marriage. Other considerations, not precluded by law, may validly support a marriage.

Although the Court views with disdain the respondent's attempt to utilize marriage for dishonest purposes, It cannot declare

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[28] Article 4, Family Code.

[29] *Bark v. Immigration & Naturalization Service*, 511 F.2d 1200, 1201 (9th Cir. 1975).

[30] Abrams, Kerry. *Immigration Law and the Regulation of Marriage*; 91 Minn. L. Rev. 1625 (2007); http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Abrams_Final.pdf; citing *McGuire v. McGuire*, 59 N.W.2d 336, 337 (Neb. 1953). *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965).

[31] Article 4, Family Code.

the marriage void. Hence, though the respondent's marriage may be considered a sham or fraudulent for the purposes of immigration, it is not void *ab initio* and continues to be valid and subsisting.

Neither can their marriage be considered voidable on the ground of fraud under Article 45 (3) of the Family Code. Only the circumstances listed under Article 46 of the same Code may constitute fraud, namely, (1) non-disclosure of a previous conviction involving moral turpitude; (2) concealment by the wife of a pregnancy by another man; (3) concealment of a sexually transmitted disease; and (4) concealment of drug addiction, alcoholism, or homosexuality. No other misrepresentation or deceit shall constitute fraud as a ground for an action to annul a marriage. Entering into a marriage for the sole purpose of evading immigration laws does not qualify under any of the listed circumstances. Furthermore, under Article 47 (3), the ground of fraud may only be brought by the injured or innocent party. In the present case, there is no injured party because Albios and Fringer both conspired to enter into the sham marriage.

Albios has indeed made a mockery of the sacred institution of marriage. Allowing her marriage with Fringer to be declared void would only further trivialize this inviolable institution. The Court cannot declare such a marriage void in the event the parties fail to qualify for immigration benefits, after they have availed of its benefits, or simply have no further use for it. These unscrupulous individuals cannot be allowed to use the courts as instruments in their fraudulent schemes. Albios already misused a judicial institution to enter into a marriage of convenience; she should not be allowed to again abuse it to get herself out of an inconvenient situation.

No less than our Constitution declares that marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.[32] It must, therefore, be safeguarded from the whims and caprices of the contracting parties. This Court cannot leave the impression that marriage may easily be

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[32] Const. (1987), Article XV, Section 2.

entered into when it suits the needs of the parties, and just as easily nullified when no longer needed.

WHEREFORE, the petition is **GRANTED.** The September 29, 2011 Decision of the Court of Appeals in CA-G.R. CV No. 95414 is **ANNULLED,** and Civil Case No. 1134-06 is **DISMISSED** for utter lack of merit.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Brion,*[**] and *Peralta, JJ.*, concur.

SECOND DIVISION

[G.R. No. 201199. October 16, 2013]

STEEL CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **MAPFRE INSULAR INSURANCE CORPORATION, NEW INDIA ASSURANCE COMPANY LIMITED, PHILIPPINE CHARTER INSURANCE CORPORATION, MALAYAN INSURANCE CO., INC., and ASIA INSURANCE PHIL. CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY WHEN THE ISSUE RAISED INVOLVES ERRORS OF JURISDICTION.— A

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[*] Designated Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1570 dated October 14, 2013.

[**] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1554 dated September 19, 2013.

petition for *certiorari* under Rule 65 is the proper remedy when the issue raised involves errors of jurisdiction. On the other hand, a petition for review under Rule 43 is the proper remedy when the issue raised involves errors of judgment. In *ABS-CBN Broadcasting Corp. v. World Interactive Network Systems Japan Co., Ltd.,* the Court held that: Proper issues that may be raised in a petition for review under Rule 43 pertain to errors of fact, law or mixed questions of fact and law. While a petition for *certiorari* under Rule 65 should only limit itself to errors of jurisdiction, that is, grave abuse of discretion amounting to a lack or excess of jurisdiction. x x x *China Banking Corporation* is inapplicable because the issue in that case is different from the issue raised by respondent insurers in CA-G.R. SP No. 119760. In *China Banking Corporation,* the issue involved errors of judgment. In particular, Cebu Printing and Packaging Corporation (CPPC) questioned the rehabilitation court's findings of fact and law in its 30 April 2002 Order denying due course to the petition for corporate rehabilitation. CPPC never questioned the rehabilitation court's jurisdiction. Since the issue involved errors of judgment, the proper remedy, as held in *China Banking Corporation,* was to file a petition for review under Rule 43. In the present case, the issue raised by respondent insurers in CA-G.R. SP No. 119760 involved errors of jurisdiction. Respondent insurers questioned the RTC's jurisdiction over the subject matter of SCP's insurance claim and over the persons of respondent insurers. Since the issue involved errors of jurisdiction, the proper remedy was to file a petition for *certiorari* under Rule 65.

2. ID.; JURISDICTION; THE REGIONAL TRIAL COURT, ACTING AS REHABILITATION COURT, HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE INSURANCE CLAIM OF PETITIONER AGAINST RESPONDENT INSURERS; REHABILITATION PROCEEDINGS ARE "SUMMARY AND NON-ADVERSARIAL" IN NATURE AND DO NOT INCLUDE ADJUDICATION OF CLAIMS THAT REQUIRE FULL TRIAL ON THE MERITS.— The RTC, acting as rehabilitation court, has no jurisdiction over the subject matter of the insurance claim of SCP against respondent insurers. SCP must file a separate action for collection where respondent

insurers can properly thresh out their defenses. SCP cannot simply file with the RTC a motion to direct respondent insurers to pay insurance proceeds. Section 3 of Republic Act No. 10142 states that rehabilitation proceedings are "summary and non-adversarial" in nature. They do not include adjudication of claims that require full trial on the merits, like SCP's insurance claim against respondent insurers.

3. ID.; ID.; THE JURISDICTION OF REHABILITATION COURTS IS OVER CLAIMS AGAINST THE DEBTOR THAT IS UNDER REHABILITATION, NOT OVER CLAIMS BY THE DEBTOR AGAINST ITS OWN DEBTORS OR AGAINST THIRD PARTIES.— The Court agrees with the ruling of the Court of Appeals that the jurisdiction of the rehabilitation courts is **over claims against the debtor** that is under rehabilitation, **not over claims by the debtor** against its own debtors or against third parties. In its 8 February 2012 Decision, the Court of Appeals held that: x x x Said insurance claims cannot be considered as "claims" within the jurisdiction of the trial court functioning as a rehabilitation court. Rehabilitation courts only have limited jurisdiction over the claims by creditors against the distressed company, not on the claims of said distressed company against its debtors. The interim rules define claim as referring to all claims or demands, of whatever nature or character against a debtor or its property, whether for money or otherwise. Even under the new Rules of Procedure on Corporate Rehabilitation, claim is defined under Section 1, Rule 2 as "all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise." This is also the definition of a claim under Republic Act No. 10142. Section 4(c) thereof reads: "(c) **Claim shall refer to all claims or demands of whatever nature or character against the debtor or its property,** whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to: (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from the acts done in the discharge of their functions falling within the scope of their authority: Provided, That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors

and officers acting in their personal capacities." Respondent insurers are **not** claiming or demanding any money or property from SCP. In other words, respondent insurers are **not creditors of SCP**. Respondent insurers are **contingent debtors** of SCP because they may possibly be, subject to proof during trial, liable to SCP. Thus, the RTC has no jurisdiction over the insurance claim of SCP against respondent insurers. SCP must file a separate action against respondent insurers to recover whatever claim it may have against them.

APPEARANCES OF COUNSEL

Balgos Gumaru & Jalandoni for petitioner.
De Guzman San Diego Mejia and Hernandez Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. Petitioner Steel Corporation of the Philippines (SCP) challenges the 8 February 2012 Decision[2] and 27 March 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 119760. The Court of Appeals declared void the 1 June 2011 Order[4] of the Regional Trial Court (RTC), acting as rehabilitation court, Fourth Judicial Region, Branch 3, Batangas City, in SP. PROC. No. 06-7993.

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[1] *Rollo,* pp. 3-63.

[2] *Id.* at 66-85. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring.

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

[4] *Id.* at 317-327. Penned by Judge Ruben A. Galvez.

The Facts

SCP is a domestic corporation engaged in the manufacture and distribution of cold-rolled and galvanized steel sheets and coils. It obtained loans from several creditors and, as security, mortgaged its assets in their favor. The creditors appointed Bank of the Philippine Islands (BPI) as their trustee. On 17 December 1997, SCP and BPI entered into a Mortgage Trust Indenture (MTI) requiring SCP to insure all of its assets until the loans are fully paid. Under the MTI, the insurance policies were to be made payable to BPI.

During the course of its business, SCP suffered financial difficulties. On 11 September 2006, one of the creditors, Equitable PCI Bank, Inc., now known as Banco de Oro-EPCI, Inc., filed with the RTC a petition to have SCP placed under corporate rehabilitation. On 12 September 2006, the RTC issued a stay order to defer all claims against SCP and appointed Atty. Santiago T. Gabionza, Jr. as rehabilitation receiver. On 3 December 2007, the RTC rendered a Decision approving the modified rehabilitation plan.

Under Collective Master Policy No. UCPB Gem HOF075089, SCP insured against material damage and business interruption its assets located in Barangay Munting Tubig, Balayan, Batangas, for the period 19 August 2007 to 19 August 2008. On 8 June 2008, a fire broke out at SCP's plant damaging its machineries. Invoking its right under the MTI, BPI demanded and received from the insurers $450,000 insurance proceeds.

On 13 October 2009, SCP filed with the RTC a motion to direct BPI to turn over the $450,000 insurance proceeds in order for SCP to repair and replace the damaged machineries. On 5 January 2010, the RTC issued an Order directing BPI to release the insurance proceeds directly to the contractors and suppliers who will undertake the repairs and replacements of the damaged machineries. BPI filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court and, in its 28

September 2010 Decision,[5] the Court of Appeals affirmed the RTC's 5 January 2010 Order. However, in its 3 October 2012 Amended Decision,[6] the Court of Appeals reversed itself and set aside the RTC's 5 January 2010 Order. SCP filed with the Court a petition for review on *certiorari* under Rule 45 and, in its 16 September 2013 Resolution,[7] the Court denied the petition. The Court held that:

> After a judicious review of the records, the Court resolves to DENY the instant petition and AFFIRM the October 3, 2012 Amended Decision and July 2, 2013 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 113078 for failure of Steel Corporation of the Philippines (petitioner) to show that the CA committed any reversible error in holding Bank of the Philippine Islands (respondent) entitled to receive and hold in trust the subject insurance proceeds. Section 4.04, sub-paragraph (f) of the Mortgage Trust Indenture Agreement between the parties expressly stipulated that respondent shall receive the insurance proceeds in case the risk or risks covered by the said policy occur and it may be released, applied, and/or paid to petitioner to procure replacement equipment and/or machinery only upon written notice to the creditors, who shall issue a Deed of Undertaking. No such compliance was shown. It is hornbook that a contract is the law between the parties and the obligation arising therefrom should be complied with in good faith. Moreover, the rehabilitation proceedings were already terminated by the CA (which decisions are immediately executory), hence, petitioner's justification for release of the insurance proceeds in its favor, *i.e.*, to replace the burnt machineries, is not feasible at this time.
>
> Besides, the petition suffers from procedural defect in that it lacked copy of the Regional Trial Court Order as well as relevant pleadings thereto, as required under Section 4(d), Rule 45 of the Rules of Court.
>
> SO ORDERED.[8]

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[5] *Bank of the Philippine Islands v. Kalalo*, CA-G.R. SP No. 113078, 28 September 2010.

[6] *Bank of the Philippine Islands v. Kalalo*, CA-G.R. SP No. 113078, 3 October 2012.

[7] *Steel Corporation of the Philippines v. Bank of the Philippine Islands*, G.R. No. 207937, 16 September 2013.

[8] *Id.*

Under Industrial All Risks Insurance Policy No. F-369430, SCP insured with respondents Mapfre Insular Insurance Corporation, New India Assurance Company Limited, Philippine Charter Insurance Corporation, Malayan Insurance Co., Inc., and Asia Insurance Phil. Corp. (respondent insurers) against material damage and business interruption its assets located in Barangay Munting Tubig for the period 19 August 2009 to 19 August 2010. On 7 December 2009, a fire again broke out at SCP's plant damaging its cold rolling mill and other machineries.

On 17 December 2010, SCP filed with the RTC a motion to direct respondent insurers to pay insurance proceeds in the amounts of $28,000,000 property damage and $8,000,000 business interruption.

During the 21 January 2011 hearing of SCP's 17 December 2010 motion, respondent insurers entered a special appearance solely for the purpose of questioning the RTC's jurisdiction over the insurance claim. On 7 February 2011, respondent insurers filed with the RTC an opposition *ad cautelam* praying that SCP's 17 December 2010 motion be denied.

In a letter dated 22 March 2011, respondent insurers denied liability on SCP's insurance claim because (1) SCP failed to comply with the terms of the policies; (2) SCP defrauded the respondent insurers; (3) the gross over-insurance of the cold rolling mill constitutes *prima facie* proof of arson; (4) SCP failed to show the actual damage sustained by its machineries; (5) SCP failed to commence the repair and replacement of the damaged machineries within 12 months; (6) SCP's negligence caused the fire; and (7) since SCP's claim for property damage is non-compensable, its claim for business interruption is also non-compensable. In their *ad cautelam* opposition dated 24 March 2011, respondent insurers prayed that SCP's 17 December 2010 motion be denied because (1) the amount of the claim for property damage was increased from $28,000,000 to $30,000,000; (2) the RTC lacked jurisdiction; (3) the RTC's 5 January 2010 Order directing BPI to release the insurance proceeds directly to the contractors and suppliers who will undertake the repairs and replacements of SCP's damaged machineries did not apply;

and (4) respondent insurers already denied SCP's insurance claim.

On 25 March and 8 April 2011, the RTC issued an Order directing (1) SCP to formally manifest its amenability to the repair and replacement of the damaged machineries instead of payment of insurance proceeds; (2) SCP and respondent insurers to file their memoranda; and (3) the creditors to file their respective comments.

The RTC's Ruling

In its 1 June 2011 Order, the RTC granted SCP's 17 December 2010 motion and directed respondent insurers to pay SCP $33,882,393 property damage and $8,000,000 business interruption. The RTC held that:

> At the outset, this Court notes that SCP's manufacturing operations have suffered from two separate fire incidents: one which damaged the ABB roll on June 8, 2008, and the other which damaged the entire Cold Rolling Mill (CRM) on December 7, 2009. The claim for the first fire incident was partially paid by the insurers but the proceeds were withheld by BPI as MTI Trustee. Thus, feeling aggrieved, SCP was forced to file a Motion to Direct Trustee to Release Insurance Proceeds to SCP which was granted by the previous judge, (over and above the objections of BPI which argued that this Court had no jurisdiction over the matter) through his Order dated January 5, 2010 x x x.
>
> This Court, in resolving the instant motion, is inclined to agree with the previous judge's order and so upholds that it has jurisdiction over the insurance claims filed by SCP in these rehabilitation proceedings. x x x.
>
> In a resolution dated September 28, 2010, the Court of Appeals (BPI *vs*. Hon. Albert A. Kalalo, C.A.-G.R. SP No. 113078) confirmed this Court's authority and jurisdiction to take cognizance of the insurance matter in the same rehabilitation proceedings. The appellate court made it very clear that this court's jurisdiction includes the necessary and usual incidental powers that are essential to effectuate SCP's rehabilitation. x x x.
>
> The argument that this Court cannot possibly pass upon the insurance claim of SCP because it is only acting as a rehabilitation

court cannot hold water. The mere fact that this Court by raffle has been designated as a rehabilitation court in view of the inhibition of RTC Branches 2 and 4 does not mean that it has lost its powers or authority as a court of general jurisdiction. x x x.

x x x x x x x x x

It is not true that the second panel of insurers are not "affected parties" and therefore cannot be deemed covered by the *in rem* nature of the rehabilitation proceedings. It is apt to note that the second panel of insurers unequivocably admitted, in par. 21 of their Opposition, that "the panel of insurers are aware that any proceeding initiated under the Rules on [C]orporate Rehabilitation shall be considered *in rem* and that jurisdiction over all persons affected by the proceedings shall be considered acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines as required by the Rules."

The panel of insurers' argument that they are not "affected parties" in the rehabilitation proceedings because they do not hold any asset belonging to SCP ["]which should be reflected in its audited financial statements" was sufficiently rebutted by SCP when the latter argued that the insurers, holding as they do, sums of money, recovery of which is sought by SCP, as the insured, are parts of the assets of its estate (Bank of the Philippine Islands *vs.* Posadas, 56 Phil. 215, 230). They are sums of money redounding to the benefit of its estate (*i.e.* assets) as an insured (Heirs of Loreto Maramag *vs.* Heirs of Maramag, *et al.*, 586 SCRA 774, 787). Thus, the fact that SCP, as insured, is claiming the proceeds of insurance policies issued to it, makes the insurers affected parties covered by the instant rehabilitation proceedings.

The panel of insurers further contend, that the claim "may not be resolved summarily as the same requires a full-blown trial" such that it may be considered a complaint and therefore this Court did not acquire jurisdiction over the *res* because of the non-payment of docket fees. Contrary to this line of reasoning however, it should be pointed out that the Interim Rules of Procedure on Corporate Rehabilitation clearly recognizes the right of the parties affected by the proceedings to file their opposition (Rule 3, Secs. 6, 10 and 20). The rehabilitation judge can hold clarificatory hearings if there is a need to clarify certain questions arising from such opposition. In short, the right to oppose (together with the corresponding right to be heard on the opposition) does not necessarily mean that a "full-

blown trial" should be conducted. The instant proceedings does [sic] not automatically become "adversarial" (as compared to "summary" proceedings) necessitating "full-blown trial" just because the insurers have conveyed their intent to oppose (which they did) the claim.

As the insurers themselves admit in par. 37 of their Opposition adversarial proceedings simply means that it is "one having opposing parties, contested as distinguished from an *ex-parte* application, one of which the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest it" (Republic of the Philippines *vs.* Valencia, 141 SCRA 462[,] 1986). It is very clear that the insurers have all the opportunity in these proceedings to oppose even without the necessity of a "full-blown hearing."

And since the subject motion for payment of the insurance claim does not necessarily entail full-blown hearings despite it being an adversarial motion (*i.e.* contested), the argument of the insurers that it is a complaint that must be resolved in an original, separate, full-blown proceedings, independently of the instant case which is summary in nature, and necessarily must comply with Sec. 141 of the Revised Rules of Court regarding the payment of filing fees ["]upon filing of the pleading or other application which initiates an action or proceeding" does not hold water and is fallacious.

x x x x x x x x x

As to the corollary issue of the rightful payee of the insurance proceeds, this Court hereby rules that contrary to the creditors' argument that the proceeds of the insurance claims should be given to the MTI Trustee pursuant to the MTI, it is appropriate for this Court to emphasize what the appellate court in BPI *vs.* Hon. Kalalo, has said – that although it is beyond dispute that the provisions of the MTI continue to bind the parties, the MTI's binding effect should be qualified. Pursuant to the provision of the Interim Rules and in deference to the purpose of rehabilitation proceedings, "the Mortgage Trust Indenture would be binding only insofar as it does not conflict with the provisions of the rehabilitation plan undertaken by the private respondent as well as if it does not hinder the corporate rehabilitation of private respondent itself". In deciding who has the better right to receive the disputed insurance proceeds, the Court of Appeals said that "utmost regard must be had to the restoration of herein private respondent to a position of successful operation and solvency."

x x x x x x x x x

It is not true as contended by the second panel of insurers that there are distinctions between the instant motion (for the second fire) from the first motion (for the first fire) which had already been ruled in favor of SCP by the previous judge. The factual circumstances under the first motion and the present one are similar or analogous even if not entirely identical. Both motions refer to disputed insurance claims arising from losses covered by existing policies issued to SCP. Both have been disputed or opposed either by the MTI Trustee or by the insurers themselves. Thus, both motions should be resolved in the same manner in order to maintain consistency and stability in this Court's judicial pronouncements.

This Court agrees with SCP when it argues that the creditors should realize that if they insist on being paid the cash proceeds of the claim or if the proceeds are to be given to the MTI trustee, the said act may not only constitute a violation of the Stay Order (since it is virtually a satisfaction/enforcement/collection of their money claims) but it would also result in SCP not being able to restart normal operations which would adversely affect its rehabilitation. Hence, this Court mandates the second panel of insurers to pay the insurance claims of SCP or in lieu thereof, replace or reinstate the CRM.

WHEREFORE, premised and predicated on the foregoing, the Court hereby orders the following:

> 1. Grant SCP's unopposed Urgent Motion (to Withdraw Motion to Admit Supplemental Motion dated December 2, 2009) dated September 9, 2010;
>
> 2. Order the second panel of insurers to already pay the additional business interruption claim of US$8 million plus interest at the rate provided by Sec. 243 of the Insurance Code (for the second fire); and
>
> 3. Order the second panel of insurers to pay to SCP the total sum of US$33,882,393.00, plus interest at the rate provided by Sec. 243 of the Insurance Code inclusive of the value of its CRM or in lieu thereof, replace or reinstate the CRM.

SO ORDERED.[9]

Respondent insurers filed with the Court of Appeals a petition[10] for *certiorari* under Rule 65 of the Rules of Court raising mainly as issue that the RTC lacked jurisdiction over SCP's insurance claim and over respondent insurers.

The Court of Appeals' Ruling

In its 8 February 2012 Decision, the Court of Appeals declared void the RTC's 1 June 2011 Order. The Court of Appeals held that:

> x x x [T]he present petition for *certiorari* under Rule 65, 1997 Rules of Civil Procedure is an appropriate remedy, as it assails the very jurisdiction of the trial court in granting private respondent's insurance claims which were raised through a mere "Motion to Pay" in the rehabilitation proceedings. It is basic that a special civil action for *certiorari* is intended for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.
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> x x x x x x x x x
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> Notably, even in the proceedings below, petitioners questioned the trial court's jurisdiction to resolve private respondent's "Motion to Pay." As the trial court noted in its Order dated June 1, 2011, during the hearing on private respondent's "Motion to Pay" on January 21, 2011, petitioners entered a very special appearance solely for the purpose of questioning the trial court's jurisdiction. Record also bears that petitioners assailed the trial court's jurisdiction during the hearing on private respondent's "Motion to Resolve Critical Pending Incidents," dated March 25, 2011, and in pleadings filed before the trial court, to wit: (i) "Insurers' Opposition *Ad Cautelam* (To: 'Motion to Direct Insurers to Pay Insurance Proceeds to Insured Steel Corporation of the Philippines' dated December 17, 2010)"; (ii) "Comment *Ad Cautelam* (On Steel Corporation of the Philippines'

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[9] *Rollo*, pp. 319-327.

[10] *Id.* at 201-270.

'Comment on the Opposition *Ad Cautelam* dated January 20, 2011')"; (iii) "Insurers' *Ad Cautelam* Opposition *versus* Honorable Court's Assumption of Jurisdiction and/or Summary Resolution of Motion in Movant's Favor"; and (iv) "Insurers' Memorandum (on Issue of Jurisdiction)."

There is no denying that the subject matter of private respondent's "Motion to Pay" comprised of its insurance claims for (i) business interruption in the amount of US$8 million, and (ii) property loss in the amount of US$28 million. Said insurance claims cannot be considered as "claims" within the jurisdiction of the trial court functioning as a rehabilitation court. Rehabilitation courts only have limited jurisdiction over the claims by creditors against the distressed company, not on the claims of said distressed company against its debtors. The interim rules define claim as referring to all claims or demands, of whatever nature or character against a debtor or its property, whether for money or otherwise.

Even under the new Rules of Procedure on Corporate Rehabilitation, claim is defined under Section 1, Rule 2 as "all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise." This is also the definition of a claim under Republic Act No. 10142. Section 4(c) thereof reads:

> "(c) Claim shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to[:] (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from the acts done in the discharge of their functions falling within the scope of their authority: Provided, That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities."

Contrary to the trial court's finding, petitioners cannot be considered as "affected parties" within the purview of Section 1, Rule 3 of the Interim Rules o[n] Corporate Rehabilitation. As explained in *Metropolitan Waterworks and Sewerage System vs. Daway*, the provision, being merely a logical consequence of filing an *in rem* petition for rehabilitation, shall only cover the distressed

company's creditors and those other persons holding the assets belonging to the debtor under rehabilitation that would be material to the rehabilitation proceedings. As the Supreme Court explained in said case:

> "The public respondent relied on Sec. 1, Rule 3 of the Interim Rules on Corporate Rehabilitation to support its jurisdiction over the Irrevocable Standby Letter of Credit and the banks that issued it. The section reads in part ['] that jurisdiction over those affected by the proceedings is considered acquired upon the publication of the notice of commencement of proceedings in a newspaper of general circulation['] and goes further to define rehabilitation as an *in rem* proceeding. This provision is a logical consequence of the *in rem* nature of the proceedings, where jurisdiction is acquired by publication and where it is necessary that the assets of the debtor come within the court's jurisdiction to secure the same for the benefit of creditors. The reference to [']all those affected by the proceedings['] covers creditors or such other persons or entities holding assets belonging to the debtor under rehabilitation which should be reflected in its audited financial statements. The banks do not hold any assets of respondent Maynilad that would be material to the rehabilitation proceedings nor is Maynilad liable to the banks at this point."

In essence, private respondent's "Motion to Pay" is a collection suit; hence, it must be filed in a separate proceeding and the corresponding docket fees must be paid. Too basic to require further elucidation is the settled doctrine that a court acquires jurisdiction over a case only upon the payment of the prescribed fees. Here, the filing of the "Motion to Pay" in the rehabilitation court was a circumvention of the basic and indispensable requirement of payment of docket fees.

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There is also no gainsaying that the trial court had not validly acquired jurisdiction over the persons of petitioners. Jurisdiction over the person of a party defendant is acquired upon the service of summons in the manner required by law or, otherwise, by his voluntary appearance. Petitioners were not served with summons. Their appearance before the trial court cannot be considered as voluntary appearance since the same was done precisely to question the

jurisdiction of the trial court. It is well-settled that a party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalidity of summons, among others, cannot be considered to have submitted himself to the jurisdiction of the court.

In fine, the Court finds that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Order dated June 1, 2011. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

WHEREFORE, the trial court's Order dated June 1, 2011 is declared NULL and VOID. Respondents and all persons acting on their behalf are PERMANENTLY ENJOINED from implementing the said Order dated June 1, 2011 and all related issuances, if any, in SP Proc. No. 06-7993.

SO ORDERED.[11]

SCP filed a motion for reconsideration, which the Court of Appeals denied in its 27 March 2012 Resolution. Hence, the present petition.

The Issues

SCP raises mainly as issues that the Court of Appeals erred when it entertained respondent insurers' petition for *certiorari* filed under Rule 65 of the Rules of Court, and when it held that the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction:

FIRST REASON

THE COURT OF APPEALS ERRED WHEN, AFTER EXPRESSLY SAYING THAT "IT IS THE MANDATE OF THE COURT TO APPLY RELEVANT DECISIONS MATERIAL TO THE

[11] *Id.* at 79-85.

