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OF THE

PHILIPPINES

FROM

OCTOBER 22, 2013 TO NOVEMBER 11, 2013

SUPREME COURT
MANILA
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 6732. October 22, 2013]

ATTY. OSCAR L. EMBIDO, REGIONAL DIRECTOR, NATIONAL BUREAU OF INVESTIGATION, WESTERN VISAYAS, REGIONAL OFFICE (NBI-WEVRO), FOR SAN PEDRO, ILOILO CITY, *complainant, vs.* **ATTY. SALVADOR N. PE, JR., ASSISTANT PROVINCIAL PROSECUTOR, SAN JOSE, ANTIQUE,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; RESPONDENT LAWYER IS GUILTY OF GRAVE MISCONDUCT FOR HAVING AUTHORED THE FALSIFICATION OF A DECISION IN A NON-EXISTENT COURT PROCEEDING.—** In light of the established circumstances, the respondent was guilty of grave misconduct for having authored the falsification of the decision in a non-existent court proceeding. Canon 7 of the *Code of Professional Responsibility* demands that all lawyers should uphold at all times the dignity and integrity of the Legal Profession. Rule 7.03 of the *Code of Professional Responsibility* states that "a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession." Lawyers are further required by Rule 1.01 of the *Code of Professional Responsibility* not to engage in any unlawful, dishonest and immoral or deceitful conduct.

2. ID.; ID.; DISBARMENT; THE DELIBERATE FALSIFICATION OF A COURT DECISION BY RESPONDENT IS AN ACT THAT REFLECTED A HIGH DEGREE OF MORAL TURPITUDE ON HIS PART; HIS ACTION MADE A MOCKERY OF THE ADMINISTRATION OF JUSTICE IN OUR COUNTRY WHICH MAKES HIM UNWORTHY OF CONTINUING AS A MEMBER OF THE BAR.— Gross immorality, conviction of a crime involving moral turpitude, or fraudulent transactions can justify a lawyer's disbarment or suspension from the practice of law. Specifically, the deliberate falsification of the court decision by the respondent was an act that reflected a high degree of moral turpitude on his part. Worse, the act made a mockery of the administration of justice in this country, given the purpose of the falsification, which was to mislead a foreign tribunal on the personal status of a person. He thereby became unworthy of continuing as a member of the Bar.

3. ID.; ID.; ID.; THE COURT WILL NOT HESITATE TO WIELD ITS HEAVY HAND OF DISCIPLINE ON THOSE AMONG THEM WHO WITTINGLY AND WILLINGLY FAIL TO MEET THE ENDURING DEMANDS OF THEIR ATTORNEY'S OATH.— It then becomes timely to remind all members of the Philippine Bar that they should do nothing that may in any way or degree lessen the confidence of the public in their professional fidelity and integrity. The Court will not hesitate to wield its heavy hand of discipline on those among them who wittingly and willingly fail to meet the enduring demands of their Attorney's Oath for them to: x x x support [the] Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; xxx do no falsehood, nor consent to the doing of any in court; x x x not wittingly or willingly promote or sue on groundless, false or unlawful suit, nor give aid nor consent to the same; x x x delay no man for money or malice, and x x x conduct [themselves as lawyers] according to the best of [their] knowledge and discretion with all good fidelity as well to the courts as to [their] clients x x x. No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities. He may be disbarred or

suspended from the practice of law not only for acts and omissions of malpractice and for dishonesty in his professional dealings, but also for gross misconduct not directly connected with his professional duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him. Verily, no lawyer is immune from the disciplinary authority of the Court whose duty and obligation are to investigate and punish lawyer misconduct committed either in a professional or private capacity. The test is whether the conduct shows the lawyer to be wanting in moral character, honesty, probity, and good demeanor, and whether the conduct renders the lawyer unworthy to continue as an officer of the Court.

APPEARANCES OF COUNSEL

Angeles R. Orquia, Jr. for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A lawyer who forges a court decision and represents it as that of a court of law is guilty of the gravest misconduct and deserves the supreme penalty of disbarment.

The Case

Before this Court is the complaint for disbarment against Assistant Provincial Prosecutor Atty. Salvador N. Pe, Jr. (respondent) of San Jose, Antique for his having allegedly falsified an inexistent decision of Branch 64 of the Regional Trial Court stationed in Bugasong, Antique (RTC) instituted by the National Bureau of Investigation (NBI), Western Visayas Regional Office, represented by Regional Director Atty. Oscar L. Embido.

Antecedent

On July 7, 2004, Atty. Ronel F. Sustituya, Clerk of Court of the RTC, received a written communication from Mr. Ballam Delaney Hunt, a Solicitor in the United Kingdom (UK). The letter requested a copy of the decision dated February 12, 1997

rendered by Judge Rafael O. Penuela in Special Proceedings Case No. 084 entitled *In the Matter of the Declaration of Presumptive Death of Rey Laserna*, whose petitioner was one Shirley Quioyo.[1]

On September 9, 2004, the RTC received another letter from Mr. Hunt, reiterating the request for a copy of the decision in Special Proceedings Case No. 084 entitled *In the Matter of the Declaration of Presumptive Death of Rey Laserna*.[2]

Judge Penuela instructed the civil docket clerk to retrieve the records of Special Proceedings Case No. 084 entitled *In the Matter of the Declaration of Presumptive Death of Rey Laserna*. It was then discovered that the RTC had no record of Special Proceedings No. 084 wherein Shirley Quioyo was the petitioner. Instead, the court files revealed that Judge Penuela had decided Special Proceedings No. 084 entitled *In the Matter of the Declaration of Presumptive Death of Rolando Austria*, whose petitioner was one Serena Catin Austria.

Informed that the requested decision and case records did not exist,[3] Mr. Hunt sent a letter dated October 12, 2004 attaching a machine copy of the purported decision in Special Proceedings No. 084 entitled *In the Matter of the Declaration of Presumptive Death of Rey Laserna* that had been presented by Shirley Quioyo in court proceedings in the UK.[4]

After comparing the two documents and ascertaining that the document attached to the October 12, 2004 letter was a falsified court document, Judge Penuela wrote Mr. Hunt to apprise him of the situation.[5]

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[1] *Rollo*, Vol. I, p. 8.

[2] *Id.*

[3] *Id.* at 22.

[4] *Id.* at 23-28.

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

The discovery of the falsified decision prompted the Clerk of Court to communicate on the situation in writing to the NBI, triggering the investigation of the falsification.[6]

In the meanwhile, Dy Quioyo, a brother of Shirley Quioyo, executed an affidavit on March 4, 2005,[7] wherein he stated that it was the respondent who had facilitated the issuance of the falsified decision in Special Proceedings No. 084 entitled *In the Matter of the Declaration of Presumptive Death of Rey Laserna* for a fee of ₱60,000.00. The allegations against the respondent were substantially corroborated by Mary Rose Quioyo, a sister of Shirley Quioyo, in an affidavit dated March 20, 2005.[8]

The NBI invited the respondent to explain his side,[9] but he invoked his constitutional right to remain silent. The NBI also issued subpoenas to Shirley Quioyo and Dy Quioyo but only the latter appeared and gave his sworn statement.

After conducting its investigation, the NBI forwarded to the Office of the Ombudsman for Visayas the records of the investigation, with a recommendation that the respondent be prosecuted for falsification of public document under Article 171, 1 and 2, of the *Revised Penal Code*, and for violation of Section 3(*a*) of Republic Act 3019 (*The Anti-Graft and Corrupt Practices Act*).[10] The NBI likewise recommended to the Office of the Court Administrator that disbarment proceedings be commenced against the respondent.[11] Then Court Administrator Presbitero J. Velasco, Jr. (now a Member of the Court) officially endorsed the recommendation to the Office of the Bar Confidant.[12]

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

[7] *Id.* at 55.

[8] *Id.* at 56.

[9] *Id.* at 58.

[10] *Id.* at 8-11.

[11] *Id.* at 7.

[12] *Id.* at 6.

Upon being required by the Court, the respondent submitted his counter-affidavit,[13] whereby he denied any participation in the falsification. He insisted that Dy Quioyo had sought his opinion on Shirley's petition for the annulment of her marriage; that he had given advice on the pertinent laws involved and the different grounds for the annulment of marriage; that in June 2004, Dy Quioyo had gone back to him to present a copy of what appeared to be a court decision;[14] that Dy Quioyo had then admitted to him that he had caused the falsification of the decision; that he had advised Dy Quioyo that the falsified decision would not hold up in an investigation; that Dy Quioyo, an overseas Filipino worker (OFW), had previously resorted to people on Recto Avenue in Manila to solve his documentation problems as an OFW; and that he had also learned from Atty. Angeles Orquia, Jr. that one Mrs. Florencia Jalipa, a resident of Igbalangao, Bugasong, Antique, had executed a sworn statement before Police Investigator Herminio Dayrit with the assistance of Atty. Orquia, Jr. to the effect that her late husband, Manuel Jalipa, had been responsible for making the falsified document at the instance of Dy Quioyo.[15]

Thereafter, the Court issued its resolution[16] treating the respondent's counter-affidavit as his comment, and referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The IBP's Report and Recommendation

In a report and recommendation dated June 14, 2006,[17] Atty. Lolita A. Quisumbing, the IBP Investigating Commissioner, found the respondent guilty of serious misconduct and violations of the Attorney's Oath and *Code of Professional Responsibility*, and recommended his suspension from the practice of law for

[13] *Id.* at 64-67.

[14] *Id.* at 65.

[15] *Id.* at 67.

[16] *Id.* at 72.

[17] *Rollo*, Vol. III, pp. 84-89.

one year. She concluded that the respondent had forged the purported decision of Judge Penuela by making it appear that Special Proceedings No. 084 concerned a petition for declaration of presumptive death of Rey Laserna, with Shirley Quioyo as the petitioner, when in truth and in fact the proceedings related to the petition for declaration of presumptive death of Rolando Austria, with Serena Catin Austria as the petitioner;[18] and that the respondent had received ₱60,000.00 from Dy Quioyo for the falsified decision. She rationalized her conclusions thusly:

> Respondent's denials are not worthy of merit. Respondent contends that it was one Manuel Jalipa (deceased) who facilitated the issuance and as proof thereof, he presented the sworn statement of the widow of Florencia Jalipa (sic). Such a contention is hard to believe. In the first place, if the decision was obtained in Recto, Manila, why was it an almost verbatim reproduction of the authentic decision on file in Judge Penuela's branch except for the names and dates? Respondent failed to explain this. Secondly, respondent did not attend the NBI investigation and merely invoked his right to remain silent. If his side of the story were true, he should have made this known in the investigation. His story therefore appears to have been a mere afterthought. Finally, there is no plausible reason why Dy Quioyo and his sister, Mary Rose Quioyo would falsely implicate him in this incident.[19]

In its Resolution No. XVII-2007-063 dated February 1, 2007,[20] the IBP Board of Governors adopted and approved, with modification, the report and recommendation of the Investigating Commissioner by suspending the respondent from the practice of law for six years.

On December 11, 2008, the IBP Board of Governors passed Resolution No. XVIII-2008-709[21] denying the respondent's motion for reconsideration and affirming Resolution No. XVII-2007-

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[18] *Id.* at 87.

[19] *Id.*

[20] *Id.* at 82.

[21] *Id.* at 98.

063. The IBP Board of Governors then forwarded the case to the Court in accordance with Section 12(*b*), Rule 139-B[22] of the *Rules of Court*.

On January 11, 2011, the Court resolved: (1) to treat the respondent's comment/opposition as his appeal by petition for review; (2) to consider the complainant's reply as his comment on the petition for review; (3) to require the respondent to file a reply to the complainant's comment within 10 days from notice; and (4) to direct the IBP to transmit the original records of the case within 15 days from notice.

Ruling

We affirm the findings of the IBP Board of Governors. Indeed, the respondent was guilty of grave misconduct for falsifying a court decision in consideration of a sum of money.

The respondent's main defense consisted in blanket denial of the imputation. He insisted that he had had no hand in the falsification, and claimed that the falsification had been the handiwork of Dy Quioyo. He implied that Dy Quioyo had resorted to the shady characters in Recto Avenue in Manila to resolve the problems he had encountered as an OFW, hinting that Dy Quioyo had a history of employing unscrupulous means to achieve his ends.

However, the respondent's denial and his implication against Dy Quioyo in the illicit generation of the falsified decision are not persuasive. Dy Quioyo's categorical declaration on the respondent's personal responsibility for the falsified decision, which by nature was positive evidence, was not overcome by the respondent's blanket denial, which by nature was negative

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[22] Section 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

evidence.[23] Also, the imputation of wrongdoing against Dy Quioyo lacked credible specifics and did not command credence. It is worthy to note, too, that the respondent filed his counter-affidavit only after the Court, through the *en banc* resolution of May 10, 2005, had required him to comment.[24] The belatedness of his response exposed his blanket denial as nothing more than an afterthought.

The respondent relied on the sworn statement supposedly executed by Mrs. Jalipa that declared that her deceased husband had been instrumental in the falsification of the forged decision. But such reliance was outrightly worthless, for the sworn statement of the wife was rendered unreliable due to its patently hearsay character. In addition, the unworthiness of the sworn statement as proof of authorship of the falsification by the husband is immediately exposed and betrayed by the falsified decision being an almost verbatim reproduction of the authentic decision penned by Judge Penuela in the real Special Proceedings Case No. 084.

In light of the established circumstances, the respondent was guilty of grave misconduct for having authored the falsification of the decision in a non-existent court proceeding. Canon 7 of the *Code of Professional Responsibility* demands that all lawyers should uphold at all times the dignity and integrity of the Legal Profession. Rule 7.03 of the *Code of Professional Responsibility* states that "a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession." Lawyers are further required by Rule 1.01 of the *Code of Professional Responsibility* not to engage in any unlawful, dishonest and immoral or deceitful conduct.

Gross immorality, conviction of a crime involving moral turpitude, or fraudulent transactions can justify a lawyer's

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[23] *People v. Biago*, G.R. No. 54411, February 21, 1990, 182 SCRA 411, 418.

[24] *Rollo,* Vol. I, p. 62.

disbarment or suspension from the practice of law.[25] Specifically, the deliberate falsification of the court decision by the respondent was an act that reflected a high degree of moral turpitude on his part. Worse, the act made a mockery of the administration of justice in this country, given the purpose of the falsification, which was to mislead a foreign tribunal on the personal status of a person. He thereby became unworthy of continuing as a member of the Bar.

It then becomes timely to remind all members of the Philippine Bar that they should do nothing that may in any way or degree lessen the confidence of the public in their professional fidelity and integrity.[26] The Court will not hesitate to wield its heavy hand of discipline on those among them who wittingly and willingly fail to meet the enduring demands of their Attorney's Oath for them to:

> x x x support [the] Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; xxx do no falsehood, nor consent to the doing of any in court; x x x not wittingly or willingly promote or sue on groundless, false or unlawful suit, nor give aid nor consent to the same; x x x delay no man for money or malice, and x x x conduct [themselves as lawyers] according to the best of [their] knowledge and discretion with all good fidelity as well to the courts as to [their] clients x x x.

No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities. He may be disbarred or suspended from the practice of law not only for acts and omissions of malpractice and for dishonesty in his professional dealings, but also for gross misconduct not directly connected with his professional

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[25] Agpalo, *Comments on the Code of Professional Responsibility and the Code of Judicial Conduct*, p. 62 (2001).

[26] *Sipin-Nabor v. Baterina*, A.C. No. 4073, June 28, 2001, 360 SCRA 6, 10.

duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him.[27] Verily, no lawyer is immune from the disciplinary authority of the Court whose duty and obligation are to investigate and punish lawyer misconduct committed either in a professional or private capacity.[28] The test is whether the conduct shows the lawyer to be wanting in moral character, honesty, probity, and good demeanor, and whether the conduct renders the lawyer unworthy to continue as an officer of the Court.[29]

WHEREFORE, the Court **FINDS AND PRONOUNCES ASST. PROVINCIAL PROSECUTOR SALVADOR N. PE, JR**. guilty of violating Rule 1.01 of Canon 1, and Rule 7.03 of Canon 7 of the *Code of Professional Responsibility*, and **DISBARS** him effective upon receipt of this decision.

The Court **DIRECTS** the Bar Confidant to remove the name of **ASST. PROVINCIAL PROSECUTOR SALVADOR N. PE, JR**. from the Roll of Attorneys.

This decision is without prejudice to any pending or contemplated proceedings to be initiated against **ASST. PROVINCIAL PROSECUTOR SALVADOR N. PE, JR**.

Let copies of this decision be furnished to the Office of the Bar Confidant, the Office of the Court Administrator for dissemination to all courts of the country, and to the Integrated Bar of the Philippines.

SO ORDERED.

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

Del Castillo, J., on leave.

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[27] *Lizaso v. Amante,* A.C. No. 2019, June 3, 1991, 198 SCRA 1, 10; citing *In Re Vicente Pelaez,* 44 Phil. 567 (1923).

[28] *Tan, Jr. v. Gumba,* A.C. No. 9000, October 5, 2011, 658 SCRA 527, 532.

[29] *Roa v. Moreno,* A.C. No. 8382, April 21, 2010, 618 SCRA 693, 699, citing *Ronquillo v. Cezar,* A.C. No. 6288, June 16, 2006, 491 SCRA 1, 5-6.

EN BANC

[A.C. No. 9401. October 22, 2013]

JOCELYN DE LEON, *complainant, vs.* **ATTY. TYRONE PEDREÑA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; MISCONDUCT UNBECOMING OF A MEMBER OF THE BAR; RESPONDENT'S ACTS NOT MERELY OFFENSIVE AND UNDESIRABLE BUT REPULSIVE, DISGRACEFUL AND IMMORAL IN CASE AT BAR.—** The records show that Atty. Pedreña rubbed the complainant's right leg with his hand; tried to insert his finger into her firmly closed hand; grabbed her hand and forcibly placed it on his crotch area; and pressed his finger against her private part. Given the circumstances in which he committed them, his acts were not merely offensive and undesirable but repulsive, disgraceful and grossly immoral. They constituted misconduct on the part of any lawyer. In this regard, it bears stressing that immoral conduct is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.

2. **ID.; ID.; ID.; THE POSSESSION OF GOOD MORAL CHARACTER IS BOTH A CONDITION PRECEDENT AND A CONTINUING REQUIREMENT TO WARRANT ADMISSION TO THE BAR AND TO RETAIN MEMBERSHIP IN THE LEGAL PROFESSION.—** The possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the Legal Profession. Members of the Bar are clearly duty-bound to observe the highest degree of morality and integrity in order to safeguard the reputation of the Bar. Any errant behavior on the part of a lawyer that tends to expose a deficiency in moral character, honesty, probity or good demeanor, be it in the lawyer's public or private activities, is sufficient to warrant the lawyer's suspension or disbarment. Section 27, Rule 138 of the *Rules of Court*, provides that a member of the Bar may be disbarred or suspended for grossly immoral conduct, or

violation of his oath as a lawyer. Towards that end, we have not been remiss in reminding members of the Bar to live up to the standards and norms of the Legal Profession by upholding the ideals and principles embodied in the *Code of Professional Responsibility*.

3. ID.; ID.; ID.; ID.; RESPONDENT'S MISCONDUCT IS AGGRAVATED BY THE FACT THAT HE WAS THEN A PUBLIC ATTORNEY MANDATED TO PROVIDE FREE LEGAL SERVICE TO INDIGENT LITIGANTS, AND BY THE FACT THAT COMPLAINANT WAS THEN SUCH A CLIENT.— Atty. Pedreña's misconduct was aggravated by the fact that he was then a Public Attorney mandated to provide free legal service to indigent litigants, and by the fact that De Leon was then such a client. He also disregarded his oath as a public officer to serve others and to be accountable at all times, because he thereby took advantage of her vulnerability as a client then in desperate need of his legal assistance.

4. ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT RESPONDENT DID NOT EMPLOY ANY SCHEME TO SATIATE HIS LUST, BUT, INSTEAD, HE DESISTED UPON THE FIRST SIGNS OF THE COMPLAINANT'S FIRM REFUSAL TO GIVE IN TO HIS ADVANCES, PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR TWO YEARS IS PROPER.— Verily, the determination of the penalty to impose on an erring lawyer is within the Court's discretion. The exercise of the discretion should neither be arbitrary nor despotic, nor motivated by any animosity or prejudice towards the lawyer, but should instead be ever controlled by the imperative need to scrupulously guard the purity and independence of the Bar and to exact from the lawyer strict compliance with his duties to the Court, to his client, to his brethren in the profession, and to the general public. In determining the appropriate penalty to be imposed on Atty. Pedreña, therefore, we take into consideration judicial precedents on gross immoral conduct bearing on sexual matters. Although most of the judicial precedents dealt with lawyers who engaged in extramarital affairs, or cohabited with women other than their wives, they are nonetheless helpful in gauging the degree of immorality committed by the respondent. In *Advincula v. Macabata*, the Court held that the errant lawyer's acts of turning his client's head towards him and then kissing her on the lips were distasteful, but still ruled that such acts, albeit offensive

and undesirable, were not grossly immoral. Hence, the respondent lawyer was merely reprimanded but reminded to be more prudent and cautious in his dealings with clients. In *Barrientos v. Daarol*, the respondent lawyer was disbarred, but the severest penalty was imposed not only because of his engaging in illicit sexual relations, but also because of his deceit. He had been already married and was about 41 years old when he proposed marriage to a 20-year-old girl. He succeeded in his seduction of her, and made her pregnant. He not only suggested that she abort the pregnancy, but he also breached his promise to marry her, and, in the end, even deserted her and their child. In *Delos Reyes v. Aznar*, the Court adjudged the respondent lawyer, a married man with children, highly immoral for having taken advantage of his position as the chairman of the College of Medicine of his school in enticing the complainant, then a student in the college, to have carnal knowledge with him under the threat that she would flunk in all her subjects should she refuse. The respondent was disbarred for grossly immoral conduct. Without diminishing the gravity of the complainant's sad experience, however, we consider the acts committed by Atty. Pedreña to be not of the same degree as the acts punished under the cited judicial precedents. Neither did his acts approximate the act committed by the respondent lawyer in *Calub v. Suller*, whereby we disbarred the respondent lawyer for raping his neighbor's wife notwithstanding that his guilt was not proved beyond reasonable doubt in his criminal prosecution for the crime. We further note that, unlike in *Barrientos* where there was deceit and in *Delos Reyes* where there were threats and taking advantage of the respondent lawyer's position, Atty. Pedreña did not employ any scheme to satiate his lust, but, instead, he desisted upon the first signs of the complainant's firm refusal to give in to his advances. In view of these considerations, the penalty of suspension from the practice of law for two years is fitting and just.

APPEARANCES OF COUNSEL

Rosemarie Carmen Veloz Perey for complainant.

D E C I S I O N

BERSAMIN, *J.*:

A lawyer who commits overt acts of sexual harassment against a female client is guilty of reprehensible conduct that is unbecoming of a member of the Bar, and may be condignly punished with suspension from the practice of law.

Antecedents

Jocelyn de Leon filed with the Integrated Bar of the Philippines (IBP) a complaint for disbarment or suspension from the practice of law against Atty. Tyrone Pedreña, a Public Attorney. She averred in her complaint-affidavit that Atty. Pedreña had sexually harassed her as follows:

1. On January 30, 2006, at about 10:00 in the morning, I went to the Public Attorney's Office in Parañaque City, in order to inquire from ATTY. TYRONE PEDREÑA about the status of my case for support for my two minor children against my husband, which case is being handled by Atty. Pedreña;

2. At that time, said Atty. Pedreña was at a court hearing, so I waited at his office until he arrived at about 11:45 a.m. Atty. Pedreña told me to go ahead to Tita Babes Restaurant so we could take our lunch together and to talk about my said case;

3. While we were eating at the said restaurant, he asked me many personal matters rather than to discuss my said case. But still, I answered him with respect, for he was my lawyer;

4. After we took our lunch, he told me to just go back on February 1, 2006 at 10:00 a.m. because according to him, my said case was quite difficult, that he needed more time to study;

5. Since Atty. Pedreña was also already going home then, he told me then to ride with him and he would just drop me by the jeepney station;

6. Although I refused to ride with him, he persistently convinced me to get in the car, and so I acceded to his request so as not to offend him;

7. Right after we left the parking lot and not yet too far from the City Hall, Atty. Pedreña immediately held my left hand with his right hand, insisted me to get closer with him and laid me on his shoulder;

8. I immediately responded by saying "*AYOKO HO*!" But he persisted in trying to get hold of my hand and he also tried very hard to inserting (sic) his finger into my firmly closed hand. Thus, I became very afraid and at the same time offended for his lack of respect for me at that moment;

9. Despite my resistance, he continued rubbing my left leg. I was then attempting to remove his hand on my leg, but he grabbed my hand and forced it to put (*sic*) on his penis;

10. Because I was already really afraid at that moment, I continued to wrestle and struggle, and as I saw that we were already approaching the 7-Eleven Store, the place where I was supposed to get off, Atty. Pedreña made another move of pressing his finger against my private part;

11. I thereafter tried at all cost to unlock the car's door and told him categorically that I was getting off the car. But because the traffic light was on green, he accelerated a bit more instead, but sensing my insistence to get off, he stopped the car, and allowed me to get off. He then reminded me to see him on February 1, 2006 at 10:00 a.m. for the continuation of hearing of my case;

12. That on February 1, 2006, I had to come for my case, but this time, I brought with me my five-year-old child to avoid another incident. I was not able to see Atty. Pedreña then, so I just signed some documents;[1]

In his answer, Atty. Pedreña averred that De Leon's allegations were unsubstantiated; that entertaining such a complaint would open the gates to those who had evil desires to destroy the names of good lawyers; that the complaint was premature and should be dismissed on the ground of forum shopping because De Leon had already charged him with acts of lasciviousness in the Parañaque City Prosecutor's Office; and that he had also filed a complaint for theft against De Leon.[2]

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[1] *Rollo*, pp. 1-2.

[2] *Id.* at 5-6.

Attached to Atty. Pedreña's answer were his counter-affidavit in the criminal case for acts of lasciviousness and his complaint-affidavit for theft. In his counter affidavit, Atty. Pedreña admitted giving a ride to De Leon, but he vehemently denied making sexual advances on her, insisting that she had sat very close to him during the ride that even made it hard for him to shift gears, and that the ride had lasted for only two to three minutes.[3] He claimed that De Leon was allowing herself to be used by his detractors in the Public Attorney's Office (PAO) after he had opposed the practice of certain PAO staff members of charging indigent clients for every document that they prepared. In his complaint affidavit for theft, he stated that he had another passenger in his car at the time he gave a ride to De Leon, who did not notice the presence of the other passenger because the ride lasted for only two to three minutes; and that the other passenger was Emma Crespo, who executed her own affidavit attesting that she had witnessed De Leon's act of taking his (Pedreña) cellphone from the handbrake box of the car.[4]

Only De Leon appeared during the hearing.[5] Hence, Atty. Pedreña was deemed to have waived his right to participate in the proceedings.[6]

Thereafter, the IBP Investigating Commissioner recommended the disbarment of Atty. Pedreña and the striking off of his name from the Roll of Attorneys.[7] Holding that a disbarment case was *sui generis* and could proceed independently of the criminal case that was based on the same facts; and that the proceedings herein need not wait until the criminal case for acts of lasciviousness brought against Atty. Pedreña was finally resolved, the IBP Investigating Commissioner found that Atty. Pedreña had made sexual advances on De Leon in violation of

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

[4] *Id.* at 10-11.

[5] *Id.* at 120.

[6] *Id.* at 117.