RESOLUTION OF QUESTIONS BEFORE IT," NEVERTHELESS REFUSED TO FOLLOW AND APPLY CHINA BANKING CORPORATION *VS.* CEBU PRINTING AND PACKAGING CORPORATION x x x UPON THE RESPONDENTS AND, INSTEAD, SUSTAINED A REMEDY WHICH WAS NOT ONLY WRONG BUT ALSO COULD NOT HAVE BEEN VALIDLY AVAILED OF BY THE RESPONDENTS FOR THE REVERSAL AND NULLIFICATION OF THE ORDER OF THE REHABILITATION COURT OF BATANGAS DIRECTING THE RESPONDENTS TO PAY TO THE PETITIONER THE PROCEEDS OF INSURANCE POLICIES ISSUED BY THEM AND/OR TO REPLACE THE COLD ROLLING MILL OF THE PETITIONER WHICH WAS LOST AS A CONSEQUENCE OF THE RISK INSURED AGAINST.

SECOND REASON

THE COURT OF APPEALS ERRED WHEN IT DID NOT CONSIDER THE STATUS OF THE PROCEEDINGS UNDER WHICH THE REHABILITATION COURT EXERCISED ITS JURISDICTION AND, INSTEAD, FOUND THE SAID COURT AS WITHOUT JURISDICTION TO DIRECT THE RESPONDENTS AS INSURERS TO PAY THE INSURANCE PROCEEDS DUE FROM THEM AND/OR REPLACE THE COLD ROLLING MILL OF THE PETITIONER SO THAT IT COULD CONTINUE TO REHABILITATE ITSELF IN A MANNER AS WOULD SERVE THE POLICIES ON CORPORATE REHABILITATION AS MANDATED BY P.D. NO. 902-A AND THE INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION.[12]

The Court's Ruling

The petition is unmeritorious.

SCP claims that respondent insurers availed of the improper remedy when they filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court, instead of a petition for review under Rule 43. Thus, the Court of Appeals erred when it did not dismiss respondent insurers' petition,

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

applying *China Banking Corporation v. Cebu Printing and Packaging Corporation.*[13]

The Court disagrees. A petition for *certiorari* under Rule 65 is the proper remedy when the issue raised involves errors of jurisdiction. On the other hand, a petition for review under Rule 43 is the proper remedy when the issue raised involves errors of judgment. In *ABS-CBN Broadcasting Corp. v. World Interactive Network Systems Japan Co., Ltd.,*[14] the Court held that:

> Proper issues that may be raised in a petition for review under Rule 43 pertain to errors of fact, law or mixed questions of fact and law. While a petition for *certiorari* under Rule 65 should only limit itself to errors of jurisdiction, that is, grave abuse of discretion amounting to a lack or excess of jurisdiction.[15]

In *Suyat, Jr. v. Torres*,[16] the Court held that:

> In a petition for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. x x x *Certiorari* will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by appeal. Error of jurisdiction is one where the act complained was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors by the trial court or quasi-judicial body in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings, and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 43 of the Rules of Court.[17]

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[13] G.R. No. 172880, 11 August 2010, 628 SCRA 154.

[14] 568 Phil. 282 (2008).

[15] *Id.* at 294.

[16] 484 Phil. 230 (2004).

[17] *Id.* at 239-240.

China Banking Corporation is inapplicable because the issue in that case is different from the issue raised by respondent insurers in CA-G.R. SP No. 119760. In *China Banking Corporation*, the issue involved errors of judgment. In particular, Cebu Printing and Packaging Corporation (CPPC) questioned the rehabilitation court's findings of fact and law in its 30 April 2002 Order denying due course to the petition for corporate rehabilitation. CPPC never questioned the rehabilitation court's jurisdiction. Since the issue involved errors of judgment, the proper remedy, as held in *China Banking Corporation*, was to file a petition for review under Rule 43. In the present case, the issue raised by respondent insurers in CA-G.R. SP No. 119760 involved errors of jurisdiction. Respondent insurers questioned the RTC's jurisdiction over the subject matter of SCP's insurance claim and over the persons of respondent insurers. Since the issue involved errors of jurisdiction, the proper remedy was to file a petition for *certiorari* under Rule 65.

SCP claims that the RTC has jurisdiction over the subject matter of the insurance claim. Thus, the Court of Appeals erred when it held that the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the 1 June 2011 Order.

The Court disagrees. The RTC, acting as rehabilitation court, has no jurisdiction over the subject matter of the insurance claim of SCP against respondent insurers. SCP must file a separate action for collection where respondent insurers can properly thresh out their defenses. SCP cannot simply file with the RTC a motion to direct respondent insurers to pay insurance proceeds. Section 3 of Republic Act No. 10142[18] states that rehabilitation proceedings are "summary and non-adversarial" in nature. They do not include adjudication of claims that require full trial on the merits, like SCP's insurance claim against respondent insurers. In *Advent Capital and Finance Corporation v. Alcantara*,[19] the Court held that:

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[18] Financial Rehabilitation and Insolvency Act of 2010.

[19] G.R. No. 183050, 25 January 2012, 664 SCRA 224.

Ultimately, the issue is what court has jurisdiction to hear and adjudicate the conflicting claims of the parties over the dividends that Belson held in trust for their owners. Certainly, not the rehabilitation court which has not been given the power to resolve ownership disputes between Advent Capital and third parties. x x x.

Advent Capital must file a separate action for collection to recover the trust fees that it allegedly earned and, with the trial court's authorization if warranted, put the money in escrow for payment to whoever it belongs. Having failed to collect the trust fees at the end of each calendar quarter as stated in the contract, **all it had against the Alcantaras was a claim for payment which is proper subject for an ordinary action for collection. It cannot enforce its money claim by simply filing a motion in the rehabilitation case for delivery of money** belonging to the Alcantaras but in the possession of a third party.

Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings. Adversarial proceedings similar to that in ordinary courts are inconsistent with the commercial nature of a rehabilitation case. The latter must be resolved quickly and expeditiously for the sake of the corporate debtor, its creditors and other interested parties. Thus, the Interim Rules "incorporate the concept of prohibited pleadings, affidavit evidence in lieu of oral testimony, clarificatory hearings instead of the traditional approach of receiving evidence, and the grant of authority to the court to decide the case, or any incident, on the basis of affidavits and documentary evidence."

Here, **Advent Capital's claim is disputed and requires a full trial on the merits. It must be resolved in a separate action where the Alcantaras' claim and defenses may also be presented and heard**.[20] (Emphases supplied)

The Court agrees with the ruling of the Court of Appeals that the jurisdiction of the rehabilitation courts is **over claims against the debtor** that is under rehabilitation, **not over claims by the debtor** against its own debtors or against third parties.

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[20] *Id.* at 231-232.

In its 8 February 2012 Decision, the Court of Appeals held that:

> x x x Said insurance claims cannot be considered as "claims" within the jurisdiction of the trial court functioning as a rehabilitation court. Rehabilitation courts only have limited jurisdiction over the claims by creditors against the distressed company, not on the claims of said distressed company against its debtors. The interim rules define claim as referring to all claims or demands, of whatever nature or character against a debtor or its property, whether for money or otherwise.
>
> Even under the new Rules of Procedure on Corporate Rehabilitation, claim is defined under Section 1, Rule 2 as "all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise." This is also the definition of a claim under Republic Act No. 10142. Section 4(c) thereof reads:
>
> > "(c) **Claim shall refer to all claims or demands of whatever nature or character against the debtor or its property**, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to[:] (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from the acts done in the discharge of their functions falling within the scope of their authority: Provided, That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities."[21] (Emphasis supplied)

Respondent insurers are **not** claiming or demanding any money or property from SCP. In other words, respondent insurers are **not creditors of SCP**. Respondent insurers are **contingent debtors** of SCP because they may possibly be, subject to proof during trial, liable to SCP. Thus, the RTC has no jurisdiction over the insurance claim of SCP against respondent insurers. SCP must file a separate action against respondent insurers to recover whatever claim it may have against them.

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[21] *Rollo*, pp. 81-82.

WHEREFORE, the petition is **DENIED.** The Court **AFFIRMS** the 8 February 2012 Decision and 27 March 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 119760.

SO ORDERED.

Brion, Perez, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

EN BANC

[A.M. No. RTJ-05-1962. October 17, 2013]

ATTY. JESSIE TULDAGUE and ATTY. ALFREDO BALAJO, JR., *complainants, vs.* **JUDGE MOISES PARDO and JAIME CALPATURA, Legal Researcher and Officer-in-Charge, Regional Trial Court, Branch 32, Cabarroguis, Quirino,** *respondents.*

[A.M. OCA IPI No. 05-2243-P. October 17, 2013]

ATTY. JESSIE TULDAGUE and ATTY. ALFREDO BALAJO, JR., *complainants, vs.* **JAIME CALPATURA, Legal Researcher and Officer-in-Charge, Branch Clerk of Court, Regional Trial Court, Branch 32, Cabarroguis, Quirino,** *respondent.*

[A.M. No. 05-10-661-RTC. October 17, 2013]

RE: REPORT ON THE JUDICIAL AUDIT AND INVESTIGATION CONDUCTED IN THE REGIONAL TRIAL COURT, CABARROGUIS, QUIRINO.

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[*] Designated Acting Member per Special Order No. 1564 dated 11 October 2013.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, THE COMPLAINANTS BEAR THE BURDEN OF PROVING, BY SUBSTANTIAL EVIDENCE, THE ALLEGATIONS IN THE COMPLAINT.— In administrative proceedings, the complainants bear the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In the absence of evidence to the contrary, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of judicial duty. x x x With the failure of complainants to substantiate their charges, the complaint against Judge Pardo should be dismissed for lack of merit.

2. ID.; ID.; ID.; ID.; WHILE THE LAW DOES NOT TOLERATE MISCONDUCT BY A CIVIL SERVANT, SUSPENSION, REPLACEMENT OR DISMISSAL MUST NOT BE RESORTED TO UNLESS THERE IS SUBSTANTIAL EVIDENCE TO MERIT SUCH PENALTIES.— While the law does not tolerate misconduct by a civil servant, suspension, replacement or dismissal must not be resorted to unless there is substantial evidence to merit such penalties. In the absence of substantial evidence to the contrary, Calpatura cannot be held accountable for the charges against him. As for ***A.M. No. 05-10-661-RTC***, we adopt the finding of the OCA that the same should be considered closed and terminated, insofar as Judge Pardo is concerned. In any case, Judge Pardo has already complied with this Court's Resolution. In *Office of the Court Administrator v. Judge Mantua*, where respondent judge was charged with gross inefficiency for undue delay in deciding cases, we considered the said judge's earnest efforts in attending to the pending cases in his docket sufficient to negate his liability.

3. JUDICIAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; GROSS MISCONDUCT; COMMITTED BY RESPONDENT JUDGE WHEN HE DID NOT DENY THAT HE HAD A DRINKING SPREE WITH A LITIGANT WHO HAD A PENDING APPLICATION FOR PROBATION IN HIS

SALA.— We find Judge Pardo liable for gross misconduct constituting violations of the Code of Judicial Conduct. Rosendo testified that he went to Judge Pardo's house to give him ₱6,000.00. Although the alleged giving of money was not proved, Judge Pardo did not deny that Rosendo, a litigant who had a pending application for probation in his *sala,* went to his house, had a "drinking spree" with him and stayed there for more than two hours. Section 1, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary states that "**Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer**." Section 2, Canon 2 of the Code states that "**The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary**." Section 1, Canon 4 of the Code states that "**Judges shall avoid impropriety and the appearance of impropriety in all of their activities**." In *Tan v. Rosete*, we ruled that the respondent judge's acts of meeting with litigants outside the office premises beyond office hours and sending a member of his staff to talk with complainant constitute gross misconduct. In *J. King & Sons Company v. Hontanosas*, we likewise held respondent judge liable for misconduct when he entertained a litigant in his home and received benefits given by the litigant.

4. ID.; ID.; ID.; ID.; RESPONDENT JUDGE IS STERNLY WARNED TO BE MORE CIRCUMSPECT IN THE PERFORMANCE OF HIS ADMINISTRATIVE FUNCTIONS AND REMINDED OF HIS PREVIOUS INFRACTIONS; THE MAXIMUM FINE OF PHP 40,000.00 WAS IMPOSED ON RESPONDENT.— Section 8, Rule 140 of the Rules of Court classifies gross misconduct constituting violations of the Code of Judicial Conduct as a serious offense. It is punishable by: (1) dismissal from the service, forfeiture of benefits, and disqualification from reinstatement to any public office; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000. The Court notes that this is not the first offense of Judge Pardo. In *Magpali v. Judge Pardo,* the Court fined him ₱10,000.00 for gross ignorance of the law and warned him that a repetition of similar acts would be dealt with more severely. In A.M. OCA IPI No. 05-2316-RTJ, we dismissed the charges of grave misconduct, gross ignorance of the law and violation

of the New Code of Judicial Conduct against Judge Pardo but reminded him to be more circumspect in the performance of his administrative functions, with a warning as well. In light of these circumstances, we find it proper to impose upon him the maximum fine of ₱40,000.00.

APPEARANCES OF COUNSEL

Soller Peig Escat and Peig Law Offices for Judge Moise Pardo and Jaime Calpatura.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court are: (1) the Administrative Complaint[1] dated 10 June 2005 filed by Atty. Jessie Tuldague (Tuldague), Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court, Cabarroguis, Quirino (RTC), and Atty. Alfredo Balajo, Jr. (Balajo), 2nd Assistant Provincial Prosecutor, Office of the Provincial Prosecutor, Cabarroguis, Quirino, against now retired Judge Moises Pardo (Judge Pardo), Presiding Judge of RTC, Branch 31, for Corruption and Violation of the New Code of Judicial Conduct; (2) the Administrative Complaint[2] dated 5 July 2005 filed by Tuldague and Balajo against Jaime Calpatura (Calpatura), Legal Researcher and Officer-In-Charge, Branch Clerk of Court of RTC, Branch 32, for Corruption; and (3) the Report on the Judicial Audit and Investigation[3] conducted in the same court.

The Facts

The antecedent facts of these cases, as culled from the records, are as follows:

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[1] *Rollo* (A.M. No. RTJ-05-1962), pp. 16-17.

[2] *Rollo* (A.M. OCA IPI No. 05-2243-P), pp. 1-4.

[3] *Rollo* (A.M. No. 05-10-661-RTC), pp. 1-16.

A.M. No. RTJ-05-1962

Tuldague and Balajo allege that Judge Pardo committed corruption and violations of the New Code of Judicial Conduct, to wit:

1. In Criminal Case No. 1427, entitled *People v. Rosendo Discipulo*, Judge Pardo allegedly asked and received ₱6,000.00 from Rosendo Discipulo (Rosendo), in exchange for a favorable decision on his application for probation.

On 28 February 2005, Rosendo was convicted for violation of Republic Act No. 6425. Balajo alleged that after the promulgation of the decision, Rosendo's counsel immediately filed a written application for probation accurately quoting the penalty imposed.[4] Rosendo testified that Calpatura sent an emissary to ask ₱10,000.00 from him, in order for Judge Pardo to act favorably on his application for probation.

On 28 March 2005, Calpatura and Judge Pardo allegedly sent text messages to Rosendo. Calpatura allegedly instructed him to give ₱3,000.00 to Dominador Pascua (Dominador) while Judge Pardo asked him to go to his house in the evening. Thereafter, Rosendo allegedly gave ₱3,000.00 to Dominador. At 7:30 p.m. of the same day, Rosendo, together with Fr. Teodoro Lazo (Fr. Lazo) and spouses Palmer and Irene Natividad, went to Judge Pardo's house. They had a "drinking congress" until 10:00 p.m. Before leaving, Rosendo allegedly gave ₱6,000.00 to Judge Pardo in the presence of his driver, Ramil S. Alonzo (Alonzo).

2. In Land Registration Case No. 223-2002, Judge Pardo allegedly obtained ₱1,000.00 from petitioner John F. Toribio (Toribio) for a speedy release of a copy of the granted petition, sometime in December 2002.

3. In Criminal Case No. 1581, entitled *People v. Johny Kimayong*, Judge Pardo allegedly asked and received one deer from accused Johny Kimayong (Kimayong) in exchange for a

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[4] *Rollo* (A.M. No. RTJ-05-1962), p. 67.

favorable decision. Balajo testified that on 21 February 2003, the jail guard mistakenly gave him a letter, containing the information that "Judge Pardo demanded and was given a live deer in exchange for a court favor to Johny Kimayong."[5]

4. Judge Pardo allegedly received ₱10,000.00 from Richard Calpito (Calpito), in exchange for endorsing him to the position of Process Server of RTC, Branch 31. Judge Pardo also allegedly received a cow from Michael T. Garingan (Garingan), in exchange for endorsing him as Utility in the Office of the Clerk of Court.

5. On 29 June 2002, Judge Pardo allegedly ordered Lugeorge N. Discipulo (Lugeorge), Electrician II of the Maintenance Section of the RTC, to take out two (2) cans of coat master paint from the Hall of Justice. Lugeorge testified that on 30 June 2002, he brought and used the two cans of paint in Judge Pardo's house. Judge Pardo allegedly ordered him to get another paint, but he no longer complied. According to him, Tuldague already discovered the missing cans of paint and had it noted in the security guard's logbook.

In his Comment/Answer dated 9 August 2005,[6] Judge Pardo vehemently denied the allegations of Tuldague, Balajo, Lugeorge and Rosendo.

Judge Pardo denied that Rosendo gave him money for his probation. Judge Pardo presented Fr. Lazo, who testified that Rosendo went with him to Judge Pardo's house to thank the judge. Fr. Lazo stated that he did not see Rosendo hand anything to Judge Pardo during their stay. Judge Pardo also narrated that on 4 July 2005, he visited Fr. Lazo in his convent. Fr. Lazo then confronted Rosendo, who admitted that he was forced by his cousin Lugeorge to sign the Affidavit. On Balajo's accusation, Judge Pardo stated that he immediately called the attention of Rosendo's counsel in open court when he quoted the penalty imposed.

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[5] *Id.* at 469-470.

[6] *Id.* at 227-235.

Judge Pardo denied the charges that he obtained ₱1,000.00 from Toribio and a live deer from Kimayong. He also denied receiving ₱10,000.00 and a cow from Calpito and Garingan in exchange for endorsing them to vacant positions in the RTC. Judge Pardo claimed that these allegations were unsupported by concrete evidence. He further argued that the letter allegedly given to Balajo was obtained illegally and in violation of the privacy of communication.

Judge Pardo likewise denied ordering Lugeorge to take two cans of paint for use in his house. He narrated that during the wake of Lugeorge's mother-in-law, Lugeorge confessed that he took the cans of paint and gave one to Alonzo.

Finally, he alleged that Tuldague filed this complaint to get even because: (a) he enjoined Tuldague from signing applications for leave of absence of employees, which he used to do; (b) he recalled Process Servers Calpito and Levi Prestoza (Prestoza), who used to be under Tuldague's disposal; (c) he issued a memorandum prohibiting Tuldague from serving summons before the raffle of cases; (d) he stopped the practice of filing all pleadings with the Office of the Clerk of Court and limited it to initiatory pleadings only; and (e) he stopped sharing the conduct of raffle of foreclosure proceedings with Tuldague. Judge Pardo claimed that Balajo detested him for noticing that Balajo would refuse to submit object evidence when he rested his case.

A.M. OCA IPI No. 05-2243-P

In this case, Tuldague and Balajo accuse Calpatura of corruption, in cahoots with Judge Pardo, to wit:

1. Calpatura allegedly approached litigants and offered them assistance provided they would give him money or animals.

In the same criminal case against Rosendo, Calpatura allegedly sent an emissary to ask for ₱10,000.00 so that Judge Pardo would decide favorably Rosendo's probation. On 28 March 2005, Calpatura allegedly sent Rosendo a text message, stating to give him ₱3,000.00, through Dominador.

In Civil Case No. 292, the plaintiff Alberto Gorospe (Gorospe) testified that his friend Jose Cabañero (Cabañero) introduced him to Calpatura while they were following up this case in the RTC. Sometime in July 2004, Gorospe, together with Cabañero, allegedly met Calpatura in the Cabarroguis public market. Calpatura allegedly urged him to buy hard drinks and *pulutan.* Gorospe agreed because he was seeking help with his case. Then, sometime in November 2004, Calpatura allegedly asked him to prepare a goat for Judge Pardo's birthday. Judge Pardo allegedly instructed Gorospe to give him the goat through Calpatura. Thereafter, Calpatura allegedly asked him again for money.

Juanito Pascua (Juanito) likewise testified that Calpatura visited him in jail to ask for two goats. Judge Pardo allegedly instructed Calpatura to ask for the goats in order to expedite his release from jail. Thus, Juanito gave the two goats for Judge Pardo to Calpatura. Calpatura allegedly asked Juanito again for another goat. After Juanito's acquittal, Calpatura allegedly ordered him to repair a bed without payment.

2. Calpatura allegedly acted as "fixer" and "bagman" for Judge Pardo in cases where the accused deposited cash bonds. Both Calpatura and Judge Pardo allegedly shared with the released cash bonds thereafter.

In Criminal Case No. 1468, Aurelia Diaz (Diaz) testified that Calpatura and Prestoza asked for her released cash bond amounting to ₱16,000.00, so that the estafa case against her would be dismissed. Diaz narrated that on 14 October 2002, Judge Pardo asked her if she would give him the released cash bond amounting to ₱16,000.00. Diaz agreed but asked Judge Pardo to acknowledge its receipt. Then, Judge Pardo allegedly called her lawyer, Atty. Edwin Betguen (Betguen). Betguen came and asked Diaz to go with him to the comfort room. Calpatura and Prestoza thereafter appeared. Then, Betguen allegedly received the ₱16,000.00 from Diaz.

On the other hand, Tuldague and Naty Fernando (Fernando) narrated that in the afternoon of 12 February 2003, Diaz, Cezar Diaz and Procopio Castro approached Tuldague to inquire about their rice thresher, which was executed upon Diaz's conviction

of estafa. Diaz then complained to Tuldague that she was misled into believing that her case would be dismissed if she gave ₱10,000.00, or part of her cash bond, to Betguen and Calpatura. Fernando testified that he heard Diaz complain to Tuldague.

3. Calpatura allegedly bragged to court litigants about drafting decisions and his closeness to Judge Pardo.

4. Finally, Calpatura allegedly projected himself as a lawyer even though he did not pass the bar.

In his Comment/Answer dated 30 August 2005,[7] Calpatura essentially denied the allegations against him. He denied that he offered assistance to litigants in exchange for money or animals and that he was a "fixer" and "bagman" of Judge Pardo.

Calpatura denied receiving ₱3,000.00 from Rosendo through Dominador. He presented Dominador, who testified that Rosendo did not give him money on 28 March 2005. However, Calpatura admitted that Lugeorge requested him to offer Rosendo's cash bond to Judge Pardo for his acquittal. He turned down the offer since he knew Judge Pardo's strictness and non-acceptance of bribes.

Calpatura alleged that Gorospe's accusations were purely concocted and fabricated. Calpatura presented Cabañero, who testified that he never introduced Gorospe to Calpatura and neither did they meet Calpatura in the Cabarroguis public market. Cabañero instead insisted that it was a certain Ramiterre, whom he introduced to Calpatura and who was with them in the Cabarroguis public market.[8]

Calpatura likewise refuted Juanito's accusations and offered the Certification issued by Benjamin Galapon, Provincial Warden, Cabarroguis, Quirino. The Certification states: "Jaime Calpatura did not visit the Provincial Warden Office since he was transferred from PENRE Office to the [RTC], Cabarroguis, Quirino."[9]

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[7] *Rollo* (A.M. OCA IPI No. 05-2243-P), pp. 29-34.

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

[9] *Rollo* (A.M. No. RTJ-05-1962), p. 215.

Calpatura denied obtaining money from Diaz regarding her estafa case. He alleged that Diaz's Affidavit was self-serving and executed upon the instance of Tuldague and Balajo. He likewise insisted that Fernando's testimony was purely fabricated and concocted.

Finally, he claimed that the allegations against him were products of instigations with ill-motive brought about by complainants' illegitimate and capricious ambitions. He alleged that Tuldague sought to be free from constructive suggestions and corrections on his wrong office actions, *i.e.* issuance of summons before the raffle of cases. He likewise claimed that Balajo harbored ill-feelings against him since he questioned his issuance of commitment orders.

A.M. No. 05-10-661-RTC

On 15 August to 19 August 2005, a judicial audit was conducted in the RTC of Cabarroguis, Quirino, based on the directive of the Office of the Court Administrator (OCA) and Chief Justice Hilario Davide, Jr. to investigate Judge Pardo. On 19 September 2005, the audit team submitted their initial report providing, among others, that in Branches 31 and 32 of the RTC, Judge Pardo, as presiding and pairing judge, accumulated a total of: (a) forty-four (44) cases without further action or settings for a considerable length of time; (b) seven (7) cases submitted for decision or resolution but already beyond the reglementary period to decide or resolve; and (c) one (1) case not yet set for hearing.[10]

In a Resolution dated 18 October 2005,[11] the Court *En Banc*, upon recommendation by the OCA, resolved to: (a) consolidate

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[10] *Rollo* (A.M. No. 05-10-661-RTC), pp. 25-30.

[11] *Rollo* (A.M. No. RTJ-05-1962), pp. 96-97. The Resolution pertinently states:

x x x x x x x x x

(a) **OUTRIGHTLY DISMISS**, for lack of merit, the complaints dated 10 June 2005 and 25 July 2005 filed by Atty. Jessie W. Tuldague and Atty. Alfredo Balajo, Jr. against Judge Moises M. Pardo, Executive Judge, RTC, Cabarroguis, Quirino, with respect to the following

the instant judicial audit and investigation report with the complaints against Judge Pardo; (b) include Calpatura as respondent in the charge of corruption; and (c) refer the consolidated cases to Justice Alfredo M. Marigomen (Justice Marigomen), Consultant, OCA, for investigation, report and recommendation within 60 days from the termination of the formal hearing.

In a Resolution dated 4 April 2006,[12] the Court *En Banc*, resolved to redocket the complaint, amend the earlier resolution

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allegations: (a) immorality; (b) oppression; (c) taking of property subject of litigation; (d) deliberately lowering the penalty imposed so that the accused would be eligible for probation in exchange for money; and (e) hiring of a killer to liquidate the complainants and several court employees;

(b) **REDOCKET** the same complaints as regular administrative cases against Judge Pardo, with respect to the following charges: (a) corruption through, among others, "sharing of cash bonds" (b) demanding money or live animals in exchange for indorsing applicants for vacant positions; (c) taking of court property specifically two (2) big cans of Coat Master Paint allocated for the painting of the Hall of Justice; and (d) deliberate ordering of the release of prisoner Florante Baliuag, Sr. despite prior knowledge of another pending criminal case filed with the other court where he also presides in an acting capacity, thus: A.M. No. RTJ-05-1962 (Atty. Jessie W. Tuldague and Atty. Alfredo A. Balajo, Jr. vs. Judge Moises M. Pardo) and A.M. No. RTJ-05-1963 (Atty. Jessie W. Tuldague and Atty. Alfredo A. Balajo, Jr. vs. Judge Moises M. Pardo);

x x x x x x x x x

[12] *Id.* at 145-147. The Resolution pertinently states:

x x x x x x x x x

(a) **OUTRIGHTLY DISMISS**, for lack of merit, the complaint dated 10 June 2005***[docketed as OCA IPI No. 05-2284-RTJ]*** filed by Atty. Jessie W. Tuldague and *Atty. Alfredo A. Balajo[,] Jr.* against Judge Moises M. Pardo, Executive Judge, RTC, Cabarroguis, Quirino, with respect to the following allegations: (a) immorality; (b) oppression; (c) taking of property subject of litigation; (d) deliberately lowering the penalty imposed so that the accused would be eligible for probation in exchange for money; and (e) hiring of a killer to liquidate the complainants and several court employees;

and limit the charges against Judge Pardo to: (a) corruption through, among others, sharing of cash bonds; (b) demanding money or live animals in exchange for endorsing applicants for vacant positions; and (c) taking of court property specifically two big cans of coat master paint allocated for the painting of the Hall of Justice.

On 27 April 2006, 25 May 2006, and 29 June 2006, Justice Marigomen conducted an investigation at the Hall of Justice, Cabarroguis, Quirino. Complainants presented eight (8) witnesses, namely: Rosendo, Lugeorge, Gorospe, Diaz, Fernando, Juanito, Tuldague, and Balajo. On the other hand, respondents presented seven (7) witnesses, namely: Fr. Lazo, Dominador, Cabañero, Madarang, Galapon, Calpatura, and Judge Pardo.

Meanwhile, based on the initial report on the judicial audit, which was adopted by the OCA in its Memorandum Report dated 28 April 2006,[13] this Court issued a Resolution dated 20 June 2006,[14] to wit:

(a) **DIRECT** Judge Moises M. Pardo, RTC, Branch 31, Cabarroguis, Quirino, to **SUBMIT** certified true copies of the following, within five (5) days from notice hereof:

(i) Criminal Case No. 1891 – order showing the latest status of the case;

(ii) Criminal Case No. 1655 – formal offer of exhibits for the prosecution allegedly attached to the case records; court

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(b) **REDOCKET** the same complaint as a regular administrative case against Judge Pardo, with respect to the following charges: (a) corruption through, among others, "sharing of cash bonds"; (b) demanding money or live animals in exchange for indorsing applicants for vacant positions; (c) taking of court property specifically two (2) big cans of Coat Master Paint allocated for the painting of the Hall of Justice, ***thus: A.M. No. RTJ-05-1962 (Atty. Jessie W. Tuldague and Atty. Alfredo A. Balajo, Jr. vs. Judge Moises M. Pardo) re: the three (3) above enumerated charges***;

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[13] *Rollo* (A.M. No. 05-10-661-RTC), pp. 1-16.

[14] *Id.* at 146-150.

order resolving the same; and court order and/or pleading filed by the parties to show the latest status of the case;

(iii) Criminal Case No. 1395 – Supreme Court Resolution allegedly designating Judge Menrado Corpuz, RTC, Branch 38, Maddela, Quirino, to hear and decide the case;

(iv) Criminal Case No. 1716-2002 – order dismissing the case;

(v) Criminal Case Nos. 1626 and 1376 – decisions (*submit only after the promulgation of the decisions*); and

(vi) Criminal Case No. 1608 and Civil Case No. 332 – decisions;

(b) **DIRECT** Judge Pardo to

(i) **DECIDE WITH DISPATCH** Criminal Case No. 1708 which has already been submitted for decision per his letter of January 16, 2005;

(ii) **COMPLY** with the previous directive of the Office of the Court Administrator to (1) decide with dispatch Criminal Case No. 1609; and (2) immediately take appropriate action on Civil Case No. 292, which remains unacted upon despite the lapse of the period given to the parties to reconstitute the records of the case; and

(iii) **SUBMIT**, within five (5) days from promulgation, a compliance report relative to the foregoing directives, with certified true copies of the order issued in Civil Case No. 292 and the decisions in Criminal Case Nos. 1609 and 1708;

x x x x x x x x x

(j) **DIRECT** Judge Pardo, in his capacity as Acting Presiding Judge of RTC, Branch 32, Cabarroguis, Quirino, to:

(i) **EXPLAIN** why no administrative sanction shall be imposed on him for his failure, as of audit date, to (1) take appropriate action on the following cases: Criminal Cases Nos. 1887, 1888, 1889, 1890, 1922, 1903, 1909, 1904, 1915, 1919, 1726 with respect to accused Jose Tubera (*with Warrants of Arrest/ Alias Warrants of Arrest*); Civil Cases Nos. 603 and 609 (*with Summons*); Civil Case No. 537 (*No further setting of trial*); Criminal Case No. 1454 (*No further setting of the hearing on the Motion for Declaration of the Penalty Imposed against the Accused*); Criminal Case Nos. 1414 and 1916-05

and Civil Cases Nos. 384, 522, 535 and 560 (*where the parties and concerned court employees failed to comply with the directives of the court for a considerable length of time*); and (2) resolve, within the reglementary period, the following cases: Criminal Case Nos. 1422, 1509, 1514 and 1615;

(ii) **SUBMIT**, within five (5) days from notice hereof, certified true copies of the decisions/resolutions in the following cases: Criminal Case Nos. 1422, 1509 and 1615;

(iii) **COMPLY** with the previous directive of the OCA to (1) resolve with dispatch Criminal Case No. 1514; and (2) immediately take appropriate action on Criminal Case No. 1916-05, where no further action was taken by the court despite the lapse of the period given to the prosecution to submit the report on the reinvestigation of the case, and Criminal Case No. 1726 which has not yet been archived with respect to accused Jose Tubera, who has not yet been arraigned and who has jumped bail since March 2004;

(iv) **SUBMIT** within ten (10) days from notice hereof a compliance report relative to the foregoing directives, with certified true copies of the orders issued in Criminal Cases Nos. 1916-05 and 1726 and the resolution/order in Criminal Case No. 1514; and

(v) **IMMEDIATELY TAKE APPROPRIATE ACTION** on the following cases: Civil Case Nos. 384, where no further action was taken by the court despite the lapse of the period given to the parties to submit their pleading or addendum to the Compromise Agreement; and Civil Case No. 522 where no further action was taken by the court despite the lapse of the period given to the DENR to comply with its Order of July 8, 2002;[15]

x x x x x x x x x

In his Letter-Compliance dated 8 August 2006,[16] Judge Pardo submitted the certified true copies of Orders and Decisions he rendered in RTC, Branch 31. In his Letter-Compliance dated 9 August 2006,[17] Judge Pardo likewise attached copies of his Medical Certificate, Orders, Resolutions and Decisions for

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[15] *Id.* at 146-149.

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

[17] *Id.* at 163-164.

Branch 32. Judge Pardo explained in his letter that he had been suffering from chronic hypertensive cardio vascular disease with temporary rheumatoid arthritis since 1 March 2005.

In a Resolution dated 18 October 2006,[18] this Court, through the Second Division, resolved to consolidate A.M. OCA IPI No. 05-2243-P with A.M. No. RTJ-05-1962.

In a Resolution dated 14 December 2009, this Court, through the First Division, approved Judge Pardo's application for optional retirement effective 1 July 2009. However, we held in abeyance the payment of his retirement benefits until the final resolution of this case.

The Report and Recommendations of the OCA

In its Report dated 3 June 2010,[19] the OCA found Judge Pardo liable for violating Section 1, Canon 4 of the New Code of Judicial Conduct.[20] The OCA found that Judge Pardo did not deny he had a drinking spree with Rosendo, for more than two hours in the evening of 28 March 2005. Thus, the OCA found this act disturbing and improper since Rosendo had a pending application for probation with Judge Pardo at that time.

As for the charges of (1) corruption against both Judge Pardo and Calpatura, (2) taking of court property, and (3) endorsing of applicants in exchange for money or animals against Judge Pardo only, the OCA noted that the complainants failed to substantiate their charges. The complainants did not have direct knowledge of their charges and the witnesses they presented were not credible to substantiate their claims.

Accordingly, the OCA recommended that:

1. the charge of corruption against respondents Judge Moises M. Pardo (now retired), formerly of the Regional Trial Court,

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[18] *Rollo* (A.M. OCA IPI No. 05-2243-P), pp. 60-61.

[19] *Rollo* (A.M. No. RTJ-05-1962), pp. 931-948.

[20] *Id.* at 946.

Branch 31, Cabarroguis, Quirino, and Jaime B. Calpatura, Legal Researcher of the said court, as well as the charges of demanding money or live animals in exchange for indorsing applicants for vacant positions and taking of court property against respondent Judge Pardo, be DISMISSED for insufficiency of evidence;

2. Judge Pardo be FINED in the amount of ₱20,000.00 for violation of the New Code of Judicial Conduct, which shall be deducted from his retirement benefits; and

3. the matter regarding the judicial audit conducted in Branches 31 and 32 of the Regional Trial Court, Cabarroguis, Quirino be now considered CLOSED and TERMINATED, insofar as Judge Pardo is concerned.[21]

The Ruling of the Court

The Court agrees with the recommendations of the OCA but modifies the amount of the recommended fine.

In administrative proceedings, the complainants bear the burden of proving, by substantial evidence, the allegations in the complaint.[22] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In the absence of evidence to the contrary, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of judicial duty.[23]

In ***A.M. No. RTJ-05-1962***, complainants Tuldague and Balajo bear the burden of proving their allegations against Judge Pardo, which we limited to three acts: (a) corruption through, among others, sharing of cash bonds; (b) demanding money or live animals in exchange for endorsing applicants for vacant positions;

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[21] *Id.* at 948.

[22] *Re: Order Dated 21 December 2006 Issued by Judge Maceda*, A.M. No. 07-2-93-RTC, 29 October 2009, 604 SCRA 652; *Lihaylihay v. Canda*, A.M. No. MTJ-06-1659, 18 June 2009, 589 SCRA 363; *Borromeo-Garcia v. Pagayatan*, A.M. No. RTJ-08-2127, 25 September 2008, 566 SCRA 320; *Flores v. Lofranco*, 576 Phil. 25 (2008).

[23] *Borromeo-Garcia v. Pagayatan*, *supra* note 22, citing *Dayag v. Gonzales*, 526 Phil. 48 (2006).

and (c) taking of court property specifically two big cans of coat master paint allocated for the painting of the Hall of Justice. Since the charges hurled against Judge Pardo are grave in nature, the evidence against him should be competent and derived from direct knowledge.[24]

However, as the OCA observed, complainants did not have direct knowledge of their charges and merely relied on their witnesses to testify on the alleged wrongful acts of Judge Pardo.

To determine the credibility and probative weight of the testimony of a witness, such testimony must be considered in its entirety and not in truncated parts.[25] To determine which contradicting statements of a witness are to prevail as to the truth, the other evidence received must be considered.[26]

On the charge of corruption, complainants only presented Rosendo to testify that he gave ₱6,000.00 to Judge Pardo in the latter's house. He alleged that he likewise gave ₱3,000.00 to Calpatura, through Dominador. However, Rosendo's statements remain uncorroborated as he did not present Alonzo, who allegedly saw him give the money to Judge Pardo. On the other hand, Judge Pardo presented Fr. Lazo, who testified that he did not see Rosendo give money to Judge Pardo in his house. Calpatura likewise presented Dominador, who testified that Rosendo never gave him money.

Rosendo's testimony also contains material inconsistencies, which gravely affected his credibility. Contrary to Rosendo's statement in his Affidavit[27] that Calpatura sent an emissary to ask for ₱10,000.00, Rosendo testified on cross-examination that Calpatura sent him a text message, while Judge Pardo called him to ask for the money.[28] In his Affidavit, Rosendo claimed

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[24] *Id.*, citing *Rondina v. Bello,* 501 Phil. 319 (2005).

[25] *Vidallon-Magtolis v. Salud,* 506 Phil. 423 (2005).

[26] *Id.*, citing *Office of the Court Administrator v. Morante*, 471 Phil. 837 (2004).

[27] *Rollo* (A.M. No. RTJ-05-1962), p. 311.

[28] TSN, 27 April 2006, p. 10.

that Calpatura only sent a text message on 28 March 2005, but on cross-examination, he stated that Calpatura also sent a text message on 28 February 2005.[29] It is well to note that when a serious and inexplicable discrepancy is present between a previously executed sworn statement of a witness and his testimonial declarations with respect to one's participation in a serious imputation such as bribery, such discrepancy raises grave doubt on the veracity of the witness' account.[30]

On the charge that Judge Pardo demanded money or live animals to endorse applicants for vacant positions, Tuldague's allegation remains unsubstantiated. Toribio, Kimayong, Calpito, and Garingan, from whom Judge Pardo allegedly asked for money and animals, were not presented. In *Aldecoa-Delorino v. Abellanosa*,[31] the charges of abuse of authority, harassment and oppression were dismissed by the Court when the concerned employees did not submit their Affidavits or appear during the investigation of the administrative case. The Court cannot give credence to charges based on mere suspicion and speculation.[32]

Finally, on the charge that Judge Pardo ordered Lugeorge to bring court property, specifically two cans of paints, to his house, we likewise find the evidence presented to be insufficient. Only Lugeorge's testimony was presented. The security guards who allegedly saw the taking were not presented. On the other hand, the veracity of Lugeorge's testimony is doubtful due to these circumstances: (1) Lugeorge only mentioned the alleged order of Judge Pardo to deliver the cans of paint to his house when Tuldague confronted him about the missing cans of paint;[33] (2) Tuldague thereafter ordered that "NOTE: TWO (2) BIG CAN (sic) OF COAT MASTER TAKEN OUT BY L. N. DISCIPULO"[34] be entered in the security logbook, but did not

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[29] *Id.* at 14.

[30] *Castaños v. Escaño*, 321 Phil. 527 (1995).

[31] A.M. No. P-08-2472, 19 October 2010, 633 SCRA 448.

[32] *Borromeo-Garcia v. Pagayatan, supra* note 22.

[33] TSN, 27 April 2006, p. 44.

[34] *Rollo* (A.M. No. RTJ-05-1962), p. 447.

mention Judge Pardo in the entry; (3) Tuldague prepared Lugeorge's affidavit on 6 June 2006, or four years from the alleged order of Judge Pardo to Lugeorge in 2002; and (4) during his cross-examination, Tuldague admitted that Lugeorge had been his subordinate since he was appointed as Clerk of Court.[35]

A material inconsistency is likewise present in Lugeorge's testimony when in his Affidavit, he stated that Judge Pardo ordered him to bring out two cans of paint from the RTC on 29 June 2002.[36] On his cross-examination, however, Lugeorge testified that Judge Pardo's order happened "before 29 June 2002."[37] In *Jabon v. Judge Usman*,[38] we held that the complainant's glaring discrepancy in the date of the commission of the alleged corrupt act and his failure to correct the discrepancy despite given a chance, negatively affected his credibility.

With the failure of complainants to substantiate their charges, the complaint against Judge Pardo should be dismissed for lack of merit. However, we find Judge Pardo liable for gross misconduct constituting violations of the Code of Judicial Conduct.

Rosendo testified that he went to Judge Pardo's house to give him ₱6,000.00. Although the alleged giving of money was not proved, Judge Pardo did not deny that Rosendo, a litigant who had a pending application for probation in his *sala*, went to his house, had a "drinking spree" with him and stayed there for more than two hours.

Section 1, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary states that "**Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer**." Section 2, Canon 2 of the Code states that "**The behavior and conduct of judges must reaffirm the people's faith in the**

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[35] TSN, 25 May 2006, p. 50.

[36] *Rollo* (A.M. No. RTJ-05-1962), pp. 312-313.

[37] TSN, 27 April 2006, p. 37.

[38] 510 Phil. 513 (2005).

integrity of the judiciary." Section 1, Canon 4 of the Code states that "**Judges shall avoid impropriety and the appearance of impropriety in all of their activities**."

In *Tan v. Rosete*,[39] we ruled that the respondent judge's acts of meeting with litigants outside the office premises beyond office hours and sending a member of his staff to talk with complainant constitute gross misconduct. In *J. King & Sons Company v. Hontanosas*,[40] we likewise held respondent judge liable for misconduct when he entertained a litigant in his home and received benefits given by the litigant.

Section 8, Rule 140 of the Rules of Court classifies gross misconduct constituting violations of the Code of Judicial Conduct as a serious offense. It is punishable by: (1) dismissal from the service, forfeiture of benefits, and disqualification from reinstatement to any public office; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000.[41]

The Court notes that this is not the first offense of Judge Pardo. In *Magpali v. Judge Pardo*,[42] the Court fined him ₱10,000.00 for gross ignorance of the law and warned him that a repetition of similar acts would be dealt with more severely. In A.M. OCA IPI No. 05-2316-RTJ, we dismissed the charges of grave misconduct, gross ignorance of the law and violation of the New Code of Judicial Conduct against Judge Pardo but reminded him to be more circumspect in the performance of his administrative functions, with a warning as well.[43] In light of these circumstances, we find it proper to impose upon him the maximum fine of ₱40,000.00.

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[39] 481 Phil. 189 (2004).

[40] 482 Phil. 1 (2004).

[41] RULES OF COURT, Rule 140, Sec. 11(A).

[42] A.M. No. RTJ-08-2146, 14 November 2008, 571 SCRA 1.

[43] *Rollo* (A.M. No. RTJ-05-1962), p. 111.

In ***A.M. OCA IPI No. 05-2243-P***, the complainants presented three witnesses to testify on separate instances when Calpatura allegedly committed corruption in cahoots with Judge Pardo.

First, Gorospe testified that Calpatura was introduced to him by Cabañero to help him with the lost records of his case. Calpatura allegedly urged Gorospe to buy liquor and *pulutan,* and then they drank in the public market. Gorospe likewise accused Calpatura of asking goats for Judge Pardo's birthday and for him. However, we find Gorospe's accusations insufficient due to the following: (1) Calpatura presented Cabañero, who refuted Gorospe's allegations and categorically stated that he never introduced Calpatura to Gorospe and neither did Calpatura join them to drink in the public market; (2) on cross-examination, Gorospe admitted that Judge Pardo never celebrated his birthday during his stint as a judge;[44] and (3) Gorospe's testimony likewise suffered from inconsistencies, such that, in his Affidavit,[45] he stated that Judge Pardo instructed him to give him a goat through Calpatura, but on cross-examination he testified that it was Calpatura who asked him for a goat to be given to Judge Pardo.[46]

Second, Juanito stated in his *Salaysay*[47] that Calpatura asked for two goats from him while he was in jail. However, Juanito's statement fails to convince us. Juanito did not specify the circumstances as to when exactly Calpatura asked for the goats and how he was able to send the goats while he was in prison. On the other hand, Calpatura presented the Certification of the Provincial Warden to prove that he never visited the jail for any purpose. Juanito further admitted during his cross-examination that: (1) he is only familiar with a little Tagalog while his *Salaysay* was written in Tagalog and prepared by Tuldague; (2) when he was asked to identify his *Salaysay*, he could only "see a little," or could see his signature only, because his vision was blurred; (3) he has little education and he could

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[44] TSN, 27 April 2006, p. 84.

[45] *Rollo* (A.M. No. RTJ-05-1962), pp. 458-459.

[46] TSN, 27 April 2006, p. 85.

[47] *Rollo* (A.M. No. RTJ-05-1962), p. 462.

only recall what he stated in his *Salaysay* if it would be read to him; and (4) finally, he signed his *Salaysay* in Tuldague's house since they were neighbors.[48]

Third, Tuldague alleged that Diaz complained to him about giving ₱10,000.00 or part of her cash bond to Betguen and Calpatura after being assured that it would settle her case.[49] Again, we cannot accept Tuldague's allegation, even though corroborated by Fernando. Both Tuldague and Fernando lacked direct and personal knowledge of whether Diaz indeed gave her cash bond to Betguen and Calpatura. Diaz, on the other hand, consistently and categorically testified that it was Betguen only who received her released cash bond amounting to ₱16,000.00.[50]

While the law does not tolerate misconduct by a civil servant, suspension, replacement or dismissal must not be resorted to unless there is substantial evidence to merit such penalties.[51] In the absence of substantial evidence to the contrary, Calpatura cannot be held accountable for the charges against him.

As for ***A.M. No. 05-10-661-RTC***, we adopt the finding of the OCA that the same should be considered closed and terminated, insofar as Judge Pardo is concerned. In any case, Judge Pardo has already complied with this Court's Resolution. In *Office of the Court Administrator v. Judge Mantua*,[52] where respondent judge was charged with gross inefficiency for undue delay in deciding cases, we considered the said judge's earnest efforts in attending to the pending cases in his docket sufficient to negate his liability.

WHEREFORE, we find respondent Judge Moises Pardo, retired Presiding Judge, Regional Trial Court, Cabarroguis,

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[48] TSN, 25 May 2006, pp. 15-25.

[49] *Rollo* (A.M. No. RTJ-05-1962), pp. 466-467.

[50] *Id.* at 456-457. TSN, 27 April 2006, p. 63.

[51] *Re: Order Dated 21 December 2006 Issued by Judge Maceda*, A.M. No. 07-2-93-RTC, 29 October 2009, 604 SCRA 652.

[52] A.M. No. RTJ-11-2291, 8 February 2012, 665 SCRA 253.

Quirino, Branch 31, **GUILTY** of gross misconduct and **FINE** him ₱40,000.00 to be deducted from his retirement benefits. The Office of the Court Administrator is **DIRECTED** to release the retirement pay and other benefits due Judge Pardo unless he is charged in some other administrative complaint or the same is otherwise withheld for some other lawful cause.

We **DISMISS** the complaint against Jaime Calpatura, Legal Researcher and Officer-In-Charge, Branch Clerk of Court, Regional Trial Court, Cabarroguis, Quirino, Branch 32, for lack of merit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion, Peralta, Bersamin, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., no part due to relationship of party.

Perez, J., no part, acted on matter as DCA.

Del Castillo, Abad, and *Leonen, JJ.,* on official leave.

EN BANC

[G.R. Nos. 178034, 178117, 186984-85. October 17, 2013]

ANDREW JAMES MCBURNIE, *petitioner, vs.* **EULALIO GANZON, EGI-MANAGERS, INC. and E. GANZON, INC.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; INSTANT CASE QUALIFIES AS AN EXCEPTION TO THE PROSCRIPTION AGAINST SECOND AND SUBSEQUENT MOTIONS FOR RECONSIDERATION AND THE RULE ON

IMMUTABILITY OF JUDGMENTS.— As we shall explain, the instant case also qualifies as an exception to, *first*, the proscription against second and subsequent motions for reconsideration, and *second*, the rule on immutability of judgments; a reconsideration of the Decision dated September 18, 2009, along with the Resolutions dated December 14, 2009 and January 25, 2012, is justified by the higher interest of substantial justice. To begin with, the Court agrees with the respondents that the Court's prior resolve to **grant**, and not just merely note, in a Resolution dated March 15, 2010 the respondents' motion for leave to submit their second motion for reconsideration already warranted a resolution and discussion of the motion for reconsideration on its merits. Instead of doing this, however, the Court issued on January 25, 2012 a Resolution denying the motion to reconsider for lack of merit, merely citing that it was a "prohibited pleading under Section 2, Rule 52 in relation to Section 4, Rule 56 of the 1997 Rules of Civil Procedure, as amended." In *League of Cities of the Philippines (LCP) v. Commission on Elections*, we reiterated a ruling that when a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. In such a case, the second motion for reconsideration is no longer a prohibited pleading. Similarly in this case, there was then no reason for the Court to still consider the respondents' second motion for reconsideration as a prohibited pleading, and deny it plainly on such ground. The Court intends to remedy such error through this resolution. More importantly, the Court finds it appropriate to accept the pending motion for reconsideration and resolve it on the merits in order to rectify its prior disposition of the main issues in the petition. Upon review, the Court is constrained to rule differently on the petitions. We have determined the grave error in affirming the NLRC's rulings, promoting results that are patently unjust for the respondents, as we consider the facts of the case, pertinent law, jurisprudence, and the degree of the injury and damage to the respondents that will inevitably result from the implementation of the Court's Decision dated September 18, 2009.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC)

RULES OF PROCEDURE; APPEAL BONDS; POSTING OF A BOND IN A REASONABLE AMOUNT SHALL SUFFICE TO SUSPEND THE RUNNING OF THE PERIOD TO PERFECT AN APPEAL FROM THE LABOR ARBITER'S DECISION TO THE NLRC; THE RULE THAT THE FILING OF A MOTION TO REDUCE BOND SHALL NOT STOP THE RUNNING OF THE PERIOD IS NOT ABSOLUTE AS THE COURT MAY RELAX THE SAME.— To clarify, the prevailing jurisprudence on the matter provides that the filing of a motion to reduce bond, coupled with compliance with the ***two conditions*** emphasized in *Garcia v. KJ Commercial* for the grant of such motion, namely, (1) a meritorious ground, and (2) posting of a bond in a reasonable amount, shall **suffice to suspend the running of the period to perfect an appeal from the labor arbiter's decision to the NLRC.** To require the full amount of the bond within the 10-day reglementary period would only render nugatory the legal provisions which allow an appellant to seek a reduction of the bond. Thus, we explained in *Garcia*: **The filing of a motion to reduce bond and compliance with the two conditions stop the running of the period to perfect an appeal**. **x x x** x x x The NLRC has full discretion to grant or deny the motion to reduce bond, and it may rule on the motion beyond the 10-day period within which to perfect an appeal. Obviously, at the time of the filing of the motion to reduce bond and posting of a bond in a reasonable amount, there is no assurance whether the appellant's motion is indeed based on "meritorious ground" and whether the bond he or she posted is of a "reasonable amount." Thus, the appellant always runs the risk of failing to perfect an appeal. x x x **In order to give full effect to the provisions on motion to reduce bond, the appellant must be allowed to wait for the ruling of the NLRC on the motion even beyond the 10-day period to perfect an appeal**. If the NLRC grants the motion and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, the appellant may still file a motion for reconsideration as provided under Section 15, Rule VII of the Rules. If the NLRC grants the motion for reconsideration and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, then the decision of the labor

arbiter becomes final and executory. x x x **In any case, the rule that the filing of a motion to reduce bond shall not stop the running of the period to perfect an appeal is not absolute. The Court may relax the rule.**

3. ID.; ID.; ID.; ID.; ID.; BY SUCH HASTE OF THE NLRC IN PEREMPTORILY DENYING THE RESPONDENT'S MOTION WITHOUT CONSIDERING THEIR ARGUMENTS, IT EFFECTIVELY DENIED THEM OF THEIR OPPORTUNITY TO SEEK A REDUCTION OF THE BOND EVEN WHEN THE SAME IS ALLOWED UNDER THE RULES AND SETTLED JURISPRUDENCE.— By such haste of the NLRC in peremptorily denying the respondents' motion without considering the respondents' arguments, it effectively denied the respondents of their opportunity to seek a reduction of the bond even when the same is allowed under the rules and settled jurisprudence. It was equivalent to the NLRC's refusal to exercise its discretion, as it refused to determine and rule on a showing of meritorious grounds and the reasonableness of the bond tendered under the circumstances. Time and again, the Court has cautioned the NLRC to give Article 223 of the Labor Code, particularly the provisions requiring bonds in appeals involving monetary awards, a liberal interpretation in line with the desired objective of resolving controversies on the merits. The NLRC's failure to take action on the motion to reduce the bond in the manner prescribed by law and jurisprudence then cannot be countenanced. Although an appeal by parties from decisions that are adverse to their interests is neither a natural right nor a part of due process, it is an essential part of our judicial system. Courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party has the amplest opportunity for the proper and just disposition of their cause, free from the constraints of technicalities. Considering the mandate of labor tribunals, the principle equally applies to them.