[7] *Id.* at 151.

Rule 1.01[8] and Rule 7.03[9] of the *Code of Professional Responsibility*.

In its Resolution No. XVIII-2007-83 dated September 19, 2007, the IBP Board of Governors adopted and approved with modification the report and recommendation of the IBP Investigating Commissioner, and imposed upon Atty. Pedreña suspension from the practice of law for three months.[10]

Atty. Pedreña filed a motion for reconsideration with the IBP,[11] which adopted and approved Resolution No. XX-2012-43 dated January 15, 2012, denying the motion and affirming with modification its Resolution No. XVIII-2007-83 by increasing the period of suspension to six months.[12]

On February 28, 2012, the IBP Board of Governors transmitted to the Court Resolution No. XX-2012-43 and the records of the case for final approval.[13]

In the Resolution dated April 24, 2012, the Court noted the IBP Board of Governors' notice of Resolution No. XX-2012-43.[14]

Ruling

The report and recommendation of the Investigating Commissioner stated thusly:

There is no doubt that Complainant was able to prove her case against the Respondent. During the clarificatory hearing, she was

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[8] Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[9] Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[10] *Rollo*, p. 283.

[11] *Id.* at 152-156.

[12] *Id.* at 282.

[13] *Id.* at 281.

[14] *Id.* at 294.

straightforward and spontaneous in answering the questions propounded on her. Her account of the incident that happened on 30 January 2006 was consistent with the matters she stated in her Complaint and Verified Position Paper.

On the other hand, Respondent's defenses are not credible enough to rebut the claims of Complainant. His defenses are replete with inconsistencies and his actuations in the entire proceedings show lack of integrity in his dealings with both the Complainant and this Commission.

x x x x x x x x x

We find no merit at all in the defenses put forth by Respondent. The Theft case filed by Respondent is a mere afterthought on his part. We note that such criminal complaint hinged on a claim that there was another person during that incident who allegedly saw Complainant stealing Respondent's mobile phone. Yet, in Respondent's Position Paper and in his Counter-Affidavit to the Acts of Lasciviousness case, which was executed after the institution of the criminal complaint for Theft, Respondent never mentioned anything about a third person being present during the incident. If the presence of this third person was crucial to prove his case against herein Complainant, there is no reason why this allegation would be omitted in his Position Paper and Counter-Affidavit to at least support his defense.

Furthermore, Respondent's contention that Complainant is being used by his detractors is self-serving. His memo regarding the amount of RATA he receives is a relatively harmless query to a higher authority, which could not possibly motivate his colleagues to prod other people to file cases against Respondent.[15]

We adopt the findings and conclusions of the Investigating Commissioner, as sustained by the IBP Board of Governors, for being substantiated by the evidence on record.

The records show that Atty. Pedreña rubbed the complainant's right leg with his hand; tried to insert his finger into her firmly closed hand; grabbed her hand and forcibly placed it on his crotch area; and pressed his finger against her private part. Given the circumstances in which he committed them, his acts

[15] *Id.* at 149-150.

were not merely offensive and undesirable but repulsive, disgraceful and grossly immoral. They constituted misconduct on the part of any lawyer. In this regard, it bears stressing that immoral conduct is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.[16]

The possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the Legal Profession. Members of the Bar are clearly duty-bound to observe the highest degree of morality and integrity in order to safeguard the reputation of the Bar. Any errant behavior on the part of a lawyer that tends to expose a deficiency in moral character, honesty, probity or good demeanor, be it in the lawyer's public or private activities, is sufficient to warrant the lawyer's suspension or disbarment.[17] Section 27, Rule 138 of the *Rules of Court*, provides that a member of the Bar may be disbarred or suspended for grossly immoral conduct, or violation of his oath as a lawyer. Towards that end, we have not been remiss in reminding members of the Bar to live up to the standards and norms of the Legal Profession by upholding the ideals and principles embodied in the *Code of Professional Responsibility*.

Atty. Pedreña's misconduct was aggravated by the fact that he was then a Public Attorney mandated to provide free legal service to indigent litigants, and by the fact that De Leon was then such a client. He also disregarded his oath as a public officer to serve others and to be accountable at all times, because he thereby took advantage of her vulnerability as a client then in desperate need of his legal assistance.

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[16] *Ventura v. Samson,* A.C. No. 9608, November 27, 2012, 686 SCRA 430, 441.

[17] *Id.* at 440-441, citing *Zaguirre v. Castillo,* Admin. Case No. 4921, March 6, 2003, 398 SCRA 658, 666.

Yet, even as we agree with the findings of the IBP, we consider the recommended penalty of suspension for six months not commensurate with the gravity of the offensive acts committed.

Verily, the determination of the penalty to impose on an erring lawyer is within the Court's discretion. The exercise of the discretion should neither be arbitrary nor despotic, nor motivated by any animosity or prejudice towards the lawyer, but should instead be ever controlled by the imperative need to scrupulously guard the purity and independence of the Bar and to exact from the lawyer strict compliance with his duties to the Court, to his client, to his brethren in the profession, and to the general public.[18]

In determining the appropriate penalty to be imposed on Atty. Pedreña, therefore, we take into consideration judicial precedents on gross immoral conduct bearing on sexual matters. Although most of the judicial precedents dealt with lawyers who engaged in extramarital affairs, or cohabited with women other than their wives,[19] they are nonetheless helpful in gauging the degree of immorality committed by the respondent.

In *Advincula v. Macabata*,[20] the Court held that the errant lawyer's acts of turning his client's head towards him and then kissing her on the lips were distasteful, but still ruled that such acts, albeit offensive and undesirable, were not grossly immoral. Hence, the respondent lawyer was merely reprimanded but reminded to be more prudent and cautious in his dealings with clients.

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[18] *Advincula v. Macabata,* A.C. No. 7204, March 7, 2007, 517 SCRA 600, 616.

[19] See *Dantes v. Dantes,* A.C. No. 6486, September 22, 2004, 438 SCRA 582; *Cojuangco, Jr. v. Palma,* Admin. Case No. 2474, September 15, 2004, 438 SCRA 306; *Macarrubo v. Macarrubo*, A.C. No. 6148, February 27, 2004, 424 SCRA 42; *Obusan v. Obusan, Jr.*, A.C. No. 1392, 128 SCRA 485; *Toledo v. Toledo*, Adm. Case No. 266, April 27, 1963, 7 SCRA 757.

[20] *Supra* note 16, at 614.

In *Barrientos v. Daarol*,[21] the respondent lawyer was disbarred, but the severest penalty was imposed not only because of his engaging in illicit sexual relations, but also because of his deceit. He had been already married and was about 41 years old when he proposed marriage to a 20-year-old girl. He succeeded in his seduction of her, and made her pregnant. He not only suggested that she abort the pregnancy, but he also breached his promise to marry her, and, in the end, even deserted her and their child.

In *Delos Reyes v. Aznar*,[22] the Court adjudged the respondent lawyer, a married man with children, highly immoral for having taken advantage of his position as the chairman of the College of Medicine of his school in enticing the complainant, then a student in the college, to have carnal knowledge with him under the threat that she would flunk in all her subjects should she refuse. The respondent was disbarred for grossly immoral conduct.

Without diminishing the gravity of the complainant's sad experience, however, we consider the acts committed by Atty. Pedreña to be not of the same degree as the acts punished under the cited judicial precedents. Neither did his acts approximate the act committed by the respondent lawyer in *Calub v. Suller*,[23] whereby we disbarred the respondent lawyer for raping his neighbor's wife notwithstanding that his guilt was not proved beyond reasonable doubt in his criminal prosecution for the crime. We further note that, unlike in *Barrientos* where there was deceit and in *Delos Reyes* where there were threats and taking advantage of the respondent lawyer's position, Atty. Pedreña did not employ any scheme to satiate his lust, but, instead, he desisted upon the first signs of the complainant's firm refusal to give in to his advances.

In view of these considerations, the penalty of suspension from the practice of law for two years is fitting and just.

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[21] Adm. Case No. 1512, January 29, 1993, 218 SCRA 30, 39.

[22] Adm. Case No. 1334, November 28, 1989, 179 SCRA 653.

[23] Adm. Case No. 1474, January 28, 2000, 323 SCRA 556.

WHEREFORE, the Court **SUSPENDS ATTY. TYRONE PEDREÑA** from the practice of law for two years effective upon receipt of this decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this decision be furnished to the Office of the Bar Confidant, to the Integrated Bar of the Philippines, and to the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

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

Del Castillo, J., on leave.

EN BANC

[A.M. OCA IPI No. 09-3138-P. October 22, 2013]
(Formerly A.M. No. 09-1-19-MTCC)

REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MUNICIPAL TRIAL COURT IN CITIES, TAGUM CITY, DAVAO DEL NORTE.

[A.M. No. MTJ-05-1618. October 22, 2013]
(Formerly A.M. No. 05-10-282-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE ISMAEL L. SALUBRE, MR. NERIO L. EDIG and MS. BELLA LUNA C. ABELLA, MS. DELIA R. PALERO and MR. MACARIO HERMOGILDO S. AVENTURADO, all**

of MUNICIPAL TRIAL COURT IN CITIES, TAGUM CITY, DAVAO DEL NORTE, *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE DEATH OF THE RESPONDENT IN AN ADMINISTRATIVE CASE DOES NOT AUTOMATICALLY DIVEST THE COURT OF JURISDICTION OVER THE CASE.— Jurisprudence is settled that the death of a respondent does not preclude a finding of administrative liability subject to certain exceptions. In the case of *Gonzales v. Escalona*, this Court expounded on this doctrine: While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. In *Layao, Jr. v. Caube*, we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability: "This jurisdiction that was ours at the time of the filing of the administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declared him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications ... If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation." The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*, where we said that death of the administrative respondent necessitates the dismissal of the case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed. None of these

exceptional considerations are present in the case. x x x As in *Gonzales*, none of the exceptions exist in the cases of Judge Salubre and Edig. As correctly found by the OCA, both were served copies of this Court's Resolution dated November 23, 2005 as well as the directive of the investigating judge for them to answer the charges against them. Thus, there was no violation of their right to due process as they were given the opportunity to be heard. Humanitarian considerations can neither be a ground for dismissal since there was no allegation or proof that the liabilities were incurred due to poor health. Also, if the imposable penalty is to be considered to determine if the instant cases against them should still continue, a fine may still be imposed or even a forfeiture of their retirement benefits if deemed proper. On the other hand, Abella's case is different. She died before a copy of the November 23, 2005 Resolution was served on her. As no actual service was made, Abella did not have the chance to defend herself against the charges hurled against her. Hence, the dismissal of the administrative case against her is in order.

2. **ID.; ID.; PUBLIC OFFICERS; JUDGES; GROSS MISCONDUCT; BORROWING MONEY FROM COURT FUNDS AND FAILURE TO RETURN THE SAME.—** A vital administrative function of a judge is effective management of his court, and this includes control of the conduct of the court's ministerial officers. He has the responsibility to see to it that his clerk of court performs his duties and observes the circulars issued by the Supreme Court and that includes the safekeeping and on-time remittance of the legal fees collected. Clearly, Judge Salubre miserably failed to fulfill this duty. Worse, he even borrowed money from the court funds. The audit team discovered several withdrawal slips containing acknowledgments by Judge Salubre evidencing that he received the cash bonds of dismissed cases and forfeited cash bonds. Based on the statements of Palero and Aventurado, this was one of the primary reasons why there were delays in the remittances– because the clerk of court or the cash clerk had to wait for Judge Salubre to return the amounts he borrowed before they can deposit them. The shortages attributed to Judge Salubre totaling to ₱436,800, on the other hand, pertain to the amounts he borrowed but failed to return. Having remained uncontroverted, all these pieces of evidence undoubtedly establish the culpability of Judge Salubre for gross misconduct.

3. ID.; ID.; ID.; CLERKS OF COURT; GROSS NEGLECT OF DUTY; SHOWN BY THE SHORTAGES IN THE AMOUNTS TO BE REMITTED AND THE YEARS OF DELAY IN THE ACTUAL REMITTANCE OF FUNDS THAT ARE COLLECTED FOR THE COURT.— As can be gathered from the documentary evidence collected by the audit team, it was established that there were unauthorized withdrawals from the Fiduciary Fund amounting to ₱5,684,875 while Edig was Clerk of Court. As Clerk of Court, he is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. Being the custodian of the court's funds, revenues, and records, Edig is likewise liable for any loss, shortage, destruction, or impairment of said funds and property. Moreover, it was likewise found that there were delays in the remittances of the court funds during his tenure. Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. The non-remittance of said amounts deprived the Court of the interest that may be earned if the amounts were deposited in a bank, as prudently required. Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which Edig should be held administratively liable.

4. ID.; ID.; ID.; COURT PERSONNEL; GROSS NEGLECT OF DUTY AND GROSS DISHONESTY; FAILURE TO TIMELY TURN OVER CASH DEPOSITED WITH THEM.— We agree with the OCA that both Palero and Aventurado were remiss in their duties as cash clerks. They tried to exculpate themselves from liability by blaming others for the shortages discovered and delay in the remittances. In several decisions, the Court has ruled that the failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use. Thus, they are not only guilty of gross neglect of duty in the performance of their duty for their failure to timely turn over the cash deposited with them but also gross dishonesty.

5. ID.; ID; ID.; SHERIFFS; SIMPLE NEGLECT OF DUTY; FAILURE TO FILE A RETURN OF THE WRIT OF EXECUTION WITHIN 30 DAYS FROM RECEIPT OF THE WRIT AND 30 DAYS

THEREAFTER UNTIL IT IS SATISFIED IN FULL OR ITS EFFECTIVITY EXPIRES.— As found by the OCA, Benemile should be made to answer for his failure to file a return in one criminal case. Section 14, Rule 39 of the 1997 Rules of Civil Procedure, as amended, provides that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. For said omission, Benemile is guilty of simple neglect of duty.

6. ID.; ID.; ID.; THE HEIRS OF DECEASED RESPONDENTS FOUND GUILTY OF AN OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE ARE NOT ENTITLED TO THE DECEASED'S RETIREMENT BENEFITS WHICH SHOULD BE FORFEITED IN FAVOR OF THE GOVERNMENT EXCEPT ACCRUED LEAVE BENEFITS.— Grave misconduct, gross neglect of duty and gross dishonesty of which Judge Salubre, Edig, Palero and Aventurado are found guilty, even if committed for the first time, are punishable by dismissal and carries with it the forfeiture of retirement benefits, except accrued leave benefits, and the perpetual disqualification for reemployment in the government service. As to Judge Salubre and Edig, however, in view of their deaths, the supreme penalty of dismissal cannot be imposed on them anymore. We however do not agree with the OCA's recommendation that they will only be fined but their heirs will still be entitled to their retirement benefits. It is only the penalty of dismissal that is rendered futile by their passing since they are not in the service anymore, but it is still within the Court's power to forfeit their retirement benefits as in the recent case of *Office of the Court Administrator v. Noel R. Ong, Deputy Sheriff, Branch 49, and Alvin A. Buencamino, Deputy Sheriff, Branch 53 of the Metropolitan Trial Court, Caloocan City*. In said case, the Court ordered the forfeiture of the retirement benefits, except accrued leave credits, of Buencamino, who was found guilty of grave misconduct and gross neglect of duty, but died during the pendency of the case.

7. ID.; ID.; ID.; RESTITUTION OF SHORTAGES; THE ACCRUED TERMINAL LEAVE BENEFITS OF THE DECEASED RESPONDENTS WERE ORDERED FORFEITED TO ANSWER FOR THE COMPUTED SHORTAGES FOUND BY THE AUDIT TEAM.— In this Court's February 18, 2009 Resolution, the terminal leave benefits of Judge Salubre, Edig and Abella were ordered forfeited to answer for the computed shortages found by the audit team. Upon computations of the Office of Administrative Services (OAS) and the Financial Management Office (FMO) of the OCA, the equivalent monetary value of their earned leave credits as against the total computed shortages for which they are accountable. The OCA recommended that the unsettled balance of the shortages shall be deducted from the retirement benefits of the three. This recommendation, however, is now only possible for Abella since the retirement benefits of Judge Salubre and Edig are ordered forfeited in favor of the Court. As for Palero and Aventurado, on top of the shortages for which they are individually accountable, they are deemed secondarily liable for the ₱5,684,875 of the computed shortages attributed to Edig: Palero for ₱3,147,285 and Aventurado for ₱2,537,590. Said amounts should be taken from the total monetary value of their earned leave credits. The remaining balance, if any, should in the meantime be withheld pending the evaluation of their compliances to the directives of the Court in its February 18, 2009 Resolution pertaining to the second audit.

APPEARANCES OF COUNSEL

Ruwel Peter S. Gonzaga for Nerio Edig.

D E C I S I O N

PER CURIAM:

These consolidated administrative matters resulted from the two financial audits conducted on the books of accounts of the Municipal Trial Court in Cities (MTCC) of Tagum City, Davao del Norte.

The first financial audit conducted in said court in 2005 covered the period January 1, 1993 to January 31, 2005. The court was then presided by Judge Ismael L. Salubre. The audit was

prompted by a report of the Commission on Audit (COA) regarding the violation of Nerio L. Edig, Clerk of Court IV, of Section 21 of the New Manual on the New Government Accounting System, which requires all collecting officers to deposit intact all their collections with the authorized government bank daily or not later than the next banking day, and Edig's non-submission of monthly reports. Edig failed to submit monthly reports for the Judiciary Development Fund (JDF) for the period February 2003 to December 31, 2004, the Clerk of Court General Fund (COCGF) for the period February 2003 to November 2003, the Special Allowance for the Judiciary Fund (SAJF) for the period December 2003 to December 31, 2004 and the Fiduciary Fund for the period April to December 31, 2004.[1] The second audit, done in 2008, covered the period February 1, 2005 to July 31, 2008 and was prompted by the successive changes in accountable officers in the court.[2]

During the 2005 audit, Edig informed the audit team that Bella Luna C. Abella was his cashier from the time he assumed office as Clerk of Court on February 16, 1978. Abella was later replaced by Delia R. Palero from January 1, 1996 until January 30, 2002 and then by Macario H.S. Aventurado from January 31, 2002 up to the time of the audit in 2005. Abella also acted as Officer-in-Charge from April 1, 2002 until October 6, 2002 while Edig was on study leave.[3]

Per Report[4] of the audit team dated September 2, 2005, the financial accountabilities of Edig, Salubre, Abella, Palero and Aventurado are as follows:

PARTICULARS	Judge Salubre	Edig	Abella	Palero	Aventurado
Received cash which was supposedly due to Government					

[1] *Rollo* (A.M. No. MTJ-05-1618), p. 8.

[2] *Rollo* (A.M. OCA IPI No. 09-3138-P), p. 3.

[3] *Rollo* (A.M. No. MTJ-05-1618), p. 8.

[4] *Id.* at 8-30.

and the bondsman					
	₱436,800.00				
JDF		₱11,340.50	₱36,928.00		
General Fund		6,703.40	2,900.00		
Fiduciary Fund		11,496.00	5,000.00		
Deposit slips w/o machine validation (JDF/ GF)		97,535.60			
Unauthorized Withdrawals (Fiduciary Fund)		5,684,875.00		₱3,147,285.00	₱2,537,590.00
Unidentified withdrawals (Fiduciary Fund)		206,500.00			
Uncollected Fines		2,480,656.16			
Unaccounted confiscated Bet Money		51,921.00			
Unremitted forfeited Cash bonds		149,800.00		110,800.00	₱39,000.00
Uncollected forfeited surety bonds		105,400.00			
Dismissed Cash bonds applied to FINES		21,000.00		21,000.00[5]	

The audit team likewise reported that "*[b]y stroke of luck, the team was able to discover documents showing that Judge Salubre received on many occasions cash bonds of dismissed cases and forfeited cash bonds in the total amount of ₱436,800.00. This discovery would confirm the allegations of both Ms. Palero and Mr. Aventurado that the Judge has something to do with the unaccounted amount incurred by them. They further alleged that Mr. Edig knew about what was happening inside the court but can not do anything. All of them were pressured.*"[6] The team also found several withdrawal slips with acknowledgments

[5] *Id.* at 24-29, 1105, 1108-1110.

[6] *Id.* at 9. Italics supplied.

at the back signed by Judge Salubre evidencing receipts of cash bonds of dismissed cases. They also discovered conflicting orders of Judge Salubre in two criminal cases.

Other irregularities such as the keeping of court collections outside court premises by Aventurado and the failure of Sheriff Carlito B. Benemile to serve the writ of execution in two criminal cases were likewise found.

In its Memorandum[7] dated September 2, 2005 to then Chief Justice Hilario G. Davide, Jr., the Office of the Court Administrator (OCA) recommended that:

[1.] **MR. NERIO L. EDIG**, Clerk of Court, MTCC, Tagum City be **DIRECTED** to:

[a.] **PAY** the following amount in the manner herein indicated (see table below) **within fifteen (15) days** from receipt hereof:

PARTICULARS		**AMOUNT**	**Manner of Payment**
Judiciary Development Fund	₱	11, 340.50	By depositing the said amount to LBP SA#0591-0116-34. There must be an indication in the deposit slip that said amount is for the payment of the shortage incurred per audit dated January 31, 2005.
Clerk of Court General Fund		6,703.40	Through PMO, payable to the National Treasury and send to the OCA-Chief Accountant and the latter to remit it to the National Treasury.
Fiduciary Fund		11,496.00	Direct deposit to LBP SA#0341-0727-19. To be indicated in the deposit slip as payment of the shortage incurred per audit dated January 31, 2005.
Total		**29,539.90**	

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

Thereafter, to immediately **FURNISH** the Court, thru the Office of the Court Administrator (OCA) machine validated deposit slip[s] as proof of deposit in the JDF and Fiduciary Fund Account.

The remittance amounting to ₱97,535.60 (Schedule 1) which was considered not to have been deposited for failure of the accountable officer to present, upon demand, machine validated deposit slips as proof of its remittance shall be held in abeyance. However, if the accountable officer fail[s] to submit certification from the Land Bank that the said amount has been received and properly entered to the account maintained by the court for the General Fund, it shall be considered as final shortage after the lapse of fifteen (15) days from notice hereof.

[b.] **EXPLAIN within fifteen (15) days** from receipt hereof why no administrative charge shall be taken against him for the following:

1) For the undeposited collections in the Judiciary Development Fund, Clerk of Court General Fund and Fiduciary Fund amounting to **₱11,340.50**, **₱6,703.40** and **₱11,496.00**, respectively, **excluding temporary shortages** brought about by the absence of supporting documents such as **₱97,535.60**, representing deposit slips without machine validation; **₱5,684,875.00**, representing unauthorized withdrawals; and **₱206,500.00**, representing unidentified withdrawals;

2) Failure to monitor the status of cases, thereby resulting [in] two writ[s] of execution becoming stale or not being served for several years (Annex D) and several cases were not reported (Annex K);

3) For allowing his cash clerk, Mr. Aventurado to bring court collections outside the court premises;

4) For allowing Judge Salubre to receive the cash bonds intended for the concerned bondsmen without informing the court of such fact (Annex H);

5) For his failure to report cases (Schedule 14) as mentioned herein; and

6) For questionable supporting documents presented to this team (Annex F).

[c.] **SHOW** cause **within fifteen (15) days** from receipt hereof why the following shall not be charged against him:

1) The amount of **₱2,480,656.16** (Schedule 8) which represents uncollected fines;

2) The amount of **₱51,921.00** (Schedule 9.2) representing unreported confiscated bet money;

3) The amount of **₱105,400.00** (Schedule 12) representing uncollected personal bonds guaranteed by sureties which were forfeited due to non[-]production of the body of the accuse[d].

4) The amount of **₱21,000.00** (Schedule 13) representing forfeited cash bonds applied to fine; and

5) The amount of **₱149,800.00** (Schedule 10) representing unremitted forfeited cash bonds;

[d.] **USE** the standard docket book where the status of the case, official receipts (where the amount, date and nature of payment are indicated) and the corresponding fees collected are entered; and

[e.] **SUBMIT** the list of official receipts issued corresponding to the following withdrawn interest, otherwise said interest shall be considered as unremitted and will form part of his accountability:

1. ₱17,937.70 – withdrawn on January 21, 1998;
2. ₱23,317.79 – withdrawn on March 5, 2002;
3. ₱ 8,946.72 – withdrawn on April 10, 2003; and
4. ₱ 4,719.52 – withdrawn on January 21, 2004

[2.] **MS. BELLA LUNA C. ABELLA**, Court Legal Researcher and former Officer-in-Charge, MTCC, Tagum City from April 1 to October 7, 2005 be **DIRECTED** to:

[a.] **PAY** the following amount in the manner herein indicated (see table below) **within fifteen (15) days** from receipt hereof:

FUND		**AMOUNT**	**Manner of Payment**
Judiciary Development Fund	₱	36,928.00	By depositing the said amount to LBP SA#0591-0116-34. Indicate in the deposit slip that such was the payment of the

			shortage incurred in JDF per audit dated January 31, 2005.
Clerk of Court General Fund		2,900.00	Through PMO payable to the National Treasury and send to the OCA-Chief Accountant and the latter to remit it to the National Treasury.
Fiduciary Fund		5,000.00	Direct deposit to LBP SA#0341-0727-19. Indicate in the deposit slip that said amount is for payment of the shortage incurred in Fiduciary Fund per audit dated January 31, 2005.
Total	**₱**	**44,828.00**	

Thereafter, to immediately **FURNISH** the Court, thru the Office of the Court Administrator (OCA) machine validated deposit slip[s] as proof of deposit in the JDF and Fiduciary Fund Account[s].

b. **EXPLAIN within fifteen (15) days** from receipt hereof why no administrative charge shall be taken against her for the following:

1) For misappropriating the court collections amounting to **₱44,828.00** (₱2,900.00, COCGF incurred shortage; ₱36,928.00, JDF incurred shortage; and ₱5,000, FF shortage);

2) For issuing temporary receipts instead of the court issued official receipts in her JDF collections without the authority of the High Court from August 6, 1993 to August 31, 1994; and

3) For the cancellation of Official Receipt No. 5866705 which was issued for the forfeited exhibit money amounting to ₱4,537.50 in Criminal Case No. 16591-96.

c. **SUBMIT within fifteen (15) days** from receipt hereof the (1) temporary receipts issued from August 6, 1993 to August 31, 1994 and (2) missing triplicate Official Receipt No. 4390228.

d. **REFRAIN** from issuing official receipts, receiving court collections and doing tasks having connections with financial transactions.

[3.] **MS. DELIA [R.] PALERO**, Court Interpreter, MTCC, Tagum City, be **DIRECTED** to:

[a.] **SHOW** cause **within fifteen (15) days** from receipt hereof why she should not be held accountable for the following:

1) Withdrawals made without authority as shown by her failure to produce the supporting documents upon demand in the amount of **₱3,147,285.00** (this amount was part of the ₱5,684,875.00 unauthorized withdrawals), Schedule 15;

2) Cash Bonds of dismissed cases ordered to be applied to fines but nothing in the records show that it was indeed applied to fines. The amount was **₱21,000.00** (Schedule 13);

3) Forfeited cash bonds already withdrawn but were not deposited either to JDF, COCGF or SAJF in the amount of **₱110,800.00** (Schedule 16);

[b.] **EXPLAIN** within the same period why no administrative charge shall be filed against her for the delay incurred in the remittance of collections in addition to the above infractions (Schedule 5, 6 and 7).