4. ID.; ID.; ID.; ID.; ID.; THE RULE ON PERFECTION OF AN APPEAL ONLY UPON POSTING OF A CASH OR SURETY BOND MAY BE RELAXED BY THE COURT UNDER CERTAIN EXCEPTIONAL CIRCUMSTANCES IN ORDER TO RESOLVE CONTROVERSIES ON THEIR MERITS.— Given the circumstances of the case, the Court's

affirmance in the Decision dated September 18, 2009 of the NLRC's strict application of the rule on appeal bonds then demands a re-examination. Again, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Section 2, Rule I of the NLRC Rules of Procedure also provides the policy that "the Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes." In accordance with the foregoing, although the general rule provides that an appeal in labor cases from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond, the Court has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) the fundamental consideration of substantial justice; (2) the prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.

5. ID.; ID.; ID.; ID.; ID.; PARAMETER SET BY THE COURT FOR THE LITIGANTS' AND THE NLRC'S GUIDANCE ON THE AMOUNT OF BOND THAT SHALL BE FILED WITH A MOTION FOR REDUCTION OF BOND; THE GUIDELINE SHALL NOT, HOWEVER, UNDULY HINDER NLRC'S EXERCISE OF ITS DISCRETION ON THE PERCENTAGE OF THE BOND SET WHICH IS MERELY PROVISIONAL.— It is in this light that the Court finds it necessary to set a parameter for the litigants' and the NLRC's guidance on the amount of bond that shall hereafter be filed with a motion for a bond's reduction. To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant, all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to ***10% of the monetary award*** that is subject of the appeal, which shall provisionally be deemed

the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission. In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended.

6. ID.; ID.; ID.; ID.; ID.; REDUCTION OF THE APPEAL BOND IS JUSTIFIED BY THE SUBSTANTIAL AMOUNT OF THE LABOR ARBITER'S AWARD WHICH COULD ONLY DEPRIVE THEM OF THE RIGHT TO APPEAL, EVEN FORCE THEM OUT OF BUSINESS AND AFFECT THE LIVELIHOOD OF THEIR EMPLOYEES.— In addition to the apparent merit of the respondents' appeal, the Court finds the reduction of the appeal bond justified by the substantial amount of the LA's monetary award. Given its considerable amount, we find reason in the respondents' claim that to require an appeal bond in such amount could only deprive them of the right to appeal, even force them out of business and affect the livelihood of their employees. In *Rosewood Processing, Inc. v. NLRC,* we emphasized: "Where a decision may be made to rest on informed judgment rather than rigid rules, the equities of the case must be accorded their due weight because labor determinations should not be '***secundum rationem*** but also ***secundum caritatem***.'"

7. ID.; ID.; ID.; ID.; ID.; THE RULE ON THE POSTING OF A "REASONABLE AMOUNT" OF AN APPEAL BOND SHOULD PRIMARILY BE BASED ON THE MERITS OF THE MOTION AND THE MAIN APPEAL.— As regards the requirement on the posting of a bond in a "reasonable amount," the Court holds that the final determination thereof by the NLRC shall be based primarily on the merits of the motion and the main appeal. Although the NLRC Rules of Procedure, particularly Section 6 of Rule VI thereof, provides that the bond to be posted shall be "in a reasonable amount *in relation to the monetary award*," the merit of the motion shall always take precedence in the determination. Settled is the rule that procedural rules were conceived, and should thus be applied in a manner that would only aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former

must yield to the latter. x x x Given the circumstances in this case and the merits of the respondents' arguments before the NLRC, the Court holds that the respondents had posted a bond in a "reasonable amount," and had thus complied with the requirements for the perfection of an appeal from the LA's decision.

8. ID.; ID.; TERMINATION OF EMPLOYMENT; FAILURE OF PETITIONER TO OBTAIN AN EMPLOYMENT PERMIT, BY ITSELF, NECESSITATES THE DISMISSAL OF HIS LABOR COMPLAINT.— Without the reversal of the Court's Decision and the dismissal of the complaint against the respondents, McBurnie would be allowed to claim benefits under our labor laws despite his failure to comply with a settled requirement for foreign nationals. Considering that McBurnie, an Australian, alleged illegal dismissal and sought to claim under our labor laws, it was necessary for him to establish, first and foremost, that he was qualified and duly authorized to obtain employment within our jurisdiction. A requirement for foreigners who intend to work within the country is an employment permit, as provided under Article 40, Title II of the Labor Code. x x x Clearly, this circumstance on the failure of McBurnie to obtain an employment permit, by itself, necessitates the dismissal of his labor complaint. Furthermore, as has been previously discussed, the NLRC has ruled in its Decision dated November 17, 2009 on the issue of illegal dismissal. It declared that McBurnie was never an employee of any of the respondents. It explained: **All these facts and circumstances prove that McBurnie was never an employee of Eulalio Ganzon or the [respondent] companies, but a potential investor in a project with a group including Eulalio Ganzon and Martinez but said project did not take off because of lack of funds.**

9. ID.; ID.; ID.; THE NLRC'S FINDINGS ON THE CONTRACTUAL RELATIONS BETWEEN PETITIONER AND THE RESPONDENTS ARE SUPPORTED BY THE RECORDS.— The NLRC's findings on the contractual relations between McBurnie and the respondents are supported by the records. *First*, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. Although an employment agreement forms part of the case records, respondent Ganzon signed it with the notation "per

my note." The respondents have sufficiently explained that the note refers to the letter dated May 11, 1999 which embodied certain conditions for the employment's effectivity. As we have previously explained, however, the said conditions, particularly on the successful completion of the project financing for the hotel project in Baguio City and McBurnie's acquisition of an Alien Employment Permit, failed to materialize. Such defense of the respondents, which was duly considered by the NLRC in its Decision dated November 17, 2009, was not sufficiently rebutted by McBurnie. *Second*, McBurnie failed to present any employment permit which would have authorized him to obtain employment in the Philippines. This circumstance negates McBurnie's claim that he had been performing work for the respondents by virtue of an employer-employee relationship. The absence of the employment permit instead bolsters the claim that the supposed employment of McBurnie was merely simulated, or did not ensue due to the non-fulfillment of the conditions that were set forth in the letter of May 11, 1999.

10. ID.; ID.; ID.; BESIDES THE EMPLOYMENT AGREEMENT, PETITIONER FAILED TO PRESENT OTHER COMPETENT EVIDENCE TO PROVE HIS CLAIM OF EMPLOYER-EMPLOYEE RELATIONSHIP.— Besides the employment agreement, McBurnie failed to present other competent evidence to prove his claim of an employer-employee relationship. Given the parties' conflicting claims on their true intention in executing the agreement, it was necessary to resort to the established criteria for the determination of an employer-employee relationship, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. The rule of thumb remains: the *onus probandi* falls on the claimant to establish or substantiate the claim by the requisite quantum of evidence. Whoever claims entitlement to the benefits provided by law should establish his or her right thereto. McBurnie failed in this regard. As previously observed by the NLRC, McBurnie even failed to show through any document such as payslips or vouchers that his salaries during the time that he allegedly worked for the respondents were paid by the company. In the absence of an employer-employee relationship between McBurnie and the respondents, McBurnie could not successfully

claim that he was dismissed, much less illegally dismissed, by the latter. Even granting that there was such an employer-employee relationship, the records are barren of any document showing that its termination was by the respondents' dismissal of McBurnie.

11. ID.; ID.; ID.; NO NEED TO REMAND THE CASE TO THE NLRC IN THE ABSENCE OF ANY SHOWING THAT THE LABOR TRIBUNAL WOULD RULE DIFFERENTLY ON THE MERITS OF THE CASE.— Given these circumstances, it would be a circuitous exercise for the Court to remand the case to the NLRC, more so in the absence of any showing that the NLRC should now rule differently on the case's merits. In *Medline Management, Inc. v. Roslinda*, the Court ruled that when there is enough basis on which the Court may render a proper evaluation of the merits of the case, the Court may dispense with the time-consuming procedure of remanding a case to a labor tribunal in order "to prevent delays in the disposition of the case," "to serve the ends of justice" and when a remand "would serve no purpose save to further delay its disposition contrary to the spirit of fair play."

APPEARANCES OF COUNSEL

Arnel Z. Dolendo and Leonard R. Subiela for petitioner.

Navarro Jumamil Escolin & Martinez Law Offices for respondents.

R E S O L U T I O N

REYES, *J.*:

For resolution are the –

(1) third motion for reconsideration[1] filed by respondent Eulalio Ganzon (Ganzon), EGI-Managers, Inc. (EGI) and E. Ganzon, Inc. (respondents) on March 27, 2012,

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[1] *Rollo* (G.R. Nos. 186984-85), pp. 874-909; subject of the Motion for Leave to File Attached Third Motion for Reconsideration dated March 27, 2012, *id*. at 867-871.

seeking a reconsideration of the Court's Decision[2] dated September 18, 2009 that ordered the dismissal of their appeal to the National Labor Relations Commission (NLRC) for failure to post additional appeal bond in the amount of ₱54,083,910.00; and

(2) motion for reconsideration[3] filed by petitioner Andrew James McBurnie (McBurnie) on September 26, 2012, assailing the Court *En Banc's* Resolution[4] dated September 4, 2012 that (1) accepted the case from the Court's Third Division and (2) enjoined the implementation of the Labor Arbiter's (LA) decision finding him to be illegally dismissed by the respondents.

Antecedent Facts

The assailed Decision dated September 18, 2009 provides the following antecedent facts and proceedings —

On October 4, 2002, McBurnie, an Australian national, instituted a complaint for illegal dismissal and other monetary claims against the respondents. McBurnie claimed that on May 11, 1999, he signed a five-year employment agreement[5] with the company EGI as an Executive Vice-President who shall oversee the management of the company's hotels and resorts within the Philippines. He performed work for the company until sometime in November 1999, when he figured in an accident that compelled him to go back to Australia while recuperating from his injuries. While in Australia, he was informed by respondent Ganzon that his services were no longer needed because their intended project would no longer push through.

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[2] Penned by Associate Justice Consuelo Ynares-Santiago (retired), with Associate Justices Minita V. Chico-Nazario (retired), Presbitero J. Velasco, Jr., Antonio Eduardo B. Nachura (retired) and Diosdado M. Peralta, concurring; *id*. at 481-493.

[3] *Id*. at 994-1010.

[4] *Id*. at 979.

[5] *Id*. at 165-169.

The respondents opposed the complaint, contending that their agreement with McBurnie was to jointly invest in and establish a company for the management of hotels. They did not intend to create an employer-employee relationship, and the execution of the employment contract that was being invoked by McBurnie was solely for the purpose of allowing McBurnie to obtain an alien work permit in the Philippines. At the time McBurnie left for Australia for his medical treatment, he had not yet obtained a work permit.

In a Decision[6] dated September 30, 2004, the LA declared McBurnie as having been illegally dismissed from employment, and thus entitled to receive from the respondents the following amounts: (a) US$985,162.00 as salary and benefits for the unexpired term of their employment contract, (b) ₱2,000,000.00 as moral and exemplary damages, and (c) attorney's fees equivalent to 10% of the total monetary award.

Feeling aggrieved, the respondents appealed the LA's Decision to the NLRC.[7] On November 5, 2004, they filed their Memorandum of Appeal[8] and Motion to Reduce Bond,[9] and posted an appeal bond in the amount of ₱100,000.00. The respondents contended in their Motion to Reduce Bond, *inter alia*, that the monetary awards of the LA were null and excessive, allegedly with the intention of rendering them incapable of posting the necessary appeal bond. They claimed that an award of "more than ₱60 Million Pesos to a single foreigner who had no work permit and who left the country for good one month after the purported commencement of his employment" was a patent nullity.[10] Furthermore, they claimed that because of their business losses that may be attributed to an economic crisis, they lacked

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[6] *Id*. at 424-435.

[7] Docketed as NLRC NCR CA No. 042913-05.

[8] *Rollo* (G.R. Nos. 178034 and 178117), pp. 65-106.

[9] *Rollo* (G.R. Nos. 186984-85), pp. 216-226.

[10] *Id*. at 216.

the capacity to pay the bond of almost ₱60 Million, or even the millions of pesos in premium required for such bond.

On March 31, 2005, the NLRC denied[11] the motion to reduce bond, explaining that "in cases involving monetary award, an employer seeking to appeal the [LA's] decision to the Commission is unconditionally required by Art. 223, Labor Code to post bond in the amount equivalent to the monetary award x x x."[12] Thus, the NLRC required from the respondents the posting of an additional bond in the amount of ₱54,083,910.00.

When their motion for reconsideration was denied,[13] the respondents decided to elevate the matter to the Court of Appeals (CA) *via* the "Petition for *Certiorari* and Prohibition (With Extremely Urgent Prayer for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order)[14] docketed as **CA-G.R. SP No. 90845**.

In the meantime, in view of the respondents' failure to post the required additional bond, the NLRC dismissed their appeal in a Resolution[15] dated March 8, 2006. The respondents' motion for reconsideration was denied on June 30, 2006.[16] This prompted the respondents to file with the CA the "Petition for *Certiorari* (With Urgent Prayers for the Immediate Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction)"[17] docketed as **CA-G.R. SP No. 95916**, which was later consolidated with **CA-G.R. SP No. 90845**.

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[11] *Id*. at 267-271.

[12] *Id*. at 269.

[13] *Id*. at 324-326.

[14] *Rollo* (G.R. Nos. 178034 and 178117), pp. 130-181.

[15] *Rollo* (G.R. Nos. 186984-85), pp. 328-330.

[16] *Id*. at 347-350.

[17] *Id*. at 88-141.

CA-G.R. SP Nos. 90845 and 95916

On February 16, 2007, the CA issued a Resolution[18] granting the respondents' application for a writ of preliminary injunction. It directed the NLRC, McBurnie, and all persons acting for and under their authority to refrain from causing the execution and enforcement of the LA's decision in favor of McBurnie, conditioned upon the respondents' posting of a bond in the amount of ₱10,000,000.00. McBurnie sought reconsideration of the issuance of the writ of preliminary injunction, but this was denied by the CA in its Resolution[19] dated May 29, 2007.

McBurnie then filed with the Court a Petition for Review on *Certiorari*[20] docketed as **G.R. Nos. 178034 and 178117**, assailing the CA Resolutions that granted the respondents' application for the injunctive writ. On July 4, 2007, the Court denied the petition on the ground of McBurnie's failure to comply with the 2004 Rules on Notarial Practice and to sufficiently show that the CA committed any reversible error.[21] A motion for reconsideration was denied with finality in a Resolution[22] dated October 8, 2007.

Unyielding, McBurnie filed a Motion for Leave (1) To File Supplemental Motion for Reconsideration and (2) To Admit the Attached Supplemental Motion for Reconsideration,[23] which was treated by the Court as a second motion for reconsideration, a prohibited pleading under Section 2, Rule 56 of the Rules of Court. Thus, the motion for leave was denied by the Court in a Resolution[24] dated November 26, 2007. The Court's Resolution dated July 4, 2007 then became final and executory on November

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[18] *Rollo* (G.R. Nos. 178034 and 178117), pp. 251-252.

[19] *Id*. at 263-265.

[20] *Id*. at 28-51.

[21] *Id*. at 297.

[22] *Id*. at 320.

[23] *Id*. at 322-324.

[24] *Id*. at 350-351.

13, 2007; accordingly, entry of judgment was made in **G.R. Nos. 178034 and 178117**.[25]

In the meantime, the CA ruled on the merits of **CA-G.R. SP No. 90845** and **CA-G.R. SP No. 95916** and rendered its Decision[26] dated October 27, 2008, allowing the respondents' motion to reduce appeal bond and directing the NLRC to give due course to their appeal. The dispositive portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the petition for *certiorari* and prohibition docketed as CA GR SP No. 90845 and the petition for *certiorari* docketed as CA GR SP No. 95916 are GRANTED. Petitioners[']Motion to Reduce Appeal Bond is GRANTED. Petitioners are hereby DIRECTED to post appeal bond in the amount of ₱10,000,000.00. The NLRC is hereby DIRECTED to give due course to petitioners' appeal in CA GR SP No. 95916 which is ordered remanded to the NLRC for further proceedings.
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> SO ORDERED.[27]

On the issue[28] of the NLRC's denial of the respondents' motion to reduce appeal bond, the CA ruled that the NLRC committed grave abuse of discretion in immediately denying the motion without fixing an appeal bond in an amount that was reasonable, as it denied the respondents of their right to appeal from the decision of the LA.[29] The CA explained that "(w)hile Art. 223 of the Labor Code requiring bond equivalent to the monetary award is explicit, Section 6, Rule VI of the NLRC Rules of Procedure, as amended, recognized as exception a motion to

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[25] *Id*. at 240.

[26] Penned by Associate Justice Arcangelita M. Romilla-Lontok (retired), with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Portia Aliño-Hormachuelos (retired), concurring; *rollo* (G.R. Nos. 186984-85), pp. 47-70.

[27] *Id.* at 70.

[28] Subject of CA-G.R. SP No. 90845.

[29] *Rollo* (G.R. Nos. 186984-85), p. 67.

reduce bond upon meritorious grounds and upon posting of a bond in a reasonable amount in relation to the monetary award."[30]

On the issue[31] of the NLRC's dismissal of the appeal on the ground of the respondents' failure to post the additional appeal bond, the CA also found grave abuse of discretion on the part of the NLRC, explaining that an appeal bond in the amount of ₱54,083,910.00 was prohibitive and excessive. Moreover, the appellate court cited the pendency of the petition for *certiorari* over the denial of the motion to reduce bond, which should have prevented the NLRC from immediately dismissing the respondents' appeal.[32]

Undeterred, McBurnie filed a motion for reconsideration. At the same time, the respondents moved that the appeal be resolved on the merits by the CA. On March 3, 2009, the CA issued a Resolution[33] denying both motions. McBurnie then filed with the Court the Petition for Review on *Certiorari*[34] docketed as **G.R. Nos. 186984-85**.

In the meantime, the NLRC, acting on the CA's order of remand, accepted the appeal from the LA's decision, and in its Decision[35] dated November 17, 2009, reversed and set aside the Decision of the LA and entered a new one dismissing McBurnie's complaint. It explained that based on records, McBurnie was never an employee of any of the respondents, but a potential investor in a project that included said respondents, barring a claim of dismissal, much less, an illegal dismissal. Granting that there was a contract of employment executed by the parties, McBurnie failed to obtain a work permit which would have allowed him to work for any of the respondents.[36] In the

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[30] *Id*.

[31] Subject of CA-G.R. SP No. 95916.

[32] *Rollo* (G.R. Nos. 186984-85), p. 69.

[33] *Id*. at 44-45.

[34] *Id*. at 3-36.

[35] *Id*. at 640-655.

[36] *Id*. at 655.

absence of such permit, the employment agreement was void and thus, could not be the source of any right or obligation.

Court Decision dated September 18, 2009

On September 18, 2009, the Third Division of this Court rendered its Decision[37] which reversed the CA Decision dated October 27, 2008 and Resolution dated March 3, 2009. The dispositive portion reads:

> **WHEREFORE,** the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. SP Nos. 90845 and 95916 dated October 27, 2008 granting respondents' Motion to Reduce Appeal Bond and ordering the National Labor Relations Commission to give due course to respondents' appeal, and its March 3, 2009 Resolution denying petitioner's motion for reconsideration, are **REVERSED** and **SET ASIDE.** The March 8, 2006 and June 30, 2006 Resolutions of the National Labor Relations Commission in NLRC NCR CA NO. 042913-05 dismissing respondents' appeal for failure to perfect an appeal and denying their motion for reconsideration, respectively, are **REINSTATED** and **AFFIRMED.**
>
> **SO ORDERED.**[38]

The Court explained that the respondents' failure to post a bond equivalent in amount to the LA's monetary award was fatal to the appeal.[39] Although an appeal bond may be reduced upon motion by an employer, the following conditions must first be satisfied: (1) the motion to reduce bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant. Unless the NLRC grants the motion to reduce the cash bond within the 10-day reglementary period to perfect an appeal from a judgment of the labor arbiter, the employer is mandated to post the cash or surety bond securing the full amount within the said 10-day period.[40] The respondents' initial appeal bond

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[37] *Id.* at 481-493.

[38] *Id.* at 492.

[39] *Id.* at 490.

[40] *Id.* at 489.

of ₱100,000.00 was grossly inadequate compared to the LA's monetary award.

The respondents' first motion for reconsideration[41] was denied by the Court for lack of merit *via* a Resolution[42] dated December 14, 2009.

Meanwhile, on the basis of the Court's Decision, McBurnie filed with the NLRC a motion for reconsideration with motion to recall and expunge from the records the NLRC Decision dated November 17, 2009.[43] The motion was granted by the NLRC in its Decision[44] dated January 14, 2010.[45]

Undaunted by the denial of their first motion for reconsideration of the Decision dated September 18, 2009, the respondents filed with the Court a Motion for Leave to Submit Attached Second Motion for Reconsideration[46] and Second Motion for Reconsideration,[47] which motion for leave was granted in a Resolution[48] dated March 15, 2010. McBurnie was allowed to submit his comment on the second motion, and the respondents, their reply to the comment. On January 25, 2012, however, the Court issued a Resolution[49] denying the second motion "for lack

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[41] *Id*. at 494-546.

[42] *Id*. at 595-596.

[43] *Id*. at 657.

[44] *Id*. at 657-659.

[45] *Id*. at 659. The dispositive portion of the NLRC Decision reads:

WHEREFORE, the foregoing considered, complainant's Motion for Reconsideration is hereby GRANTED. The Decision of the Commission, dated November 17, 2009, is SET ASIDE. However, let the Decision of the Commission remain on file with the case records.

SO ORDERED.

[46] *Id*. at 598-601.

[47] *Id*. at 602-637.

[48] *Id*. at 732-733.

[49] *Id*. at 853.

of merit," "considering that a second motion for reconsideration is a prohibited pleading x x x."[50]

The Court's Decision dated September 18, 2009 became final and executory on March 14, 2012. Thus, entry of judgment[51] was made in due course, as follows:

ENTRY OF JUDGMENT

This is to certify that on September 18, 2009 a decision rendered in the above-entitled cases was filed in this Office, the dispositive part of which reads as follows:

x x x x x x x x x

and that the same has, on March 14, 2012 become final and executory and is hereby recorded in the Book of Entries of Judgments.[52]

The Entry of Judgment indicated that the same was made for the Court's Decision rendered in **G.R. Nos. 186984-85**.

On March 27, 2012, the respondents filed a Motion for Leave to File Attached Third Motion for Reconsideration, with an attached Motion for Reconsideration (on the Honorable Court's 25 January 2012 Resolution) with Motion to Refer These Cases to the Honorable Court *En Banc*.[53] The third motion for reconsideration is founded on the following grounds:

I.

THE PREVIOUS 15 MARCH 2010 RESOLUTION OF THE HONORABLE COURT ACTUALLY GRANTED RESPONDENTS' "MOTION FOR LEAVE TO SUBMIT A SECOND MOTION FOR RECONSIDERATION."

HENCE, RESPONDENTS RESPECTFULLY CONTEND THAT THE SUBSEQUENT 25 JANUARY 2012 RESOLUTION CANNOT DENY THE "*SECOND MOTION FOR RECONSIDERATION*" ON THE GROUND THAT IT IS A PROHIBITED PLEADING.

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[50] *Id*.

[51] *Id*. at 914.

[52] *Id*.

[53] *Id*. at 874-909.

MOREOVER, IT IS RESPECTFULLY CONTENDED THAT THERE ARE VERY PECULIAR CIRCUMSTANCES AND NUMEROUS IMPORTANT ISSUES IN THESE CASES THAT CLEARLY JUSTIFY GIVING DUE COURSE TO RESPONDENTS' "SECOND MOTION FOR RECONSIDERATION," WHICH ARE:

II.

THE 10 MILLION PESOS BOND WHICH WAS POSTED IN COMPLIANCE WITH THE OCTOBER 27, 2008 DECISION OF THE COURT OF APPEALS IS A SUBSTANTIAL AND SPECIAL MERITORIOUS CIRCUMSTANCE TO MERIT RECONSIDERATION OF THIS APPEAL.

III.

THE HONORABLE COURT HAS HELD IN NUMEROUS LABOR CASES THAT WITH RESPECT TO ARTICLE 223 OF THE LABOR CODE, THE REQUIREMENTS OF THE LAW SHOULD BE GIVEN A LIBERAL INTERPRETATION, ESPECIALLY IF THERE ARE SPECIAL MERITORIOUS CIRCUMSTANCES AND ISSUES.

IV.

THE [LA'S] JUDGMENT WAS PATENTLY VOID SINCE IT AWARDS MORE THAN [₱]60 MILLION PESOS TO A SINGLE FOREIGNER WHO HAD NO WORK PERMIT, AND NO WORKING VISA.

V.

PETITIONER MCBURNIE DID NOT IMPLEAD THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) IN HIS APPEAL HEREIN, MAKING THE APPEAL INEFFECTIVE AGAINST THE NLRC.

VI.

NLRC HAS DISMISSED THE COMPLAINT OF PETITIONER MCBURNIE IN ITS NOVEMBER 17, 2009 DECISION.

VII.

THE HONORABLE COURT'S 18 SEPTEMBER 2009 DECISION WAS TAINTED WITH VERY SERIOUS IRREGULARITIES.

VIII.

GR NOS. 178034 AND 178117 HAVE BEEN INADVERTENTLY INCLUDED IN THIS CASE.

IX.

THE HONORABLE COURT DID NOT DULY RULE UPON THE OTHER VERY MERITORIOUS ARGUMENTS OF THE RESPONDENTS WHICH ARE AS FOLLOWS:

(A) PETITIONER NEVER ATTENDED ANY OF ALL 14 HEARINGS BEFORE THE [LA] (WHEN 2 MISSED HEARINGS MEAN DISMISSAL)[.]

(B) PETITIONER REFERRED TO HIMSELF AS A "VICTIM" OF LEISURE EXPERTS, INC., BUT NOT OF ANY OF THE RESPONDENTS[.]

(C) PETITIONER'S POSITIVE LETTER TO RESPONDENT MR. EULALIO GANZON CLEARLY SHOWS THAT HE WAS NOT ILLEGALLY DISMISSED NOR EVEN DISMISSED BY ANY OF THE RESPONDENTS AND PETITIONER EVEN PROMISED TO PAY HIS DEBTS FOR ADVANCES MADE BY RESPONDENT[S].

(D) PETITIONER WAS NEVER EMPLOYED BY ANY OF THE RESPONDENTS. PETITIONER PRESENTED WORK FOR CORONADO BEACH RESORT WHICH IS [NEITHER] OWNED NOR CONNECTED WITH ANY OF THE RESPONDENTS.

(E) THE [LA] CONCLUDED THAT PETITIONER WAS DISMISSED EVEN IF THERE WAS ABSOLUTELY NO EVIDENCE AT ALL PRESENTED THAT PETITIONER WAS DISMISSED BY THE RESPONDENTS[.]

(F) PETITIONER LEFT THE PHILIPPINES FOR AUSTRALIA JUST 2 MONTHS AFTER THE START OF THE ALLEGED EMPLOYMENT AGREEMENT, AND HAS STILL NOT RETURNED TO THE PHILIPPINES AS CONFIRMED BY THE BUREAU OF IMMIGRATION.

(G) PETITIONER COULD NOT HAVE SIGNED AND PERSONALLY APPEARED BEFORE THE NLRC ADMINISTERING OFFICER AS INDICATED IN THE COMPLAINT SHEET SINCE HE LEFT THE COUNTRY 3

YEARS BEFORE THE COMPLAINT WAS FILED AND HE NEVER CAME BACK.[54]

On September 4, 2012, the Court *En Banc*[55] issued a Resolution[56] accepting the case from the Third Division. It also issued a temporary restraining order (TRO) enjoining the implementation of the LA's Decision dated September 30, 2004. This prompted McBurnie's filing of a Motion for Reconsideration,[57] where he invoked the fact that the Court's Decision dated September 18, 2009 had become final and executory, with an entry of judgment already made by the Court.

Our Ruling

In light of pertinent law and jurisprudence, and upon taking a second hard look of the parties' arguments and the records of the case, the Court has ascertained that a reconsideration of this Court's Decision dated September 18, 2009 and Resolutions dated December 14, 2009 and January 25, 2012, along with the lifting of the entry of judgment in G.R. Nos. 186984-85, is in order.

The Court's acceptance of the third motion for reconsideration

At the outset, the Court emphasizes that second and subsequent motions for reconsideration are, as a general rule, prohibited. Section 2, Rule 52 of the Rules of Court provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rule rests on the basic tenet of immutability of judgments. "At some point, a decision becomes final and executory and, consequently, all litigations must come to an end."[58]

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[54] *Id.* at 876-878.

[55] By a vote of 12.

[56] *Rollo* (G.R. Nos. 186984-85), p. 979.

[57] *Id.* at 994-1010.

[58] *Verginesa-Suarez v. Dilag*, A.M. No. RTJ-06-2014, August 16, 2011, 655 SCRA 454, 459-460.

The general rule, however, against second and subsequent motions for reconsideration admits of settled exceptions. For one, the present Internal Rules of the Supreme Court, particularly Section 3, Rule 15 thereof, provides:

> **Sec. 3.** ***Second motion for reconsideration***.—The Court shall not entertain a second motion for reconsideration, and **any exception to this rule can only be granted in the higher interest of justice** by the Court *En Banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" **when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties**. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> x x x x x x x x x (Emphasis ours)

In a line of cases, the Court has then entertained and granted second motions for reconsideration "in the higher interest of substantial justice," as allowed under the Internal Rules when the assailed decision is "legally erroneous," "patently unjust" and "potentially capable of causing unwarranted and irremediable injury or damage to the parties." In *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*,[59] we also explained that a second motion for reconsideration may be allowed in instances of "extraordinarily persuasive reasons and only after an express leave shall have been obtained."[60] In *Apo Fruits Corporation v. Land Bank of the Philippines*,[61] we allowed a second motion for reconsideration as the issue involved therein was a matter of public interest, as it pertained to the proper application of a basic constitutionally-guaranteed right in the government's implementation of its agrarian reform program. In *San Miguel Corporation v. NLRC*,[62] the Court set aside the decisions of

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[59] G.R. No. 169712, January 20, 2009, 576 SCRA 625.

[60] *Id*. at 628, citing *Ortigas and Company Limited Partnership v. Velasco*, 324 Phil. 483, 489 (1996).

[61] G.R. No. 164195, April 5, 2011, 647 SCRA 207.

[62] 256 Phil. 271 (1989).

the LA and the NLRC that favored claimants-security guards upon the Court's review of San Miguel Corporation's second motion for reconsideration. In *Vir-Jen Shipping and Marine Services, Inc. v. NLRC, et al.*,[63] the Court *en banc* reversed on a third motion for reconsideration the ruling of the Court's Division on therein private respondents' claim for wages and monetary benefits.

It is also recognized that in some instances, the prudent action towards a just resolution of a case is for the Court to suspend rules of procedure, for "the power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned."[64] In *De Guzman v. Sandiganbayan*,[65] the Court, thus, explained:

> [T]he rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Even the Rules of Court envision this liberality. This power to suspend or even disregard the rules can be so pervasive and encompassing so as to alter even that which this Court itself has already declared to be final, as we are now compelled to do in this case. x x x.
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> x x x x x x x x x x x x
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> The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in

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[63] 210 Phil. 482 (1983).

[64] *De Guzman v. Sandiganbayan*, 326 Phil. 182, 188 (1996), citing *Vda. de Ronquillo, et al. v. Marasigan*, 115 Phil. 292 (1962); *Piczon v. Court of Appeals*, 268 Phil. 23 (1990).

[65] 326 Phil. 182 (1996).

the appropriate language of Justice Makalintal, "*should give way to the realities of the situation.*" x x x.[66] (Citations omitted)

Consistent with the foregoing precepts, the Court has then reconsidered even decisions that have attained finality, finding it more appropriate to lift entries of judgments already made in these cases. In *Navarro v. Executive Secretary*,[67] we reiterated the pronouncement in *De Guzman* that the power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself has already declared final. The Court then recalled in *Navarro* an entry of judgment after it had determined the validity and constitutionality of Republic Act No. 9355, explaining that:

> Verily, the Court had, on several occasions, sanctioned the recall of entries of judgment in light of attendant extraordinary circumstances. The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final. In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the [Local Government Code (LGC)] with respect to the creation of local government units. x x x.[68] (Citations omitted)

In *Munoz v. CA*,[69] the Court resolved to recall an entry of judgment to prevent a miscarriage of justice. This justification was likewise applied in *Tan Tiac Chiong v. Hon. Cosico*,[70] wherein the Court held that:

> The recall of entries of judgments, albeit rare, is not a novelty. In *Muñoz v. CA*, where the case was elevated to this Court and a first and *second* motion for reconsideration had been denied with

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

[67] G.R. No. 180050, April 12, 2011, 648 SCRA 400.

[68] *Id*. at 436.

[69] 379 Phil. 809 (2000).

[70] 434 Phil. 753 (2002).

finality, the Court, in the interest of substantial justice, recalled the Entry of Judgment as well as the letter of transmittal of the records to the Court of Appeals.[71] (Citation omitted)

In *Barnes v. Judge Padilla*,[72] we ruled:

> [A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.
>
> However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[73] (Citations omitted)

As we shall explain, the instant case also qualifies as an exception to, *first*, the proscription against second and subsequent motions for reconsideration, and *second*, the rule on immutability of judgments; a reconsideration of the Decision dated September 18, 2009, along with the Resolutions dated December 14, 2009 and January 25, 2012, is justified by the higher interest of substantial justice.

To begin with, the Court agrees with the respondents that the Court's prior resolve to **grant**, and not just merely note, in a Resolution dated March 15, 2010 the respondents' motion for leave to submit their second motion for reconsideration already warranted a resolution and discussion of the motion for reconsideration on its merits. Instead of doing this, however, the Court issued on January 25, 2012 a Resolution[74] denying the motion to reconsider for lack of merit, merely citing that it was a "prohibited pleading under Section 2, Rule 52 in relation

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[71] *Id*. at 762.

[72] 482 Phil. 903 (2004).

[73] *Id*. at 915.

[74] *Rollo* (G.R. Nos. 186984-85), p. 853.

to Section 4, Rule 56 of the 1997 Rules of Civil Procedure, as amended."[75] In *League of Cities of the Philippines (LCP) v. Commission on Elections*,[76] we reiterated a ruling that when a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. In such a case, the second motion for reconsideration is no longer a prohibited pleading. Similarly in this case, there was then no reason for the Court to still consider the respondents' second motion for reconsideration as a prohibited pleading, and deny it plainly on such ground. The Court intends to remedy such error through this resolution.

More importantly, the Court finds it appropriate to accept the pending motion for reconsideration and resolve it on the merits in order to rectify its prior disposition of the main issues in the petition. Upon review, the Court is constrained to rule differently on the petitions. We have determined the grave error in affirming the NLRC's rulings, promoting results that are patently unjust for the respondents, as we consider the facts of the case, pertinent law, jurisprudence, and the degree of the injury and damage to the respondents that will inevitably result from the implementation of the Court's Decision dated September 18, 2009.

The rule on appeal bonds

We emphasize that the crucial issue in this case concerns the sufficiency of the appeal bond that was posted by the respondents. The present rule on the matter is Section 6, Rule VI of the 2011 NLRC Rules of Procedure, which was substantially the same provision in effect at the time of the respondents' appeal to the NLRC, and which reads:

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[75] *Id*.

[76] G.R. No. 176951, February 15, 2011, 643 SCRA 149.

RULE VI

APPEALS

Sec. 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

x x x x x x x x x

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal. (Emphasis supplied)

While the CA, in this case, allowed an appeal bond in the reduced amount of ₱10,000,000.00 and then ordered the case's remand to the NLRC, this Court's Decision dated September 18, 2009 provides otherwise, as it reads in part:

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter. The lawmakers clearly intended to make the bond a mandatory requisite for the perfection of an appeal by the employer as inferred from the provision that an appeal by the employer may be perfected "*only upon the posting of a cash or surety bond.*" The word *"only"* makes it clear that the posting of a cash or surety bond by the employer is the essential and exclusive means by which an employer's appeal may be perfected. x x x.

Moreover, the filing of the bond is not only mandatory but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.

x x x x x x x x x

Thus, it behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the ***full*** amount of the monetary award within the 10[-]day reglementary period. **Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is *less* than the monetary award in the judgment, or would deem such insufficient posting as sufficient to perfect the appeal.**

While the bond may be reduced upon motion by the employer, this is subject to the conditions that (1) the motion to reduce the bond shall be based on **meritorious grounds**; and (2) a **reasonable amount** in relation to the monetary award is posted by the appellant, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal. The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the 10[-]day reglementary period, **the employer is still expected to post the cash or surety bond securing the full amount within the said 10-day period**. If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be to reduce the cash or surety bond already posted by the employer within the 10-day period.[77] (Emphasis supplied; underscoring ours)

To begin with, the Court rectifies its prior pronouncement – the unqualified statement that even an appellant who seeks a reduction of an appeal bond before the NLRC is expected to post a cash or surety bond securing the full amount of the judgment award within the 10-day reglementary period to perfect the appeal.

The suspension of the period to perfect the appeal upon the filing of a motion to reduce bond

To clarify, the prevailing jurisprudence on the matter provides that the filing of a motion to reduce bond, coupled with compliance with the ***two conditions*** emphasized in *Garcia v. KJ Commercial*[78]

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[77] *Rollo* (G.R. Nos. 186984-85), pp. 487-489.

[78] G.R. No. 196830, February 29, 2012, 667 SCRA 396.

for the grant of such motion, namely, (1) a meritorious ground, and (2) posting of a bond in a reasonable amount, shall **suffice to suspend the running of the period to perfect an appeal from the labor arbiter's decision to the NLRC**.[79] To require the full amount of the bond within the 10-day reglementary period would only render nugatory the legal provisions which allow an appellant to seek a reduction of the bond. Thus, we explained in *Garcia*:

> **The filing of a motion to reduce bond and compliance with the two conditions stop the running of the period to perfect an appeal. x x x**
>
> x x x x x x x x x
>
> The NLRC has full discretion to grant or deny the motion to reduce bond, and it may rule on the motion beyond the 10-day period within which to perfect an appeal. Obviously, at the time of the filing of the motion to reduce bond and posting of a bond in a reasonable amount, there is no assurance whether the appellant's motion is indeed based on "meritorious ground" and whether the bond he or she posted is of a "reasonable amount." Thus, the appellant always runs the risk of failing to perfect an appeal.
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> x x x **In order to give full effect to the provisions on motion to reduce bond, the appellant must be allowed to wait for the ruling of the NLRC on the motion even beyond the 10-day period to perfect an appeal**. If the NLRC grants the motion and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, the appellant may still file a motion for reconsideration as provided under Section 15, Rule VII of the Rules. If the NLRC grants the motion for reconsideration and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, then the decision of the labor arbiter becomes final and executory.
>
> x x x x x x x x x
>
> **In any case, the rule that the filing of a motion to reduce bond shall not stop the running of the period to perfect an appeal is**

[79] *Id*. at 409.

not absolute. The Court may relax the rule. In *Intertranz Container Lines, Inc. v. Bautista,* the Court held:

> "Jurisprudence tells us that in labor cases, an appeal from a decision involving a monetary award may be perfected only upon the posting of cash or surety bond. The Court, however, has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) fundamental consideration of substantial justice; (2) prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved."[80] (Citations omitted and emphasis ours)

A serious error of the NLRC was its outright denial of the motion to reduce the bond, without even considering the respondents' arguments and totally unmindful of the rules and jurisprudence that allow the bond's reduction. Instead of resolving the motion to reduce the bond on its merits, the NLRC insisted on an amount that was equivalent to the monetary award, merely explaining:

> We are constrained to deny respondents[']motion for reduction. As held by the Supreme Court in a recent case, in cases involving monetary award, **an employer seeking to appeal the Labor Arbiter's decision to the Commission is unconditionally required by Art. 223, Labor Code to post bond in the amount equivalent to the monetary award** (*Calabash Garments vs. NLRC*, G.R. No. 110827, August 8, 1996). x x x[81] (Emphasis ours)

When the respondents sought to reconsider, the NLRC still refused to fully decide on the motion. It refused to at least make a preliminary determination of the merits of the appeal, as it held:

> We are constrained to dismiss respondents' Motion for Reconsideration. Respondents' contention that the appeal bond is

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[80] *Id.* at 409-411.

[81] *Rollo* (G.R. Nos. 186984-85), p. 244.

excessive and based on a decision which is a patent nullity involve[s] the merits of the case. x x x[82]

Prevailing rules and jurisprudence allow the reduction of appeal bonds.

By such haste of the NLRC in peremptorily denying the respondents' motion without considering the respondents' arguments, it effectively denied the respondents of their opportunity to seek a reduction of the bond even when the same is allowed under the rules and settled jurisprudence. It was equivalent to the NLRC's refusal to exercise its discretion, as it refused to determine and rule on a showing of meritorious grounds and the reasonableness of the bond tendered under the circumstances.[83] Time and again, the Court has cautioned the NLRC to give Article 223 of the Labor Code, particularly the provisions requiring bonds in appeals involving monetary awards, a liberal interpretation in line with the desired objective of resolving controversies on the merits.[84] The NLRC's failure to take action on the motion to reduce the bond in the manner prescribed by law and jurisprudence then cannot be countenanced. Although an appeal by parties from decisions that are adverse to their interests is neither a natural right nor a part of due process, it is an essential part of our judicial system. Courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party has the amplest opportunity for the proper and just disposition of their cause, free from the constraints of technicalities.[85] Considering the mandate of labor tribunals, the principle equally applies to them.

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[82] *Id*. at 325.

[83] See *Nicol v. Footjoy Industrial Corp*., 555 Phil. 275, 287 (2007).

[84] *Cosico, Jr. v. NLRC*, 338 Phil. 1080 (1997), citing *Star Angel Handicraft v. National Labor Relations Commission*, G.R. No. 108914, September 20, 1994, 236 SCRA 580; *Dr. Postigo v. Phil. Tuberculosis Society, Inc.*, 515 Phil. 601 (2006); *Rada v. NLRC*, G.R. No. 96078, January 9, 1992, 205 SCRA 69, and *YBL (Your Bus Line) v. National Labor Relations Commission*, 268 Phil. 169 (1990).

[85] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429, 439.

Given the circumstances of the case, the Court's affirmance in the Decision dated September 18, 2009 of the NLRC's strict application of the rule on appeal bonds then demands a re-examination. Again, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[86] Section 2, Rule I of the NLRC Rules of Procedure also provides the policy that "[the] Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes."[87]

In accordance with the foregoing, although the general rule provides that an appeal in labor cases from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond, the Court has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) the fundamental consideration of substantial justice; (2) the prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.[88] Guidelines that are applicable in the reduction of appeal bonds were also explained in *Nicol v. Footjoy Industrial Corporation.*[89] The bond requirement in appeals involving monetary awards has been and may be relaxed in meritorious cases, including instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious

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[86] *Aujero v. Philippine Communications Satellite Corporation*, G.R. No. 193484, January 18, 2012, 663 SCRA 467, 481-482, citing *Heirs of the Deceased Spouses Arcilla v. Teodoro*, G.R. No. 162886, August 11, 2008, 561 SCRA 545, 557.

[87] *Garcia v. KJ Commercial, supra* note 78, at 410.

[88] *Intertranz Container Lines, Inc. v. Bautista*, G.R. No. 187693, July 13, 2010, 625 SCRA 75, 84, citing *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013 (1998).

[89] 555 Phil. 275 (2007).

grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[90]

In *Blancaflor v. NLRC*,[91] the Court also emphasized that while Article 223[92] of the Labor Code, as amended by Republic Act No. 6715, which requires a cash or surety bond in an amount equivalent to the monetary award in the judgment appealed from may be considered a jurisdictional requirement for the perfection of an appeal, nevertheless, adhering to the principle that substantial justice is better served by allowing the appeal on the merits to be threshed out by the NLRC, the foregoing requirement of the law should be given a liberal interpretation.

As the Court, nonetheless, remains firm on the importance of appeal bonds in appeals from monetary awards of LAs, we stress that the NLRC, pursuant to Section 6, Rule VI of the NLRC Rules of Procedure, shall only accept motions to reduce bond that are coupled with the posting of a bond in a reasonable amount. Time and again, we have explained that the bond requirement imposed upon appellants in labor cases is intended to ensure the satisfaction of awards that are made in favor of appellees, in the event that their claims are eventually sustained

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[90] *Id*. at 292.

[91] G.R. No. 101013, February 2, 1993, 218 SCRA 366.

[92] Art. 223. *Appeal* – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

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by the courts.[93] On the part of the appellants, its posting may also signify their good faith and willingness to recognize the final outcome of their appeal.

At the time of a motion to reduce appeal bond's filing, the question of what constitutes "a reasonable amount of bond" that must accompany the motion may be subject to differing interpretations of litigants. The judgment of the NLRC which has the discretion under the law to determine such amount cannot as yet be invoked by litigants until after their motions to reduce appeal bond are accepted.

Given these limitations, it is not uncommon for a party to unduly forfeit his opportunity to seek a reduction of the required bond and thus, to appeal, when the NLRC eventually disagrees with the party's assessment. These have also resulted in the filing of numerous petitions against the NLRC, citing an alleged grave abuse of discretion on the part of the labor tribunal for its finding on the sufficiency or insufficiency of posted appeal bonds.

It is in this light that the Court finds it necessary to set a parameter for the litigants' and the NLRC's guidance on the amount of bond that shall hereafter be filed with a motion for a bond's reduction. To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant, all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to ***10% of the monetary award*** that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission. In conformity with the NLRC Rules, the

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[93] See *Mindanao Times Corporation v. Confesor*, G.R. No. 183417, February 5, 2010, 611 SCRA 748; *Computer Innovations Center v. NLRC*, 500 Phil. 573 (2005); *St. Gothard Disco Pub & Restaurant v. NLRC*, G.R. No. 102570, February 1, 1993, 218 SCRA 327.

monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees.[94] Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended.

The foregoing shall not be misconstrued to unduly hinder the NLRC's exercise of its discretion, given that the percentage of bond that is set by this guideline shall be **merely provisional**. The NLRC retains its authority and duty to resolve the motion and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of **"meritorious grounds"** and **"reasonable amount."** Should the NLRC, after considering the motion's merit, determine that a greater amount or the full amount of the bond needs to be posted by the appellant, then the party shall comply accordingly. The appellant shall be given a period of 10 days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.

Meritorious ground as a condition for the reduction of the appeal bond

In all cases, the reduction of the appeal bond shall be justified by meritorious grounds and accompanied by the posting of the required appeal bond in a reasonable amount.

The requirement on the existence of a "meritorious ground" delves on the worth of the parties' arguments, taking into account their respective rights and the circumstances that attend the case. The condition was emphasized in *University Plans Incorporated v. Solano,*[95] wherein the Court held that while the NLRC's Revised Rules of Procedure "allows the [NLRC] to reduce the amount

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[94] 2011 NLRC Rules of Procedure, Rule VI, Section 6 reads:

SEC. 6. BOND.— In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

[95] G.R. No. 170416, June 22, 2011, 652 SCRA 492.

of the bond, the exercise of the authority is not a matter of right on the part of the movant, but lies within the sound discretion of the NLRC upon a showing of meritorious grounds."[96] By jurisprudence, the merit referred to may pertain to an appellant's lack of financial capability to pay the full amount of the bond,[97] the merits of the main appeal such as when there is a valid claim that there was no illegal dismissal to justify the award,[98] the absence of an employer-employee relationship,[99] prescription of claims,[100] and other similarly valid issues that are raised in the appeal.[101] For the purpose of determining a "meritorious ground," the NLRC is not precluded from receiving evidence, or from making a preliminary determination of the merits of the appellant's contentions.[102]

In this case, the NLRC then should have considered the respondents' arguments in the memorandum on appeal that was filed with the motion to reduce the requisite appeal bond. Although a consideration of said arguments at that point would have been merely preliminary and should not in any way bind the eventual outcome of the appeal, it was apparent that the respondents' defenses came with an indication of merit that deserved a full review of the decision of the LA. The CA, by its Resolution dated February 16, 2007, even found justified the issuance of a preliminary injunction to enjoin the immediate execution of the LA's decision, and this Court, a temporary restraining order on September 4, 2012.

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[96] *Id*. at 503-504, citing *Ramirez v. CA*, G.R. No. 182626, December 4, 2004, 607 SCRA 752, 765.

[97] See *Nicol v. Footjoy Industrial Corp.*, *supra* note 89.

[98] See *Semblante v. Court of Appeals*, G.R. No. 196426, August 15, 2011, 655 SCRA 444.

[99] *Id*.

[100] See *Star Angel Handicraft v. National Labor Relations Commission*, *supra* note 84.

[101] See *YBL (Your Bus Line) v. NLRC*, *supra* note 84.

[102] See *University Plans Incorporated v. Solano*, *supra* note 95; *Nicol v. Footjoy Industrial Corp.*, *supra* note 89.

Significantly, following the CA's remand of the case to the NLRC, the latter even rendered a Decision that contained findings that are inconsistent with McBurnie's claims. The NLRC reversed and set aside the decision of the LA, and entered a new one dismissing McBurnie's complaint. It explained that McBurnie was not an employee of the respondents; thus, they could not have dismissed him from employment. The purported employment contract of the respondents with the petitioner was qualified by the conditions set forth in a letter dated May 11, 1999, which reads:

May 11, 1999
MR. ANDREW MCBURNIE
Re: Employment Contract

Dear Andrew,

It is understood that this Contract is made subject to the understanding that it is effective only when the project financing for our Baguio Hotel project pushed through.

The agreement with EGI Managers, Inc. is made now to support your need to facilitate your work permit with the Department of Labor in view of the expiration of your contract with Pan Pacific.

Regards,

Sgd.
Eulalio Ganzon (p. 203, Records)[103]

For the NLRC, the employment agreement could not have given rise to an employer-employee relationship by reason of legal impossibility. The two conditions that form part of their agreement, namely, the successful completion of the project financing for the hotel project in Baguio City and McBurnie's acquisition of an Alien Employment Permit, remained unsatisfied.[104] The NLRC concluded that McBurnie was instead a potential investor in a project that included Ganzon, but the

[103] *Rollo* (G.R. Nos. 186984-85), p. 649.

[104] *Id*. at 650.

said project failed to pursue due to lack of funds. Any work performed by McBurnie in relation to the project was merely preliminary to the business venture and part of his "due diligence" study before pursuing the project, "done at his own instance, not in furtherance of the employment contract but for his own investment purposes."[105] Lastly, the alleged employment of the petitioner would have been void for being contrary to law, since it is undisputed that McBurnie did not have any work permit. The NLRC declared:

> Absent an employment permit, any employment relationship that [McBurnie] contemplated with the [respondents] was void for being contrary to law. A void or inexistent contract, in turn, has no force and effect from the beginning as if it had never [been] entered into. Thus, without an Alien Employment Permit, the "Employment Agreement" is void and could not be the source of a right or obligation. In support thereof, the DOLE issued a certification that [McBurnie] has neither applied nor [been] issued [an] Alien Employment Permit (p. 204, Records).[106]

McBurnie moved to reconsider, citing the Court's Decision of September 18, 2009 that reversed and set aside the CA's Decision authorizing the remand. Although the NLRC granted the motion on the said ground *via* a Decision[107] that set aside the NLRC's Decision dated November 17, 2009, the findings of the NLRC in the November 17, 2009 decision merit consideration, especially since the findings made therein are supported by the case records.

In addition to the apparent merit of the respondents' appeal, the Court finds the reduction of the appeal bond justified by the substantial amount of the LA's monetary award. Given its considerable amount, we find reason in the respondents' claim that to require an appeal bond in such amount could only deprive them of the right to appeal, even force them out of business and

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[105] *Id*. at 650-651.

[106] *Id*. at 654.

[107] *Id*. at 640-655.

affect the livelihood of their employees.[108] In *Rosewood Processing, Inc. v. NLRC,*[109] we emphasized: "Where a decision may be made to rest on informed judgment rather than rigid rules, the equities of the case must be accorded their due weight because labor determinations should not be '***secundum rationem*** but also ***secundum caritatem***.'"[110]

What constitutes a reasonable amount in the determination of the final amount of appeal bond

As regards the requirement on the posting of a bond in a "reasonable amount," the Court holds that the final determination thereof by the NLRC shall be based primarily on the merits of the motion and the main appeal.

Although the NLRC Rules of Procedure, particularly Section 6 of Rule VI thereof, provides that the bond to be posted shall be "in a reasonable amount *in relation to the monetary award*," the merit of the motion shall always take precedence in the determination. Settled is the rule that procedural rules were conceived, and should thus be applied in a manner that would only aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[111]

Thus, in *Nicol* where the appellant posted a bond of ₱10,000,000.00 upon an appeal from the LA's award of ₱51,956,314.00, the Court, instead of ruling right away on the reasonableness of the bond's amount solely on the basis of the judgment award, found it appropriate to remand the case to the NLRC, which should first determine the merits of the motion.

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

[109] 352 Phil. 1013 (1998).

[110] *Id*. at 1031.