[4.] **MR. MACARIO H. S. AVENTURADO**, Cash Clerk III, MTCC, Tagum City, be **DIRECTED** to:

[a.] **SHOW** cause **within fifteen (15) days** from receipt hereof why he should not be held accountable for the following:

1) Withdrawals made without authority as shown by his failure to produce the supporting documents upon demand in the amount of **₱2,537,590.00** (this amount was part of the ₱5,684,875.00 unauthorized withdrawals), Schedule 17; and

2) Forfeited cash bonds already withdrawn but were not deposited either to JDF, COCGF or SAJF in the amount of **₱39,000.00** (Schedule 18).

[b.] **EXPLAIN** within the same period why no administrative charge shall be filed against him for the delay incurred in the remittance of collections in addition to the above infractions (see Schedule 5, 6 and 7).

[c.] **SUBMIT within fifteen (15) days** from receipt of notice JDF, COCGF, SAJF cash books; for currently used cash books, photo copy thereof will suffice.

5. MR. CARLITO B. BENEMILE, Sheriff of MTCC, Tagum City be **DIRECTED** to **EXPLAIN within fifteen (15) days** from receipt hereof why no administrative charge shall be filed against him for his failure to serve the writ of execution in connection with the cases of People *vs.* Molde, Criminal Case Nos. 16486 to 16488-96 and People *v.* Elena Salipot, Criminal Case No. 26075-00 despite notice to him.

6. HON. ISMAEL L. SALUBRE, Presiding Judge, MTCC, Tagum City be **DIRECTED** to show cause **within fifteen (15) days** from receipt hereof why he should not be administratively charged for his act of taking cash bonds intended for the bondsmen and for the government in the amount of **₱436,800.00** as well as for issuing two conflicting orders in connection with the cases of People *vs*. Danilo Gomez, *supra* and People *vs*. Romar Ebol, *supra*.

7. This report be docketed as a regular administrative matter against **MR. NERIO L. EDIG, MS. BELLA LUNA C. ABELLA, MS. DELIA R. PALERO, MR. MACARIO H. S. AVENTURADO and HON. ISMAEL L. SALUBRE** and the same be referred to the Executive Judge of Regional Trial Court (RTC), Tagum City for Investigation[,] Report and Recommendation within sixty (60) days from receipt of records.

8. For the Honorable Court to allow the withdrawal of ₱13,000.00 from the Judiciary Development Fund Account and the same be deposited to the Fiduciary Fund Account (LBP SA#0341-0727-19) of the Municipal Trial Court in Cities, Tagum City.[8]

Acting upon the recommendations of the OCA, the Court, on November 23, 2005, issued a Resolution[9] adopting the same.

On December 10, 2005, Abella succumbed to cancer.[10]

In a letter dated January 5, 2006, then Deputy Court Administrator Christopher O. Lock issued a letter-directive to

[8] *Id.* at 1-6, 25-30.

[9] *Id.* at 716-722.

[10] *Id.* at 757.

Executive Judge Oscar G. Tirol of the Regional Trial Court of Tagum City to conduct an investigation and submit a report/recommendation within 60 days from receipt of the endorsement.[11]

On January 11, 2006, Judge Salubre, Edig, Palero, Aventurado and Benemile received their copies of the November 23, 2005 Resolution.[12]

On February 13, 2006, Judge Tirol issued an Order[13] directing Judge Salubre, Edig, Abella, Palero, Aventurado and Benemile to submit their answers/comments to the charges outlined in the November 23, 2005 Resolution. Palero, Aventurado and Benemile received their copies of said order on the same day while Judge Salubre received his the following day or on February 14, 2006. Edig, on the other hand, received a copy on February 15, 2006.[14]

On March 1, 2006, Judge Salubre died of diabetic complications.[15]

As for Edig, his lawyer, Atty. Ruwel Peter S. Gonzaga, initially asked for a 30-day extension to file an answer citing the former's serious ailments.[16] But Antonieta Edig, Edig's wife, in a letter[17] dated March 17, 2006, informed the investigating judge that her husband was incapable of filing an answer and that she wanted to insulate him from stress that may affect his gradual recovery.

In Palero's Answer[18] dated March 20, 2006, she explained that the unaccounted withdrawals totaling ₱3,147,285 were authorized. She contended that the withdrawal slips were signed

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[11] *Id.* at 721, 724, 737.

[12] *Id.* at 719 and 721 (dorsal side).

[13] *Id.* at 737-738.

[14] *Id.* at 737.

[15] *Id.* at 758.

[16] *Id.* at 743-744.

[17] *Id.* at 759-760.

[18] *Id.* at 768-769.

by either Judge Salubre or Clerk of Court Edig. Part of the amount was received by Judge Salubre who even signed the acknowledgment receipts. As to the ₱21,000 pertaining to the cash bonds of dismissed cases that were supposed to be applied to fines but were not, Palero claimed that Judge Salubre also took it without signing an acknowledgment receipt though she noted it for reference. As to the ₱110,800 forfeited cash bonds, Palero submitted acknowledgment receipts showing that ₱21,000 was received by Evelyn Molde, wife of an accused in three criminal cases; ₱14,000 was withdrawn and received by Ms. Ruth Ibaos; and ₱63,800 was taken by Judge Salubre.

Palero also admitted that the remittances were delayed but she was not even aware that they were "technically" delayed already. She claimed that it has been the practice of the court to just make the remittance on the month following the month when the collections were actually made and that she was just doing the manual task of going to the bank to make the deposits. She likewise knew for a fact that the clerk of court would still wait for Judge Salubre to pay for his debt/advances in the collections, but the clerk of court would just use his own money in replenishing the collections when Judge Salubre throws invectives at them when they demand payment.

In Aventurado's Answer[19] dated March 21, 2006, he contended that he never benefited from the unaccounted amount he was made to explain. He claimed to be the newest and youngest employee in the court and only sought advice from his fellow employees. He alleged that Clerk of Court Edig, Legal Researcher Abella and Court Interpreter Palero advised him to let the bondsman sign at the back of the receipts but even if he did as told, there were instances when the bondsmen would leave immediately after receiving the money. He also claimed that he can no longer give a detailed explanation on the withdrawals and non-receipt of amounts by bondsmen because they were instructed to send all the pertinent records to the Supreme Court. As to the ₱39,000 unaccounted forfeited cash bonds, Aventurado submitted some receipts.

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[19] *Id.* at 771-774.

Aventurado likewise admitted to the delays in the remittance of collections but attributed said delays to Judge Salubre. He claimed that there were instances when the judge would call him to his chambers to ask about the cash on hand and thereafter order him to hand over some of the collections with a promise that he would return them after a day or two. As the judge was his superior, he would comply and as advised by his fellow employees, ask the judge to sign an acknowledgment receipt. He, however, alleged that there were times when the judge would get angry and refuse to sign the receipt. He further added that he had to wait for the incoming collections for the month to be able to deposit because there were instances when the judge would not pay what he got from the court collections.

In his letter[20] dated February 14, 2006, Benemile explained that records would show that he did not receive a writ of execution for *People v. Molde*[21] and that he only knew of the fact that the same was decided and gained finality when he received the administrative order. As to *People v. Salipot*,[22] he clarified that the writ of execution in said case was duly implemented but admitted that no return was made because the parties agreed that the losing party will pay in installment basis.

In his report[23] dated April 22, 2006, the investigating judge evaluated the liabilities of Palero, Aventurado and Benemile. He left to this Court's discretion the liabilities of Judge Salubre, Abella and Edig.

The investigating judge found Palero's explanation as inadequate and unsatisfactory because Palero failed to produce the acknowledgment receipts required except for 36 cases wherein she was able to present court orders directing the release of the bonds and the signatures of the persons who received them. Still, the investigating judge opined that in said 36 cases,

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[20] *Id.* at 797.

[21] Criminal Case Nos. 16486-96 to 16488-96.

[22] Criminal Case No. 26075-00.

[23] *Rollo* (A.M. No. MTJ-05-1618), pp. 725-736.

Palero had been too lax and liberal, releasing to persons equipped with no authority to receive the money for cancelled cash bonds and failing in most instances to note down the names of the recipients. Palero, also by her explanation, betrayed her unreliability as custodian of funds if indeed it was true that Judge Salubre took the ₱1,630,439.70 and that Judge Salubre should be blamed for her failure to account for the ₱21,000 cash bonds that should be applied to fines, since she allowed it to happen.

The investigating judge also found unacceptable the reason posed by both Palero and Aventurado for the delay in the remittance of collections – that they had to wait for Judge Salubre to return the borrowed funds – as the duty to remit collections on time cannot be compromised.

As to Aventurado, while he was able to show that deposits of some of the forfeited cash bonds were duly effected and reported, he was not able to present proof of acknowledgments of bondsmen for withdrawn cash bonds in several cases.

The investigating judge ruled that there was no clear indication of dishonesty that can be imputed to Palero and Aventurado and held that it was perhaps out of inexperience in the job of cash clerk that made them grossly ineffective and incompetent resulting in so much loss.

As to Benemile, the investigating judge found that he cannot be held accountable for his failure to implement a writ which was never brought to his attention in *People v. Molde*, but he should be made to answer for failure to make a return on the writ of execution in *People v. Salipot.*

Based on the above observations, the investigating judge made the following recommendations:

1. that respondents DELIA [R.] PALERO and MACARIO H.S. AVENTURADO be each suspended for a period of Six (6) Months without salary, and restitute whatever sums may be found owing from them as shortages in remittance/ collections;

2. that Sheriff CARLITO B. BENEMILE be fined in the amount of One Thousand Pesos (₱1,000.00) for admittedly failing to make his return of the writ of execution issued in Criminal Case No. 26075-00.[24]

In its October 16, 2006 Memorandum[25] for then Associate Justice Reynato S. Puno, the OCA recommended, after considering the report of the investigating judge,

1. That the administrative complaint against the late Judge Ismael L. Salubre and Ms. Bella Luna C. Abella be **DISMISSED**;

2. That Respondent Nerio L. Edig be **DIRECTED** to file his Answer to the charges against him within fifteen (15) days from receipt hereof otherwise, his liability shall be determined based on the record of this case;

3. Respondent Delia R. Palero be **DISMISSED** from the service for gross neglect of duty, dishonesty and grave misconduct. All her retirement benefits, excluding earned leave credits, are ordered forfeited in favor of the government with prejudice to re[-]employment in any government office, including government[-]owned and [-]controlled corporations and that she be directed to pay the amount of ₱3,147,285.00 representing the shortage in the Fiduciary Fund, ₱21,000.00 and ₱74,800.00 representing the shortage in the Judiciary Development Fund;

4. Respondent Macario H.S. Aventurado be **DISMISSED** from the service for gross neglect of duty, dishonesty and grave misconduct. All his retirement benefits, excluding earned leave credits, are ordered forfeited in favor of the government with prejudice to re[-]employment in any government office, including government[-]owned and [-]controlled corporations and that he be directed to restitute the amount of ₱2,537,590.00 representing the shortage in the Fiduciary Fund and the amount of ₱39,000.00 representing the shortage in the Judiciary Development Fund; and

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[24] *Id.* at 736.

[25] *Id.* at 800-812.

5. Respondent Carlito Benemile be **FINED** in the amount of ₱1,000.00 for admittedly failing to make his return of the writ of execution issued in Criminal Case No. 26075-00.[26]

On December 11, 2006, the Court issued a Resolution[27] (1) dismissing the administrative complaint against Judge Salubre and Abella in view of their death; (2) directing Edig to file his answer to the charges against him within 15 days from receipt, otherwise his liability shall be determined based on the records of the case; and (3) requiring Palero, Aventurado and Benemile to manifest to the Court whether they are submitting this matter for decision on the basis of the pleadings filed.

On March 6, 2007, this Court received separate Manifestations[28] from Palero, Aventurado and Benemile indicating that they are submitting the matter for decision on the basis of the pleadings they have filed. On even date, the Court also received a Manifestation[29] from Antonieta Edig indicating that her husband was still suffering from the effects of the stroke he suffered two years ago and that every time he was confronted with problems, he undergoes seizures. She likewise informed the Court that she did not and will not allow anyone to discuss with him his problems related to his employment and that her husband was not physically and mentally capable to fully explain or submit an answer to the charges against him due to his sensitive condition.

On July 16, 2007, this Court directed Edig anew to file his answer to the charges against him within a non-extendible period of 15 days from notice, otherwise his liability shall be determined based on the records of the case.[30]

Meanwhile, on September 10, 2007, in A.M. No. 12749-Ret. (*Re: Application for Retirement/Gratuity Benefits under*

[26] *Id.* at 811-812.

[27] *Id.* at 813-814.

[28] *Id.* at 815-822.

[29] *Id.* at 824-825.

[30] *Id.* at 944.

R.A. 910, as amended by R.A. 5095 and PD 1438, filed by Ms. Susana C. Salubre, surviving spouse of the late Judge Ismael L. Salubre, MTCC Tagum City), the Court issued a Resolution[31] approving the application for retirement/gratuity benefits of the late Judge Salubre subject to the usual clearance requirements.

In an Explanation[32] dated October 5, 2007, Edig, through his wife, answered the charges hurled against him.

In a Memorandum[33] dated October 23, 2007 to then Chief Justice Reynato S. Puno, the OCA recommended the reconsideration of the Court's Resolution dismissing the administrative case against Judge Salubre and Abella and the reinstatement of the same. The OCA further recommended that the September 10, 2007 Resolution in A.M. No. 12749-Ret. be set aside and that the processing of the clearances of the two be held in abeyance pending resolution of the administrative case. The OCA's recommendations were based on two grounds: (1) the rudiments of due process were complied with; and (2) the death of the respondent is not in itself a ground for the dismissal of the administrative case.

On April 6, 2008, Edig passed away. In a Manifestation[34] dated April 21, 2008, his counsel prayed that Edig be dropped from the case and that his family be allowed to process and receive, if any, whatever is due them.

On June 2, 2008, this Court issued a Resolution[35] adopting the recommendations of the OCA in its October 23, 2007 Memorandum.

In the meantime, the second financial audit was conducted on the books of accounts of the MTCC of Tagum City covering

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[31] *Id.* at 981.

[32] *Id.* at 957-961.

[33] *Id.* at 975-980.

[34] *Id.* at 997.

[35] *Id.* at 1022-1023.

the period February 1, 2005 to July 31, 2008. Following are the detailed periods of accountability[36] of each accountable officer, together with their respective Cash Clerks:

Clerk of Court*/ Officer-in-Charge**	Cash Clerk	Period of Accountability		
Nerio L. Edig*	Delia R. Palero	February 1, 2005	-	February 28, 2005
Delia R. Palero**	Macario H. Aventurado	March 1, 2005	-	May 31, 2007
Runero S. Gonzaga**	Delia R. Palero	June 1, 2007	-	January 31, 2008
Edgar C. Perez*	Delia R. Palero	February 1, 2008	-	present

The audit team found shortages during the period of accountability of Palero. Below is the summary[37] of her remaining total accountability exclusive of the prior audit's findings:

Special Allowance for the Judiciary Fund (SAJF)	₱	43,124.70
Judiciary Development Fund (JDF)		322,625.30
Mediation Fund		9,500.00
Fiduciary Fund (FF) – undeposited collections		7,000.00
Fiduciary Fund (FF) – unauthorized withdrawals (no acknowledgment receipts)		607,290.00
Total Accountability	***₱***	***982,540.00***

Thus, the audit team recommended:

1. This report be treated as an administrative complaint against Ms. Delia R. Palero and Mr. Macario Hermogildo S. Aventurado and consolidated with A.M. No. MTJ-05-1618 [formerly OCA IPI No. 05-10-282-MTCC] entitled "*Office of the Court Administrator v. Hon. Ismael L. Salubre, Mr. Nerio L. Edig, Ms. Bella Luna C. Abella, Ms. Delia R. Palero and Mr. Macario Hermogildo S. Aventurado, all of MTCC, Tagum City, Davao del Norte.*"

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[36] *Rollo* (A.M. OCA IPI No. 09-3138-P), p. 8.

[37] *Id.* at 16.

2. **Ms. DELIA R. PALERO**, Court Interpreter II and former Acting Clerk of Court IV, together with **Mr. MACARIO HERMOGILDO S. AVENTURADO**, Cash Clerk III, both from MTCC Tagum City, Davao del Norte, be **DIRECTED**, within fifteen (15) days from notice to:

   a. SUBMIT machine validated deposit slips or LBP certification supporting the remittances of the computed shortages on the following funds, otherwise **RESTITUTE** the same, to wit:

Special allowance for the Judiciary Fund (SAJF) (Schedule 1)	₱43,124.70
Judiciary Development Fund (JDF) (Schedule 2)	322,625.30
Mediation Fund (MF) (Schedule 3)	9,500.00
Fiduciary Fund (FF) – undeposited collections (Schedule 4)	7,000.00
Total Accountability	***₱382,250.00***

   b. SUBMIT valid acknowledgment receipts to support the withdrawals of the attached list of unauthorized withdrawals amounting to ₱607,290.00 (Schedule 5), otherwise **RESTITUTE** the same.

   c. EXPLAIN the occurrence of the above computed shortages and delay incurred in the remittance of the Mediation Fund collections.

   d. REITERATE the full compliance with the directives in the Resolution of the Court dated November 23, 2005 (Court Resolution Attached).

3. **Mr. Carlito Benemile, Sheriff III, Mr. Ramonito Catubag, Clerk III, Mr. Alvin Obero, Clerk II, Mr. Joseph Casimura, Process Server, Mr. Renato Ilagan, Process Server, all from MTCC, Tagum City, Davao del Norte**, be **DIRECTED** within fifteen (15) days from notice to liquidate their respective cash advances (see attached statement of accounts) from the Sheriff's Trust Fund, to wit:

Payee	Position		Amount
Alvin Obero	Clerk II	₱	41,641.00
Ramonito Catubag	Clerk III		37,042.00
Joseph Casimura	Process Server		28,579.00

Carlito Benemile	Sheriff III		11,800.00
Renato Ilagan	Process Server		1,300.00
TOTAL		₱	120,362.00

4. **MR. EDGAR C. PEREZ**, Clerk of Court IV, MTCC, Tagum City, Davao del Norte, be **DIRECTED** to:

a. **TRACE and IDENTIFY** the employee who received the cash advances from the Sheriff's Trust Fund amounting to ₱2,000.00 each on June 14, 2007 and July 14, 2007 and **DIRECT** to liquidate the same; and

b. **STRICTLY ADHERE** to the provisions of Amended Administrative Circular No. 35-2004, Sec. 10, with regard[s] to the proper handling of the Sheriff's Trust Fund and all Circulars issued by the Honorable Court.

5. **Hon. ARLENE LIRAG-PALABRICA**, Presiding Judge, MTCC, Tagum City, Davao del Norte, be **DIRECTED** to **MONITOR** the financial transactions of the court to avoid the occurrence of irregularity in the collection, deposit and withdrawal of court funds.

6. That the terminal leave benefits payable to the heirs of the late Judge Ismael L. Salubre, Ms. Bella Luna C. Abella and Mr. Nerio L. Edig be **FORFEITED** in favor of the Supreme Court to answer for the computed shortages found by the Financial Audit Team on the financial audit conducted on January 31, 2005.

7. The Office of the Administrative Services and Financial Management Office be **DIRECTED** to **PROCESS** and **COMPUTE** the terminal leave pay of the respondents Judge Salubre, Ms. Abella and Mr. Edig, dispensing [with] the usual documentary requirements and to **APPLY** the same to the computed shortages on the financial audit conducted on January 31, 2005.[38]

The recommendations of the audit team were approved and adopted by then Court Administrator Jose P. Perez (now Supreme Court Justice) in his Memorandum[39] dated January 19, 2009 to

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

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

then Chief Justice Reynato S. Puno. The Court, in its Resolution[40] dated February 18, 2009 in turn adopted the recommendations of the OCA.

On July 22, 2009, the OCA received the compliance[41] of Obero, Catubag, Camisura, Benemile and Iligan with the February 18, 2009 Resolution particularly the directives in paragraphs 3 and 4(a).

Through a Memorandum[42] dated July 20, 2010 to then Chief Justice Renato C. Corona, the OCA submitted its evaluation and recommendations on the liabilities of Judge Salubre, Edig and Abella.

As to Judge Salubre and Edig, the OCA opined that while they died before the investigating judge was able to finish and submit his report, records show that they were duly notified of the proceedings and were directed to file their answers but their spouses chose not to because of their failing health. Having complied with the rudiments of due process, the OCA is of the opinion that the Court can proceed in determining the administrative liability of Judge Salubre and Edig.

The OCA found that the evidence gathered during the audit, such as the acknowledgments signed by Judge Salubre evidencing receipt of dismissed and forfeited cash bonds and the statements of Palero and Aventurado, established his culpability. It ruled that Judge Salubre's act of receiving and appropriating for himself the cash bonds of dismissed cases and forfeited cash bonds which were due to the government and to the bondsmen constitute grave misconduct.

As to Edig, the OCA ruled that the evidence gathered by the audit team clearly establish the unauthorized withdrawals from the Fiduciary Fund amounting to ₱5,684,875. Being the clerk of court and custodian of the court's funds, Edig is primarily accountable for the unauthorized withdrawals from the Fiduciary Fund. It held that Edig's failure to fulfill the responsibility of

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[40] *Id.* at 61-64.

[41] *Id.* at 81-109.

[42] *Rollo* (A.M. No. MTJ-05-1618), pp. 1104-1117.

closely supervising the proper handling of collections and deposits to avoid any mishandling of government funds deserves administrative sanction and not even the full payment of the shortages shall exempt him from liability.

As to Abella, the OCA found that while she died on December 10, 2005, after the issuance of the November 23, 2005 Resolution of the Court directing her to pay the shortages and to explain the charges against her, the directive was only received on January 11, 2006. Thus, there was no actual service of notice to Abella since she was already dead at that time. Because of lack of due process, the OCA opined that the administrative complaint against Abella should be dismissed.

Given the above findings, the OCA recommended that:

A) Judge ISMAEL L. SALUBRE be found **GUILTY** of grave misconduct. Considering that the Court can no longer dismiss respondent Judge SALUBRE in view of his death, a penalty of **FINE** equivalent to his salary for six (6) months may be imposed to be deducted from his retirement gratuity benefits;

B) The Financial Management Office (FMO), OCA, be **DIRECTED** to:

(B.1) **PROCESS** the money value of [the] terminal leave benefits of respondent Judge ISMAEL L. SALUBRE subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of Four Hundred Thirty Six Thousand Eight Hundred Pesos (Php436,800.00) and the remaining balance of the shortage shall be **DEDUCTED** from the retirement gratuity benefits due to Judge ISMAEL L. SALUBRE to be remitted to the Fiduciary Fund account of the Municipal Trial Court in Cities, Tagum City. The FMO, OCA is further **DIRECTED** to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check issued in favor of the MTCC, Tagum City, Davao del Norte for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;

(B.2) The balance of the retirement gratuity benefits of the late Judge ISMAEL L. SALUBRE after deducting the abovementioned shortages be **RELEASED to his legal heirs**, unless he is charged

in some other administrative complaint or the same is otherwise withheld for some lawful cause, subject to the usual required clearances and accounting and auditing procedures;

C) Clerk of Court NERIO L. EDIG be found **GUILTY** of grave misconduct and dishonesty. Considering, however, that the dismissal from the service can no longer be imposed in view of the respondent's demise, a penalty of **FINE** equivalent to his salary for six (6) months may be imposed to be deducted from his retirement benefits;

D) The Financial Management Office, OCA, be **DIRECTED** to **PROCESS** the money value of [the] terminal leave benefits of the late respondent NERIO L. EDIG dispensing with the usual documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of Eight Million Eight Hundred Twenty[-]Seven Thousand Two Hundred Twenty[-]Seven Pesos and 66/100 (Php8,827,227.66). The FMO, OCA is further **DIRECTED** to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check issued in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;

E) The administrative case against the late respondent **BELLA LUNA C. ABELLA** be **DISMISSED**; and the Financial Management Office, OCA, be **DIRECTED** to:

(E.1) **PROCESS** the money value of [the] terminal leave benefits of the late respondent BELLA LUNA C. ABELLA subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of Forty[-]Four Thousand Eight Hundred Twenty[-]Eight Pesos (Php44,828.00). The FMO, OCA is further DIRECTED to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check [issued] in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City; and

(E.2) The balance of the money value of [the] terminal leave benefits of the late respondent BELLA LUNA C. ABELLA after deducting the shortage incurred on her books of accounts be RELEASED

to his legal heirs, unless she is charged in some other administrative complaint or the same is otherwise withheld for some lawful cause, subject to the usual required clearances and accounting and auditing procedures.

F) Presiding Judge ARLENE L. PALABRICA, MTCC, Tagum City, Davao del Norte, be **DIRECTED** to **CLOSELY MONITOR** the financial transactions of the Court, and to **STUDY** and **IMPLEMENT** procedures that shall strengthen the internal control over financial transactions otherwise she shall be held equally liable for the infractions committed by the employees under her command/supervision.[43]

Starting March 2012 up to the present, the OCA has been receiving several Manifestations[44] from Palero and Aventurado as partial compliance with this Court's directive in its February 18, 2009 Resolution for them to submit valid acknowledgment receipts to support the unauthorized withdrawals amounting to ₱607,290 of the same resolution.

We note that it has been eight years since the first audit and no one yet has been held administratively liable for the shortages found. To avoid further delay and to prevent any occurrence of shortages in the court's funds, this Court will proceed with the resolution of the consolidated cases without prejudice to the evaluation of the OCA of the compliances to directives in the February 18, 2009 Resolution pertaining to the second audit submitted by Palero, Aventurado, Benemile, Catubag, Obero, Camisura and Iligan.

The Court is confronted with two main issues in the instant cases: (1) Is the death of the respondent in an administrative case a ground for the dismissal of the case against him? (2) Should respondents be held administratively liable for the shortages in the court's funds found by the audit team?

The death of the respondent in an administrative case does not

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[43] *Id.* at 1115-1117.

[44] *Rollo* (A.M. OCA IPI No. 09-3138-P), pp. 119-143, 147-161, 163-193, 197-204, 209-215.

automatically divest this Court of jurisdiction over the case.

Jurisprudence is settled that the death of a respondent does not preclude a finding of administrative liability subject to certain exceptions. In the case of *Gonzales v. Escalona*,[45] this Court expounded on this doctrine:

While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. In *Layao, Jr. v. Caube,* we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability:

> "This jurisdiction that was ours at the time of the filing of the administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declared him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications ... If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation."

The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero, where we said* that the death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed. None of these exceptional considerations are present in the case.

The dismissal of an administrative case against a deceased respondent on the ground of lack of due process is proper under

[45] A.M. No. P-03-1715, September 19, 2008, 566 SCRA 1.

the circumstances of a given case when, because of his death, the respondent can no longer defend himself. Conversely, the resolution of the case may continue to its due resolution notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, as in this case, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs.

In *Judicial Audit Report, Branches 21, 32 and 36*, we recognized the dismissal of an administrative case by reason of the respondent's death for equitable and humanitarian considerations; the liability was incurred by reason of the respondent's poor health. We had occasion, too, to take into account the imposable administrative penalty in determining whether an administrative case should be continued. We observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent, enforceable against his or her estate.[46] (Citations omitted.)

As in *Gonzales*, none of the exceptions exist in the cases of Judge Salubre and Edig. As correctly found by the OCA, both were served copies of this Court's Resolution dated November 23, 2005 as well as the directive of the investigating judge for them to answer the charges against them. Thus, there was no violation of their right to due process as they were given the opportunity to be heard. Humanitarian considerations can neither be a ground for dismissal since there was no allegation or proof that the liabilities were incurred due to poor health. Also, if the imposable penalty is to be considered to determine if the instant cases against them should still continue, a fine may still be imposed or even a forfeiture of their retirement benefits if deemed proper.