[111] *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011, 656 SCRA 102, 117, citing *Basco v. CA*, 392 Phil. 251, 266 (2000).

In *University Plans,*[112] the Court also reversed the outright dismissal of an appeal where the bond posted in a judgment award of more than ₱30,000,000.00 was ₱30,000.00. The Court then directed the NLRC to first determine the merit, or lack of merit, of the motion to reduce the bond, after the appellant therein claimed that it was under receivership and thus, could not dispose of its assets within a short notice. Clearly, the rule on the posting of an appeal bond should not be allowed to defeat the substantive rights of the parties.[113]

Notably, in the present case, following the CA's rendition of its Decision which allowed a reduced appeal bond, the respondents have posted a bond in the amount of ₱10,000,000.00. In *Rosewood*, the Court deemed the posting of a surety bond of ₱50,000.00, coupled with a motion to reduce the appeal bond, as substantial compliance with the legal requirements for an appeal from a ₱789,154.39 monetary award "considering the clear merits which appear, *res ipsa loquitor*, in the appeal from the [LA's] Decision, and the petitioner's substantial compliance with rules governing appeals."[114] The foregoing jurisprudence strongly indicate that in determining the reasonable amount of appeal bonds, the Court primarily considers the merits of the motions and appeals.

Given the circumstances in this case and the merits of the respondents' arguments before the NLRC, the Court holds that the respondents had posted a bond in a "reasonable amount," and had thus complied with the requirements for the perfection of an appeal from the LA's decision. The CA was correct in ruling that:

> In the case of Nueva Ecija I Electric Cooperative, Inc. (NEECO I) Employees Association, President Rodolfo Jimenez[,] and members[,] Reynaldo Fajardo, *et al*. *vs*. NLRC, Nueva Ecija I Electric Cooperative, Inc. (NEECO I) and Patricio de la Peña (GR No. 116066, January

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[112] *Supra* note 95.

[113] *Supra* note 98.

[114] *Supra* note 109, at 1031.

24, 2000), the Supreme Court recognized that: "the NLRC, in its Resolution No. 11-01-91 dated November 7, 1991 deleted the phrase "exclusive of moral and exemplary damages as well as attorney's fees in the determination of the amount of bond, and provided a safeguard against the imposition of excessive bonds by providing that "(T)he Commission may in meritorious cases and upon motion of the appellant, reduce the amount of the bond."

In the case of *Cosico[,] Jr. vs. NLRC[,]* 272 SCRA 583, it was held:

> "The unreasonable and excessive amount of bond would be oppressive and unjust and would have the effect of depriving a party of his right to appeal."

x x x x x x x x x

In dismissing outright the motion to reduce bond filed by petitioners, NLRC abused its discretion. It should have fixed an appeal bond in a reasonable amount. Said dismissal deprived petitioners of their right to appeal the Labor Arbiter's decision.

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NLRC Rules allow reduction of appeal bond on meritorious grounds (Sec. 6, Rule VI, NLRC Rules of Procedure). This Court finds the appeal bond in the amount of [₱]54,083,910.00 prohibitive and excessive, which constitutes a meritorious ground to allow a motion for reduction thereof.[115]

The foregoing declaration of the Court requiring a bond in a reasonable amount, taking into account the merits of the motion and the appeal, is consistent with the oft-repeated principle that letter-perfect rules must yield to the broader interest of substantial justice.[116]

The effect of a denial of the appeal to the NLRC

In finding merit in the respondents' motion for reconsideration, we also take into account the unwarranted results that will arise

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[115] *Rollo* (G.R. Nos. 186984-85), pp. 67, 69.

[116] *Nicol v. Footjoy Industrial Corp., supra* note 89, at 290, citing *Rosewood Processing, Inc. v. NLRC, supra* note 109.

from an implementation of the Court's Decision dated September 18, 2009. We emphasize, moreover, that although a remand and an order upon the NLRC to give due course to the appeal would have been the usual course after a finding that the conditions for the reduction of an appeal bond were duly satisfied by the respondents, given such results, the Court finds it necessary to modify the CA's order of remand, and instead rule on the dismissal of the complaint against the respondents.

Without the reversal of the Court's Decision and the dismissal of the complaint against the respondents, McBurnie would be allowed to claim benefits under our labor laws despite his failure to comply with a settled requirement for foreign nationals.

Considering that McBurnie, an Australian, alleged illegal dismissal and sought to claim under our labor laws, it was necessary for him to establish, first and foremost, that he was qualified and duly authorized to obtain employment within our jurisdiction. A requirement for foreigners who intend to work within the country is an employment permit, as provided under Article 40, Title II of the Labor Code which reads:

> Art. 40. *Employment permit for non-resident aliens.* Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.

In *WPP Marketing Communications, Inc. v. Galera*,[117] we held that a foreign national's failure to seek an employment permit prior to employment poses a serious problem in seeking relief from the Court.[118] Thus, although the respondent therein appeared to have been illegally dismissed from employment, we explained:

> This is Galera's dilemma: Galera worked in the Philippines without proper work permit but now wants to claim employee's benefits under Philippine labor laws.

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[117] G.R. No. 169207, March 25, 2010, 616 SCRA 422.

[118] *Id.* at 442-443.

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The law and the rules are consistent in stating that the employment permit must be acquired **prior** to employment. The Labor Code states: "Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor." Section 4, Rule XIV, Book I of the Implementing Rules and Regulations provides:

> "*Employment permit required for entry.* – No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may be allowed to be employed upon presentation of a duly approved employment permit."
>
> Galera cannot come to this Court with unclean hands. To grant Galera's prayer is to sanction the violation of the Philippine labor laws requiring aliens to secure work permits **before** their employment. We hold that the *status quo* must prevail in the present case and we leave the parties where they are. This ruling, however, does not bar Galera from seeking relief from other jurisdictions.[119] (Citations omitted and underscoring ours)

Clearly, this circumstance on the failure of McBurnie to obtain an employment permit, by itself, necessitates the dismissal of his labor complaint.

Furthermore, as has been previously discussed, the NLRC has ruled in its Decision dated November 17, 2009 on the issue of illegal dismissal. It declared that McBurnie was never an employee of any of the respondents.[120] It explained:

> **All these facts and circumstances prove that [McBurnie] was never an employee of Eulalio Ganzon or the [respondent] companies, but a potential investor in a project with a group including Eulalio Ganzon and Martinez but said project did not take off because of lack of funds.**

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[119] *Id*.

[120] *Rollo* (G.R. Nos. 186984-85), p. 652.

[McBurnie] further claims that in conformity with the provision of the employment contract pertaining to the obligation of the [respondents] to provide housing, [respondents] assigned him Condo Unit # 812 of the Makati Cinema Square Condominium owned by the [respondents]. He was also allowed to use a Hyundai car. If it were true that the contract of employment was for working visa purposes only, why did the [respondents] perform their obligations to him?

There is no question that [respondents] assigned him Condo Unit # 812 of the MCS, but this was not free of charge. If it were true that it is part of the compensation package as employee, then [McBurnie] would not be obligated to pay anything, but clearly, he admitted in his letter that he had to pay all the expenses incurred in the apartment.

Assuming for the sake of argument that the employment contract is valid between them, record shows that [McBurnie] worked from September 1, 1999 until he met an accident on the last week of October. During the period of employment, [the respondents] must have paid his salaries in the sum of US$26,000.00, more or less.

However, [McBurnie] failed to present a single evidence that [the respondents] paid his salaries like payslip, check or cash vouchers duly signed by him or any document showing proof of receipt of his compensation from [the respondents] or activity in furtherance of the employment contract.

Granting again that there was a valid contract of employment, it is undisputed that on November 1, 1999, [McBurnie] left for Australia and never came back. x x x.[121] (Emphasis supplied)

Although the NLRC's Decision dated November 17, 2009 was set aside in a Decision dated January 14, 2010, the Court's resolve to now reconsider its Decision dated September 18, 2009 and to affirm the CA's Decision and Resolution in the respondents' favor effectively restores the NLRC's basis for rendering the Decision dated November 17, 2009.

More importantly, the NLRC's findings on the contractual relations between McBurnie and the respondents are supported by the records.

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[121] *Id.* at 652-653.

First, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[122] Although an employment agreement forms part of the case records, respondent Ganzon signed it with the notation "per my note."[123] The respondents have sufficiently explained that the note refers to the letter[124] dated May 11, 1999 which embodied certain conditions for the employment's effectivity. As we have previously explained, however, the said conditions, particularly on the successful completion of the project financing for the hotel project in Baguio City and McBurnie's acquisition of an Alien Employment Permit, failed to materialize. Such defense of the respondents, which was duly considered by the NLRC in its Decision dated November 17, 2009, was not sufficiently rebutted by McBurnie.

Second, McBurnie failed to present any employment permit which would have authorized him to obtain employment in the Philippines. This circumstance negates McBurnie's claim that he had been performing work for the respondents by virtue of an employer-employee relationship. The absence of the employment permit instead bolsters the claim that the supposed employment of McBurnie was merely simulated, or did not ensue due to the non-fulfillment of the conditions that were set forth in the letter of May 11, 1999.

Third, besides the employment agreement, McBurnie failed to present other competent evidence to prove his claim of an employer-employee relationship. Given the parties' conflicting claims on their true intention in executing the agreement, it was necessary to resort to the established criteria for the determination of an employer-employee relationship, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the

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[122] *Lopez v. Bodega City* (*Video-Disco Kitchen of the Phils.*) *and/or Torres-Yap*, 558 Phil. 666, 674 (2007).

[123] *Rollo* (G.R. Nos. 186984-85), p. 169.

[124] *Supra* note 103.

employee's conduct.[125] The rule of thumb remains: the *onus probandi* falls on the claimant to establish or substantiate the claim by the requisite quantum of evidence. Whoever claims entitlement to the benefits provided by law should establish his or her right thereto.[126] McBurnie failed in this regard. As previously observed by the NLRC, McBurnie even failed to show through any document such as payslips or vouchers that his salaries during the time that he allegedly worked for the respondents were paid by the company. In the absence of an employer-employee relationship between McBurnie and the respondents, McBurnie could not successfully claim that he was dismissed, much less illegally dismissed, by the latter. Even granting that there was such an employer-employee relationship, the records are barren of any document showing that its termination was by the respondents' dismissal of McBurnie.

Given these circumstances, it would be a circuitous exercise for the Court to remand the case to the NLRC, more so in the absence of any showing that the NLRC should now rule differently on the case's merits. In *Medline Management, Inc. v. Roslinda,*[127] the Court ruled that when there is enough basis on which the Court may render a proper evaluation of the merits of the case, the Court may dispense with the time-consuming procedure of remanding a case to a labor tribunal in order "to prevent delays in the disposition of the case," "to serve the ends of justice" and when a remand "would serve no purpose save to further delay its disposition contrary to the spirit of fair play."[128] In *Real v. Sangu Philippines, Inc.*,[129] we again ruled:

With the foregoing, it is clear that the CA erred in affirming the decision of the NLRC which dismissed petitioner's complaint for

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[125] *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382.

[126] *Id.* at 397-398.

[127] G.R. No. 168715, September 15, 2010, 630 SCRA 471.

[128] *Id.* at 486.

[129] G.R. No. 168757, January 19, 2011, 640 SCRA 67.

lack of jurisdiction. In cases such as this, the Court normally remands the case to the NLRC and directs it to properly dispose of the case on the merits. "However, when there is enough basis on which a proper evaluation of the merits of petitioner's case may be had, the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case." "It is already an accepted rule of procedure for us to strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of litigation. If, based on the records, the pleadings, and other evidence, the dispute can be resolved by us, we will do so to serve the ends of justice instead of remanding the case to the lower court for further proceedings." x x x.[130] (Citations omitted)

It bears mentioning that although the Court resolves to grant the respondents' motion for reconsideration, the other grounds raised in the motion, especially as they pertain to insinuations on irregularities in the Court, deserve no merit for being founded on baseless conclusions. Furthermore, the Court finds it unnecessary to discuss the other grounds that are raised in the motion, considering the grounds that already justify the dismissal of McBurnie's complaint.

All these considered, the Court also affirms its Resolution dated September 4, 2012; accordingly, McBurnie's motion for reconsideration thereof is denied.

WHEREFORE, in light of the foregoing, the Court rules as follows:

(a) The motion for reconsideration filed on September 26, 2012 by petitioner Andrew James McBurnie is **DENIED;**

(b) The motion for reconsideration filed on March 27, 2012 by respondents Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc. is **GRANTED.**

(c) The Entry of Judgment issued in G.R. Nos. 186984-85 is **LIFTED.** This Court's Decision dated September

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

18, 2009 and Resolutions dated December 14, 2009 and January 25, 2012 are **SET ASIDE.** The Court of Appeals Decision dated October 27, 2008 and Resolution dated March 3, 2009 in CA-G.R. SP No. 90845 and CA-G.R. SP No. 95916 are **AFFIRMED WITH MODIFICATION.** In lieu of a remand of the case to the National Labor Relations Commission, the complaint for illegal dismissal filed by petitioner Andrew James McBurnie against respondents Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc. is **DISMISSED.**

Furthermore, on the matter of the filing and acceptance of motions to reduce appeal bond, as provided in Section 6, Rule VI of the 2011 NLRC Rules of Procedure, the Court hereby **RESOLVES** that **henceforth**, the following guidelines shall be observed:

(a) The filing of a motion to reduce appeal bond shall be entertained by the NLRC subject to the following conditions: (1) there is meritorious ground; and (2) a bond in a reasonable amount is posted;

(b) For purposes of compliance with condition no. (2), a motion shall be accompanied by the posting of a **provisional cash or surety bond equivalent to ten percent (10%) of the monetary award** subject of the appeal, exclusive of damages and attorney's fees;

(c) Compliance with the foregoing conditions shall suffice to suspend the running of the 10-day reglementary period to perfect an appeal from the labor arbiter's decision to the NLRC;

(d) The NLRC retains its authority and duty to resolve the motion to reduce bond and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of "meritorious grounds" and "reasonable amount"; and

(e) In the event that the NLRC denies the motion to reduce bond, or requires a bond that exceeds the amount of the provisional bond, the appellant shall be given a fresh period of ten (10) days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.

SO ORDERED.

Sereno, C.J. (Chairperson), Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr. and *Perlas-Bernabe,, JJ.,* no part.

Del Castillo, Abad, and *Leonen, JJ.,* on official leave.

EN BANC

[G.R. No. 190872. October 17, 2013]

REPUBLIC OF THE PHILIPPINES, represented by the Commissioner of Internal Revenue, *petitioner, vs.* **GST PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE ADDED TAX (VAT); REFUNDS OR TAX CREDITS OF INPUT TAX; THE 120-DAY AND 30-DAY PERIODS PROVIDED IN SECTION 112 (C) ARE NOT MERELY DIRECTORY BUT MANDATORY; FAILURE TO COMPLY WITH THE 120-DAY WAITING PERIOD VIOLATES THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RENDERS THE PETITION PREMATURE AND THUS WITHOUT A

CAUSE OF ACTION WITH THE EFFECT THAT THE COURT OF TAX APPEALS (CTA) DOES NOT ACQUIRE JURISDICTION OVER THE TAXPAYER'S PETITION.— The Court had already clarified in the case of *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi),* promulgated on October 6, 2010, that the two-year prescriptive period applies only to administrative claims and not to judicial claims. Morever, it was ruled that the 120-day and 30-day periods are not merely directory but **mandatory**. Accordingly, the judicial claim of *Aichi,* which was simultaneously filed with its administrative claim, was found to be premature. The Court held: In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) [now Section 112 (C)] of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) [now Section 112 (C)] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.** The taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or tax credit of unutilized excess input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period. Failure to comply with the 120-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.

2. ID.; ID.; ID.; ID.; RESPONDENT TAXPAYER CAN BENEFIT FROM BUREAU OF INTERNAL REVENUE (BIR) RULING NO. DA-489-03 WITH RESPECT TO ITS CLAIMS FOR REFUND OF UNUTILIZED EXCESS INPUT VAT FOR THE SECOND AND THIRD QUARTERS OF TAXABLE YEAR 2005 WHICH WERE FILED BEFORE THE COMMISSIONER OF INTERNAL REVENUE CODE

ON NOVEMBER 18, 2005 BUT ELEVATED TO THE CTA ON MARCH 17, 2006 BEFORE THE EXPIRATION OF THE 120-DAY PERIOD; THE RULING EFFECTIVELY SHIELDED THE FILING OF RESPONDENT'S JUDICIAL CLAIM FROM THE VICE OF PREMATURITY.— While the Court *En Banc* reiterated in the recent consolidated cases of *CIR v. San Roque Power Corporation* (*San Roque*), promulgated on February 12, 2013, that the 120-day period is mandatory and jurisdictional, however, it categorically held that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for **equitable estoppel** under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 expressly states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**." Speaking through Associate Justice Antonio T. Carpio, the Court ratiocinated as follows: There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code. x x x. BIR Ruling No. DA-489-03 was classified in *San Roque* as a **general interpretative rule** having been made in response to a query by a government agency tasked with processing tax refunds and credits – the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. As such, *all* taxpayers can rely on said ruling from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30 day periods are mandatory and jurisdictional. Therefore, GST can benefit from BIR Ruling No. DA-489-03 with respect to its claims for refund of unutilized

excess input VAT for the second and third quarters of taxable year 2005 which were filed before the CIR on November 18, 2005 but elevated to the CTA on March 17, 2006 ***before*** the expiration of the 120-day period (March 18, 2006 being the 120th day). BIR Ruling No. DA-489-03 effectively shielded the filing of GST's judicial claim from the vice of prematurity.

3. ID.; ID.; ID.; ID.; THE RECKONING DATE OF THE 120-DAY PERIOD COMMENCED SIMULTANEOUSLY WITH FILING OF THE ADMINISTRATIVE CLAIMS WHEN RESPONDENT TAXPAYER WAS PRESUMED TO HAVE ATTACHED THE RELEVANT DOCUMENTS TO SUPPORT ITS APPLICATIONS FOR REFUND OF TAX CREDIT.— As may be observed from the Court's application of the 120+30 day periods to GST's claims, the 120-day period is *uniformly* reckoned from the date of the filing of the administrative claims. The CIR insists, however, that the filing of the administrative claim was *not* necessarily the same time when the complete supporting documents were submitted to the Commissioner. *The Court agrees*. However, this issue is *not* determinative of the resolution of this case for failure of the CIR to show that GST further submitted supporting documents subsequent to the filing of its administrative claims. Thus, the reckoning date of the 120-day period commenced *simultaneously* with the filing of the administrative claims when GST was presumed to have attached the relevant documents to support its applications for refund or tax credit.

4. ID.; ID.; ID.; ID.; A TAXPAYER MUST PROVE NOT ONLY ITS ENTITLEMENT TO A REFUND BUT ALSO COMPLIANCE WITH PRESCRIBED PROCEDURES.— As a final note, it is incumbent on the Court to emphasize that tax refunds partake of the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State. Thus, as emphasized in *Aichi*, a taxpayer must prove not only its entitlement to a refund but also its compliance with prescribed procedures.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

It is true that every citizen has a civic responsibility, *nay* an obligation, to honestly pay the right taxes as a contribution to the government in order to keep and maintain a civilized society. Corollarily, the government is expected to implement tax laws in good faith; to discharge its duty to collect what is due to it; and, consistent with the principles of fair play and equity, to justly return what has been erroneously and excessively given to it, after careful verification but without infringing upon the fundamental rights of the taxpayer.

In this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Republic of the Philippines, represented by the Commissioner of Internal Revenue (CIR), assails the October 30, 2009 Decision[2] and January 5, 2010 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 484, granting respondent GST Philippines, Inc. (GST) a refund of its unutilized excess input value added tax (VAT) attributable to zero-rated sales for the four quarters of taxable year 2004 and the first three quarters of taxable year 2005.

The Facts

GST is a corporation duly organized and existing under the laws of the Philippines, and primarily engaged in the business of manufacturing, processing, selling, and dealing in all kinds

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[1] *Rollo*, pp. 8-27.

[2] *Id.* at 28-45. Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta, dissenting, Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring, and Associate Justices Lovell R. Bautista and Caesar A. Casanova, both concurring and dissenting.

[3] *Id.* at 62-65. Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta, dissenting, and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

of iron, steel or other metals.[4] It is a duly registered VAT enterprise with taxpayer identification number 000-155-645-000,[5] which deals with companies registered with (1) the Board of Investments (BOI) pursuant to Executive Order No. (EO) 226,[6] whose manufactured products are 100% exported to foreign countries; and (2) the Philippine Economic Zone Authority (PEZA).[7] Sales made by a VAT-registered person to a PEZA-registered entity are considered exports to a foreign country subject to a zero rate.[8]

During the taxable years 2004 and 2005, GST filed Quarterly VAT Returns showing its zero-rated sales, as follows:[9]

Period	Date of Filing	Zero-Rated Sales
1st Quarter of year 2004	April 16, 2004	₱ 77,687,420.54
2nd Quarter of year 2004	July 15, 2004	53,737,063.05
3rd Quarter of year 2004	October 15, 2004	74,280,682.00
4th Quarter of year 2004	January 11, 2005	104,633,604.23
1st Quarter of year 2005	April 25, 2005	37,742,969.02
2nd Quarter of year 2005	July 19, 2005	56,133,761.00
3rd Quarter of year 2005	October 26, 2005	51,147,677.80

Claiming unutilized excess input VAT in the total amount of ₱32,722,109.68 attributable to the foregoing zero-rated sales,[10]

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[4] *Id.* at 9.

[5] *Id.* at 29.

[6] Otherwise known as the "Omnibus Investments Code of 1987."

[7] *Rollo*, pp. 77-78.

[8] See *CIR v. Seagate Technology (Phils.)*, 491 Phil. 317, 338-339 (2005), citing Section 106 (A)(2)(a)(5) of RA 8424 in relation to EO 226 and RA 7916 (The Special Economic Zone Act of 1995).

[9] *Rollo*, p. 30.

[10] *Id.*

GST filed before the Bureau of Internal Revenue (BIR) separate claims for refund on the following dates:[11]

Period	Date of Filing of Administrative Claim for Refund
1st Quarter of 2004	June 9, 2004
2nd Quarter of 2004	August 12, 2004
3rd Quarter of 2004	February 18, 2005
4th Quarter of 2004	February 18, 2005
1st Quarter of 2005	May 11, 2005
2nd Quarter of 2005	November 18, 2005
3rd Quarter of 2005	November 18, 2005

For failure of the CIR to act on its administrative claims, GST filed a petition for review before the CTA on March 17, 2006. After due proceedings, the CTA First Division rendered a Decision[12] on January 27, 2009 granting GST's claims for refund but at the reduced amount of ₱27,369,114.36. The CIR was also ordered to issue the corresponding tax credit certificate.[13]

The CIR moved for reconsideration, which was denied[14] by the CTA First Division for lack of merit, thus, prompting the elevation of the case to the CTA *En Banc* via a petition for review.[15] The CIR raised therein the failure of GST to substantiate its entitlement to a refund,[16] and argued that the judicial appeal

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[11] *Id.* at 44.

[12] The said decision is not attached to the records of this case.

[13] *Rollo,* p. 30.

[14] The CTA First Division's Resolution dated March 30, 2009 which denied CIR's motion for reconsideration was not attached in the records of this case.

[15] *Rollo,* p. 30.

[16] *Id.* at 31.

to the CTA was filed beyond the reglementary periods prescribed in Section 112 of RA 8424[17] (Tax Code).[18]

On October 30, 2009, the CTA *En Banc* affirmed[19] the Decision of the CTA First Division finding GST's administrative and judicial claims for refund to have been filed well within the prescribed periods provided in the Tax Code.[20] The CIR's motion for reconsideration was denied by the CTA *En Banc* in its Resolution[21] dated January 5, 2010.

Hence, the instant petition.

The Issue

The CIR no longer raises the alleged failure of GST to comply with the substantiation requirements for the questioned claims for refund nor questions the reduced award granted by the CTA *En Banc* in the amount of ₱27,369,114.36. Thus, the lone issue for resolution is whether GST's action for refund has complied with the prescriptive periods under the Tax Code.

The Ruling of the Court

Laws Providing Refunds or Tax Credit of Unutilized Excess Input VAT

Refund or tax credit of unutilized excess input VAT has been allowed as early as in the Original VAT Law – EO 273.[22] This

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[17] An Act Amending the National Internal Revenue Code, As Amended, and for Other Purposes." This is otherwise known as the "Tax Reform Act of 1997" or the "National Internal Revenue Code of 1997."

[18] *Rollo,* p. 41.

[19] *Id.* at 28-45.

[20] *Id.* at 44.

[21] *Id.* at 62-65.

[22] Adopting a Value-Added Tax, Amending for this Purpose Certain Provisions of the National Internal Revenue Code, and for Other Purposes." It added Section 106 in the Tax Code and the pertinent provisions read:

was later amended by RA 7716[23] and RA 8424, and further

Sec. 106. **Refunds or tax credits of input tax.** – x x x.
(b) **Zero-rated or effectively zero-rated sales**. – Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.

x x x x x x x x x

(e) **Period within which refund of input taxes may be made by the Commissioner.** – The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.

x x x x x x x x x

[23] "An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and for Other Purposes." It further amended Section 106 and the pertinent provisions read:

Sec. 106. *Refunds or tax credits of creditable input tax*. –
(a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

x x x x x x x x x

amended by RA 9337[24] which took effect on November 1,

(d) *Period within which refund or tax credit of input taxes shall be made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

x x x x x x x x x

[24] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes." Pertinent provisions of Section 112 now reads:

Sec. 112. *Refunds or Tax Credits of Input Tax*. –

(A) *Zero-Rated or Effectively Zero-Rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within

2005.[25] Since GST's claims for refund covered the periods before the effectivity of RA 9337, the old provision on VAT refund, specifically Section 112, as amended by RA 8424, shall apply.[26] It reads:

Section 112. *Refunds or Tax Credits of Input Tax.* –

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (Emphasis supplied)

x x x x x x x x x

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one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

x x x x x x x x x

[25] Its effectivity clause provides that it shall take effect on July 1, 2005 but its effectivity was suspended due to a temporary restraining order (TRO) issued by the Court. The law finally took effect only on November 1, 2005 when the validity of the law was upheld and the TRO was lifted (see *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005, 469 SCRA 1). See also *CIR v. Philippine Global Communications, Inc.*, G.R. No. 144696, August 16, 2006, 499 SCRA 53 regarding the effect of a TRO on the effectivity of a law. It states that with the issuance of the TRO, the enforcement and/or implementation of an entire law, not only the contested provisions, is stopped.

[26] RA 9337 removed the grant to a taxpayer to refund input VAT arising from purchase of capital goods. Other than that, RA 9337 did not significantly modify Section 112.

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis supplied)

The CIR, adopting the dissenting opinion[27] of CTA Presiding Justice Ernesto D. Acosta to the CTA *En Banc* Decision dated October 30, 2009, maintains that the two-year prescriptive period under Section 112 (A) of the Tax Code reckoned from the close of the taxable quarter involved is limited only to the filing of an administrative – not judicial – claim.[28] In turn, under paragraph (D) of the same Section, the CIR has 120 days to decide on the claim counted from the date of the submission of complete documents and not from the mere filing of the administrative claim. The taxpayer then has 30 days from receipt of the adverse decision, or from the expiration of the 120-day period without the CIR acting upon the claim, to institute his judicial claim before the CTA.[29]

Thus, in the present case, the claims filed for the four quarters of taxable year 2004, as well as the first quarter of taxable year 2005, had already prescribed. While those of the second and third quarters of taxable year 2005 were prematurely filed, as summarized in the table presented by Justice Acosta, to wit:

Applying the above discourse in the case at bar, a table is prepared for easy reference:

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[27] *Rollo*, pp. 46-54.

[28] *Id.* at 50.

[29] *Id.* at 52.

Filing of Administrative Claim	120th day [Section 112 (D), NIRC of 1997]	30th day [Section 112 (D), 2nd par., NIRC of 1997]	Filing of the Petition before the First Division of this Court	Remarks
June 9, 2004	October 7, 2004	November 6, 2004	March 17, 2006	Prescribed
August 12, 2004	December 10, 2004	January 9, 2005	March 17, 2006	Prescribed
February 18, 2005	June 18, 2005	July 18, 2005	March 17, 2006	Prescribed
May 11, 2005	September 8, 2005	October 8, 2005	March 17, 2006	Prescribed
November 18, 2005	March 18, 2006	April 17, 2006	March 17, 2006	Premature

Based on the above, the filing of the Petition for Review before the First Division has already prescribed with respect to the administrative claim filed on June 9, 2004; August 12, 2004; February 18, 2005; and May 11, 2005 for being filed beyond the 30th day provided under the second paragraph of Section 112 (D) of the NIRC of 1997. The petition is therefore dismissible for being out of time.

Anent the administrative claim filed on November 18, 2005, the filing of the petition before the First Division is premature for failure of respondent to wait for the 120-day period to expire. It failed to exhaust the available administrative remedies. Hence, the instant petition is likewise dismissible for lack of cause of action.[30]

For its part, GST asserts that under Section 112 (A) of the Tax Code, the prescriptive period is complied with if both the administrative and judicial claims are filed within the two-year prescriptive period;[31] and that compliance with the 120-day and 30-day periods under Section 112 (D) of the Tax Code is not mandatory.[32] It explained that the 30-day period only refers to a case where a decision is rendered by the CIR and not when the claim for refund is not acted upon, in which case, the taxpayer may appeal to the CTA anytime even prior to or after the expiration of the 120-day period as long as it is within the two-

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[30] *Id.* at 53-54.

[31] *Id.* at 82.

[32] *Id.* at 84.

year prescriptive period. On the other hand, the CIR may still choose to resolve the administrative claim even beyond the 120-day period. In any case, compliance with the 120-day and 30-day periods is merely directory and permissive, not mandatory nor jurisdictional.[33]

The 120+30 day periods are mandatory and jurisdictional.

The Court had already clarified in the case of *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi)*,[34] promulgated on October 6, 2010, that the two-year prescriptive period applies only to administrative claims and not to judicial claims. Morever, it was ruled that the 120-day and 30-day periods are not merely directory but **mandatory**. Accordingly, the judicial claim of *Aichi*, which was simultaneously filed with its administrative claim, was found to be premature. The Court held:

> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) [now Section 112 (C)] of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) [now Section 112 (C)] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**[35] (Emphasis supplied)

The taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or tax credit of unutilized

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[33] *Id.* at 82-84.

[34] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[35] *Id.* at 444.

excess input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.[36] Failure to comply with the 120-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.[37]

San Roque case provides exception to the strict compliance with the 120-day period

While the Court *En Banc* reiterated in the recent consolidated cases of *CIR v. San Roque Power Corporation* (*San Roque*),[38] promulgated on February 12, 2013, that the 120-day period is mandatory and jurisdictional, however, it categorically held that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for **equitable estoppel** under Section 246[39] of the Tax Code. BIR Ruling No. DA-489-03 expressly states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the**

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[36] *CIR v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 398.

[37] *Id.* at 381.

[38] *Id.*

[39] Sec. 246. *Non-Retroactivity of Rulings*. – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith.

CTA by way of Petition for Review."[40] Speaking through Associate Justice Antonio T. Carpio, the Court ratiocinated as follows:

> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
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> Section 4 of the Tax Code, a new provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:
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> > Sec. 4. *Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases*. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
> >
> > The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
>
> Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later

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[40] S*upra* note 35, at 401.

turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. x x x.[41]

BIR Ruling No. DA-489-03 was classified in *San Roque* as a **general interpretative rule** having been made in response to a query by a government agency tasked with processing tax refunds and credits – the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. As such, *all* taxpayers can rely on said ruling from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30 day periods are mandatory and jurisdictional.[42]

Therefore, GST can benefit from BIR Ruling No. DA-489-03 with respect to its claims for refund of unutilized excess input VAT for the second and third quarters of taxable year 2005 which were filed before the CIR on November 18, 2005 but elevated to the CTA on March 17, 2006 ***before*** the expiration of the 120-day period (March 18, 2006 being the 120th day). BIR Ruling No. DA-489-03 effectively shielded the filing of GST's judicial claim from the vice of prematurity.[43]

GST's claims, however, for the four quarters of taxable year 2004 and the first quarter of taxable year 2005 should be denied for **late filing** of the petition for review before the CTA. GST filed its VAT Return for the first quarter of 2004 on April 16, 2004. Reckoned from the close of the first taxable quarter of 2004 on March 31, 2004, the administrative claim filed on June 9, 2004 was well within the required two-year prescriptive period from the close of the taxable quarter, the last day of filing being March 31, 2006. The CIR then had 120 days from June 9, 2004,

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[41] *Id.* at 401-402.

[42] *Id.* at 404.

[43] *Id.* at 405.

or until October 7, 2004, to decide the claim. Since the Commissioner did not act on the claim within the said period, GST had 30 days from October 7, 2004, or until November 6, 2004, to file its judicial claim. However, GST filed its petition for review before the CTA only on March 17, 2006, or 496 days ***after*** the last day of filing. In short, **GST was late by one year and 131 days in filing its judicial claim**.

For the second quarter of taxable year 2004, GST filed its administrative claim on August 12, 2004. The 120-day period from the filing of such claim ended on December 10, 2004, and the 30th day within which to file a judicial claim fell on January 9, 2005. However, GST filed its petition for review before the CTA only on March 17, 2006, or 432 days ***after*** the last day of filing. **GST was late by one year and 67 days in filing its judicial claim**.

For the third and fourth quarters of taxable year 2004, GST filed its administrative claims on February 18, 2005. The 120th day, or June 18, 2005, lapsed without any action from the CIR. Thus, GST had 30 days therefrom, or until July 18, 2005, to file its judicial claim, but it did so only on March 17, 2006, or 242 days ***after*** the last day of filing. **GST was late by 242 days in filing its judicial claim.**

Finally, for the first quarter of taxable year 2005, GST filed its administrative claim on May 11, 2005. The 120-day period ended on September 8, 2005, again with no action from the CIR. Nonetheless, GST failed to elevate its claim to the CTA within 30 days, or until October 8, 2005. The petition for review filed by GST on March 17, 2006, or 160 days ***after*** the last day of filing was, therefore, **late**.

Following is a tabular summation of the relevant dates of GST's administrative and judicial claims, and the corresponding action on said claims:

Taxable Period	Filing of Administrative claim	120th day [Section 112 (D), NIRC of 1997]	30th day [Section 112 (D), NIRC of 1997]	Filing of Judicial Claim	Remarks	Action on Claim
1st Quarter 2004	June 9, 2004	October 7, 2004	November 6, 2004	March 17, 2006	Filed late	**DENY**, pursuant to Section 112 (C), NIRC of 1997
2nd Quarter 2004	August 12, 2004	December 10, 2004	January 9, 2005	March 17, 2006	Filed late	**DENY**, pursuant to Section 112 (C), NIRC of 1997
3rd Quarter 2004	February 18, 2005	June 18, 2005	July 18, 2005	March 17, 2006	Filed late	**DENY**, pursuant to Section 112 (C), NIRC of 1997
4th Quarter 2004	February 18, 2005	June 18, 2005	July 18, 2005	March 17, 2006	Filed late	**DENY**, pursuant to Section 112 (C), NIRC of 1997
1st Quarter 2005	May 11, 2005	September 8, 2005	October 8, 2005	March 17, 2006	Filed late	**DENY**, pursuant to Section 112 (C), NIRC of 1997
2nd Quarter 2005	November 18, 2005	March 18, 2006	April 17, 2006	March 17, 2006	Prematurely filed	**GRANT**, pursuant to BIR Ruling No. DA-489-03
3rd Quarter 2005	November 18, 2005	March 18, 2006	April 17, 2006	March 17, 2006	Prematurely filed	**GRANT**, pursuant to BIR Ruling No. DA-489-03

As may be observed from the Court's application of the 120+30 day periods to GST's claims, the 120-day period is *uniformly* reckoned from the date of the filing of the administrative claims. The CIR insists,[44] however, that the filing of the administrative claim was *not* necessarily the same time when the complete supporting documents were submitted to the Commissioner.

The Court agrees. However, this issue is *not* determinative of the resolution of this case for failure of the CIR to show that GST further submitted supporting documents subsequent to the

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[44] *Rollo*, p. 22.

filing of its administrative claims. Thus, the reckoning date of the 120-day period commenced *simultaneously*[45] with the filing of the administrative claims when GST was presumed to have attached the relevant documents to support its applications for refund or tax credit.

As a final note, it is incumbent on the Court to emphasize that tax refunds partake of the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.[46] Thus, as emphasized in *Aichi*, a taxpayer must prove not only its entitlement to a refund but also its compliance with prescribed procedures.[47]

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated October 30, 2009 of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 484, affirming the Decision dated January 27, 2009 of the CTA First Division in C.T.A. Case No. 7419, is **AFFIRMED with MODIFICATION.** The claims of respondent GST Philippines, Inc. for refund or tax credit for unutilized excess input VAT for the four quarters of taxable year 2004, as well as the first quarter of taxable year 2005 are hereby **DENIED** for being filed beyond the prescriptive period, while the claims for refund for the second and third quarters of taxable year 2005 are **GRANTED.** Accordingly, the Commissioner of Internal Revenue is ordered to refund or, in the alternative, to issue a tax credit certificate to respondent

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[45] This is consistent with several CTA decisions, as follows: *Procter & Gamble Asia, PTE. LTD. v. Commissioner of Internal Revenue*, CTA EB No. 830 (CTA Case No. 7982), December 20, 2012; *Taganito Mining Corporation v. Commissioner of Internal Revenue*, CTA EB No. 656 (CTA Case No. 7769), October 19, 2011; *UCPB Properties, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 645 (CTA Case Nos. 6543 & 6589), July 18, 2011; *Commissioner of Internal Revenue v. Team Energy Corporation (formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.)*, CTA EB No. 652 (CTA Case No. 7461).

[46] *Gulf Air Company, Philippine Branch (GF) v. CIR*, G.R. No. 182045, September 19, 2012, 681 SCRA 377, 389.

[47] *Supra* note 33, at 425.

GST Philippines, Inc. corresponding only to the amount representing unutilized excess input VAT for the second and third quarters of taxable year 2005 out of the total amount of ₱27,369,114.36 awarded by the CTA.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Villarama, Jr., Perez, Mendoza, and *Reyes, JJ.,* concur.

Del Castillo, Abad, and *Leonen, JJ.*, on official leave.

FIRST DIVISION

[A.M. No. P-13-3155. October 21, 2013]
(Formerly O.C.A. IPI No. 10-3530-P)

JOEFIL BAGUIO, *complainant, vs.* **MARIA FE V. ARNEJO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; THE COURT WILL NOT TOLERATE THE PRACTICE OF ASKING FOR ADVANCE PAYMENT FROM LITIGANTS, MUCH LESS THE UNAUTHORIZED ACCEPTANCE OF JUDICIAL FEES; RESPONDENT, BEING A STENOGRAPHER, IS NOT AUTHORIZED TO ACCEPT PAYMENT FOR JUDICIAL FEES, EVEN IF TWO-THIRDS OF THOSE FEES WOULD BE PAID TO HER ANYWAY.— The Court cannot turn blind to the admitted fact that respondent received from complainant the supposed

payment for the TSN on 22 July 2010 and remitted the money to the cashier of the Clerk of Court only on 19 and 23 December 2010. This Court will not tolerate the practice of asking for advance payment from litigants, much less the unauthorized acceptance of judicial fees. Section 11, Rule 141 of the Rules of Court, specifically provides that payment for requests of copies of the TSN shall be made to the Clerk of Court. Clearly, therefore, payment cannot be made to respondent, as it is an official transaction, and, as such, must be made to the Clerk of Court. Respondent, being a stenographer, is not authorized to accept payment for judicial fees, even if two-thirds of those fees would be paid to her anyway. Moreover, the issuance of an acknowledgment receipt cannot be construed as having been done in good faith, considering the fact that respondent only remitted the payment for the TSN five (5) months after her receipt of the supposed judicial fee, or only after the instant Complaint had been filed against her. Her belated remittance was tainted with bad faith.

2. ID.; ID.; ID.; ID.; COURT PERSONNEL MUST AT ALL TIMES ACT WITH STRICT PROPRIETY AND PROPER DECORUM SO AS TO EARN AND REBUILD THE PUBLIC'S TRUST IN THE JUDICIARY AS AN INSTITUTION.— Court personnel must at all times act with strict propriety and proper decorum so as to earn and rebuild the public's trust in the judiciary as an institution. This Court has consistently ruled that the Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary. Every employee of the judiciary should be an example of integrity, uprightness and honesty. We have repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as would free them from any suspicion that may taint the judiciary. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice that would violate the norm of public accountability and diminish or even just

tend to diminish the faith of the people in the judiciary. As a judicial employee, respondent is held to the highest ethical standards to preserve the integrity of the courts.

3. ID.; ID.; ID.; ID.; FOR HUMANITARIAN REASON AND CONSIDERING THAT THE PRESENT CASE IS RESPONDENT'S FIRST INFRACTION, THE COURT REDUCED THE PENALTY TO THREE MONTHS SUSPENSION WITH STERN WARNING.— We do not agree, however, with the recommended penalty of the investigating judge and the OCA. Pursuant to the Uniform Rules in Administrative Cases in the Civil Service, respondent's infraction is classified as a grave offense, which constitutes conduct grossly prejudicial to the best interest of the service and punishable on the first offense by a suspension for six (6) months and one (1) day to one (1) year. However, for humanitarian reason and considering that this is her first infraction, there being no evidence to prove that respondent has been previously involved with other offenses or violations; we reduce the penalty to three (3) months suspension with a stern warning that a repetition of the same or a similar offense will be dealt with more severely.

R E S O L U T I O N

SERENO, *C.J.*:

A letter-complaint[1] dated 27 October 2010 was filed by complainant charging respondent stenographer with willful gross neglect of duties based on the following: 1) noncompliance with Supreme Court (SC) Administrative Circular No. 24-90, which requires stenographers to transcribe notes within 20 days from the date of hearing; 2) non-issuance of an official receipt (OR) for the payment of the transcript of stenographic notes (TSN); and 3) antedating of the date the TSN was prepared when the ORs submitted by respondent for the 27 May 2010 and 8 September 2010 hearing dates were dated 23 and 18 December 2010, respectively, with the corresponding amounts of ₱79.20

[1] *Rollo*, p. 1.

and ₱92.40, which were not consistent with the amount indicated in the temporary acknowledgement receipt she had issued.[2]

Upon the recommendation of the Office of the Court Administrator,[3] the Complaint was referred to the executive judge of the Regional Trial Court (RTC) of Cebu City for investigation, report and recommendation.

Executive Judge Silvestre Maamo, Jr. conducted an investigation, but after three consecutive failures of complainant to appear for the presentation of his evidence, the case was submitted for resolution based on the available evidence on record.

Based on the Investigation Report[4] submitted by Judge Maamo, the following were established:

1. The judge found no basis for the allegation of noncompliance with SC Administrative Circular No. 24-90, as the TSN for 27 May 2010 and 8 September 2010 had been transcribed within the 20-day period.

   Also, there was no hearing conducted on 30 September 2010, as there was a "Motion to Postpone Sept. 30, 2010 Hearing;" and a different stenographer, Beatriz Espartero, was on duty.

2. As regards the non-issuance of a receipt for the payment of the TSN, records show the following:

   a) On 27 May 2010, respondent asked from complainant ₱500 with which to buy ink for the printer, which was allegedly treated as advance payment.

   b) Respondent admitted issuing an acknowledgment receipt on 22 July 2011 for the amount of ₱240 which she received on 27 May 2010 as advance payment for the TSN.

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[2] Resolution dated 11 April 2012, *id.* at 83.

[3] *Id.* at 79-82.

[4] Received by the OCA on 16 October 2012.

c) The actual remittance for the payment for the TSN for the 27 May 2010 and the 8 September 2010 hearing dates was made only on 23 December 2010 and 19 December 2010, respectively, or after the instant Complaint was filed against her.

d) Respondent failed to prove that she had been regularly remitting payments for the TSN to the Office of the Clerk of Court (OCC) of the RTC-Cebu City in accordance with the Office of the Court Administrator (OCA) Circular No. 83-2010.

3. Respondent likewise admitted in her Comment filed on 21 January 2011 that the date of the Certification in the TSN must coincide with the date of hearing so as not to create confusion; thus, she actually antedated the Certification date as a matter of practice.

The investigating judge recommends that respondent be reprimanded for "violating A.M. No. 03-06-13 SC[5] and RA 6793[6] [sic]" by asking for advances from litigants; issuing acknowledgment receipts for collecting payments for the TSN; and failing to immediately remit her TSN collection accruing to the Judiciary Development Fund (JDF) on the day the payments were received; and failing to prove her alleged practice of regularly remitting to the OCC, RTC-Cebu City the JDF she collected for the TSNs paid for by the litigant.

The Investigation Report was forwarded to the OCA for evaluation, report, and recommendation who likewise found that the conclusions of Judge Maamo were supported by the evidence on record. The OCA found that respondent complied with the SC Administrative Circular No. 24-90 on the completion of TSNs within twenty (20) days from hearing. However, as to

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[5] Code of Conduct for Court Personnel.

[6] R.A. No. 6713, otherwise known as "Code of Conduct and Ethical Standards for Public Officials and Employees."

the issuance of official receipts, respondent Arnejo violated Section 11, Rule 141 of the Revised Rules of Court.[7]

THE COURT'S RULING

This Court likewise finds respondent had complied with the SC Administrative Circular No. 24-90 on the completion of TSNs within twenty (20) days from hearing. However, after a careful review of the records, we agree with the findings of the investigating judge and OCA that respondent stenographer violated the Code of Conduct of Court Personnel and Code of Ethics for Government Officials and Employees.

At the outset, the Court cannot turn blind to the admitted fact that respondent received from complainant the supposed payment for the TSN on 22 July 2010[8] and remitted the money to the cashier of the Clerk of Court only on 19 and 23 December 2010.[9]

This Court will not tolerate the practice of asking for advance payment from litigants, much less the unauthorized acceptance of judicial fees. Section 11, Rule 141 of the Rules of Court, specifically provides that payment for requests of copies of the TSN shall be made to the Clerk of Court. Clearly, therefore, payment cannot be made to respondent, as it is an official transaction, and, as such, must be made to the Clerk of Court.[10] Respondent, being a stenographer, is not authorized to accept payment for judicial fees, even if two-thirds of those fees would be paid to her anyway.

Moreover, the issuance of an acknowledgment receipt cannot be construed as having been done in good faith, considering the fact that respondent only remitted the payment for the TSN

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[7] OCA Memorandum, *rollo*, pp. 183-187.

[8] Acknowledgment Receipt, *rollo*, p. 6.

[9] Offical Receipts, *id.* at 77-78.

[10] *Basilio v. Dinio*, A.M. No. P-09-2700, 15 November 2010, 634 SCRA 516, 522.

five (5) months after her receipt of the supposed judicial fee, or only after the instant Complaint had been filed against her. Her belated remittance was tainted with bad faith.

Court personnel must at all times act with strict propriety and proper decorum so as to earn and rebuild the public's trust in the judiciary as an institution.[11] This Court has consistently ruled that the Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service.[12] And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary.[13] Every employee of the judiciary should be an example of integrity, uprightness and honesty.[14]

We have repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as would free them from any suspicion that may taint the judiciary.[15] The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[16] As a judicial employee, respondent is held to the highest ethical standards to preserve the integrity of the courts.

We do not agree, however, with the recommended penalty of the investigating judge and the OCA. Pursuant to the Uniform

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[11] *Judge Jaravata v. Orencia,* A.M. No. P-12-3035, 13 June 2012.

[12] *Alawi v. Alauya,* 335 Phil. 1096 (1997).

[13] *Rabe v. Flores,* 338 Phil. 919 (1997).

[14] *Court Administrator v. Sevillo,* 336 Phil. 931 (1997); *Estreller v. Manatad, Jr.,* 335 Phil. 1077 (1997).

[15] *Concerned Citizens of Laoag City v. Arzaga,* 334 Phil. 830 (1997).

[16] *Office of the Court Administrator v. Sheriff IV Cabe*, 389 Phil. 685 (2000); *Santiago v. Judge Jovellanos*, 391 Phil. 682 (2000).

Rules in Administrative Cases in the Civil Service,[17] respondent's infraction is classified as a grave offense, which constitutes conduct grossly prejudicial to the best interest of the service and punishable on the first offense by a suspension for six (6) months and one (1) day to one (1) year. However, for humanitarian reason and considering that this is her first infraction, there being no evidence to prove that respondent has been previously involved with other offenses or violations; we reduce the penalty to three (3) months suspension with a stern warning that a repetition of the same or a similar offense will be dealt with more severely.

WHEREFORE, respondent Maria Fe Arnejo is found **GUILTY** of conduct grossly prejudicial to the best interest of the service. Accordingly, she is hereby **SUSPENDED** for three (3) months, with a **STERN WARNING** that a repetition of the same or a similar offense will be dealt with more severely.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[17] Resolution No. 991936 of the Civil Service Commission.

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— If a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces with the consultation, then the professional employment is established. (Tria-Samonte *vs*. Obias, A.C. No. 4945, Oct. 08, 2013) p. 70

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— The chain of custody must be proved by the prosecution to ensure the preservation of the integrity and evidentiary value of the seized item. (People *vs*. Guzon, G.R. No. 199901, Oct. 09, 2013) p. 441

— The saving clause provided under Sec 21(a) of the Implementing Rules and Regulations (IRR) that non-compliance with the legal requirement shall not render void and invalid seizures of and custody over the items is applicable only if the prosecution was able to prove the existence of justifiable grounds and preservation of the integrity and evidentiary value of the items. (People *vs*. Candidia, G.R. No. 191263, Oct. 16, 2013) p. 538

Illegal sale of dangerous drugs — The following elements must be established: (1) the identities of the buyer and the seller, the object and consideration of the sale; and (3) the delivery to the buyer of the thing sold and receipt by the seller of the payment therefor. (People *vs*. Guzon, G.R. No. 199901, Oct. 09, 2013) p. 441

Prosecution of drug cases — Credence should be given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner unless there is evidence to the contrary. (People *vs*. Candidia, G.R. No. 191263, Oct. 16, 2013) p. 538

CONCUBINAGE

Commission of — Admission set against the specific acts of concubinage does not amount to condonation. (Busuego *vs*. Office of the Ombudsman, G.R. No. 196842, Oct. 09, 2013) p. 367

— Specific acts of concubinage by a husband are: (1) keeping a mistress in the conjugal dwelling; (2) sexual intercourse, under scandalous circumstances, with a woman who is not his wife; and (3) cohabiting with a woman who is not his wife in any other place. *(Id.)*

CONTRACTS

Rescission of — In the absence of a stipulation, a party cannot unilaterally and extrajudicially rescind a contract; a judicial or notarial act is necessary before a valid rescission can take place. (EDS Manufacturing, Inc. *vs*. Healthcheck International, Inc., G.R. No. 162802, Oct. 09, 2013) p. 205

— Will not be permitted for a slight or casual breach, but only or such substantial and fundamental violations as would defeat the very object of the parties in making the agreement. *(Id.)*

CORPORATE REHABILITATION

Rehabilitation proceedings — Summary and non-adversarial in nature and do not include adjudication of claims that

require full trial on the merits. (Steel Corp. of the Phils. *vs*. Mapfre Insular Insurance Corp., G.R. No. 201199, Oct. 16. 2013) p. 638

COURT PERSONNEL

Conduct of — The conduct of every person serving the Judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the Judiciary. (Baguio *vs*. Arnejo, A.M. No. P-13-3155, Oct. 21, 2013) p. 748

(*Re*: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Reynard B. Castor, A.M. No. 2013-08-SC, Oct. 08, 2013) p. 96

Conduct prejudicial to the best interest of the service — Court will not tolerate the practice of asking for advance payment from litigants much less the unauthorized acceptance of judicial fees. (Baguio *vs*. Arnejo, A.M. No. P-13-3155, Oct. 21, 2013) p. 748

— Indulging in the use of illegal drugs constitutes conduct unbecoming of court personnel. (*Re*: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Reynard B. Castor, A.M. No. 2013-08-SC, Oct. 08, 2013) p. 96

— Punishable on the first offense by a suspension for six (6) months and one (1) day to one (1) year. (Baguio *vs*. Arnejo, A.M. No. P-13-3155, Oct. 21, 2013) p. 748

Stenographer — Not authorized to accept payment for judicial fees, even if two-thirds of those fees would be paid to her anyway. (Baguio *vs*. Arnejo, A.M. No. P-13-3155, Oct. 21, 2013) p. 748

DAMAGES

Actual damages — There must be competent proof of the actual amount of loss. (Abella *vs*. People, G.R. No. 198400, Oct. 07, 2013) p. 53

Attorney's fees — May be recovered when exemplary damages are awarded, when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest, and where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. (San Fernando Regala Trading, Inc. *vs*. Cargill Phils., Inc., G.R. No. 178008, Oct. 09, 2013) p. 256

Exemplary damages — In breach of contract, it may only be awarded if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. (Adriano *vs*. Lasala, G.R. No. 197842, Oct. 09, 2013) p. 408

(San Fernando Regala Trading, Inc. *vs*. Cargill Phils., Inc., G.R. No. 178008, Oct. 09, 2013) p. 256

Moral damages — Awarded in cases of murder and homicide without need of allegation and proof other than the death of the victim. (People *vs*. Galicia, G.R. No. 191063, Oct. 09, 2013) p. 337

(Abella *vs*. People, G.R. No. 198400, Oct. 07, 2013) p. 53

— Granted where the forced resignation and retirement were fraudulently done and attended by bad faith. (SME Bank, Inc. *vs*. De Guzman, G.R. No. 184517, Oct. 08, 2013) p. 103

— In an action for breach of contract, the breach must be palpably wanton, reckless and malicious, in bad faith, oppressive, or abusive. (Adriano *vs*. Lasala, G.R. No. 197842, Oct. 09, 2013) p. 408