On the other hand, Abella's case is different. She died before a copy of the November 23, 2005 Resolution was served on her. As no actual service was made, Abella did not have the chance to defend herself against the charges hurled against her. Hence, the dismissal of the administrative case against her is in order.

We now go to the administrative liabilities of Judge Salubre, Edig, Palero, Aventurado and Benemile.

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[46] *Id.* at 14-16.

Re: Judge Ismael Salubre

A vital administrative function of a judge is effective management of his court, and this includes control of the conduct of the court's ministerial officers.[47] He has the responsibility to see to it that his clerk of court performs his duties and observes the circulars issued by the Supreme Court[48] and that includes the safekeeping and on-time remittance of the legal fees collected. Clearly, Judge Salubre miserably failed to fulfill this duty. Worse, he even borrowed money from the court funds. The audit team discovered several withdrawal slips containing acknowledgments by Judge Salubre evidencing that he received the cash bonds of dismissed cases and forfeited cash bonds. Based on the statements of Palero and Aventurado, this was one of the primary reasons why there were delays in the remittances– because the clerk of court or the cash clerk had to wait for Judge Salubre to return the amounts he borrowed before they can deposit them. The shortages attributed to Judge Salubre totaling to ₱436,800, on the other hand, pertain to the amounts he borrowed but failed to return. Having remained uncontroverted, all these pieces of evidence undoubtedly establish the culpability of Judge Salubre for gross misconduct.

Re: Nerio L. Edig

As can be gathered from the documentary evidence collected by the audit team, it was established that there were unauthorized withdrawals from the Fiduciary Fund amounting to ₱5,684,875 while Edig was Clerk of Court. As Clerk of Court, he is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. Being the custodian of the court's funds, revenues, and records, Edig is likewise liable for any loss, shortage, destruction, or impairment of said funds

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[47] *Report on the Financial Audit in RTC, General Santos City*, 384 Phil. 155, 167 (2000).

[48] See *Re: Report on the Judicial and Financial Audit, MTC, Bayombong & Solano & MCTC, Aritao-Sta. Fe, Nueva Vizcaya*, 561 Phil. 349, 363 (2007).

and property.[49] Moreover, it was likewise found that there were delays in the remittances of the court funds during his tenure. Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.[50] The non-remittance of said amounts deprived the Court of the interest that may be earned if the amounts were deposited in a bank, as prudently required. Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which Edig should be held administratively liable.[51]

Re: Delia R. Palero and Macario H.S. Aventurado

We agree with the OCA that both Palero and Aventurado were remiss in their duties as cash clerks. They tried to exculpate themselves from liability by blaming others for the shortages discovered and delay in the remittances. In several decisions, the Court has ruled that the failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use.[52] Thus, they are not only guilty of gross neglect of duty in the performance of their duty for their failure to timely turn over the cash deposited with them but also gross dishonesty.

Re: Sheriff Carlito B. Benemile

As found by the OCA, Benemile should be made to answer for his failure to file a return in one criminal case. Section 14, Rule 39 of the 1997 Rules of Civil Procedure, as amended,

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[49] *Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., RTC, Catarman, Northern Samar,* A.M. Nos. P-07-2364 & P-11-2902, January 25, 2011, 640 SCRA 376, 388.

[50] *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido,* 518 Phil. 1, 5 (2006).

[51] *Soria v. Oliveros,* 497 Phil. 709, 722 (2005).

[52] *Office of the Court Administrator v. Jamora,* A.M. No. P-08-2441, November 14, 2012, 685 SCRA 412, 415.

provides that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ.[53] For said omission, Benemile is guilty of simple neglect of duty.

The penalties

Grave misconduct, gross neglect of duty and gross dishonesty of which Judge Salubre, Edig, Palero and Aventurado are found guilty, even if committed for the first time, are punishable by dismissal and carries with it the forfeiture of retirement benefits, except accrued leave benefits, and the perpetual disqualification for reemployment in the government service.

As to Judge Salubre and Edig, however, in view of their deaths, the supreme penalty of dismissal cannot be imposed on them anymore. We however do not agree with the OCA's recommendation that they will only be fined but their heirs will still be entitled to their retirement benefits. It is only the penalty of dismissal that is rendered futile by their passing since they are not in the service anymore, but it is still within the Court's power to forfeit their retirement benefits as in the recent case of *Office of the Court Administrator v. Noel R. Ong, Deputy Sheriff, Branch 49, and Alvin A. Buencamino, Deputy Sheriff, Branch 53 of the Metropolitan Trial Court, Caloocan City*.[54] In said case, the Court ordered the forfeiture of the retirement benefits, except accrued leave credits, of Buencamino, who was found guilty of grave misconduct and gross neglect of duty, but died during the pendency of the case.

As to Benemile, instead of the ₱1,000 fine recommended by the OCA, a suspension of one month and one day is meted on him for being found guilty of simple neglect of duty, a less

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[53] *Judge Badoles-Algodon v. Zaldivar*, 529 Phil. 436, 447-448 (2006).

[54] A.M. No. P-09-2690, July 9, 2013.

grave offense, pursuant to Section 52.B (1), Rule IV of the *Uniform Rules in Administrative Cases in the Civil Service*.

The restitution of shortages

In this Court's February 18, 2009 Resolution, the terminal leave benefits of Judge Salubre, Edig and Abella were ordered forfeited to answer for the computed shortages found by the audit team. Upon computations of the Office of Administrative Services (OAS) and the Financial Management Office (FMO) of the OCA, the equivalent monetary value of their earned leave credits as against the total computed shortages for which they are accountable are as follows:

PARTICULARS	**Judge SALUBRE**	**Mr. EDIG**	**Ms. ABELLA**
Total Earned Leave (days)	95.584	107.957	28.067
Highest Emoluments Received	₱ 57,615.27	₱ 21,035.00	₱ 11,446.00
Constant Factor	0.0478087	0.0478087	0.0478087
Total Money Value	**₱ 263,287.19**	**₱108,567.60**	**₱ 15,358.78**[55]
Total Computed Shortages	**₱ 436,800.00**	**₱ 8,827,227.66**	**₱ 44,828.00**
Unsettled Balance	**₱ 173,512.81**	**₱ 8,718,660.06**[56]	**₱ 29,469.22**[57]

The OCA recommended that the unsettled balance of the shortages shall be deducted from the retirement benefits of the three. This recommendation, however, is now only possible for Abella since the retirement benefits of Judge Salubre and Edig are ordered forfeited in favor of the Court.

As for Palero and Aventurado, on top of the shortages for which they are individually accountable, they are deemed secondarily liable for the ₱5,684,875 of the computed shortages

[55] Erroneously stated as ₱15,358.78.

[56] Erroneously stated as ₱8,871,660.06.

[57] *Rollo* (A.M. No. MTJ-05-1618), p. 1105.

attributed to Edig: Palero for ₱3,147,285 and Aventurado for ₱2,537,590. Said amounts should be taken from the total monetary value of their earned leave credits. The remaining balance, if any, should in the meantime be withheld pending the evaluation of their compliances to the directives of the Court in its February 18, 2009 Resolution pertaining to the second audit.

WHEREFORE, judgment is hereby rendered finding:

1. Judge Ismael L. Salubre **LIABLE** for grave misconduct. All his retirement benefits, except his accrued leave credits, are ordered **FORFEITED** in favor of the government. The Financial Management Office (FMO) of the Office of the Court Administrator (OCA) is directed to **PROCESS** the monetary value of his accrued leave credits subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of ₱436,800 to be remitted to the Fiduciary Fund account of the Municipal Trial Court in Cities, Tagum City. The FMO, OCA is further **DIRECTED** to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check issued in favor of MTCC, Tagum City, Davao del Norte for preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;

2. Nerio L. Edig **LIABLE** for gross neglect of duty. All his retirement benefits, except his accrued leave credits, are ordered **FORFEITED** in favor of the government. The FMO, OCA is directed to **PROCESS** the monetary value of his accrued leave credits subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of ₱8,827,227.66. The FMO, OCA is further **DIRECTED** to coordinate with the FMD, CMO, OCA, before the release of the check in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;

3. Delia R. Palero **LIABLE** for gross neglect of duty. She is ordered **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government-owned and -controlled corporations. She is further directed to **PAY** the amount of ₱3,147,285 representing the shortage in the Fiduciary Fund, ₱21,000 and ₱74,800 representing the shortage in the Judiciary Development Fund. The FMO, OCA is directed to **WITHHOLD** the release of the monetary value of her accrued leave credits to answer for any unsettled balance in the shortages she was directed to pay and pending the evaluation of the OCA of her compliances to the directives of this Court in its February 18, 2009 Resolution.

4. Macario H.S. Aventurado **LIABLE** for gross neglect of duty. He is ordered **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government-owned and -controlled corporations. He is further directed to **PAY** the amount of ₱2,537,590 representing the shortage in the Fiduciary Fund and the amount of ₱39,000.00 representing the shortage in the Judiciary Development Fund. The FMO, OCA is directed to **WITHHOLD** the release of the monetary value of his accrued leave credits to answer for any unsettled balance in the shortages he was directed to pay and pending the evaluation of the OCA of her compliances to the directives of this Court in its February 18, 2009 Resolution.

5. Carlito B. Benemile **LIABLE** for simple neglect of duty. He is hereby **SUSPENDED** for a period one (1) month and one (1) day with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

On the other hand, the administrative case against Bella Luna C. Abella is ordered **DISMISSED**. The FMO, OCA is

DIRECTED to process the monetary value of her accrued leave credits subject to the submission of the documentary requirements and apply the same to the computed shortage in the Fiduciary Fund account in the amount of ₱44,828. The FMO, OCA is further **DIRECTED** to coordinate with the FMD, CMO, OCA, before the release of the check in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte. The balance of the money value of her terminal leave benefits after deducting the shortage incurred on her books of accounts shall be **RELEASED** to her legal heirs, unless she is charged in some other administrative complaint or the same is otherwise withheld for some lawful cause, subject to the usual required clearances and accounting and auditing procedures.

The compliances submitted by Delia R. Palero, Macario H.S. Aventurado, Carlito P. Benemile, Ramonito Catubag, Joseph Casimura, Alvin Obrero and Renato Ilagan to this Court's Resolution dated February 18, 2009 is hereby **REFERRED** to the OCA for evaluation, report and recommendation to be submitted within 30 days from receipt of the records.

Presiding Judge Arlene L. Palabrica, MTCC, Tagum City, Davao del Norte, is **DIRECTED** to closely monitor the financial transactions of the Court, and to study and implement procedures that shall strengthen the internal control over financial transactions otherwise she shall be held equally liable for the infractions committed by the employees under her command/supervision.

This Decision is immediately **EXECUTORY**.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

Del Castillo, J., on official leave.

Perez, J., no part. Acted on matter as Court Adm.

EN BANC

[A.M. No. RTJ-11-2259. October 22, 2013]
(Formerly OCA IPI No. 10-3441-RTJ)

MA. REGINA S. PERALTA, *complainant, vs.* **JUDGE GEORGE E. OMELIO,** *respondent.*

[A.M. No. RTJ-11-2264. October 22, 2013]
(Formerly OCA IPI No. 10-3368-RTJ)

ROMUALDO G. MENDOZA, *complainant, vs.* **JUDGE GEORGE E. OMELIO,** *respondent.*

[A.M. No. RTJ-11-2273. October 22, 2013]
(Formerly OCA IPI No. 10-3381-RTJ)

ATTY. ASTERIA E. CRUZABRA, *complainant, vs.* **JUDGE GEORGE E. OMELIO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; NOT EVERY ERROR OR MISTAKE COMMITTED BY JUDGES IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES RENDERS THEM ADMINISTRATIVELY LIABLE; ONLY ERRORS TAINTED WITH FRAUD, CORRUPTION OR MALICE MAY BE THE SUBJECT OF DISCIPLINARY ACTIONS.— Even assuming that respondent committed errors in issuing the TRO, Peralta could have pursued the appropriate remedy to challenge its validity. But nowhere in her complaint was it mentioned that she filed a motion for reconsideration or a petition for *certiorari* in the CA assailing the TRO. We have previously held that where sufficient judicial remedies exist, the filing of an administrative complaint is not the proper recourse to correct a judge's allegedly erroneous act. Indeed, as a matter of public policy, not every error or mistake committed by judges in the performance of their official duties renders them administratively liable. Only errors that are

tainted with fraud, corruption or malice may be the subject of disciplinary actions. For administrative liability to attach, respondent must be shown to have been moved by bad faith, dishonesty, hatred or some other similar motive. Peralta failed to allege and prove any improper motive or bad faith on the part of respondent. She merely averred having suffered "undue emotional and financial hardships" because of respondent's act. For this reason, her complaint against the respondent must be dismissed.

2. ID.; ID.; ID.; ID.; THE FILING OF AN ADMINISTRATIVE COMPLAINT IS NOT THE PROPER REMEDY FOR CORRECTING THE ACTIONS OF A JUDGE PERCEIVED TO HAVE GONE BEYOND THE NORMS OF PROPRIETY, WHERE SUFFICIENT REMEDY EXISTS.— An order granting or denying an application for preliminary injunction is interlocutory in nature. The November 7, 2008 order denying the application for a writ of preliminary injunction is not a final order, and hence the association's filing of a second motion for reconsideration of the said order, is not prohibited. Being an interlocutory order which is not appealable, respondent's subsequent order granting the application for preliminary injunction may be challenged in a petition for *certiorari* before the CA. Mendoza, however, opted to file this administrative complaint which contained no allegation that he had availed of the aforesaid remedy to set aside the writ issued by respondent. We reiterate the rule that the filing of an administrative complaint is not the proper remedy for correcting the actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient remedy exists. The actions against judges should not be considered as complementary or suppletory to, or substitute for, the judicial remedies which can be availed of by a party in a case. Moreover, the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave

abuse of discretion. In view of the foregoing reasons, Mendoza's administrative complaint against respondent must be dismissed for lack of merit.

3. ID.; ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; RESPONDENT'S BAD FAITH IN DISREGARDING THE JURISDICTIONAL REQUIREMENTS IN RECONSTITUTION PROCEEDINGS IS EVIDENT IN HIS ORDER FOR THE ISSUANCE OF A FENCING PERMIT AND WRIT OF DEMOLITION IN FAVOR OF A PARTY WITHOUT SERVING ACTUAL NOTICE ON THE OCCUPANTS AND POSSESSORS OF THE LAND SUBJECT OF RECONSTITUTION.— Respondent's bad faith in disregarding the jurisdictional requirements in reconstitution proceedings is evident in his order for the issuance of a fencing permit and writ of demolition in favor of Denila. Respondent should have been alerted by the presence of actual occupants and possessors when, after the finality of the March 4, 2008 Decision which ordered the reconstitution of the subject OCTs, Denila moved for the issuance of a writ of demolition for such belied her allegation in the amended petition that "[T]here are no buildings or other structures of strong materials on the above-mentioned pieces of land, which do not belong to the herein petitioner" and the absence of any name and address of any occupant, possessor or person who may have an interest in the properties. With the failure to serve actual notice on these occupants and possessors, Branch 14 had not acquired jurisdiction over Sp. Proc. No. 7527-2004, and therefore the March 4, 2008 Decision rendered by respondent is null and void. A decision of the court without jurisdiction is null and void; hence, it can never logically become final and executory. Such a judgment may be attacked directly or collaterally.

4. ID.; ID.; ID.; ID.; RESPONDENT'S BAD FAITH IS ALSO EVIDENT IN HIS REVERSAL OF HIS OWN INHIBITION; HAVING ACKNOWLEDGED THAT THERE WERE ALREADY DOUBTS CAST ON HIS IMPARTIALITY, RESPONDENT JUDGE SHOULD NOT HAVE RESUMED HANDLING THE CASE WHEN IT WAS RE-RAFFLED TO HIM FOLLOWING THE

PREVIOUS JUDGE'S INHIBITION.— In his September 3, 2008 Order, respondent after accepting the criticism of concerned sectors particularly on his speedy rendition of judgment in Sp. Proc. No. 7527-2004 even if he had just taken over Branch 14, and acknowledging that he merely copied the draft decision of the former presiding judge, voluntarily inhibited himself from further acting on the case for the reason that "there is already a doubt cast" on his sense of impartiality and independence. Notwithstanding this perceived bias and partiality on his part, respondent readily reassumed jurisdiction over the case when Judge Tanjili, to whom the case was re-raffled off, inhibited himself upon motion filed by Denila, and subsequently denied the petition for relief. In *Garcia v. Burgos*, we found respondent judge's reversal of his previous inhibition as improper and the supposed bare allegation of prejudgment by a party litigant as insufficient and flimsy reason for revoking his voluntary inhibition. x x x Respondent gave no reason at all for revoking his previous inhibition save for the fact that it was re-raffled off back to Branch 14 when Judge Tanjili likewise inhibited himself. Thenceforth, he continued handling the case and issued various orders for the immediate implementation of his March 4, 2008 Decision. Having acknowledged that there were already doubts cast on his impartiality, respondent should not have resumed handling the case when it was re-raffled off to him following Judge Tanjili's voluntary inhibition. Respondent by his acts transgressed Canon 3 of the New Code of Judicial Conduct on the judge's duty to perform his official duties with impartiality.

5. ID.; ID.; ID.; RESPONDENT JUDGE DISPLAYED AN UTTER DISREGARD OF THE DUTY TO APPLY SETTLED LAWS AND RULES OF PROCEDURE WHEN HE ENTERTAINED A SECOND CONTEMPT CHARGE UNDER A MERE MOTION, WHICH IS NOT PERMITTED BY THE RULES.— Further reinforcing his perceived lack of impartiality are respondent's actuations in the indirect contempt proceedings lodged by Denila against Cruzabra who persistently refused to implement the said decision. x x x A person may be charged with indirect contempt only by either of two alternative ways, namely: (1) by a verified

petition, if initiated by a party; or (2) by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, if made by a court against which the contempt is committed. In short, a charge of indirect contempt must be initiated through a *verified petition*, unless the charge is directly made by the court against which the contemptuous act is committed. While the first contempt proceeding against Cruzabra was initiated by Denila in a verified motion and was separately docketed and heard (Civil Case No. 32,387-08), a second charge of contempt was later filed by Denila in the reconstitution case (Sp. Proc. No. 7527-2004) by way of a motion. Respondent after declaring Cruzabra in contempt of court in Civil Case No. 32,387-08 and ordering her arrest, inhibited himself upon the ground that he was apprised of a previous pleading he had signed relating to one of the properties involved in the reconstitution case. But when Civil Case No. 32,387-08 was dismissed by Judge Carpio, to whom the case was re-raffled off and who heard Cruzabra's motion for reconsideration, Denila filed a motion to declare Cruzabra, Paralisan and Administrator Ulep in contempt of court in the reconstitution case. This time, unmindful of his previous inhibition in Civil Case No. 32,387-08 (December 17, 2009 Order), respondent took cognizance of the motion for contempt. After hearing, respondent declared Cruzabra and Paralisan in contempt of court and immediately issued warrants of arrest against them (the previous warrant of arrest against Cruzabra was recalled by Judge Carpio). Respondent once again displayed an utter disregard of the duty to apply settled laws and rules of procedure when he entertained the second contempt charge under a mere motion, which is not permitted by the Rules. Worse, it was done notwithstanding respondent's earlier voluntary inhibition in the indirect contempt case (Civil Case No. 32,387-08), which only raised suspicion of respondent's unusual interest in the immediate execution of the March 4, 2008 Decision despite its jurisdictional defects. The two cases being so closely related, it did not matter that respondent's previous inhibition on the matter of contempt was in the separate case (Civil Case No. 32,387-08) and not in Sp. Proc. No. 7527-2004. Notably, respondent inhibited himself from the indirect contempt case

only after adjudging Cruzabra in contempt of court and issuing a warrant of arrest against her and, the motion for contempt in the reconstitution case involved the very same act of Cruzabra's refusal to comply with the March 4, 2008 Decision and was filed only after Judge Carpio had dismissed the indirect contempt case and ruled that Cruzabra's refusal to comply with the March 4, 2008 Decision was not contumacious. All the foregoing considered, we find respondent guilty of gross ignorance of law and procedure and violation of Canon 3 of the New Code of Judicial Conduct, which merit administrative sanction.

6. ID.; ID.; ID.; ID.; THE COURT CONSIDERED RESPONDENT JUDGE'S PREVIOUS INFRACTIONS IN IMPOSING THE SUPREME PENALTY OF DISMISSAL FROM SERVICE.— As pointed out by the OCA, this is not the first time respondent was found administratively liable. In A.M. No. MTJ-08-1701 (OCA IPI No. 08-1964-MTJ) entitled *"Milagros Villa Abrille versus Judge George Omelio, Municipal Trial Court in Cities, Branch 4, Davao City and Deputy Sheriff Philip N. Betil, Branch 3, Same Court,"* respondent was found administratively liable for violation of a Supreme Court Circular for which he was fined with the amount of ₱10,000.00. And in A.M. No. RTJ-12-2321 decided just last year, respondent was found guilty of four counts of gross ignorance of the law x x x. For the said infractions, respondent was penalized with fine of ₱40,000.00. Respondent was sternly warned in both cases that repetition of the same or similar acts shall be dealt with more severely. Yet, from the facts on record, it is clear that respondent continued transgressing the norms of judicial conduct. x x x With these in mind, we therefore adopt the recommendation of the OCA that the supreme penalty of dismissal is the proper penalty to be imposed on respondent in this case being the third time he is found administratively liable. Indeed, the Court can no longer afford to be lenient in this case, lest it give the public the impression that incompetence and repeated offenders are tolerated in the judiciary.

APPEARANCES OF COUNSEL

Dexter Zeno Achilles S. Pascua for Atty. Asteria E. Cruzabra.

Kho Bustos Malcontento Argosino Law Offices for Ma. Regina S. Peralta.

D E C I S I O N

PER CURIAM:

Before the Court are three consolidated administrative complaints against respondent George E. Omelio, presiding Judge of the Regional Trial Court (RTC) of Davao City, Branch 14, for gross ignorance of the law, grave misconduct, oppression, bias and partiality.

The Facts

A.M. No. RTJ-11-2259

Complainant Ma. Regina S. Peralta is one of the plaintiffs in Civil Case No. 32,302-08 entitled "*Bentley House Furniture Company, et al. vs. Jonathon Bentley Stevens, et al.*" for Declaration of Nullity of Deed of Assignment, pending before the RTC of Davao City, Branch 11.[1]

On March 19, 2010, Jonathon Bentley Stevens, on behalf of the same company, and "Bentley House International Corp." represented by its Attorney-in-Fact Atty. Michael Castaños, instituted Civil Case No. 33,291-10 against Land Bank of the Philippines (LBP) for Easement of Right of Way with application for temporary restraining order (TRO), writ of preliminary injunction, damages and attorney's fees. The case was raffled off to respondent who immediately issued a TRO effective for 20 days enjoining LBP from blocking the road leading to the company-owned factory. On the strength of this TRO, Stevens accompanied by his counsels and Sheriff Hipolito Belangal of RTC Branch 13, allegedly went to the said premises taking

[1] *Rollo* (A.M. No. RTJ-11-2259), p. 1.

corporate properties along with those of Peralta and her family's belongings.[2]

Contending that the TRO was in direct contravention of orders issued by RTC Branch 11 in Civil Case No. 32,302-08, Peralta filed an administrative complaint against respondent. She argued that respondent's *ex parte* issuance of the TRO violates the basic procedure laid down in Section 4 (b), (c) and (d), Rule 58 of the Rules of Court. Had respondent conducted the requisite hearing, he would have been apprised of the following: (a) The complaint filed by Stevens and Atty. Castaños was previously the subject of an "Urgent Motion to Issue Order for Road Right of Way and/or Status Quo Pending Final Resolution" dated January 27, 2010, asking for the same relief, filed with the Court of Appeals (CA) in CA-G.R. CV No. 0115-MIN; (b) "Bentley House International Inc." mentioned in the TRO does not exist and has no premises in the area where the right of way was sought; (c) LBP has in its favor a writ of possession on the property as early as March 2, 2000, which was reaffirmed by Judge Emmanuel C. Carpio in his Order dated December 3, 2004 in Civil Case No. 28,630-2001; and (d) LBP has not prevented Stevens or his agents from gaining access to the property, but sees them daily as they walk past the LBP guardhouse to the factory.[3]

Peralta averred that the undue haste in the *ex parte* issuance of the TRO caused her great emotional and mental anguish as she had to deal with Stevens' attempt to dispose and remove from company premises personal and corporate properties, thus preventing her from spending time with her family during the Holy Week. She further alleged incurring additional expenses in employing 24-hour security personnel to watch over the factory.[4]

A.M. No. RTJ-11-2264

Complainant Romualdo G. Mendoza is one of the defendants in Civil Case No. 32,245-08 entitled "*Neighborhood Assn. of*

[2] *Id.* at 2-3, 15-19, 31.

[3] *Id.* at 2.

[4] *Id.* at 3.

Sto. Rosario Old Airport Sasa, Inc. vs. Hon. Jose Emmanuel M. Castillo, MTCC Branch 1, 11th Judicial Region, Davao City, Romualdo G. Mendoza and Elaine Matas," for Annulment of Judgment with prayer for preliminary injunction, TRO and attorney's fees, initially assigned to the RTC of Davao City, Branch 11 presided by Judge Virginia Hofileña-Europa. On November 7, 2008, Judge Europa denied the plaintiff's association's application for a writ of preliminary injunction to restrain the execution of the decision rendered by Judge Castillo in Civil Case No. 20,001-A-07 of the Municipal Trial Court in Cities (MTCC), Branch 1 for unlawful detainer filed by Mendoza against the association. The latter's motion for reconsideration was likewise denied under Judge Europa's Order dated June 22, 2009 and the case was set for pre-trial conference on July 16, 2009. However, on July 16, 2009, the association filed a motion for voluntary inhibition of Judge Europa who thereupon issued an Order dated July 16, 2009 cancelling the scheduled pre-trial conference and setting the motion for hearing on July 24, 2009. After Judge Europa inhibited herself, the case was re-raffled off and later assigned to RTC Branch 14 presided by respondent.[5]

Seven months later, the association filed another motion to reconsider and set aside the July 16, 2009 Order of Judge Europa. After due hearing, respondent issued an Order dated February 2, 2010 setting aside the July 16, 2009 Order of Judge Europa and granting the association's application for a writ of preliminary injunction. The writ of preliminary injunction was accordingly issued in favor of the association.[6]

Mendoza filed an administrative complaint against respondent charging him with gross ignorance of the law and procedure, gross inefficiency and negligence, and violations of the New Code of Judicial Conduct, considering that: (1) The Motion for Reconsideration dated January 29, 2010 filed by the association was a second motion for reconsideration prohibited under Section 2, Rule 52 of the Rules of Court, and was filed seven months and five days after the denial of the association's motion for

[5] *Rollo* (A.M. No. RTJ-11-2264), pp. 1-25.