— Not recoverable in *culpa contractual* except when bad faith had been proved. (San Fernando Regala Trading, Inc. *vs*. Cargill Phils., Inc., G.R. No. 178008, Oct. 09, 2013) p. 256

Temperate damages — May be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. (Adriano *vs*. Lasala, G.R. No. 197842, Oct. 09, 2013) p. 408

(Abella *vs*. People, G.R. No. 198400, Oct. 07, 2013) p. 53

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — Established criteria for determination of its existence are: (1) the selection and engagement of the employee; (2) the payment of wages; the power of dismissal; and (4) the power to control the emloyee's conduct. (McBurnie *vs*. Ganzon, G.R. Nos. 178034 & 178117, Oct. 17, 2013) p. 680

Management prerogatives — Exercise of the prerogative to terminate employment must always be fair and reasonable. (Opinaldo *vs*. Ravina, G.R. No. 196573, Oct. 16, 2013) p. 584

— While it is a management prerogative to require an employee to submit medical certificate, the employer cannot withhold the employee's employment without observing the principle of due process. *(Id.)*

EMPLOYMENT, TERMINATION OF

Abandonment as a ground — Elements that must concur are: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. (Opinaldo *vs*. Ravina, G.R. No. 196573, Oct. 16, 2013) p. 584

Cessation or closure of establishment as a ground — In an asset sale, the seller in good faith is authorized to dismiss the affected employees, but is liable for the payment of separation pay under the law; the buyer in good faith, on the other hand, is not obliged to absorb the employees affected by the sale, nor is it liable for the payment of their claims; in stock sale, the corporation continues to be the employer of its people and continues to be liable for the payment of their just claims and the new majority shareholders cannot dismiss the employees, absent a just or authorized cause. (SME Bank, Inc. *vs*. De Guzman, G.R. No. 184517, Oct. 08, 2013) p. 103

— The law does not obligate the employer for the payment of separation pay if there is closure of business due to serious losses. *(Id.)*

Constructive dismissal — Occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit. (SME Bank, Inc. *vs.* De Guzman, G.R. No. 184517, Oct. 08, 2013) p. 103

Illegal dismissal — A corporate officer cannot be held solidarily liable with the corporation in the absence of malice or bad faith. (SME Bank, Inc. *vs*. De Guzman, G.R. No. 184517, Oct. 08, 2013) p. 103

— Illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowance and other benefits or their monetary equivalent. *(Id.)*

Involuntary retirement — Tantamount to dismissal, as employees can only choose the means and methods of terminating their employment, but are powerless as to the status of their employment and have no choice but to leave the company. (SME Bank, Inc. *vs.* De Guzman, G.R. No. 184517, Oct. 08, 2013) p. 103

Loss of trust and confidence as a ground — Guidelines to be observed are: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. (Hormillosa *vs*. Coca-Cola Bottlers Phils., Inc., G.R. No. 198699, Oct. 09, 2013) p. 421

— The loss of trust must be based on willful breach of such trust and founded on clearly established facts. (Chuanico *vs*. Legacy Consolidated Plans, Inc., G.R. No. 181852, Oct. 09, 2013) p. 284

Resignation — Employer's act of moving the effectivity date of employee's resignation is not an act of harassment; the 30-day notice requirement for an employee's resignation is actually for the benefit of the employer who has the discretion to waive such period. (Hechanova Bugay Vilches Lawyers *vs*. Atty. Matorre, G.R. No. 198261, Oct. 16, 2013) p. 608

— Having submitted a resignation letter, it is then incumbent upon the employee to prove that the resignation was not voluntary but was actually a case of constructive dismissal with clear, positive, and convincing evidence. *(Id.)*

— While resignation letters containing words of gratitude may indicate that the employees were not coerced into resignation, this fact alone is not conclusive proof that they intelligently, freely and voluntarily resigned; the Court cannot merely rely on the tenor of the resignation letters to determine whether the employees truly intend to resign from their respective posts, but must take into consideration the totality of circumstances in each particular case. (SME Bank, Inc. *vs*. De Guzman, G.R. No. 184517, Oct. 08, 2013) p. 103

Separation pay — Acceptance of separation does not bar the employees from subsequently contesting the legality of their dismissal, nor does it estop them from challenging the legality of their separation from the service. (SME Bank, Inc. *vs*. De Guzman, G.R. No. 184517, Oct. 08, 2013) p. 103

Valid dismissal — As a rule, an employee who is dismissed for a just and lawful cause is not entitled to separation pay, except: (1) the installation of labor saving devices, (2) redundancy, (3) retrenchment, (4) cessation of employer's business, or (5) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees. (Hormillosa *vs*. Coca-Cola Bottlers Phils., Inc., G.R. No. 198699, Oct. 09, 2013) p. 421

— The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal rests on the employer. (Opinaldo *vs*. Ravina, G.R. No. 196573, Oct. 16, 2013) p. 584

EVIDENCE

Burden of proof — Burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the Rules of Court, or on the defendant if he admits expressly or impliedly the essential allegations but raises an affirmative defense, that, if proved, would exculpate him from liability. (Far East Bank & Trust Co. *vs*. Chante, G.R. No. 170598, Oct. 09, 2013) p. 221

Circumstantial evidence — To warrant conviction of an accused, it is required that: (1) there is more than one circumstance; (2) the fact from which the circumstances arose are duly established in court; and (3) the circumstances form an unbroken chain of events leading to the fair conclusion of the culpability of the accused for the crime for which he is convicted. (People *vs*. Dearo, G.R. No. 190862, Oct. 09, 2013) p. 324

Preponderance of evidence — Means that the evidence adduced by one side is, as a whole superior to that of the other side. (Far East Bank & Trust Co. *vs.* Chante, G.R. No. 170598, Oct. 09, 2013) p. 221

— The proof that leads the trier of facts to find that the existence of the contested fact is more probable that its non-existence. *(Id.)*

EVIDENT PREMEDITATION

As a qualifying circumstance — Its essence is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. (People *vs.* Galicia, G.R. No. 191063, Oct. 09, 2013) p. 337

(People *vs*. Dearo, G.R. No. 190862, Oct. 09, 2013) p. 324

FORUM SHOPPING

Concept — Can be committed in three ways, namely: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved; or by (3) by filing multiple cases based on the same cause of action but with different prayers. (Brown-Araneta *vs*. Araneta, G.R. No. 190814, Oct. 09, 2013) p. 293

GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1997 (R.A. NO. 8291)

General Reserve Fund (GRF) — Allocated for specific purpose and not intended for distribution to members. (Gersip Assn., Inc. *vs*. GSIS, G.R. No. 189827, Oct. 16, 2013) p. 526

— The preparation of an annual report showing the income and expenses and the financial condition of the Fund as of the end of each calendar year is required. *(Id.)*

HOMICIDE

Commission of — Imposable penalty where the mitigating circumstance of voluntary surrender was appreciated. (People *vs*. Placer, G.R. No. 181753, Oct. 09, 2013) p. 268

— The following elements must be proved: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. (Abella *vs*. People, G.R. No. 198400, Oct. 07, 2013) p. 53

Frustrated homicide — Accused is liable for moral damages. (Abella *vs*. People, G.R. No. 198400, Oct. 07, 2013) p. 53

— The main element is the accused's intent to take his victim's life. *(Id.)*

— The use of scythe against the victim's neck is determinative of the accused's homicidal intent when the hacking blow was delivered, for a single hacking blow in the neck with the use of a scythe could be enough to decapitate a person and leave him dead. *(Id.)*

JUDGES

Gross misconduct — Committed when a judge did not deny that he had a drinking spree with a litigant who had a pending application for probation in his sala. (Atty. Tuldague *vs*. Judge Pardo, A.M. No. RTJ-05-1962, Oct. 17, 2013) p. 658

— Punishable by (1) dismissal from the service, forfeiture of benefits, and disqualification from reinstatement to any public office; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000. *(Id.)*

JUDGMENTS

Conviction — Must stand on the strength of the prosecution's evidence, not on the weakness of the defense which the accused put up. (People *vs*. Guzon, G.R. No. 199901, Oct. 09, 2013) p. 441

Effect of — Decisions of the Court of Tax Appeals and Court of Appeals, unlike those of the Supreme Court, do not form part of the law of the land. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Oct. 08, 2013) p. 137

Execution, satisfaction and effect of — A party cannot frustrate execution of a judgment for a specific act on the pretext of inability to do so as the Rules provide ample means by which it can be satisfied. (Raymundo *vs*. Galen Realty and Mining Corp., G.R. No. 191594, Oct. 16, 2013) p. 557

— 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 wording of the dispositive portion, as couched. *(Id.)*

LAWS

Effect and application of — The doctrine of operative fact is an exception to the general rule that a void law or administrative act cannot be the source of legal rights or duties such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Oct. 08, 2013) p. 137

Doctrine of operative fact — To apply in taxation, there must be a rule or ruling issued by the Commissioner of Internal Revenue that is relied upon by the taxpayer in good faith, for an administrative practice, not formalized into a rule or ruling, will not suffice because the same may not be uniformly and consistently applied. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Oct. 08, 2013) p. 137

LITIS PENDENTIA

Concept — Requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs being founded on the same facts; and (3) identity with respect to the two preceding cases, regardless of which party is successful would amount to *res judicata* in the other case. (Brown-Araneta *vs*. Araneta, G.R. No. 190814, Oct. 09, 2013) p. 293

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Classification of cities — A city may either be component or highly urbanized: provided however, that the criteria established in the Code shall not affect the classification

and corporate status of existing cities. (Jadewell Parking Systems Corp. *vs*. Judge Lidua, Sr., G.R. No. 169588, Oct. 07, 2013) p.1

Independent component cities — Those component cities whose charters prohibit their voters from voting for provincial elective officials. (Jadewell Parking Systems Corp. *vs*. Judge Lidua, Sr., G.R. No. 169588, Oct. 07, 2013) p. 1

MARRIAGES

Valid marriage — Consent as a requisite for valid marriage must be (1) freely given and (2) made in the presence of a solemnizing officer. (Rep. of the Phils. *vs*. Albios, G.R. No. 198780, Oct. 16, 2013) p. 622

— That consent was freely given is best evidenced by the spouses' conscious purpose of acquiring American citizenship through marriage. *(Id.)*

— The possibility that the parties in a marriage might have no real intention to establish a life together is insufficient to nullify a marriage freely entered into in accordance with law. *(Id,)*

— Though the parties' marriage may be considered a sham or fraudulent for purposes of immigration, it is not void *ab initio* and continues to be valid and subsisting. *(Id.)*

Voidable marriage on the ground of fraud — Circumstances which may constitute fraud are: (1) non-disclosure of a previous conviction involving moral turpitude; (2) concealment by the wife of a pregnancy by another man; (3) concealment of a sexually transmitted disease; and (4) concealment of drug addiction, alcoholism, or homosexuality. (Rep. of the Phils. *vs*. Albios, G.R. No. 198780, Oct. 16, 2013) p. 622

MOOT AND ACADEMIC CASES

Case of — Court will refrain from expressing its opinion in a case where no practical relief may be granted in view of a supervening event. (Raymundo *vs*. Galen Realty and Mining Corp., G.R. No. 191594, Oct. 16, 2013) p. 557

MORTGAGES

Equitable mortgage — The real intention is to charge the real property as security for a debt. (Raymundo *vs*. Galen Realty and Mining Corp., G.R. No. 191594, Oct. 16, 2013) p. 557

MOTION FOR RECONSIDERATION

Second for reconsideration — When a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. (Mcburnie *vs*. Ganzon, G.R. Nos. 178034 & 178117, Oct. 17, 2013) p. 680

MURDER

Civil liabilities of accused — Accused shall be liable for: (1) civil indemnity for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. (People *vs*. Dearo, G.R. No. 190862, Oct. 09, 2013) p. 324

Commission of — Imposable penalty is *reclusion perpetua* to death. (People *vs*. Galicia, G.R. No. 191063, Oct. 09, 2013) p. 337

(People *vs*. Dearo, G.R. No. 190862, Oct. 09, 2013) p. 324

NATIONAL LABOR RELATIONS COMMISSION

Appeal bonds — Posting of a bond in a reasonable amount shall suffice to suspend the running of the period to perfect an appeal from the Labor Arbiter's decision to the Commission. (Mcburnie *vs*. Ganzon, G.R. Nos. 178034 & 178117, Oct. 17, 2013) p. 680

— That the filing of a motion to reduce the bond shall not stop the running of the period is not absolute as the court may relax the same. *(Id.)*

— The rule on perfection of an appeal only upon posting of a cash or surety bond may be relaxed by the court under certain exceptional circumstances in order to resolve

controversies on their merits and these exceptional circumstances are: (1) the fundamental consideration of substantial justice; (2) the prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the cases combined with its legal merits, and the amount and the issue involved. *(Id.)*

— The rule on the posting of a "reasonable amount" of an appeal bond should be based on the merits of the motion and the main appeal. *(Id.)*

Rules of procedure — NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the application of its rules in deciding labor cases; its liberal interpretation stems from the mandate that the workingman's welfare should be the primordial and paramount consideration. (Opinaldo *vs*. Ravina, G.R. No. 196573, Oct. 16, 2013) p. 584

NATURALIZATION

Acquisition of Philippine citizenship — An alien may acquire Philippine citizenship through either judicial naturalization under C.A. 472 or administrative naturalization under R.A. No. 9139 and the third option is called derivative naturalization under Sec. 15 of C.A. 473. (Rep. of the Phils. *vs*. Batuigas, G.R. No. 183110, Oct. 07, 2013) p. 20

— Requires that the applicant must have a known lucrative trade, profession or lawful occupant. *(Id.)*

Judicial naturalization — Allowed after denial of application for derivative naturalization. (Rep. of the Phils. *vs*. Batuigas, G.R. No. 183110, Oct. 07, 2013) p. 20

OBLIGATIONS

Demand — Not necessary when the obligation under the contract specifies the date and place of delivery; payment of unrealized profit is warranted. (San Fernando Regala Trading, Inc. *vs*. Cargill Phils., Inc., G.R. No. 178008, Oct. 09, 2013) p. 256

OBLIGATIONS, EXTINGUISHMENT OF

Novation — A subsequent obligation extinguishes a previous one through substitution either by changing the object or principal condition by substituting another in place of the debtor, or by subrogating a third person into the right. (Degaños *vs*. People, G.R. No. 162826, Oct. 14, 2013) p. 487

— The role of novation may only be either to prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction. *(Id.)*

OMBUDSMAN, OFFICE OF

Powers of — Include full discretionary authority in the determination of probable cause during preliminary investigation. (Busuego *vs*. Office of the Ombudsman, G.R. No. 196842, Oct. 09, 2013) p. 367

PARTIES TO CIVIL ACTIONS

Indispensable parties — No man can be affected by any proceeding to which he is a stranger and strangers to a case cannot be bound by a judgment rendered by the court. (Cagatao *vs.* Almonte, G.R. No. 174004, Oct. 09, 2013) p. 241

PLEADINGS

Answer — Prescription as an affirmative defense, not proper in actions to declare the nullity of a void title. (James *vs*. Eurem Realty Dev't., Corp., G.R. No. 190650, Oct. 14, 2013) p. 501

PRESCRIPTION AS A MODE FOR ACQUIRING OWNERSHIP

Acquisitive prescription — The acquisition of a right by the lapse of time. (James *vs*. Eurem Realty Dev't., Corp., G.R. No. 190650, Oct. 14, 2013) p. 501

Extinctive prescription — Where rights and actions are lost by the lapse of time. (James *vs*. Eurem Realty Dev't., Corp., G.R. No. 190650, Oct. 14, 2013) p. 501

PRESCRIPTION OF OFFENSES

Computation of — 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. (Jadewell Parking Systems Corp. *vs*. Judge Lidua, Sr., G.R. No. 169588, Oct. 07, 2013) p. 1

Parameters of prescription — In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted. (Jadewell Parking Systems Corp. *vs*. Judge Lidua, Sr., G.R. No. 169588, Oct. 07, 2013) p. 1

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Registration — CENRO Certification is insufficient to prove that a parcel of land is alienable and disposable. (Rep. of the Phils. *vs.* Belmonte, G.R. No. 197028, Oct. 09, 2013) p. 393

— Requisites for the filing of application for registration are: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicants by themselves or through their predecessor-in-interest have been in open, continuous, exclusive, and notorious possession and occupation; and (3) that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier. *(Id.)*

Torrens title — A person dealing with a registered land has the right to rely on the face of the Torrens title and need not inquire further, unless the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such an inquiry. (Cagatao *vs*. Almonte, G.R. No. 174004, Oct. 09, 2013) p. 241

— Cannot be attacked collaterally, and the issue of its validity can be raised only in an action expressly instituted for that purpose. *(Id.)*

— Indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Grave misconduct — Element of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest. (*Re*: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Reynard B. Castor, A.M. No. 2013-08-SC, Oct. 08, 2013) p. 96

— Punishable by dismissal even for the first offense. *(Id.)*

— Use of prohibited drugs is a case of gross misconduct. *(Id.)*

Misconduct — A transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence of a public officer. (*Re*: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Reynard B. Castor, A.M. No. 2013-08-SC, Oct. 08, 2013) p. 96

QUALIFYING CIRCUMSTANCES

Minority and relationship — Must be proved beyond reasonable doubt just like the crime itself. (People *vs*. Cial, G.R. No. 191362, Oct. 09, 2013) p. 354

QUIETING OF TITLE

Action for — A common law remedy designed for the removal of any cloud upon, or doubt, or uncertainty affecting title to real property. (James *vs*. Eurem Realty Dev't., Corp., G.R. No. 190650, Oct. 14, 2013) p. 501

RAPE

Commission of — Civil and moral damages are awarded to rape victim without need of proof other than the fact of rape. (People *vs*. Galagar, G.R. No. 202842, Oct. 09, 2013) p. 463

(People *vs*. Cial, G.R. No. 191362, Oct. 09, 2013) p. 354

— Rape can be committed even in places where people congregate. *(Id.)*

Prosecution of rape cases — Delay in reporting rape incidents, in the face of threats of physical violence cannot be taken against the victim. (People *vs*. Galagar, G.R. No. 202842, Oct. 09, 2013) p. 463

— Examining doctor's finding of healed laceration does not negatively affect the victim's credibility nor disprove her rape. (People *vs*. De Jesus, G.R. No. 190622, Oct. 07, 2013) p. 36

— Medical evidence in rape cases is not indispensable. (People *vs*. Galagar, G.R. No. 202842, Oct. 09, 2013) p. 463

(People *vs*. Cial, G.R. No. 191362, Oct. 09, 2013) p. 354

Statutory rape — Elements of the crime are: (1) that the victim is a female under 12 years or is demented; (2) that the offender had carnal knowledge of the victim. (People *vs*. De Jesus, G.R. No. 190622, Oct. 07, 2013) p. 36

— Victim is entitled to civil indemnity, moral damages, and exemplary damages. *(Id.)*

REGIONAL TRIAL COURT

As a rehabilitation court — Has no jurisdiction over the subject matter of the insurance claim of the insured against the insurer. (Steel Corp. of the Phils. *vs*. Mapfre Insular Insurance Corp., G.R. No. 201199, Oct. 16. 2013) p. 638

— Its jurisdiction is over claims against debtor that is under rehabilitation, not over claims by the debtor against its own debtors or against third parties. *(Id.)*

RES JUDICATA

Doctrine of — Requisites are: (1) that the former judgment is final; (2) that it has been rendered by a court of competent jurisdiction; (3) that it is a judgment on the merits; and (4)

that, between the first and the second actions, there is identity of parties, subject matter, and cause of action. (James *vs*. Eurem Realty Dev't., Corp., G.R. No. 190650, Oct. 14, 2013) p. 501

SALES

Contract of sale — A stipulation designating the place and manner of delivery is controlling on the contracting parties. (San Fernando Regala Trading, Inc. *vs*. Cargill Phils., Inc., G.R. No. 178008, Oct. 09, 2013) p. 256

— The thing sold can only be understood as delivered to the buyer when it is placed in the buyer's control and possession at the agreed place of delivery. *(Id.)*

SELF-DEFENSE

As a justifying circumstance — The following elements must be proved: (1) unlawful aggression on the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. (People *vs*. Placer, G.R. No. 181753, Oct. 09, 2013) p. 268

Unlawful aggression as an element — Accused must establish the concurrence of three elements of unlawful aggression, namely: (1) there must be a physical or material attack or assault; (2) the attack or assault must be actual, or at least imminent; and (3) the attack or assault must be unlawful. (People *vs*. Placer, G.R. No. 181753, Oct. 09, 2013) p. 268

— The unlawful aggression of the victim must put the life and personal safety of the person defending himself in actual peril and not a mere threatening or intimidating attitude. *(Id.)*

— Two kinds of unlawful aggression are: (1) actual or material unlawful aggression; and (2) imminent unlawful aggression. *(Id.)*

SHERIFFS

Administrative complaint against — The penalty of fine may be imposed in lieu of suspension from office if the sheriff is actually discharging a frontline function. (Atty. Cabigao *vs*. Nery, A.M. No. P-13-3153, Oct. 14, 2013) p. 475

Duties of — Duty to serve summons to the defendant efficiently and expeditiously is required. (Atty. Cabigao *vs*. Nery, A.M. No. P-13-3153, Oct. 14, 2013) p. 475

— Failure to comply with the procedure to be observed in defraying the actual travel expenses in serving summons warrants disciplinary measure. *(Id.)*

— Sheriffs must always demonstrate integrity in their conduct. *(Id.)*

STATE POLICIES

Sacred institution of marriage — Unscrupulous individuals cannot be allowed to misuse the court to enter into a marriage of convenience. (Rep. of the Phils. *vs*. Albios, G.R. No. 198780, Oct. 16, 2013) p. 622

SUMMARY PROCEDURE

Rule on — Includes violation of city ordinances which in chartered cities shall be commenced only by information and thus, effectively tolls the prescriptive period. (Jadewell Parking Systems Corp. *vs*. Judge Lidua, Sr., G.R. No. 169588, Oct. 07, 2013) p. 1

TAX REFUND/TAX CREDIT

Claim for — A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites: (1) the claim must be filed with the CIR within the two-year period from the date of payment of the tax; (2) it must be shown on the return of the recipient that the income received was declared as part of the gross income; and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee

showing the amount paid and the amount of tax withheld. (Commissioner of Internal Revenue *vs*. TeaM [Phils.] Operations Corp., G.R. No. 185728, Oct. 16, 2014) p. 513

— A taxpayer must prove not only its entitlement to a refund but also his compliance with the prescribed procedure. (Rep. of the Phils. *vs*. GST Phils., Inc., G.R. No. 190872, Oct. 17, 2013) p. 728

— Copies of the Certificates of Creditable Tax Withheld at source when found by the duly commissioned Independent Certified Public Accountant to be a faithful reproduction of the original copies would suffice to establish the fact of withholding. (Commissioner of Internal Revenue *vs*. TeaM [Phils.] Operations Corp., G.R. No. 185728, Oct. 16, 2014) p. 513

— Failure to comply with the 120-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action with the effect that the Court of Tax Appeals does not acquire jurisdiction over the petition. (Rep. of the Phils. *vs*. GST Phils., Inc., G.R. No. 190872, Oct. 17, 2013) p. 728

— No administrative practice allowing simultaneous filing of claims for tax refund or credit; prior to issuance of BIR Ruling No. DA-489-03, the 120+30 day periods were considered mandatory and jurisdictional. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Oct. 08, 2013) p. 137

— Refund seekers should not be prejudiced, penalized nor castigated for having taken guidance from the policies, pronouncement, issuances and actuation which have direct bearing on a difficult question of law. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Oct. 08, 2013; *Velasco, Jr., J., dissenting opinion*) p. 137

— Taxpayers are allowed to treat the 120-day period as non-compulsory and mere discretionary so long as the 2-year period is observed and complied. *(Id.)*

— The 120-day and 30-day period are not merely directory but mandatory and jurisdictional. (Rep. of the Phils. *vs*. GST Phils., Inc., G.R. No. 190872, Oct. 17, 2013) p. 728

— The mandatory application of the 120+30 day period before the filing of a judicial claim for VAT refund was set aside and made clear only upon the effectivity of RR16-2005 which applies prospectively and retroactively to the date of effectivity of the 1997 Tax Code. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Oct. 08, 2013; *Velasco, Jr., J., dissenting opinion*) p. 137

— The reckoning date of the 120-day period commenced simultaneously with the filing of the administrative claims when taxpayer was presumed to have attached the relevant documents to support its application for refund or tax credit. (Rep. of the Phils. *vs*. GST Phils., Inc., G.R. No. 190872, Oct. 17, 2013) p. 728

TREACHERY

As a qualifying circumstance — Its essence is that the attack comes without a warning and in a swift, deliberate, and unexpected manner affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. (People *vs*. Galicia, G.R. No. 191063, Oct. 09, 2013) p. 337

— Not present when the victim was placed on his guard, like when a heated argument has preceded the attack, or when the victim was standing face to face with assailant. (People *vs*. Placer, G.R. No. 181753, Oct. 09, 2013) p. 268

— Present when the offender commits any of the crimes against person, employing means, methods, or forms in the execution, without risk to himself arising from the defense which the offended party might make. (People *vs*. Dearo, G.R. No. 190862, Oct. 09, 2013) p. 324

TRUSTS

Classification — Trust can either be express which is created by the intention of the trustor or of the parties, or implied which comes into being by operation of law. (Gersip Assn., Inc. *vs*. GSIS, G.R. No. 189827, Oct. 16, 2013) p. 526

Concept — The legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. (Gersip Assn., Inc. *vs*. GSIS, G.R. No. 189827, Oct. 16, 2013) p. 526

Trust fund — Refers to money or property set aside as a trust for the benefit of another and held by a trustee. (Gersip Assn., Inc. *vs*. GSIS, G.R. No. 189827, Oct. 16, 2013) p. 526

VOLUNTARY SURRENDER

As a mitigating circumstance — Has the following requisites: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. (People *vs*. Placer, G.R. No. 181753, Oct. 09, 2013) p. 268

WITNESSES

Credibility of — Findings of trial court are not disturbed on appeal, especially when they are affirmed by the Court of Appeals; exceptions. (People *vs*. Candidia, G.R. No. 191263, Oct. 16, 2013) p. 538

(People *vs*. Galicia, G.R. No. 191063, Oct. 09, 2013) p. 337

(People *vs*. De Jesus, G.R. No. 190622, Oct. 07, 2013) p. 36

— Imperfection or inconsistencies on details which are neither material nor relevant to the case do not detract from the credibility of the testimony of the witnesses much less justify the total rejection of the same. (People *vs*. Candidia, G.R. No. 191263, Oct. 16, 2013) p. 538

(People *vs*. Galicia, G.R. No. 191063, Oct. 09, 2013) p. 337

— 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. *(Id.)*

— Stands in the absence of improper motive to falsely testify against the accused. (People *vs*. Galicia, G.R. No. 191063, Oct. 09, 2013) p. 337

— Testimonies of rape victims who are young and immature deserve credence. (People *vs*. De Jesus, G.R. No. 190622, Oct. 07, 2013) p. 36

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