[6] *Id.* at 1-2, 28-34.

reconsideration by Judge Europa on June 22, 2009; (2) The application for preliminary injunction was not accompanied by an affidavit of merit; (3) Respondent had not even read the records of the case when he issued the writ of preliminary injunction as he fondly called the association's counsel, Atty. Mahipus (Davao City Councilor who was running for Congress) as "Congressman Mahipus" thus allowing his friendship with opposing counsel to inflict an injustice by being ignorant of what he was setting aside, at one time even arguing in said counsel's behalf as if respondent was actually lawyering for plaintiff association; and (4) Respondent did not even indicate in his order granting the writ the reasons for setting aside the previous denial of Judge Europa.[7]

A.M. No. RTJ-11-2273

Complainant Atty. Asteria E. Cruzabra is the Acting Registrar of Deeds of Davao City who had testified during the proceedings in Sp. Proc. No. 7527-2004 entitled "In Re: Petition for Judicial Reconstitution of Original and Owner's Duplicate of Original Certificate of Title of the Registry of Deeds for Davao City and the Inscription of the Technical Descriptions Thereto" of the RTC of Davao City, Branch 14.[8]

Helen P. Denila, petitioner in Sp. Proc. No. 7527-2004, sought the reconstitution of Original Certificate of Title (OCT) Nos. 67, 164, 219, 220, 301, 337 and 514 registered in the names of deceased spouses Constancio S. Guzman and Isabel Luna. Denila claimed to have authority, under a special power of attorney (SPA), from Bellie S. Artigas, the alleged "Administrator of Emilio Alvarez Guzman Estate, sole Heir of Constancio Guzman and Isabel Luna" who was granted 40% share in the estate of Don Constancio Guzman by virtue of an Agreement with Emilio Alvarez Guzman, which interest she had already sold to Denila.[9]

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

[8] *Rollo* (A.M. No. RTJ-11-2273), pp. 1, 26 & 29.

[9] *Id.* at 1-3; records, pp. 70-78, 89-90 (Annexes "A", "B" and "F" of Complainant's Position Paper).

The Republic of the Philippines through the Office of the Solicitor General (OSG) filed its Opposition[10] arguing that the documents attached to the amended petition are not sufficient sources for reconstitution of original certificates of title under Republic Act (R.A.) No. 26. At the trial, Cruzabra was called to testify on the certification she issued stating that the original titles in their custody are "mutilated and/or destroyed," and was also presented as a witness for the State on the latter's exhibits showing that the OCTs sought to be reconstituted contained markings/typewritten words indicating that said titles were already cancelled.[11]

On March 4, 2008, respondent rendered his Decision[12] in favor of Denila, the dispositive portion of which reads:

WHEREFORE, finding the instant petition well founded, the same is hereby granted.

The Registrar Register of Deeds of Davao City is hereby ordered to reconstitute the owners Original Duplicate copy of Original Certificate of Titles No. **OCT No. 164, OCT No. 219, OCT No. 220, OCT No. 301, OCT No. 337, OCT No. 514 and OCT No. 67** with the approved Technical Description of said parcels of land attached with this petition be respectively inscribed thereto and that the titles to the said mentioned parcels of land be duly registered in the name of the original owner Constancio Guzman, and considering that the latter through his attorney-in-fact Bellie S. Artigas sold the same to herein petitioner (Exhs. "G" to "M"), the Register of Deeds, Davao City is further ordered to correspondingly issue Transfer Certificate of Titles over the subject parcels of land in the name of herein petitioner.

Cost against the petitioner.

SO ORDERED.[13]

Cruzabra elevated the matter to the Land Registration Authority (LRA) by way of *consulta* pursuant to Section 117

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[10] Records, pp. 94-99.

[11] *Rollo* (A.M. No. RTJ-11-2273), p. 29.

[12] *Id.* at 26-31.

[13] *Id.* at 31.

of Presidential Decree No. 1529. Meanwhile, on May 26, 2008, the OSG filed a petition for relief from judgment with prayer for injunction assailing the validity of the March 4, 2008 Decision on the ground that reconstitution of OCT Nos. 219, 337, 67 and 164 was previously denied by this Court while OCT Nos. 514, 220 and 301 were cancelled on account of various conveyances and hence could not likewise be reconstituted. The OSG thus prayed that the March 4, 2008 Decision be set aside, the case be reopened and the Republic be allowed to present its evidence, and thereafter another decision be rendered by the court dismissing Denila's petition for reconstitution.[14]

On September 3, 2008, respondent voluntarily inhibited himself from the reconstitution case (Sp. Proc. No. 7527-2004), apparently in reaction to insinuations that he was impelled by improper considerations in rendering the March 4, 2008 Decision with "lightning speed" despite having just assumed office at Branch 14 after the former presiding judge returned to her permanent station. In his Order,[15] respondent admitted he just copied the draft already written by the former presiding judge and signed the same, and thereupon stated:

> As there is already a doubt cast by these concerned sectors against the sense of impartiality and independence of the undersigned Presiding Judge he is therefore, voluntarily INHIBITING himself from further sitting in this case.
>
> Let the record of this case be transmitted to the Office of the Executive Judge of this Court for re-raffling with the exception of Branch 14. SO ORDERED.

The case was re-raffled off to Branch 15, but the presiding judge thereof, after setting the OSG's petition for relief from judgment for hearing and directing Denila to file her answer, eventually inhibited himself upon motion filed by Denila. The case was thus sent back to Branch 14.

On June 10, 2008, Denila filed a verified petition to declare Cruzabra in contempt of court (Civil Case No. 32,387-08 for

[14] *Id.* at 4; records, pp. 106-112.

[15] Records, pp. 113-114.

Indirect Contempt) which was raffled off to Branch 14. Cruzabra had refused to comply with the writ of execution served upon her to implement the March 4, 2008 Decision in the reconstitution case. Cruzabra moved to suspend the indirect contempt proceedings, citing the pendency of the OSG's petition for relief from judgment.[16]

Meanwhile, on June 29, 2009, LRA Administrator Benedicto B. Ulep issued a Resolution in *Consulta* No. 4581 holding that based on the records, the certificates of title sought to be reconstituted in Sp. Proc. No. 7527-2004 are previously cancelled titles. The LRA thus opined that the March 4, 2008 decision is not registrable and hence the Registrar of Deeds may not be compelled to register the same despite its finality.[17]

On September 3, 2009, respondent issued an order denying the petition for relief stating that: (1) Neither the OSG nor the City Prosecutor who received a copy of the decision on March 10, 2008 filed an appeal or a motion for reconsideration; (2) Cruzabra made a wrong interpretation of the Rules by filing a *consulta* with the LRA; (3) Such gross negligence on their part resulted in the expiration of the period to appeal and the consequent issuance of a writ of execution. Prosecutor Samuel T. Atencia filed a motion for reconsideration on behalf of the Republic but respondent denied it in his Order dated October 1, 2009, on the ground that the notice of hearing was addressed to the Clerk of Court and not to the parties. In the Order dated December 8, 2009, Cruzabra was declared in contempt of court and ordered imprisoned until she complies with the March 4, 2008 Decision. On October 22, 2009, the OSG filed in the CA a petition for *certiorari* with urgent prayer for TRO and writ of preliminary injunction. On December 9, 2009, respondent issued a warrant of arrest against Cruzabra.[18]

Cruzabra filed a motion for reconsideration of the December 8, 2009 Order but on December 17, 2009, respondent inhibited

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[16] *Id.* at 115-118; *rollo* (A.M. No. RTJ-11-2273), pp. 51-53.

[17] *Rollo* (A.M. No. RTJ-11-2273), pp. 45-47.

[18] Records, pp. 122-182.

himself from further sitting on Civil Case No. 32,387-08 (Indirect Contempt) stating in his order that he was shown a pleading he had signed almost 30 years ago involving a big tract of land, a portion of which was involved in the reconstitution case.[19]

Civil Case No. 32,387-08 (Indirect Contempt) was eventually re-raffled off to Branch 16 presided by Judge Emmanuel C. Carpio. After due hearing, Judge Carpio issued an Order[20] dated February 11, 2010 holding that Cruzabra's refusal to comply with the March 4, 2008 decision was not contumacious, thus:

GIVEN THE REASONS, the Court finds merit on the Motion For Reconsideration filed by respondent Cruzabra. **CONSEQUENTLY**:

1. THE Motion For Reconsideration is **GRANTED**;
2. Court Order dated December 8, 2009 is **SET ASIDE**;
3. The warrant for her arrest is **RECALLED**;
4. The instant petition is **DISMISSED**.

SO ORDERED.[21]

On February 17, 2010, the LRA denied the motion for reconsideration of the Resolution dated June 29, 2009 filed by Denila. Subsequently, she filed in Sp. Proc. No. 7527-2004 (reconstitution case) a motion to declare Cruzabra, Acting Registrar of Deeds Jorlyn B. Paralisan and LRA Administrator Ulep in contempt of court "for NOT performing and openly defying their ministerial functions" to implement the March 4, 2008 decision. On February 25, 2010, she also filed a motion for reconsideration of the February 11, 2010 Order of Judge Carpio dismissing Civil Case No. 32,387-08 (Indirect Contempt).[22]

At the hearing of the motion for contempt, Prosecutor Atencia opposed the conduct of the hearing, pointing out that pursuant to Section 4, Rule 71 of the 1997 Rules of Civil Procedure, as

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[19] *Rollo* (A.M. No. RTJ-11-2273), p. 74.

[20] Records, pp. 183-186.

[21] *Id.* at 186.

[22] *Id.* at 187-213.

amended, there must be an independent petition or action for indirect contempt which must be filed and docketed apart from the main case. In his Order dated March 4, 2010, respondent rejected the prosecutor's stance, stating that there is no more interest left to be represented by the State as the main case had long been decided and had become final and executory two years ago. Respondent also disagreed with the contention that since the petition for indirect contempt was dismissed by Branch 16, Denila's motion for contempt in the reconstitution case should likewise be dismissed, holding that *res judicata* does not obtain in the two cases, and further faulted the Register of Deeds for issuing the derivative titles despite the existence of the subject OCTs in the files of the LRA. Thus, respondent cited Cruzabra and Paralisan in contempt of court, while the motion for contempt with respect to Administrator Ulep for issuing a resolution tending to obstruct the administration of justice, will be dealt with in due time. A warrant of arrest was thereupon issued by respondent against Cruzabra and Paralisan.[23]

On March 17, 2010, the Twenty-Second Division of CA-Mindanao Station granted in CA-G.R. SP No. 03270-MIN the Republic's prayer for a TRO which was issued effective for 60 days. On the other hand, Judge Carpio in his Order dated March 18, 2010 denied the motion for reconsideration of Denila from the order dismissing her petition for indirect contempt (Civil Case No. 32,387-08). On May 17, 2010, the appellate court also granted the Republic's application for a writ of preliminary injunction and the writ was issued "specifically enjoining the public respondent Judge George E. Omelio, his agents or deputies and all other persons acting for and [in] his behalf and under his authority, to forthwith CEASE and DESIST from enforcing, implementing, and executing the Decision of March 4, 2008, the Order of September 3, 2009, and the Order of October 1, 2009, as well as the Order of March 4, 2010 - during the pendency of this case and until final determination and judgment shall have been rendered x x x."[24]

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[23] *Id.* at 214-219; *rollo* (A.M. No. RTJ-11-2273), p. 128.

[24] *Id.* at 220-224.

On May 25, 2010, respondent granted Denila's motion to require the City Engineer's Office of Davao City to issue a fencing permit over the properties covered by OCT Nos. 164, 219, 220, 301, 337, 514 and 67.[25] Under Resolution dated October 5, 2010, the CA-MIN upon motion for clarification filed by Denila, assented to the said order for issuance of a fencing permit as well as a writ of demolition. Subsequently, motions to intervene with attached joint petitions for intervention were filed by third parties (Lolita P. Tano, *et al.* and Alejandro Alonzo, *et al*.) claiming to be possessors and actual occupants of lots previously covered by the OCTs sought to be reconstituted. They contended that Denila had speciously asked for the issuance of a fencing permit without disclosing that there were actual occupants and possessors of the subject properties. The City of Davao later joined the intervenors. On April 28, 2011, the CA-MIN (1) granted the motions to intervene filed by Tano, *et al*., Alonzo, *et al*. and the City of Davao and direct movants Tano, *et al*. and Alonzo, *et al*. to pay the required docket fees, and (2) recalled its October 5, 2010 Resolution insofar as the CA's assent to the issuance of a fencing permit.[26]

Cruzabra charges respondent with ignorance of law and procedure, misconduct, bias, partiality and oppression in granting Denila's petition for reconstitution despite the previous ruling of this Court in *Heirs of Don Constancio Guzman, Inc. v. Hon. Judge Emmanuel Carpio*[27] against the reconstitution of OCT Nos. 219, 337, 67 and 164, and the failure of Denila to comply with the jurisdictional requirements under R.A. No. 26 (indicating (1) the nature and description of the buildings and improvements not belonging to the owner of the land; and (2) the names and addresses of occupants or persons in possession of the property).[28]

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[25] *Id.* at 225.

[26] *Id.* at 228-240.

[27] G.R. No. 159579, November 24, 2003 (Resolution), *rollo* (A.M. No. RTJ-11-2273), pp. 109-112.

[28] Records, pp. 34-38.

Cruzabra likewise assails respondent for revoking his previous inhibition and denying the Republic's petition for relief from judgment without conducting a hearing as required by Section 6, Rule 38 of the Rules of Court. The reason for similar denial of the motion for reconsideration filed by the OSG was also flimsy: the notice of hearing was addressed only to the Clerk of Court, even as the parties were all furnished with copies of the motion.[29]

As to Civil Case No. 32,387-08 (Indirect Contempt), Cruzabra stresses that she was cited in contempt and ordered arrested by the respondent without any hearing. Respondent simply ignored the various motions filed by Cruzabra but did not require Denila to present evidence. And after respondent inhibited himself from the case, it was re-raffled off to Judge Carpio who eventually dismissed Denila's petition and revoked the warrant of arrest earlier issued by respondent against Cruzabra. But despite Judge Carpio's ruling that Cruzabra's failure to obey the March 4, 2008 decision was not contumacious, respondent revoked his previous inhibition and proceeded to give due course to Denila's *motion* to cite Cruzabra in contempt of court in the reconstitution case. Thus, not only did respondent fail to adhere to the requirement that contempt proceedings be initiated through a verified petition, his act of taking cognizance of a mere motion to cite Cruzabra in contempt of court and ordering her incarceration in jail until she complies with the March 4, 2008 Decision, had the effect of placing Cruzabra in double jeopardy. Additionally, Cruzabra cites the petition for *certiorari* filed in the CA by the OSG describing respondent's acts which denied due process to the Republic as indicative of bias and partiality on his part.[30]

Lastly, Cruzabra contends that respondent's precipitous issuance of a warrant of arrest was oppressive. Respondent was overzealous in putting her to jail knowing that she cannot comply with the directive to reconstitute the owner's original duplicate copies of OCT Nos. 164, 219, 220, 301, 337, 514 and

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

[30] *Id.* at 47-58.

67 because the LRA ruled against their registrability. And after learning of the dismissal by Judge Carpio of the indirect contempt case, respondent immediately revoked his previous inhibition in Sp. Proc. No. 7527-2004 (reconstitution case) and took cognizance of Denila's motion to cite in contempt Cruzabra along with Paralisan and Administrator Ulep.[31]

Respondent's Answer

In A.M. No. RTJ-11-2259, respondent claims it was filed by Peralta merely to harass him so that he would dismiss a criminal case for estafa filed against Peralta involving the sum of ₱4 million now pending before Branch 14 (Crim. Case No. 65,463-2009), as in fact Peralta filed a motion for his recusal in the said case.[32]

As to the TRO he had issued in favor of Stevens, respondent contends that the Chambers conference held at 9:00 in the morning substantially complies with the requirement of summary hearing under the Rules. Moreover, Peralta failed to exhaust her administrative remedies against the TRO before filing the present administrative complaint, such as a motion for reconsideration and petition for *certiorari* with the CA. Peralta also could have intervened in Civil Case No. 33,291-2010 (Easement of Road Right-of-Way). Respondent further points out that Peralta herself admitted it was LBP which allowed Stevens to freely access the subject property and hence she had no reason to complain on the TRO issued.[33]

In A.M. No. RTJ-11-2264, respondent asserts that Mendoza had no moral standing to file this administrative complaint considering that he had been indicted for Falsification under Article 172 of the Revised Penal Code, as amended, by the City Prosecutor's Office of Davao City. He alleges that Mendoza was selling properties no longer owned by him, including the property subject of the unlawful detainer case (Civil Case No. 20,001-A-2007). In its entirety, the administrative complaint

[31] *Id.* at 58-60.

[32] *Id.* at 370.

[33] *Id.* at 370-373.

narrates errors allegedly committed by respondent, for which the appropriate remedy is the filing of a motion for reconsideration. The administrative complaint was therefore prematurely filed, aside from being a mere harassment suit.[34]

In A.M. No. RTJ-11-2273, respondent vehemently denies the accusations of bias, partiality, misconduct and ignorance of the law and procedure. Cruzabra's reliance on the LRA ruling is misplaced because the LRA had no authority and jurisdiction by mere *consulta* to interfere with, review, revoke and/or override a decision of the RTC which had already become final and executory. As to the previous ruling of this Court in *Heirs of Don Constancio Guzman, Inc. v. Hon. Judge Emmanuel Carpio*,[35] what petitioners therein failed to prove, petitioner Denila in Sp. Proc. No. 7527-2004 "overwhelmingly introduced evidence and proved [her] petition by complying with the mandate of the provisions of Section 2, R.A. 26 x x x."[36]

Respondent contends that Cruzabra defiantly and deliberately refuses to perform her ministerial duty of complying with the March 4, 2008 decision, which resulted to her being cited in contempt of court. As for the denial of the OSG's petition for relief from judgment, respondent faults Cruzabra for "wrongly elevating" the March 4, 2008 Decision to the LRA Administrator - by way of *consulta*, instead of appealing the same to the CA or filing a petition for certiorari in the Supreme Court - thereby allowing the said decision to become final and executory.[37]

On the alleged denial of due process in the indirect contempt case, respondent vigorously denies it for being false and concocted, insisting that Cruzabra was formally charged but she did not bother to attend several hearings set by respondent. Contrary to the claims of Cruzabra, it is she, Paralisan and Administrator Ulep who connived and conspired with one another

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[34] *Id.* at 283-290.

[35] *Supra* note 27.

[36] *Id.* at 295, 305-306, 308.

[37] *Id.* at 306-307, 353.

in "making a mockery of justice by avoiding the execution of the final decision" of respondent. Respondent believes that the present administrative complaint was filed to destroy his good name and reputation after deciding the reconstitution case in good faith, based on the proof and evidence presented during the trial.[38]

Report of the Investigating Justice Of the Court of Appeals

On March 28, 2012, Justice Zenaida T. Galapate-Laguilles of the Court of Appeals Mindanao Station submitted her Report.[39] She found the complaints in A.M. Nos. RTJ-11-2259 and RTJ-11-2264 lacking in factual and legal bases. However, she recommended that in A.M. No. RTJ-11-2273, respondent be suspended for three months and ordered to pay a fine of ₱30,000.00 for gross ignorance of the law, with a warning that any similar transgression in the future shall be dealt with more severely.

Justice Galapate-Laguilles found that respondent repeatedly disregarded and failed to take judicial notice of the Resolution issued by this Court in G.R. No. 159579 and rendered orders denying the OSG's petition for relief from judgment and motion for reconsideration thereof. She opined that respondent's refusal to heed or simply take note of the parallelism of facts in the decided case and the one before his court bespeaks of his cavalier treatment of legal precedents. Such display of defiance of the established guidelines, aside from being impermissible, is unbecoming a magistrate.[40]

Recommendation of the OCA

On the matter of *ex parte* issuance of TRO by respondent preceded by a conference with the parties' respective counsels at his chamber, the gist of Peralta's complaint (RTJ-11-2259), the OCA found no violation of the provisions of Rule 58, Rules

[38] *Id.* at 314, 319-321.

[39] *Rollo* (A.M. No. RTJ-11-2259), pp. 90-116.

[40] *Id.* at 112.

of Court, which expressly allows the *ex parte* granting of a TRO. Peralta simply failed to prove that respondent acted in bad faith, fraud, dishonesty or corruption that would overturn the presumption of regularity of an official act.[41]

The OCA likewise found no merit in the complaint of Mendoza (RTJ-11-2264). Respondent's grant of the association's second motion for reconsideration is not proscribed under the Rules because the order sought to be reconsidered is an interlocutory, not a final order. There is likewise no abuse of discretion committed by the respondent in issuing the TRO and writ of preliminary injunction. The OCA noted that Mendoza did not indicate in his complaint nor in his Comment on respondent's position paper that he challenged the Order and the Writ of Preliminary Injunction before the CA or this Court. Instead of exhausting the judicial remedies available to him, Mendoza, preferred to file the present administrative complaint against respondent.[42]

However, with respect to Cruzabra's complaint (RTJ-11-2273) pertaining to the failure of respondent to take judicial notice of this Court's previous ruling against the reconstitution of OCTs sought to be reconstituted in Sp. Proc. No. 7527-2004, the OCA found respondent guilty of gross ignorance of the law. The OCA said that the finding of the Investigating Justice that the attitude of respondent reflected injudiciousness is substantially supported with applicable legal principles and jurisprudence.[43]

The OCA recommended, thus –

RECOMMENDATION:

PREMISES CONSIDERED, it is respectfully recommended for the consideration of the Court that:

1. **A.M. No. RTJ-11-2264 [Formerly A.M. OCA IPI No. 10-3368-RTJ]** (*Romualdo G. Mendoza vs. Judge George E.*

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[41] *Rollo* (A.M. No. RTJ-11-2264), pp. 154-155.

[42] *Id.* at 152-154.

[43] *Id.* at 155-158.

Omelio, Regional Trial Court, Branch 14, Davao City) and **A.M. No. RTJ-11-2259 [Formerly A.M. OCA IPI No. 10-3441-RTJ]** (*Ma. Regina S. Peralta vs. Judge George E. Omelio*, Regional Trial Court, Branch 14, Davao City) be **DISMISSED** for lack of merit; and

2. in **A.M. No. RTJ-11-2273 [Formerly A.M. OCA IPI No. 10-3381-RTJ]** (*Atty. Asteria E. Cruzabra vs. Judge George E. Omelio*, Regional Trial Court, Branch 14, Davao City), respondent Judge George E. Omelio be held guilty of gross ignorance of the law and be **DISMISSED** from the service with forfeiture of all his benefits, except accrued leave credits, with prejudice to his reemployment in any branch or service of the government including government-owned or controlled corporations.[44]

The Court's Ruling

We agree with the findings and recommended penalty of the OCA.

In A.M. No. RTJ-11-2259, upon receiving the complaint on March 26, 2010, respondent granted the prayer for TRO after holding at his chambers a conference with the parties' respective counsels who conformed to the issuance of a TRO. Peralta and her counsel thus had notice and the requirement of a summary hearing was substantially complied with. In any case, under Section 5,[45] Rule 58 of the Rules of Court, respondent was

[44] *Id.* at 159-160.

[45] SEC. 5. *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order. (As amended by En Banc Resolution of the Supreme Court, Bar Matter No. 803, dated February 17, 1998.)

allowed to issue *ex parte* a TRO of limited effectivity and, in that time, conduct a hearing to determine the propriety of extending the TRO or issuing a writ of preliminary injunction.

Even assuming that respondent committed errors in issuing the TRO, Peralta could have pursued the appropriate remedy to challenge its validity. But nowhere in her complaint was it mentioned that she filed a motion for reconsideration or a petition for *certiorari* in the CA assailing the TRO. We have previously held that where sufficient judicial remedies exist, the filing of an administrative complaint is not the proper recourse to correct a judge's allegedly erroneous act.[46]

Indeed, as a matter of public policy, not every error or mistake committed by judges in the performance of their official duties renders them administratively liable.[47] Only errors that are tainted with fraud, corruption or malice may be the subject of disciplinary actions. For administrative liability to attach, respondent must be shown to have been moved by bad faith, dishonesty, hatred or some other similar motive.[48] Peralta failed to allege and prove any improper motive or bad faith on the

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However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two (72) hours provided herein.

x x x x

[46] *Atty. Lacurom v. Judge Tienzo,* 561 Phil. 376, 382-383 (2007), citing *Dr. Cruz v. Judge Iturralde,* 450 Phil. 77, 85 (2003).

[47] *Id.* at 383, citing *Planas v. Reyes,* A.M. No. RTJ-05-1905, February 23, 2005, 452 SCRA 146, 155.

[48] *Id.*

part of respondent. She merely averred having suffered "undue emotional and financial hardships" because of respondent's act. For this reason, her complaint against the respondent must be dismissed.

As to the charges of gross ignorance of the law, partiality and prejudgment in A.M. No. RTJ-11-2264, the complaint focuses on respondent's Order dated February 2, 2010 in Civil Case No. 32,245-2008 (for "Annulment of Judgment") which granted the association's (defendant in the unlawful detainer case decided by the MCTC) motion for reconsideration of the July 16, 2009 Order issued by Judge Europa to whom the case was initially assigned. Aside from the fact that said motion was filed after the lapse of 7 months and 5 days from June 22, 2009 when Judge Europa denied the association's motion for reconsideration of the November 7, 2008 Order denying the association's application for a writ of preliminary injunction, the Order sought to be reconsidered – the July 16, 2009 Order – was, in fact, irrelevant because it merely cancelled the scheduled pre-trial conference as Judge Europa, upon motion filed by the association, inhibited herself from further handling the case. Mendoza stresses that the February 2, 2010 Order issued by respondent *granted* the association's application for a writ of preliminary injunction, which was already denied under Judge Europa's November 7, 2008 Order. He thus accuses respondent of committing patently erroneous acts in abuse of his authority when he entertained the association's Motion for Reconsideration dated January 29, 2010 despite being a second motion for reconsideration proscribed by the Rules of Court which was filed only months after the application for a writ of preliminary injunction was denied by Judge Europa, and notwithstanding that the July 16, 2009 Order refers to the cancellation of the pre-trial hearing and *not* the denial of the application for a writ of preliminary injunction. These acts, coupled with respondent's "arguing in behalf" of the association's counsel whom he even called "Congressman Mahipus," strongly indicate respondent's partiality to the association.

We agree with the OCA that while the association's motion dated January 29, 2010 was a second motion for reconsideration,

said motion did not violate the rule prohibiting the filing of a second motion for reconsideration.

As Section 5, Rule 37 of the Rules of Court clearly provides, the proscription against a second motion for reconsideration is directed against "a judgment or *final* order."[49] Thus, we held in *Philgreen Trading Construction Corporation v. Court of Appeals:*[50]

> The rule that a second motion for reconsideration is prohibited by the Rules applies to final judgments and orders, not interlocutory orders. This is clear from the Interim or Transitional Rules Relative to the Implementation of B.P. 129. Section 4 of the Interim Rules provides that "[n]o party shall be allowed a second motion for reconsideration of a final order or judgment." A second motion for reconsideration attacking an interlocutory order can be denied on the ground that it is a "rehash" or mere reiteration of grounds and arguments already passed upon and resolved by the court; it, however, cannot be rejected on the ground that a second motion for reconsideration of an interlocutory order is forbidden by law.[51]

An order granting or denying an application for preliminary injunction is interlocutory in nature.[52] The November 7, 2008 order denying the application for a writ of preliminary injunction is not a final order, and hence the association's filing of a second motion for reconsideration of the said order, is not prohibited. Being an interlocutory order which is not appealable,[53] respondent's subsequent order granting the application for preliminary injunction may be challenged in a petition for *certiorari* before the CA. Mendoza, however, opted to file this administrative

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[49] *Republic v. Sandiganbayan (Fourth Division),* G.R. No. 152375, December 13, 2011, 662 SCRA 152, 178.

[50] 338 Phil. 433 (1997).

[51] *Id.* at 440.

[52] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province,* G.R. No. 183367, March 14, 2012, 668 SCRA 253, 260, citing *City of Naga v. Asuncion,* G.R. No. 174042, July 9, 2008, 557 SCRA 528, 541 and *Ex-Mayor Tambaoan v. Court of Appeals,* 417 Phil. 683 (2001).

[53] *Id.*

complaint which contained no allegation that he had availed of the aforesaid remedy to set aside the writ issued by respondent.

We reiterate the rule that the filing of an administrative complaint is not the proper remedy for correcting the actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient remedy exists.[54] The actions against judges should not be considered as complementary or suppletory to, or substitute for, the judicial remedies which can be availed of by a party in a case.[55] Moreover, the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[56]

In view of the foregoing reasons, Mendoza's administrative complaint against respondent must be dismissed for lack of merit.

However, we find respondent administratively liable in A.M. No. RTJ-11-2273 for gross ignorance of the law in (a) refusing to adhere to a prior ruling of this Court against the reconstitution of certain OCTs; (b) reversing his previous inhibition in Sp. Proc. No. 7527-2004; and (c) taking cognizance of Denila's motion for indirect contempt.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to

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[54] *Government Service Insurance System v. Judge Pacquing,* 543 Phil. 1, 11 (2007), citing *Webb v. People,* 342 Phil. 206 (1997).

[55] *Id.*, citing *Balayo v. Judge Buban, Jr.,* 372 Phil. 688, 696 (1999).

[56] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province, supra* note 52, at 261-262, citing *Barbieto v. Court of Appeals,* G.R. No. 184645, October 30, 2009, 604 SCRA 825, 840.

apply settled law and jurisprudence.[57] Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Where the law is straightforward and the facts so evident, not to know it or to act as if one does not know it constitutes gross ignorance of the law.[58]

In granting Denila's petition for reconstitution of *original* and owner's duplicate copies of OCTs registered in the name of Constancio S. Guzman and Isabel Luna, respondent failed to take judicial notice of this Court's previous ruling rendered in *Heirs of Don Constancio Guzman, Inc. v. Hon. Judge Emmanuel Carpio*[59] which involved the same OCT Nos. 219, 337, 67 and 164. The Resolution rendered by this Court's Third Division is herein reproduced:

> Before this Court is a petition for review on *certiorari* seeking the reversal of the order dated May 12, 2003 of the Regional Trial Court, Branch 16, of Davao City and another order dated July 11, 2003 which denied petitioner's motion for reconsideration in Special Proceedings Nos. 5913-01 to 5916-01.
>
> The generative facts of this case follow.
>
> On June 8, 2001, petitioner filed in the trial court four separate petitions for reconstitution of lost and/or destroyed original certificates of title (OCT) nos. 219, 337, 67 and 164.
>
> Petitioner alleges that Constancio Guzman was the owner of several parcels of land located in Davao City. Constancio was beheaded by the Japanese soldiers on December 21, 1941. Thereafter, his common-law wife, Isabel Luna, also passed away. Constancio died without any direct heir and was survived by petitioner, a corporation

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[57] *Medina v. Canoy*, A.M. No. RTJ-11-2298, February 22, 2012, 666 SCRA 424, 433, citing *Chief Prosecutor Zuño v. Judge Cabredo*, 450 Phil. 89, 97 (2003) and *Judge Cabatingan, Sr. (Ret.) v. Judge Arcueno*, 436 Phil. 341, 350 (2002).

[58] *Amante-Descallar v. Ramas*, A.M. No. RTJ-08-2142 [OCA-IPI No. 08-2779-RTJ], March 20, 2009, 582 SCRA 22, 39.

[59] *Supra* note 27.

whose stakeholders were sons, daughters and grandchildren of his only brother, the late Manuel Guzman.

In compliance with the court's order, petitioner caused the publication of each petition in the Official Gazette for two consecutive weeks as well as the posting of copies of the four petitions at the City Hall and Hall of Justice of Davao City.

During the initial hearing on May 16, 2002, the trial court issued an order requiring the Register of Deeds of Davao City to submit a report on the status of the aforementioned certificates of title.

On July 25, 2002, the Acting Registrar of Deeds of Davao City, Atty. Florenda Patriarca, submitted a report showing that: (1) OCT No. 337 in the name of spouses Constancio Guzman and Isabel Luna had already been cancelled and was the subject of several transfers, the latest being to the Republic of the Philippines; (2) OCT No. 219 in the name of spouses Constancio Guzman and Isabel Luna had likewise been cancelled and, was the subject of several transfers, the latest being in favor of Antonio Arroyo; (3) OCT No. 164 in the name of spouses Constancio Guzman and Isabel Luna was the subject of several transfers and was now registered in the name of Antonio Arroyo; (4) OCT No. 67 in the name of Constancio Guzman alone had also been cancelled and transferred several times, the latest being in the name of Madeline Marfori.

On November 25, 2002, Madeline Marfori and Beatriz Gutierrez opposed the petitions for reconstitution and filed a motion to dismiss on the ground that the petitions failed to satisfy the jurisdictional requirements of RA 26.

On May 12, 2003, the trial court issued an order dismissing all the petitions for reconstitution as it was clear from the report of the Register of Deeds that **OCT Nos. 337, 219, 164 and 67** were neither mutilated, destroyed nor lost but were in fact cancelled as a result of voluntary and involuntary transfers.

Hence, this petition.

At the outset, it should be stated that there is here a blatant disregard of the hierarchy of courts and no exceptional or compelling circumstance has been cited by petitioner why direct recourse to this Court should be allowed. In *Tano v. Socrates*, this Court declared

that the propensity of litigants and lawyers to disregard the hierarchy of courts must be stopped in its tracks, not only because it wastes the precious time of this Court but also because it delays the adjudication of a case which has to be remanded or referred to the proper forum.

Moreover, even if we were to decide the instant case on the merits, the petition would still fail. Reconstitution of certificates of title, within the meaning of RA 26, means the restoration of the instrument which is supposed to have been *lost or destroyed* in its original form and condition. Petitioner failed to prove that the certificates of title intended to be reconstituted were in fact lost or destroyed. On the contrary, **the evidence on record reveals that the certificates of title were cancelled on account of various conveyances. In fact, the parcels of land involved were duly registered in the names of the present owners whose acquisition of title can be clearly traced through a series of valid and fully documented transactions.**[60] (Italics in the original; emphasis supplied; citations omitted.)

Under Resolution[61] dated February 16, 2004, this Court issued a final denial of the motion for reconsideration filed by the petitioners in the above-cited case. In its petition for relief from judgment, the OSG brought to the attention of respondent the foregoing ruling as the Republic's good and valid defense against Denila's claim. While respondent inhibited himself from the case he eventually resumed handling the case after the presiding judge of Branch 15 inhibited himself upon motion filed by Denila. Instead of giving serious consideration to the meritorious defense raised by the Republic, respondent denied the petition for relief, finding both the City Prosecutor and Cruzabra at fault, the former in not filing a motion for reconsideration and the latter in her "wrong interpretation of the Rules" when she filed instead a *consulta* before the LRA. The City Prosecutor moved to reconsider the denial of the Republic's petition for relief from judgment, but respondent denied it on the flimsy reason that the notice of hearing was addressed to the Clerk of Court.

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[60] *Id.*

[61] *Id.* at 108.

In *Republic v. Tuastumban*,[62] the Court enumerated what needs to be shown before the issuance of an order for reconstitution: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or has an interest therein; (d) *that the certificate of title was in force at the time it was lost or destroyed*; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.[63] That OCT Nos. 164, 219, 337 and 67 are already cancelled titles was definitively settled by this Court. Respondent's stubborn disregard of our pronouncement that the said titles can no longer be reconstituted is a violation of his mandate to apply the relevant statutes and jurisprudence in deciding cases.

In *Peltan Development, Inc. v. Court of Appeals*,[64] we emphatically declared:

> x x x In resolving a motion to dismiss, every court must take cognizance of decisions this Court has rendered because they are proper subjects of mandatory judicial notice as provided by Section 1 of Rule 129 of the Rules of Court, to wit:
>
> "SECTION 1. *Judicial notice, when mandatory*. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, *the official acts of the legislative, executive and judicial departments of the Philippines*, laws of nature, the measure of time, and the geographical divisions." (Italics supplied.)

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[62] G.R. No. 173210, April 24, 2009, 586 SCRA 600, 613-614.

[63] As cited in *Republic v. Catarroja*, G.R. No. 171774, February 12, 2010, 612 SCRA 472, 478.

[64] 336 Phil. 824 (1997).

The said decisions, more importantly, "form part of the legal system," and failure of any court to apply them shall constitute an abdication of its duty to resolve a dispute in accordance with law, and shall be a ground for administrative action against an inferior court magistrate.

In resolving the present complaint, therefore, the Court is well aware that a decision in *Margolles vs. CA*, rendered on 14 February 1994, upheld the validity of OCT No. 4216 (and the certificates of title derived therefrom), the same OCT that the present complaint seeks to nullify for being "fictitious and spurious." Respondent CA, in its assailed Decision dated 29 June 1994, failed to consider *Margolles vs. CA*. This we cannot countenance.[65] (Emphasis supplied; citations omitted.)

With respect to OCT Nos. 220, 301 and 514, the LRA urged the RTC to re-examine the correctness of its order to reconstitute the said titles in the hearing of the Republic's petition for relief from judgment since said titles were found to have been cancelled on account of various transactions. The LRA resolution on Consulta No. 4581 was presented by Cruzabra as her defense to the motion for contempt filed by Denila in the reconstitution case *after* the petition for indirect contempt (Civil Case No. 32,387-08) was dismissed by Judge Carpio.

In his March 4, 2010 Order declaring Cruzabra and Paralisan in contempt of court, respondent brushed aside the LRA's findings on the subject OCTs. Respondent instead faulted the Register of Deeds for issuing the derivative titles "despite existence of the subject original certificates of titles in the files of the Land Registration Authority."[66] This stance of respondent is perplexing considering that in the March 4, 2008 Decision, respondent narrated that Denila's witness, Myrna Fernandez, Chief of the LRA's Document Section Docket Division, who presented in court certified true copies of the original copies in their file of the subject OCTs, "further testified that as record custodian they only keep a record of the said titles and *as to the cancellation*

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[65] *Id.* at 834-835.

[66] *Rollo* (A.M. No. RTJ-11-2273), p. 126.

thereof, it is the Register of Deeds of the said place that makes the cancellation without need of any communication or information on their end."[67] It is thus clear that the present condition of the titles is to be verified not from the LRA but with the local Registry of Deeds where instruments of conveyance and other transactions are recorded. Indeed, the records reveal that respondent persistently ignored these findings on the status of the subject OCTs, including the previous ruling of this Court, as he even blamed the OSG for raising the matter only in their petition for relief from judgment.

But more important, respondent granted the petition for reconstitution in Sp. Proc. 7527-2004 despite non-compliance with the requirements under R.A. No. 26.

The applicable provisions are Sections 2, 12 and 13 which state:

SECTION 2. **Original certificates of title** shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

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[67] *Id.* at 28.

x x x x x x x x x

SEC. 12. Petitions for reconstitution from sources enumerated in Sections **2(c),** 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. **The petition shall state or contain**, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (**e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and all persons who may have any interest in the property;** (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: *Provided*, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further be accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property.

SEC. 13. The court shall cause **a notice of the petition**, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the *Official Gazette*, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. **The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing**. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the

property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. **The petitioner shall, at the hearing, submit proof of** the publication, posting and **service of the notice as directed by the court.** (Emphasis supplied.)

In this case, the petition for reconstitution of the subject OCTs is based on Section 2 (c), that is, on certified true copies of the said titles issued by a legal custodian from the LRA. However, the amended petition and the notice of hearing failed to state the names and addresses of the occupants or persons in possession of the property and all persons who may have any interest in the property as required by Section 12. There is also no compliance with the required service of notice to the said occupants, possessors and all persons who may have any interest in the property.

Records reveal that Denila indeed failed to disclose in her amended petition for reconstitution that there are occupants and possessors in the properties covered by the subject OCTs. Third parties, including the City Government of Davao filed motions for intervention in CA-G.R. SP 03270-MIN and manifested before the CA Cagayan de Oro City that several structures and buildings, including a *barangay* hall, a police station and a major public highway would be affected by the order for the issuance of a fencing permit and writ of demolition issued by respondent. These occupants and possessors have not been notified of the reconstitution proceedings. The March 4, 2008 decision itself shows that no notice was sent to any occupant, possessor or person who may have an interest in the properties.

The requirements prescribed by Sections 12 and 13 of R.A. No. 26 are mandatory and compliance with such requirements is jurisdictional.[68] Notice of hearing of the petition for

[68] *Opriasa v. The City Government of Quezon City*, 540 Phil. 256, 266 (2006), citing *Republic of the Phil. v. Court of Appeals*, 368 Phil. 412, 421 (1999). See also *Puzon v. Sta. Lucia Realty and Development, Inc.*, 406 Phil. 263 (2001).

reconstitution of title must be served on the actual possessors of the property. Notice thereof by publication is insufficient. Jurisprudence is to the effect settled that in petitions for reconstitution of titles, actual owners and possessors of the land involved must be duly served with actual and personal notice of the petition.[69] Compliance with the actual notice requirement is necessary for the trial court to acquire jurisdiction over the petition for reconstitution.[70] If no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved, he is deprived of his day in court and the order of reconstitution is null and void.[71]

In *Subido v. Republic of the Philippines*,[72] this Court ruled:

> As may be noted, Section 13 of R.A. No. 26 specifically enumerates the manner of notifying interested parties of the petition for reconstitution, namely: (a) publication in the Official Gazette; (b) posting on the main entrance of the provincial capitol building and of the municipal building of the municipality or city in which the land is situated; and (c) by registered mail or otherwise, to every person named in the notice. The notification process being mandatory, non-compliance with publication and posting requirements would be fatal to the jurisdiction of the reconstituting trial court and invalidates the whole reconstitution proceedings. So would failure to notify, in the manner specifically prescribed in said Section 13, interested persons of the initial hearing date. Contextually, Section 13 particularly requires that the notice of the hearing be sent to the property occupant or other persons interested, by *registered mail or otherwise*. The term *"otherwise"* could only contemplate a notifying mode other than publication, posting, or thru the mail. That other mode could only refer to service of notice by *hand or other similar mode of delivery*.
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> **It cannot be over-emphasized that R.A. No. 26 specifically provides the special requirements and procedures that must be followed before the court can properly act, assume and acquire jurisdiction over**

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[69] *Dordas v. Court of Appeals*, 337 Phil. 59, 67 (1997).

[70] See *Opriasa v. The City Government of Quezon City*, *supra* note 68, at 265-266.

[71] *San Agustin v. Court of Appeals*, 422 Phil. 686, 695 (2001).

[72] 522 Phil. 155 (2006).

the petition and grant the reconstitution prayed for. These requirements, as the Court has repeatedly declared, are mandatory. Publication of notice in the Official Gazette and the posting thereof in provincial capitol and city/municipal buildings would not be sufficient. The service of the notice of hearing to parties affected by the petition for reconstitution, notably actual occupant/s of the land, either by registered mail or hand delivery must also be made. In the case at bar, the "posting of the notice at the place where TCT No. 95585 is situated" is not, as urged by petitioner, tantamount to compliance with the mandatory requirement that notice by registered mail or otherwise be sent to the person named in the notice.

In view of what amounts to a failure to properly notify parties affected by the petition for reconstitution of the date of the initial hearing thereof, the appellate court correctly held that the trial court indeed lacked jurisdiction to take cognizance of such petition. And needless to stress, barring the application in appropriate cases of the estoppel principle, a judgment rendered by a court without jurisdiction to take cognizance of the case is void, *ergo,* without binding legal effect for any purpose.[73] (Emphasis supplied; citations omitted.)

In *Ortigas & Co. Ltd. Partnership v. Velasco*,[74] we have held Judge Tirso Velasco's acts of proceeding with the reconstitution despite awareness of lack of compliance with the prerequisites for the acquisition of jurisdiction under R.A. No. 26, and disregarding adverse findings or evidence of high officials of LRA that militates against the reconstitution of titles, to be of serious character warranting his dismissal from the service. We also charged Judge Velasco with knowledge of this Court's pronouncement in *Alabang Development Corporation v. Valenzuela*[75] and other precedents admonishing courts to exercise the "greatest caution" in entertaining petitions for reconstitution of allegedly lost certificates of title and taking judicial notice of innumerable litigations and controversies that have been spawned by the reckless and hasty grant of such

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[73] *Id.* at 164-166.

[74] 343 Phil. 115 (1997).

[75] 201 Phil. 727 (1982).

reconstitution of allegedly lost or destroyed titles as well as of the numerous purchasers who have been victimized by forged or fake titles or whose areas simply expanded through table surveys with the cooperation of unscrupulous officials.[76]

Here, respondent's bad faith in disregarding the jurisdictional requirements in reconstitution proceedings is evident in his order for the issuance of a fencing permit and writ of demolition in favor of Denila. Respondent should have been alerted by the presence of actual occupants and possessors when, after the finality of the March 4, 2008 Decision which ordered the reconstitution of the subject OCTs, Denila moved for the issuance of a writ of demolition for such belied her allegation in the amended petition that "[T]here are no buildings or other structures of strong materials on the above-mentioned pieces of land, which do not belong to the herein petitioner"[77] and the absence of any name and address of any occupant, possessor or person who may have an interest in the properties.

With the failure to serve actual notice on these occupants and possessors, Branch 14 had not acquired jurisdiction over Sp. Proc. No. 7527-2004, and therefore the March 4, 2008 Decision rendered by respondent is null and void. A decision of the court without jurisdiction is null and void; hence, it can never logically become final and executory. Such a judgment may be attacked directly or collaterally.[78]

But respondent's bad faith is most evident in his reversal of his inhibition in Sp. Proc. No. 7527-2004 to act upon the petition for relief from judgment. Respondent voluntarily inhibited himself after rendition of the decision, only to resume handling the case and immediately denied the said petition for relief despite the previous order of Judge Tanjili setting the petition for hearing,

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[76] *Ortigas & Co. Ltd. Partnership v. Velasco*, *supra* note 74, at 136, also citing *Republic v. Court of Appeals*, 183 Phil. 426 (1979); *Director of Lands v. Court of Appeals*, 190 Phil. 311 (1981); *Tahanan Development Corp. v. Court of Appeals*, 203 Phil. 652 (1982).

[77] *Rollo* (A.M. No. RTJ-11-2273), p. 71.

[78] *Laresma v. Abellana*, 484 Phil. 766, 779 (2004).

and completely ignoring the jurisdictional defects of the decision raised by the OSG and Cruzabra.

It must be borne in mind that the inhibition of judges is rooted in the Constitution[79] which recognizes the right to due process of every person. Due process necessarily requires that a hearing be conducted before an impartial and disinterested tribunal because unquestionably, every litigant is entitled to nothing less than the cold neutrality of an impartial judge. All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge.[80]

The rule on disqualification of judges is laid down in Rule 137, Section 1 of the Rules of Court, which reads:

SECTION 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The second paragraph governs voluntary inhibition. Based on this provision, judges have been given the exclusive prerogative to recuse themselves from hearing cases for reasons other than those pertaining to their pecuniary interest, relation, previous connection, or previous rulings or decisions. The issue of voluntary

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[79] Section 1, Art. III, Bill of Rights.

[80] *People v. Hon. Ong*, 523 Phil. 347, 356 (2006), citing *Gutierrez v. Santos*, 112 Phil. 184, 189 (1961) and *Rallos v. Gako, Jr.*, 385 Phil. 4, 20 (2000).

inhibition in this instance becomes primarily a matter of conscience and sound discretion on the part of the judge.[81]

In his September 3, 2008 Order, respondent after accepting the criticism of concerned sectors particularly on his speedy rendition of judgment in Sp. Proc. No. 7527-2004 even if he had just taken over Branch 14, and acknowledging that he merely copied the draft decision of the former presiding judge, voluntarily inhibited himself from further acting on the case for the reason that "there is already a doubt cast" on his sense of impartiality and independence. Notwithstanding this perceived bias and partiality on his part, respondent readily reassumed jurisdiction over the case when Judge Tanjili, to whom the case was re-raffled off, inhibited himself upon motion filed by Denila, and subsequently denied the petition for relief.

In *Garcia v. Burgos*,[82] we found respondent judge's reversal of his previous inhibition as improper and the supposed bare allegation of prejudgment by a party litigant as insufficient and flimsy reason for revoking his voluntary inhibition. Thus:

> However, respondent judge reversed his voluntary inhibition, meekly stating in his Order dated March 12, 1996 that "[t]he allegation of prejudgment and partiality is so bare and empty as movant Osmeña failed to present sufficient ground or proof for the Presiding Judge to disqualify himself. The Judge realized the mistake in granting the motion for inhibition when defendant Osmeña misled the Court in asserting that on the same day February 26, 1996, he would be filing an administrative case against the Judge for violation of PD 1818 and Supreme Court Circulars issued in relation to said decree x x x. In that eventuality, Osmeña said, the Judge would be bias[ed] and partial to him because he [was] the complainant in the pending administrative case."
>
> We find merit in petitioners' contention. Judge Burgos inhibited himself on the basis of Petitioner Osmeña's allegation of prejudgment. **In reversing his voluntary inhibition, respondent judge nebulously branded Osmeña's allegations as "so bare and empty."** Judge Burgos'

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[81] *Id.* at 356-357.

[82] 353 Phil. 740 (1998).

claim that he was misled by Osmeña's threat of an administrative case is obviously a mere afterthought that does not inspire belief. **Although inhibition is truly discretionary on the part of the judge, the flimsy reasons proffered above are insufficient to justify reversal of his previous voluntary inhibition**. As aptly pointed out by petitioners in their Memorandum,

> "'**x x x a judge may not rescind his action and reassume jurisdiction where good cause exists for the disqualification.** Furthermore, because a presumption arises, by reason of the judge's prior order of disqualification, of the existence of the factual reason for such disqualification, where the regular judge who has been disqualified revokes the order of disqualification, and objection is made to such revocation, it is not sufficient for the judge to enter an order merely saying that he or she is not disqualified; the record should clearly reveal the facts upon which the revocation is made.' (46 Am Jur 2d § 234, p. 321)"

We deem it important to point out that **a judge must preserve the trust and faith reposed in him by the parties as an impartial and objective administrator of justice**. When he exhibits actions that give rise, fairly or unfairly, to perceptions of bias, such faith and confidence are eroded, and he has no choice but to inhibit himself voluntarily. It is basic that "[a] judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce doubt [on] his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. The better course for the judge is to disqualify himself."[83] (Emphasis supplied; citations omitted.)

Respondent gave no reason at all for revoking his previous inhibition save for the fact that it was re-raffled off back to Branch 14 when Judge Tanjili likewise inhibited himself. Thenceforth, he continued handling the case and issued various orders for the immediate implementation of his March 4, 2008 Decision. Having acknowledged that there were already doubts cast on his impartiality, respondent should not have resumed handling the case when it was re-raffled off to him following

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[83] *Id.* at 770-772.

Judge Tanjili's voluntary inhibition. Respondent by his acts transgressed Canon 3 of the New Code of Judicial Conduct on the judge's duty to perform his official duties with impartiality. Thus, we underscored in one case that:

> x x x a presiding judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself above reproach and suspicion. **At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case.** The better course for the judge under such circumstances is to disqualify himself. That way, he avoids being misunderstood; his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to. x x x[84] (Emphasis supplied.)

Further reinforcing his perceived lack of impartiality are respondent's actuations in the indirect contempt proceedings lodged by Denila against Cruzabra who persistently refused to implement the said decision.

Section 4, Rule 71, of the 1997 Rules of Civil Procedure, as amended, provides:

> Sec. 4. *How proceedings commenced*. — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
>
> **In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned.** If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition **shall be docketed, heard and decided separately,** unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (Emphasis supplied).

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[84] *Madula v. Judge Santos*, 457 Phil. 625, 634 (2003).

Thus, a person may be charged with indirect contempt only by either of two alternative ways, namely: (1) by a verified petition, if initiated by a party; or (2) by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, if made by a court against which the contempt is committed. In short, a charge of indirect contempt must be initiated through a *verified petition*, unless the charge is directly made by the court against which the contemptuous act is committed.[85]

While the first contempt proceeding against Cruzabra was initiated by Denila in a verified motion and was separately docketed and heard (Civil Case No. 32,387-08), a second charge of contempt was later filed by Denila in the reconstitution case (Sp. Proc. No. 7527-2004) by way of a motion. Respondent after declaring Cruzabra in contempt of court in Civil Case No. 32,387-08 and ordering her arrest, inhibited himself upon the ground that he was apprised of a previous pleading he had signed relating to one of the properties involved in the reconstitution case. But when Civil Case No. 32,387-08 was dismissed by Judge Carpio, to whom the case was re-raffled off and who heard Cruzabra's motion for reconsideration, Denila filed a motion to declare Cruzabra, Paralisan and Administrator Ulep in contempt of court in the reconstitution case. This time, unmindful of his previous inhibition in Civil Case No. 32,387-08 (December 17, 2009 Order), respondent took cognizance of the motion for contempt. After hearing, respondent declared Cruzabra and Paralisan in contempt of court and immediately issued warrants of arrest against them (the previous warrant of arrest against Cruzabra was recalled by Judge Carpio).

Respondent once again displayed an utter disregard of the duty to apply settled laws and rules of procedure when he entertained the second contempt charge under a mere motion, which is not permitted by the Rules. Worse, it was done notwithstanding respondent's earlier voluntary inhibition in the indirect contempt case (Civil Case No. 32,387-08), which only

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[85] *Mallari v. Government Service Insurance System*, G.R. No. 157659, January 25, 2010, 611 SCRA 32, 51.

raised suspicion of respondent's unusual interest in the immediate execution of the March 4, 2008 Decision despite its jurisdictional defects. The two cases being so closely related, it did not matter that respondent's previous inhibition on the matter of contempt was in the separate case (Civil Case No. 32,387-08) and not in Sp. Proc. No. 7527-2004. Notably, respondent inhibited himself from the indirect contempt case only after adjudging Cruzabra in contempt of court and issuing a warrant of arrest against her and, the motion for contempt in the reconstitution case involved the very same act of Cruzabra's refusal to comply with the March 4, 2008 Decision and was filed only after Judge Carpio had dismissed the indirect contempt case and ruled that Cruzabra's refusal to comply with the March 4, 2008 Decision was not contumacious.

All the foregoing considered, we find respondent guilty of gross ignorance of law and procedure and violation of Canon 3 of the New Code of Judicial Conduct, which merit administrative sanction.

Section 8 of Rule 140 on the Discipline of Judges and Justices, as amended by A.M. No. 01-8-10-SC,[86] classifies gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct as serious charges, with the following imposable penalties:

SEC. 11. *Sanctions.* – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00

[86] Effective October 1, 2001.

As pointed out by the OCA, this is not the first time respondent was found administratively liable. In A.M. No. MTJ-08-1701 (OCA IPI No. 08-1964-MTJ) entitled *"Milagros Villa Abrille versus Judge George Omelio, Municipal Trial Court in Cities, Branch 4, Davao City and Deputy Sheriff Philip N. Betil, Branch 3, Same Court,"* respondent was found administratively liable for violation of a Supreme Court Circular for which he was fined with the amount of ₱10,000.00.[87] And in A.M. No. RTJ-12-2321[88] decided just last year, respondent was found guilty of four counts of gross ignorance of the law for the following acts: (a) refusal to recognize spouses Crisologo as indispensable parties; (b) granting a contentious motion in violation of the three-day notice rule; (c) non-compliance with the rules on summons; and (d) rendering a decision in an indirect contempt case that cancels an annotation of a Sheriff's Certificate of Sale on two titles without notifying the buyers, in violation of the latter's right to due process. For the said infractions, respondent was penalized with fine of ₱40,000.00.

Respondent was sternly warned in both cases that repetition of the same or similar acts shall be dealt with more severely. Yet, from the facts on record, it is clear that respondent continued transgressing the norms of judicial conduct. All his past and present violations raise a serious question on his competence and integrity in the performance of his functions as a magistrate. With these in mind, we therefore adopt the recommendation of the OCA that the supreme penalty of dismissal is the proper penalty to be imposed on respondent in this case being the third time he is found administratively liable. Indeed, the Court can no longer afford to be lenient in this case, lest it give the public the impression that incompetence and repeated offenders are tolerated in the judiciary.[89]

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[87] Resolution of the Third Division dated July 28, 2008, see *rollo* (A.M. No. RTJ-11-2273), pp. 416-417.

[88] *Crisologo v. Omelio,* October 3, 2012, 682 SCRA 154, 190 & 192.

[89] *Comilang v. Belen,* A.M. No. RTJ-10-2216, June 26, 2012, 674 SCRA 477, 490.

WHEREFORE, premises considered, Judge George E. Omelio, Presiding Judge of the Regional Trial Court, Branch 14, Davao City is found **GUILTY** of Gross Ignorance of the Law and violation of Canon 3 of the New Code of Judicial Conduct and is hereby **DISMISSED FROM THE SERVICE,** with forfeiture of all his retirement benefits, except his accrued leave credits, and with perpetual disqualification for re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.

This Decision is immediately **EXECUTORY**.

SO ORDERED.

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

Velasco, Jr., J., no part due to relationship to party.

Del Castillo, J., on official leave.

EN BANC

[G.R. No. 174321. October 22, 2013]

ROLANDO GANZON, *petitioner, vs.* **FERNANDO ARLOS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT EMPLOYEES; GRAVE MISCONDUCT; POINTING THE LOADED FIREARM AT ANOTHER EMPLOYEE NOT ONLY ONCE BUT FOUR TIMES CONSTITUTES GRAVE MISCONDUCT.— Did Ganzon's act of aiming his loaded firearm

at Arlos and menacing him with it constitute grave misconduct in the context of the foregoing provisions? Undoubtedly it did. Drawing and pointing the loaded firearm at Arlos evinced the intent on the part of Ganzon to cause some harm upon Arlos on whom he vented his resentment of the poor performance rating he received. Considering that Ganzon pointed his loaded firearm at Arlos not only once, but four times, Ganzon's menacing acts engendered in the mind of Arlos the well-founded belief that Arlos' life could be in imminent danger. That the firearm exploded when Arlos parried Ganzon's firearm-wielding hand did not help dissipate the belief.

2. **ID.; ID.; ID.; ID.; THAT THE ACTS COMPLAINED OF WERE COMMITTED OUTSIDE OFFICE HOURS DID NOT MATTER IN VIEW OF THE FACT THAT IT IS CONNECTED WITH THE PERFORMANCE OF DUTY AND IT HAPPENED WITHIN THE PREMISES OF A GOVERNMENT OFFICE.—** The Court stressed in *Largo v. Court of Appeals* the criteria that an act, to constitute a misconduct, must not be committed in his private capacity and should bear a direct relation to and be connected with the performance of his official duties. Ganzon's acts met the criteria in *Largo v. Court of Appeals*. To begin with, he was not acting in a private capacity when he acted menacingly towards Arlos, it being clear that his resentment of his poor performance rating, surely a matter that concerned his performance of duty, motivated his confronting the latter. Moreover, it did not matter that his acts were committed outside of office hours, because they were intimately connected to the office of the offender. An act is intimately connected to the office of the offender if it is committed as the consequence of the performance of the office by him, or if it cannot exist without the office even if public office is not an element of the crime in the abstract. This was the thrust in *Alarilla v. Sandiganbayan*, with the Court citing ample jurisprudence. x x x Considering that Ganzon resented the poor performance rating he had received, and his resentment caused his aggressive confrontation of Arlos, it definitely appears that Ganzon's offense could not be separated from his performance of duty. Indeed, under *Alarilla v. Sandiganbayan* and its progenitor rulings, an act that is the consequence of the discharge of the employee's official functions or the performance of his duties, or that is relevant to his office or to the discharge of his official functions

is justly considered as service-related. The fact that the acts of Ganzon were committed within the premises of the DILG Regional Office No. 6 strengthens our view that such acts could not but be connected to Ganzon's public employment. Verily, the Court has regarded the commission of offensive overt acts by public officials and employees within the premises of their public offices to be deserving of administrative reprobation.

3. ID.; ID.; ID.; ID.; ACQUITTAL IN THE CRIMINAL CASE DOES NOT PRECLUDE ADMINISTRATIVE LIABILITY.— An administrative case is, as a rule, independent from criminal proceedings. The dismissal of a criminal case on the ground of insufficiency of evidence or the acquittal of an accused who is also a respondent in an administrative case does not necessarily preclude the administrative proceeding nor carry with it relief from administrative liability. This is because the quantum of proof required in administrative proceedings is substantial evidence, unlike in criminal cases which require proof beyond reasonable doubt. Substantial evidence, according to Section 5 of Rule 133, *Rules of Court,* is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." In contrast, proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

4. ID.; ID.; ID.; ID.; THE PENALTY OF DISMISSAL FROM THE SERVICE FOR THE FIRST OFFENSE IS PROPER.— After being duly found guilty of grave misconduct, Ganzon was rightly meted the penalty of dismissal from the service for his first offense conformably with the *Revised Uniform Rules on Administrative Cases in the Civil Service,* to wit: RULE IV Penalties Section 52. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service. A. The following are grave offenses with their corresponding penalties: 1. x x x **3. Grave Misconduct; 1st offense – Dismissal**[.] In this regard, Section 56 and Section 58 of the *Revised Uniform Rules on Administrative Cases in the Civil Service* respectively state that the penalty of dismissal shall result in the permanent separation of the respondent from the service, with or without

prejudice to criminal or civil liability, and shall carry with it cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service, unless otherwise provided in the decision. The Court deems it worthwhile to emphasize as a final word that the imposition of the correct disciplinary measures upon erring public officials and employees has the primary objective of the improvement of the public service and the preservation of the public's faith and confidence in the Government. The punishment of the erring public officials and employees is secondary, but is nonetheless in accord with the Constitution, which stresses in Section 1 of its Article XI that a public office is a public trust, and commands that public officers must at all times be accountable to the people, whom they must serve with utmost responsibility, integrity, loyalty, and efficiency.

APPEARANCES OF COUNSEL

Rey M. Padilla for petitioner.
Virgilio T. Teruel for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A government employee who is found guilty of grave misconduct may be dismissed from the service even upon the first offense.

The Case

Petitioner Rolando Ganzon, an employee of the Department of Interior and Local Government (DILG), seeks the reversal of his dismissal from the service and the accessory penalties on the ground of grave misconduct.

Antecedents

The DILG Regional Office in Port San Pedro, Iloilo City held its Christmas party on December 17, 1999 at the office parking lot. When the Christmas party was about to end at 7:30 in the evening, respondent Fernando Arlos (Arlos), then

the OIC Provincial Director of DILG, left to get some documents from the Office of the Operations Division located at the second floor of the building. While Arlos was making his way to the stairs, Ganzon suddenly approached and pulled out a short firearm of unknown caliber from his waist and with no provocation pointed the firearm at Arlos, angrily shouting in Ilongo: *Nanding, hulat anay. Diin ang boss mo? Nga-a nga wala man nya ako guin-patawag?*[1] Arlos responded: *Ato ti sir Orendez sa may program. May kuhaon lang ako sa ibabaw.*[2] Arlos parried Ganzon's firearm-wielding hand and tried to proceed towards the stairs, but Ganzon blocked his path, pushed him back, and again pointed the firearm at Arlos' chest. Sensing that Ganzon would shoot him then, Arlos quickly warded off Ganzon's firearm-wielding hand. At that instant, the firearm exploded and the bullet hit the floor. Ganzon again aimed the firearm at Arlos, prompting the latter to run away as fast as he could. Ganzon followed Arlos, and when they got to the gate of the building, Ganzon once more pushed him back and pointed the firearm at him, saying: *Patay ka!*[3] Ganzon held the firearm close to his waistline to conceal it from the view of the other people present at the time.

At around 9:45 in the morning of December 21, 1999, Arlos went to the DILG office to see the Regional Director upon the latter's instruction. Ganzon, who was then standing near the entrance to the building, shouted upon seeing Arlos enter the gate: *O, ti ano?*,[4] obviously still referring to the incident of December 17, 1999. Arlos answered: *Ang kadto ko diri indi away, kundi makigkita ako sa kay Director.*[5]

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[1] Translated:- *"Nanding, for a moment, where is your boss? [referring to Provincial Director Eliseo D. Orender] Why did he not call for me?"*

[2] Translated:- *"Sir Orendez is there in the program. I am just getting something from upstairs.?"*

[3] Translated:- *"You're dead."*

[4] Translated:- *"What now?"*

[5] Translated:- *"I came here not to quarrel, but only to see the Director."*

The incidents of December 17, 1999 and December 21, 1999 impelled Arlos to administratively charge Ganzon with grave misconduct.

On his part, Ganzon denied the charge and elected to undergo a formal investigation. During the formal investigation conducted by Regional Office No. 6 of the Civil Service Commission (CSC Regional Office), the parties agreed that in order to dispense with the presentation of witnesses and other evidence, they would just adopt the evidence presented in the pending criminal prosecution for attempted homicide (Criminal Case No. 648-2000 entitled *People v. Ganzon*) in the Municipal Circuit Trial Court (Branch 1) in Iloilo City arising from the same incident.[6] Accordingly, Arlos was directed to submit the complete transcripts of stenographic notes of the proceedings in Criminal Case No. 648-2000.

The witnesses for the Prosecution in Criminal Case No. 648-2000 were Arlos, DILG employee Nestor Sayno, DILG Provincial Director Eliseo Orendez, and Fernando Totesora, Jr., the security guard then assigned at the DILG Regional Office. They attested to what had transpired in the evening of December 17, 1999, specifically, that Ganzon had threatened and aimed a firearm at Arlos.[7]

In his turn, Ganzon presented himself and two others, namely, Bobby Pepino, also an employee of the DILG Regional Office, and Voltaire Guides.[8] They described a different version of the incident, to wit:

ROLANDO GANZON testified that he is presently assigned with the Planning Unit of DILG. He has been connected with the DILG for twenty-five (25) years. From 1994 to 1999 he was assigned as DILG Officer of the Municipality of Barotac Viejo, Iloilo. In September 1999, he transferred to the Regional Office. On December 17, 1999, about 7:30 in the evening, he was with Bobby Pepino and Voltaire Guides waiting for the drinks to be served to guests in their Christmas

[6] *Rollo*, p. 15.

[7] *Id.* at 15-19.

[8] *Id.* at 19-23.

Party. Fernando Arlos arrived and asked them what they were doing at the lobby. He answered that they were waiting for the drinks to be served.

Fernando said that they should be getting better performance ratings. He immediately responded that sometimes performance ratings are disregarded or even changed. Fernando got angry, and in order to avoid further discussion, Rolando stood up. At that time, guests were starting to arrive. Fernando pushed his body against Rolando at the same time raising his right hand. Rolando held his hand; Fernando raised his left but again Rolando held it. They then pushed and shoved each other to the gate.

At the gate, Fernando immediately left. Rolando went back to the administrative office to take his dinner. After eating, he went to the quadrangle to watch the program. At the quadrangle, he saw Provincial Director Orendez, Regional Director Reyes, and Presidential Consultant Jonathan Sanico. He stayed there up to 2 o'clock in the morning. During that time no policeman came to arrest him.

He further testified that before the incident he had no grudge or ill feeling against Fernando Arlos. He also testified about the hole located at the lobby of the Regional Office. He said that no shell or slug was recovered in connection with the subject incident. He testified about the change made on his performance rating and that he would often meet Fernando Arlos and no altercation or heated argument transpired between them.[9]

Ruling of CSC Regional Office

On February 7, 2002, the CSC Regional Office rendered its decision finding Ganzon guilty of grave misconduct, ruling thusly:

WHEREFORE**,** Rolando Ganzon is hereby found guilty of Grave Misconduct and meted out the penalty of dismissal from the service with all its accessory penalties.

Let copies of this Decision be furnished Fernando Arlos, Rolando Ganzon, Atty. Virgilio Teruel, Atty. Rey Padilla, Director Rexdito Reyes of DILG Regional Office No. 6, Iloilo City, the GSIS Branch Manager in Iloilo City and Director Purita H. Escobia of CSC Iloilo Provincial Office at their known addresses.[10]

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

[10] *Id.* at 223.

Ruling of CSC Main

Ganzon appealed to the Civil Service Commission Main Office (CSC), which affirmed the contested ruling of the CSC Regional Office on January 27, 2004, to wit:

> **WHEREFORE**, the instant appeal is hereby **DISMISSED**. The decision of the Civil Service Regional Office No. VI finding Rolando Ganzon guilty of grave misconduct and penalizing him with dismissal from the service, is affirmed in all aspects. It should be understood that the penalty of dismissal as imposed in this case carries with it such accessory penalties as forfeiture of retirement benefits, and disqualification from public employment.[11]

Ganzon moved for a reconsideration, but his motion to that effect was denied through the resolution dated November 9, 2004.

Ruling of the Court of Appeals

Ganzon appealed by petition for review in the Court of Appeals (CA), submitting the following issues, namely:

> 1. WHETHER OR NOT THE ACT ALLEGEDLY COMMITTED BY THE PETITIONER WAS ESSENTIALLY CONNECTED WITH THE PERFORMANCE OF HIS OFFICIAL DUTIES.
>
> 2. WHETHER OR NOT THE OFFENSE CHARGED CAN BE CONSIDERED AS SERVICE CONNECTED DESPITE THE FACT THAT IT IS NOT ESSENTIALLY CONNECTED WITH THE OFFICE OF THE PETITIONER AND WAS NOT PERPETRATED WHILE IN PERFORMANCE OF HIS OFFICIAL FUNCTION.
>
> 3. WHETHER OR NOT THE CIVIL SERVICE COMMISSION CAN HOLD LIABLE THE PETITIONER FOR GRAVE MISCONDUCT DESPITE HIS ACQUITTAL IN THE CRIMINAL CASE FILED AGAINST HIM.
>
> 4. WHETHER OR NOT THE PENALTY OF DISMISSAL IS UNJUST AND EXCESSIVE.[12]

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[11] *Id.* at 223-224.

[12] *Id.* at 43.

On February 15, 2006, the CA promulgated its assailed decision affirming the ruling of the CSC,[13] thus:

WHEREFORE, finding no merit in the present petition, the same is hereby **DISMISSED** and the assailed judgments **AFFIRMED *in toto***. Costs against petitioner.

SO ORDERED.

On August 3, 2006, the CA denied Ganzon's motion for reconsideration.[14]

Issues

Hence, Ganzon has appealed to the Court upon the following issues:

I.

WHETHER OR NOT ATTENDING A CHRISTMAS PARTY AS REQUIRED BY THE OFFICE IS AN OFFICIAL FUNCTION AND THAT ANY UNTOWARD INCIDENT COMMITTED DURING SUCH CHRISTMAS PARTY IS AUTOMATICALLY CONSIDERED SERVICE RELATED AND THAT THE OFFENDER COULD BE LIABLE FOR GRAVE MISCONDUCT?

II.

WHETHER OR NOT THE ALLEGED ACT COMMITTED BY THE PETITIONER WAS INTIMATELY RELATED TO HIS OFFICE IN ORDER TO CONSIDER IT AS GRAVE MISCONDUCT IN THE CONTEMPLATION OF THE LAW.

III.

WHETHER OR NOT THE PENALTY OF DISMISSAL IS UNJUST AND EXCESSIVE.[15]

Ruling of the Court

The appeal has no merit.

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[13] *Id.* at 38-47.

[14] *Id.* at 48-59.

[15] *Id.* at 24.

Misconduct is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.[16]

In accordance with Section 46 of Subtitle A, Title I, Book V of the *Administrative Code of 1987* (Executive Order No. 292), misconduct is among the grounds for disciplinary action, but no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process. It is cogent to mention that the *Revised Uniform Rules on Administrative Cases in the Civil Service*, which governs the conduct of disciplinary and non-disciplinary proceedings in administrative cases, classifies grave misconduct as a grave administrative offense.[17]

Did Ganzon's act of aiming his loaded firearm at Arlos and menacing him with it constitute grave misconduct in the context of the foregoing provisions?

Undoubtedly it did. Drawing and pointing the loaded firearm at Arlos evinced the intent on the part of Ganzon to cause some harm upon Arlos on whom he vented his resentment of the poor performance rating he received. Considering that Ganzon pointed his loaded firearm at Arlos not only once, but four times, Ganzon's menacing acts engendered in the mind of Arlos the well-founded belief that Arlos' life could be in imminent danger. That the firearm exploded when Arlos parried Ganzon's firearm-wielding hand did not help dissipate the belief.

Nonetheless, Ganzon projects that his acts did not constitute grave misconduct in the contemplation of the law because they

[16] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010, 616 SCRA 586, 591.

[17] Rule IV, Section 5, *Revised Uniform Rules on Administrative Cases in the Civil Service*, Civil Service Commission Memorandum Circular 19, Series of 1999, August 31, 1999.

were not committed in relation to his performance of duty; and that the Christmas party was not an official function as to render any untoward incident committed on the occasion thereof a misconduct. He posits that his offense could exist without the office; and that the holding of the office was not a constituent element of his offense.

We disagree.

The Court stressed in *Largo v. Court of Appeals*[18] the criteria that an act, to constitute a misconduct, must not be committed in his private capacity and should bear a direct relation to and be connected with the performance of his official duties.

Ganzon's acts met the criteria in *Largo v. Court of Appeals*. To begin with, he was not acting in a private capacity when he acted menacingly towards Arlos, it being clear that his resentment of his poor performance rating, surely a matter that concerned his performance of duty, motivated his confronting the latter. Moreover, it did not matter that his acts were committed outside of office hours, because they were intimately connected to the office of the offender. An act is intimately connected to the office of the offender if it is committed as the consequence of the performance of the office by him, or if it cannot exist without the office even if public office is not an element of the crime in the abstract. This was the thrust in *Alarilla v. Sandiganbayan*,[19] with the Court citing ample jurisprudence.[20]

In *Alarilla v. Sandiganbayan*, one of the two main issues was whether the crime of grave threats charged against the accused had been committed in relation to his office. The resolution of the issue would determine whether or not it was

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[18] G.R. No. 177244, November 20, 2007, 537 SCRA 721.

[19] G.R. No. 136806, August 22, 2000, 338 SCRA 485, 497.

[20] *Cunanan v. Arceo*, G.R. No. 116615, March 1, 1995, 242 SCRA 88; *Sanchez v. Demetriou*, G.R. Nos. 111771-77, November 9, 1993, 227 SCRA 627; *People v. Montejo*, 108 Phil. 613 (1960); *Montilla v. Hilario*, 90 Phil. 49 (1951).

the Sandiganbayan that had jurisdiction to try him. The accused contended that it was not established that the crime charged had been committed by him while in the discharge of or as the consequence of his official functions as municipal mayor. He pointed out that public office was not an essential ingredient of grave threats, the crime charged, which could be committed with the same facility by a public officer and a private individual alike. The Court resolved that the crime charged was properly within the jurisdiction of the Sandiganbayan because the amended information contained allegations showing that Alarilla had taken advantage of his official functions as municipal mayor when he committed the crime of grave threats against the complainant, a municipal councilor, by aiming a gun at and threatening to kill the latter on the occasion of a public hearing during which the latter delivered a privilege speech critical of Alarilla's administration. The Court explained that the crime charged was "intimately connected with the discharge of [Alarilla's] official functions" because the crime charged was Alarilla's response to the complainant's attack against his performance as a mayor; and that if Alarilla was not the mayor, "he would not have been irritated or angered by whatever private complainant might have said during said privilege speech."[21]

Considering that Ganzon resented the poor performance rating he had received, and his resentment caused his aggressive confrontation of Arlos, it definitely appears that Ganzon's offense could not be separated from his performance of duty. Indeed, under *Alarilla v. Sandiganbayan* and its progenitor rulings, an act that is the consequence of the discharge of the employee's official functions or the performance of his duties, or that is relevant to his office or to the discharge of his official functions is justly considered as service-related.

The fact that the acts of Ganzon were committed within the premises of the DILG Regional Office No. 6 strengthens our view that such acts could not but be connected to Ganzon's public employment. Verily, the Court has regarded the commission of offensive overt acts by public officials and

[21] *Supra* note 19, at 495-498.

employees within the premises of their public offices to be deserving of administrative reprobation.

For instance, in *Quiroz v. Orfila*,[22] the court employees' conduct of shouting at each other and quarreling within the court premises and during working hours were considered as exhibiting discourtesy and disrespect to their co-workers and to the court itself. Their behavior was held to be contrary to the ethical standard demanded by Republic Act No. 6713 (*Code of Conduct and Ethical Standards for Public Officials and Employees*).

Another illustrative instance is *Baloloy v. Flores*,[23] where the respondent Sherwin M. Baloloy was charged with misconduct because:

> x x x complainant alleged that as he was going back to his office after delivering court documents, he noticed respondent sitting on a bench, staring menacingly at him. Without any warning, respondent stood up and boxed him several times in the face. To avoid further harm, complainant ran towards room 315 and once he was inside, the secretary therein locked the door. Respondent pursued him and started kicking and banging at the door, all the while shouting invectives at him. Respondent left after apparently sensing the alarm he was causing.
>
> A few minutes after respondents left, complainant left room 315 accompanied by a friend named Demet. They went to respondent's office to report the incident to respondent's superior. When they got there, however, they saw respondent holding a screwdriver, provoking them to fight. The branch clerk of court intervened and requested Demet to take complainant to the hospital. x x x.

Finding both the complainant as legal researcher and the respondent as process server guilty of misconduct, the Court ruled that:

> We have time and again emphasized that the conduct and behavior or everyone connected with an office charged with the administration of justice must at all times be characterized by propriety and decorum. This Court will not tolerate misconduct committed by court personnel,

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[22] A.M. No. P-96-1210, May 7, 1997, 272 SCRA 324, 331.

[23] A.M. No. P-99-1357, September 4, 2001, 364 SCRA 317-318.

particularly during office hours and within court premises. Such misconduct shows a total lack of respect for the court, and erodes the good image of the judiciary in the eyes of the public.

Both complainant and respondent have fallen short of the standard of conduct required of court employees. **Fighting with each other during working hours shows disrespect not only of coworkers but also of the court.**[24] (Emphasis supplied)

Although court employees were involved in the foregoing situations, while the conduct of an employee of the DILG is the focus herein, the same considerations taken into account in the former are applicable herein.

Even if the affair occurred outside of the regular work hours, Ganzon's menacing attitude towards Arlos still had no excuse, particularly as Arlos was his superior in the office hierarchy. Section 4(c) of RA 6713 (*Code of Conduct Standards for Public Officials and Employees*) fittingly provides:

(c) Justness and sincerity. – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. **They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest**. (Emphasis supplied)

It is almost superfluous to remind all public employees like Ganzon that the law of good manners and proper decorum was law during as well as outside office hours.

Another ground for Ganzon's appeal was that the administrative case should not have been resolved independently of the criminal case; and that his eventual acquittal in the criminal case precluded his administrative liability.

Again, the Court disagrees.

We uphold the CA's following rumination on the matter, *viz:*

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[24] *Id.* at 321.

x x x. The mere fact that he was acquitted in the criminal case (said criminal case was based on the same facts or incidents which gave rise to the instant administrative case) does not *ipso facto* absolve him from administrative liability. Time and again, the Supreme Court has laid down the doctrine that an administrative case is not dependent on the conviction or acquittal of the criminal case because the evidence required in the proceedings therein is only substantial and not proof beyond reasonable doubt.[25]

An administrative case is, as a rule, independent from criminal proceedings. The dismissal of a criminal case on the ground of insufficiency of evidence or the acquittal of an accused who is also a respondent in an administrative case does not necessarily preclude the administrative proceeding nor carry with it relief from administrative liability. This is because the quantum of proof required in administrative proceedings is substantial evidence, unlike in criminal cases which require proof beyond reasonable doubt. Substantial evidence, according to Section 5 of Rule 133, *Rules of Court*, is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." In contrast, proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[26]

Finally, Ganzon's insistence that the penalty of dismissal from the service imposed on him was unjustified and excessive is unwarranted.

After being duly found guilty of grave misconduct, Ganzon was rightly meted the penalty of dismissal from the service for his first offense conformably with the *Revised Uniform Rules on Administrative Cases in the Civil Service*,[27] to wit:

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[25] *Rollo*, pp. 115-116.

[26] Section 2, Rule 133, *Rules of Court*.

[27] Civil Service Commission Memorandum Circular 19, Series of 1999, August 31, 1999.

RULE IV

Penalties

Section 52. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty;

xxx xxx xxx

3. Grave Misconduct;
1st offense – Dismissal (Emphasis supplied)

In this regard, Section 56 and Section 58 of the *Revised Uniform Rules on Administrative Cases in the Civil Service* respectively state that the penalty of dismissal shall result in the permanent separation of the respondent from the service, with or without prejudice to criminal or civil liability, and shall carry with it cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service, unless otherwise provided in the decision.

The Court deems it worthwhile to emphasize as a final word that the imposition of the correct disciplinary measures upon erring public officials and employees has the primary objective of the improvement of the public service and the preservation of the public's faith and confidence in the Government. The punishment of the erring public officials and employees is secondary, but is nonetheless in accord with the Constitution, which stresses in Section 1 of its Article XI that a public office is a public trust, and commands that public officers must at all times be accountable to the people, whom they must serve with utmost responsibility, integrity, loyalty, and efficiency.

WHEREFORE, the Court **AFFIRMS** the decision promulgated by the Court of Appeals and **ORDERS** petitioner Rolando Ganzon to pay the costs of suit.

SO ORDERED.

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

Del Castillo, J., on leave.

EN BANC

[G.R. No. 206952. October 22, 2013]

ABANG LINGKOD PARTY-LIST (ABANG LINGKOD), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; REPUBLIC ACT NO. 7941 (R.A. 7941); DENIAL OF DUE PROCESS, NOT A CASE OF; WHERE A SECTORAL PARTY WAS GIVEN SUFFICIENT OPPORTUNITY TO ESTABLISH ITS QUALIFICATION AS A PARY-LIST GROUP, IT IS NOT NECESSARY FOR THE COMMISSION ON ELECTIONS (COMELEC) TO CONDUCT FURTHER SUMMARY HEARING TO DETERMINE SUCH PARTY'S QUALIFICATION.— In the instant case, while the petitioner laments that it was denied due process, the Court finds that the COMELEC had afforded ABANG LINGKOD sufficient opportunity to present evidence establishing its qualification as a party-list group. It was notified through Resolution No. 9513 that its registration was to be reviewed by the COMELEC. That ABANG LINGKOD was able to file its *Manifestation of Intent* and other pertinent documents to prove its continuing compliance with the requirements under R.A. No. 7941, which the COMELEC set for summary hearing on three separate dates, belies its claim that it was denied due process. There was no necessity for the COMELEC to conduct further

summary evidentiary hearing to assess the qualification of ABANG LINGKOD pursuant to *Atong Paglaum*. ABANG LINGKOD's *Manifestation of Intent* and all the evidence adduced by it to establish its qualification as a party-list group are already in the possession of the COMELEC. Thus, conducting further summary evidentiary hearing for the sole purpose of determining ABANG LINGKOD's qualification under the party-list system pursuant to *Atong Paglaum* would just be a superfluity.

2. ID.; ID.; ID.; R.A. 7941 DOES NOT REQUIRE PARTY-LIST GROUPS TO SUBMIT PROOF OF THEIR TRACK RECORD; THEY ARE MERELY REQUIRED TO SUBMIT THEIR CONSTITUTION, BY-LAWS, PLATFORM OF GOVERNMENT, LIST OF OFFICERS, COALITION AGREEMENT, AND OTHER RELEVANT INFORMATION AS MAY BE REQUIRED BY THE COMELEC.— R.A. No. 7941 did not require groups intending to register under the party-list system to submit proof of their track record as group. The track record requirement was only imposed in *Ang Bagong Bayani* where the Court held that national, regional, and sectoral parties or organizations seeking registration under the party-list system must prove through their, *inter alia*, track record that they truly represent the marginalized and underrepresented[.] x x x **Track record is not the same as the submission or presentation of "constitution, by-laws, platform of government, list of officers, coalition agreement, and other relevant information as may be required by the COMELEC,"** which are but mere pieces of documentary evidence intended to establish that the group exists and is a going concern. The said documentary evidence presents an abstract of the ideals that national, regional, and sectoral parties or organizations seek to achieve. This is not merely a matter of semantics; the delineation of what constitutes a track record has certain consequences in a group's bid for registration under the party-list system. Under Section 5 of R.A. No. 7941, groups intending to register under the party-list system are not required to submit evidence of their track record; they are merely required to attach to their verified petitions their "constitution, by-laws, platform of government, list of officers, coalition agreement, and other relevant information as may be required by the COMELEC." x x x Contrary to the COMELEC's claim, sectoral parties or organizations, such as ABANG

LINGKOD, are no longer required to adduce evidence showing their track record, *i.e.* proof of activities that they have undertaken to further the cause of the sector they represent. Indeed, it is enough that their principal advocacy pertains to the special interest and concerns of their sector. Otherwise stated**, it is sufficient that the ideals represented by the sectoral organizations are geared towards the cause of the sector/s, which they represent**.

3. ID.; ID.; ID.; ID.; WHILE SUBMISSION OF DIGITALLY ALTERED PHOTOGRAPHS TO ESTABLISH TRACK RECORD AMOUNTS TO A PARTY-LIST GROUP'S MISREPRESENTATION, IT CANNOT BE USED AS A GROUND TO DENY OR CANCEL ITS REGISTRATION.— Anent the photographs submitted by ABANG LINGKOD, these only show book-giving and medical missions, which are activities it conducted. Suffice it to state, however, that said activities do not specifically or directly pertain to the interest or advocacy espoused by ABANG LINGKOD. As such, the misrepresentation committed by ABANG LINGKOD with regard to said activities would not necessarily militate against its representation of the farmers and fisherfolk. Lest it be misunderstood, the Court does not condone the deceit perpetrated by ABANG LINGKOD in connection with its bid for continued registration under the party-list system. That ABANG LINGKOD, to establish its track record, submitted photographs that were edited to make it appear that it conducted activities aimed at ameliorating the plight of the sectors it represents is a factual finding by the COMELEC, which the Court, considering that it is supported by substantial evidence, will not disturb. The Court does not tolerate ABANG LINGKOD's resort to chicanery and its shabby treatment of the requirements for registration under the party-list system. Nevertheless, considering that track record is no longer a requirement, a group's misrepresentation as its track record cannot be used as a ground to deny or cancel its registration – it is no longer material to its qualification under the party-list system. In this case, ABANG LINGKOD's submission of digitally altered photographs cannot be considered material to its qualification as a party-list group.

4. ID.; ID.; ID.; ID.; DECLARATION OF UNTRUTHFUL STATEMENT AS A GROUND TO DENY OR CANCEL REGISTRATION, EXPLAINED; SUBMISSION OF DIGITALLY

ALTERED PHOTOGRAPHS DID NOT AMOUNT TO A DECLARATION OF UNTRUTHFUL STATEMENT AS TO WARRANT CANCELLATION OF A PARTY-LIST GROUP'S REGISTRATION.— Declaration of an untruthful statement in a petition for a registration, or in any other document pertinent to the registration and/or accreditation under the party-list system, as a ground for the refusal or cancellation of registration under Section 6(6) of R.A. No. 7941, is akin to material misrepresentation in the certificate of candidacy filed by an individual candidate under Section 78 of the Omnibus Election Code. Both provisions disallow prospective candidates from participating in an election for declaring false statements in their eligibility requirements. x x x In *Velasco v. Commission on Elections*, the Court further clarified that a false representation under Section 78 of the Omnibus Election Code, in order to be a ground to deny due course or cancel a certificate of candidacy, must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. x x x Similarly, a declaration of an untruthful statement in a petition for registration under Section 6(6) of R.A. No. 7941, in order to be a ground for the refusal and/or cancellation of registration under the party-list system, must pertain to the qualification of the party, organization or coalition under the party-list system. In order to justify the cancellation or refusal of registration of a group, there must be a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render the group disqualified from participating in the party-list elections. The digitally altered photographs of activities submitted by ABANG LINGKOD to prove its continuing qualification under R.A. No. 7941 only pertain to its track record, which, as already discussed, is no longer a requirement under the new parameters laid down *in Atong Paglaum.* **Simply put, they do not affect the qualification of ABANG LINGKOD as a party-list group and, hence, could not be used as a ground to cancel its registration under the party-list system.**

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ELECTIONS; REPUBLIC ACT NO. 7941 (R.A. 7941); THE REQUIREMENT TO SHOW PROOF OF *BONA FIDE* EXISTENCE OR TRACK RECORD APPLIES TO ALL PARTIES AND ORGANIZATIONS AND NOT ONLY TO

SECTORAL GROUPS.— The *ponencia* in this case supposes that when the majority in *Atong Paglaum* declared as part of the fifth (5th) parameter that the "nominees of the sectoral party either must belong to the sector, or must have a track record of advocacy for the sector represented," it meant that the track record requirement **will only apply to the sectoral groups.** I take a contrary view, especially since this Court in several cases already deemed track record as one of the factors considered in allowing groups to participate in party-list elections, although discussed in the previous definition or framework of party-list groups. The redefinition of the parameters for party-list registration to include national and regional parties or organizations **did not** remove the requirement of showing that these groups existed prior to the elections they wish to participate in and that they indeed operate as genuine organizations. **I maintain that the record of a party or an organization's genuineness and *bona fide* existence is necessary for all parties and organizations, whether national, regional or sectoral**. **This will show whether the party-list group is genuine and not an expediently created formation that does not have any advocacy.** This is evident from the law, particularly from Section 5 of Republic Act No. 7941[.] x x x *Atong Paglaum* declared that there may be national or regional parties or organizations apart from sectoral groups. Thus, the requirements for each of these groups have been modified. All national, regional or sectoral parties or organizations should show that they have been existing as *bona fide* organizations. Sectoral organizations should, therefore, prove links with the sector that they represent. Reading the text of Republic Act No. 7941 and previous rulings of this Court, this record may be established by presenting an organization's constitution, by-laws, platform or program of government, list of officers, coalition agreement, and other relevant information as may be required by the Commission on Elections. It is important for the groups to show that they are capable of participating in the elections and that they will not make a mockery of the electoral system, specifically the party-list system.

2. ID.; ID.; ID.; SUBMITTING DIGITALLY MANIPULATED PICTURES OR FALSIFIED DOCUMENTS IS TANTAMOUNT TO MAKING DECLARATIONS OF UNTRUTHFUL STATEMENTS WHICH IS A GROUND TO CANCEL

REGISTRATION.— [W]hen the digitally manipulated pictures were submitted by ABANG LINGKOD, it was done to prove the continuous **qualifications of the party-list group** for registration with the Commission on Elections. The "photoshopped" or altered pictures indicating the name of the party-list group were intended to deceive people into thinking that the group was engaging in joint medical and dental mission and book-giving activities. The reliance of the *ponencia* on *Lluz v. Commission on Elections* in relating the act of declaring an untruthful statement to the concept of material misrepresentation is not precise. The circumstances and provisions of law involved in *Lluz* do not square with the present case. In *Lluz*, this Court determined whether the respondent committed material misrepresentation when he declared his profession as "Certified Public Accountant" in his Certificate of Candidacy. As We said in that case, "Profession or occupation not being a qualification for elective office, misrepresentation of such does not constitute a material misrepresentation." **In the present case, what is at issue is the genuineness and existence of the party-list group. This includes the question as to whether they truly represent the sector.** The claim of representation can be supported by proof of their activities in relation to their sector. As established above, this record of genuineness and existence is a continuing requirement of the law and goes into the qualifications of the party-list. The brazen use of falsified documents of ABANG LINGKOD in its compliance for registration is deplorable and appalling because of the obvious intent to deceive the Commission on Elections and the electorate. It cannot be tolerated. It denigrates the right to suffrage. Submitting falsified documents is tantamount to making declarations of untruthful statements. It is a ground for cancellation of the registration/accreditation of the party-list group under Section 6 of Republic Act No. 7941. x x x The actions of the group amounted to declaring untruthful statements, which the Commission on Elections correctly considered as a ground for the cancellation of the petitioner's Certificate of Registration under Section 6 of Republic Act No. 7941.

APPEARANCES OF COUNSEL

Lyndon Gabriel C. Perez and *Magnelio S. Arboladura* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court filed by Abang Lingkod Party-List (ABANG LINGKOD) assailing the Resolution [1] dated May 10, 2013 issued by the Commission on Elections (COMELEC) *En Banc* in SPP No. 12-238 (PLM), which, *inter alia*, affirmed the cancellation of ABANG LINGKOD's registration as a party-list group.

The Facts

ABANG LINGKOD is a sectoral organization that represents the interests of peasant farmers and fisherfolks, and was registered under the party-list system on December 22, 2009. It participated in the May 2010 elections, but failed to obtain the number of votes needed for a seat in the House of Representatives.

On May 31, 2012, ABANG LINGKOD manifested before the COMELEC its intent to participate in the May 2013 elections. On August 2, 2012, the COMELEC issued Resolution No. 9513, [2] which, *inter alia*, required previously registered party-list groups

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[1] *Rollo*, pp. 30-36. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim and Ma. Gracia Cielo M. Padaca; Commissioners Al A. Parreno and Luie Tito F. Guia took no part.

[2] Entitled "In the matter of: (1) the automatic review by the Commission *En Banc* of pending petitions for registration of party-list groups; and (2) setting for hearing the accredited party-list groups or organizations which are existing and which have filed manifestations of intent to participate in the 2013 national and local elections," promulgated on August 2, 2012.

that have filed their respective *Manifestations of Intent* to undergo summary evidentiary hearing for purposes of determining their continuing compliance with the requirements under Republic Act (R.A.) No. 7941[3] and the guidelines set forth in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*.[4]

Accordingly, on August 9, 2012, the COMELEC issued a Resolution, which set the summary evidentiary hearing of previously registered party-list groups. The COMELEC scheduled three (3) dates — August 17, 31 and September 3, 2012 — for the summary hearing of ABANG LINGKOD's *Manifestation of Intent*, to enable it to show proof of its continuing qualification under the party-list system.

On August 16, 2012, ABANG LINGKOD, in compliance with the COMELEC's August 9, 2012 Resolution, filed with the COMELEC pertinent documents to prove its continuing compliance with the requirements under R.A. No. 7941.

After due proceedings, the COMELEC *En Banc*, in a Resolution dated November 7, 2012, cancelled ABANG LINGKOD's registration as a party-list group. The COMELEC *En Banc* pointed out that ABANG LINGKOD failed to establish its track record in uplifting the cause of the marginalized and underrepresented; that it merely offered photographs of some alleged activities it conducted after the May 2010 elections. The COMELEC *En Banc* further opined that ABANG LINGKOD failed to show that its nominees are themselves marginalized and underrepresented or that they have been involved in activities aimed at improving the plight of the marginalized and underrepresented sectors it claims to represent.

ABANG LINGKOD then filed with this Court a petition[5] for *certiorari*, alleging that the COMELEC gravely abused its discretion in cancelling its registration under the party-list system.

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[3] Entitled "An act providing for the election of party-list representatives through the party-list system, and appropriating funds therefor."

[4] 412 Phil. 308 (2001).

[5] Docketed as G.R. No. 204220.

The said petition was consolidated with the separate petitions filed by fifty-one (51) other party-list groups whose registration were cancelled or who were denied registration under the party-list system. The said party-list groups, including ABANG LINGKOD, were able to obtain status quo ante orders from this Court.

On April 2, 2013, the Court, in *Atong Paglaum, Inc. v. Commission on Elections*,[6] laid down new parameters to be observed by the COMELEC in screening parties, organizations or associations seeking registration and/or accreditation under the party-list system, *viz.*:

1. Three different groups may participate in the party-list system: (1) national parties or organizations, (2) regional parties or organizations, and (3) sectoral parties or organizations.

2. National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector.

3. Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.

4. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interests and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political

[6] G.R. Nos. 203766, 203818-19, *et al.*, April 2, 2013, 694 SCRA 477.

constituencies" include professionals, the elderly, women, and the youth.

5. A majority of the members of the sectoral parties or organizations that represent the "marginalized and underrepresented" must belong to the "marginalized and underrepresented" sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack "well-defined political constituencies" must belong to the sector they represent. The nominees of sectoral parties or organizations that represent the "marginalized and underrepresented" or that represent those who lack "well-defined political constituencies," either must belong to their respective sectors, or must have a track record or advocacy for their respective sectors. The nominees of national and regional parties or organizations must be *bona-fide* members of such parties or organizations.

6. National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified.

Thus, the Court remanded to the COMELEC the cases of previously registered party-list groups, including that of ABANG LINGKOD, to determine whether they are qualified under the party-list system pursuant to the new parameters laid down by the Court and, in the affirmative, be allowed to participate in the May 2013 party-list elections.

On May 10, 2013, the COMELEC issued the herein assailed Resolution,[7] which, *inter alia*, affirmed the cancellation of ABANG LINGKOD's registration under the party-list system. The COMELEC issued the Resolution dated May 10, 2013 *sans* any summary evidentiary hearing, citing the proximity of the May 13, 2013 elections as the reason therefor.

In maintaining the cancellation of ABANG LINGKOD's registration, the COMELEC held that:

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[7] *Supra* note 1.

The Commission maintains its position in the previous *en banc* ruling cancelling the registration of ABANG LINGKOD. To reiterate, it is not enough that the party-list organization claim representation of the marginalized and underrepresented because representation is easy to claim and to feign. It is but reasonable to require from groups and organizations consistent participation and advocacy in the sector it seeks to represent, and not just seasonal and "sporadic" programs which are unrelated to its sector.

ABANG LINGKOD submitted pictures showing a seminar held on 10 July 2010, Medical Mission on 11 November 2010, Disaster Management Training on 21 October 2011, Book-giving on 28 June 2011, and Medical Mission on 1 December 2011.

And as if to insult the Commission, the photographs submitted appear to have been edited to show in the banners that ABANG LINGKOD participated in the activities. ABANG LINGKOD's name and logo was superimposed on some banners to feign participation in the activities (Joint Medical Mission, Book-giving).

Under the party-list System Act, a group's registration may be cancelled for declaring unlawful statements in its petition. Photoshopping images to establish a fact that did not occur is tantamount to declaring unlawful statements. It is on this ground that the Commission cancels ABANG LINGKOD's registration.[8]

On May 12, 2013, ABANG LINGKOD sought a reconsideration of the COMELEC's Resolution dated May 10, 2013. However, on May 15, 2013, ABANG LINGKOD withdrew the motion for reconsideration it filed with the COMELEC and, instead, instituted the instant petition[9] with this Court, alleging that there may not be enough time for the COMELEC to pass upon the merits of its motion for reconsideration considering that the election returns were already being canvassed and consolidated by the COMELEC.

In support of the instant petition, ABANG LINGKOD claims that the COMELEC gravely abused its discretion when it affirmed the cancellation of its registration *sans* a summary

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[8] *Id*. at 34.

[9] G.R. No. 206952; *id*. at 6-29.

evidentiary hearing for that purpose, asserting that the COMELEC should have allowed it to present evidence to prove its qualification as a party-list group pursuant to *Atong Paglaum*. It claims that there was no valid justification for the COMELEC to cancel its registration considering that it complied with the six-point parameters in screening party-list groups laid down in *Atong Paglaum*.

On the other hand, the COMELEC avers that the instant petition should be dismissed for utter lack of merit. It asserts that ABANG LINGKOD was not denied due process when the COMELEC affirmed the cancellation of its registration since it was given every reasonable opportunity to be heard. The COMELEC further claims that it did not abuse its discretion when it cancelled ABANG LINGKOD's registration on the ground that it failed to establish a track record in representing the marginalized and underrepresented. Further, the COMELEC alleges that its finding of facts may not be passed upon by this Court as the same is supported by substantial evidence.

The Issues

In sum, the issues presented for the Court's resolution are the following: *first*, whether ABANG LINGKOD was denied due process when the COMELEC affirmed the cancellation of its registration under the party-list system *sans* any summary evidentiary hearing; and *second*, whether the COMELEC gravely abused its discretion in cancelling ABANG LINGKOD's registration under the party-list system.

The Court's Ruling

The petition is meritorious.

First Issue: Due Process

The essence of due process is simply an opportunity to be heard or as applied to administrative or quasi-judicial proceedings, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. A formal or trial type hearing is not at all times and in all instances essential.

The requirements are satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice or hearing.[10]

In the instant case, while the petitioner laments that it was denied due process, the Court finds that the COMELEC had afforded ABANG LINGKOD sufficient opportunity to present evidence establishing its qualification as a party-list group. It was notified through Resolution No. 9513 that its registration was to be reviewed by the COMELEC. That ABANG LINGKOD was able to file its *Manifestation of Intent* and other pertinent documents to prove its continuing compliance with the requirements under R.A. No. 7941, which the COMELEC set for summary hearing on three separate dates, belies its claim that it was denied due process.

There was no necessity for the COMELEC to conduct further summary evidentiary hearing to assess the qualification of ABANG LINGKOD pursuant to *Atong Paglaum*. ABANG LINGKOD's *Manifestation of Intent* and all the evidence adduced by it to establish its qualification as a party-list group are already in the possession of the COMELEC. Thus, conducting further summary evidentiary hearing for the sole purpose of determining ABANG LINGKOD's qualification under the party-list system pursuant to *Atong Paglaum* would just be a superfluity.

Contrary to ABANG LINGKOD's claim, the Court, in *Atong Paglaum,* did not categorically require the COMELEC to conduct a summary evidentiary hearing for the purpose of determining the qualifications of the petitioners therein pursuant to the new parameters for screening party-list groups. The dispositive portion of Atong Paglaum reads:

WHEREFORE, all the present 54 petitions are **GRANTED**. The 13 petitions, which have been granted *Status Quo Ante* Orders but without mandatory injunction to include the names of the petitioners

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[10] See *Barot v. Commission on Elections*, 452 Phil. 438, 446 (2003); *Mendoza v. Commission on Elections*, G.R. No. 188308, October 15, 2009, 603 SCRA 692, 714.

in the printing of ballots, are remanded to the Commission on Elections only for determination whether petitioners are qualified to register under the party-list system under the parameters prescribed in this Decision but they shall not participate in the 13 May 2013 party-list elections. The 41 petitions, which have been granted mandatory injunctions to include the names of petitioners in the printing of ballots, **are remanded to the Commission on Elections for determination whether petitioners are qualified to register under the party-list system and to participate in the 13 May 2013 party-list elections under the parameters prescribed in this Decision.** The Commission on Elections **may conduct summary evidentiary hearings for this purpose**. This Decision is immediately executory.

SO ORDERED. [11] (Emphasis ours)

Thus, the cases of previously registered party-list groups, including ABANG LINGKOD, were remanded to the COMELEC so that it may reassess, based on the evidence already submitted by the former, whether they are qualified to participate in the party-list system pursuant to the new parameters laid down in *Atong Paglaum*. The Court did not require the COMELEC to conduct a hearing *de novo* in reassessing the qualifications of said party-list groups. Nevertheless, the Court gave the COMELEC the option to conduct further summary evidentiary hearing should it deem appropriate to do so.

The records also disclose that ABANG LINGKOD was able to file with the COMELEC a motion for reconsideration of the Resolution dated May 10, 2013, negating its claim that it was denied due process. As it has been held, deprivation of due process cannot be successfully invoked where a party was given a chance to be heard on his motion for reconsideration. [12]

Second Issue: Cancellation of ABANG LINGKOD's Registration

However, after a careful perusal of the factual antecedents of this case, pinned against the new parameters in screening

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[11] *Supra* note 6.

[12] *Paat v. Court of Appeals*, 334 Phil. 146, 155 (1997).

party-list groups laid down in *Atong Paglaum*, the Court finds that the COMELEC gravely abused its discretion in cancelling the registration of ABANG LINGKOD under the party-list system.

The COMELEC affirmed the cancellation of ABANG LINGKOD's registration on the ground that it declared untruthful statement in its bid for accreditation as a party-list group in the May 2013 elections, pointing out that it deliberately submitted digitally altered photographs of activities to make it appear that it had a track record in representing the marginalized and underrepresented. Essentially, ABANG LINGKOD's registration was cancelled on the ground that it failed to adduce evidence showing its track record in representing the marginalized and underrepresented.

The flaw in the COMELEC's disposition lies in the fact that it insists on requiring party-list groups to present evidence showing that they have a track record in representing the marginalized and underrepresented.

Track record is a record of past performance often taken as an indicator of likely future performance.[13] As a requirement imposed by *Ang Bagong Bayani* for groups intending to participate in the party-list elections, **track record pertains to the actual activities undertaken by groups to uplift the cause of the sector/s, which they represent.**

Section 5 of R.A. No. 7941 however provides:

> Sec. 5. Registration. — Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, **attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition**

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[13] http://www.merriam-webster.com/dictionary/track%20record, last accessed on September 2, 2013.

agreement and other relevant information as the COMELEC may require: Provided, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. (Emphasis ours)

R.A. No. 7941 did not require groups intending to register under the party-list system to submit proof of their track record as a group. The track record requirement was only imposed in *Ang Bagong Bayani* where the Court held that national, regional, and sectoral parties or organizations seeking registration under the party-list system must prove through their, *inter alia*, track record that they truly represent the marginalized and underrepresented, thus:

> x x x In this light, the Court finds it appropriate to lay down the following guidelines, culled from the law and the Constitution, to assist the Comelec in its work.
>
> *First*, the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. **In other words, it must show — through its constitution, articles of incorporation, bylaws, history, platform of government and track record — that it represents and seeks to uplift marginalized and underrepresented sectors.** Verily, majority of its membership should belong to the marginalized and underrepresented. And it must demonstrate that in a conflict of interests, it has chosen or is likely to choose the interest of such sectors. (Emphasis ours)

Track record is not the same as the submission or presentation of "constitution, by-laws, platform of government, list of officers, coalition agreement, and other relevant information as may be required by the COMELEC," which are but mere pieces of documentary evidence intended to establish that the group exists and is a going concern. The said documentary evidence presents an abstract of the ideals that national, regional, and sectoral parties or organizations seek to achieve.

This is not merely a matter of semantics; the delineation of what constitutes a track record has certain consequences in a

group's bid for registration under the party-list system. Under Section 5 of R.A. No. 7941, groups intending to register under the party-list system are not required to submit evidence of their track record; they are merely required to attach to their verified petitions their "constitution, by-laws, platform of government, list of officers, coalition agreement, and other relevant information as may be required by the COMELEC."

In *Atong Paglaum*, the Court has modified to a great extent the jurisprudential doctrines on who may register under the party-list system and the representation of the marginalized and underrepresented. For purposes of registration under the party-list system, **national or regional parties or organizations need not represent any marginalized and underrepresented sector;** that representation of the marginalized and underrepresented is only required of **sectoral organizations** that represent the sectors stated under Section 5 of R.A. No. 7941 that are, by their nature, economically marginalized and underrepresented.

There was no mention that sectoral organizations intending to participate in the party-list elections are still required to present a track record, *viz.*:

> x x x In determining who may participate in the coming 13 May 2013 and subsequent party-list elections, the COMELEC shall adhere to the following parameters:
>
> x x x x x x x x x
>
> 4. **Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interests and concerns of their sector.** The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth. (Emphasis ours)

Contrary to the COMELEC's claim, sectoral parties or organizations, such as ABANG LINGKOD, are no longer required

to adduce evidence showing their track record, *i.e.*, proof of activities that they have undertaken to further the cause of the sector they represent. Indeed, it is enough that their principal advocacy pertains to the special interest and concerns of their sector. Otherwise stated, **it is sufficient that the ideals represented by the sectoral organizations are geared towards the cause of the sector/s, which they represent.**

If at all, evidence showing a track record in representing the marginalized and underrepresented sectors is only required from nominees of sectoral parties or organizations that represent the marginalized and underrepresented who do not factually belong to the sector represented by their party or organization.

Dissenting, my esteemed colleague, Mr. Justice Leonen, however, maintains that parties or organizations intending to register under the party-list system are still required to present a track record notwithstanding the Court's pronouncement in *Atong Paglaum*; that the track record that would have to be presented would only differ as to the nature of their group/ organization. He opines that sectoral organizations must prove their links with the marginalized and underrepresented while national or regional parties or organizations must show that they have been existing as a *bona fide* organization.

To submit to the dissent's insistence on *varying track records*, which are required of those intending to register under the party-list system, depending on the nature of their group, **would result into an absurd and unjust situation**. Under the "varying track record requirement," sectoral organizations must present evidence showing their track record in representing the marginalized and underrepresented, *i.e.*, actual activities conducted by them to further uplift the cause of the sector/s they represent. On the other hand, national and regional parties or organizations need only prove that they exist as *bona fide* organizations which, as the dissent suggests, may be done through the submission of their constitution, by-laws, platform of government, list of officers, coalition agreement, and other relevant information required by the COMELEC.

However, submission of a group's constitution, by-laws, platform of government, list of officers, coalition agreement, and other relevant information required by the COMELEC, as explained earlier, is not synonymous with the track record requirement. In such case, only sectoral organizations would be required to present a track record (actual activities conducted by them to further the cause of the marginalized and underrepresented); while national and regional organizations need not present their track record as they are only required to submit documentary evidence showing that they are *bona fide* organizations.

There is no logic in treating sectoral organizations differently from national and regional parties or organizations as regards their bid for registration under the party-list system. The "varying track record requirement" suggested by the dissent would **unnecessarily put a premium on groups intending to register as national and regional parties or organizations as against those intending to register as sectoral organizations**. The imposition of an additional burden on sectoral organizations, *i.e.*, submission of their track record, would be plainly unjust as it effectively deters the marginalized and underrepresented sectors from organizing themselves under the party-list system.

Likewise, that there was no explicit reversal of the guidelines in *Ang Bagong Bayani* in *Atong Paglaum* does not mean that groups intending to register under the party-list system are still required to submit a track record. The track record of groups intending to register under the party-list system was required under the first guideline of *Ang Bagong Bayani* for a very *specific purpose* — to show that the national, regional, and sectoral parties or organizations that would be allowed to participate in the party-list elections are **truly representative of the marginalized and underrepresented sectors**. It was necessary then to require groups seeking registration under the party-list system since representation of the marginalized and underrepresented, as understood in the context of *Ang Bagong Bayani*, is easy to claim and feign.

There exists no reason to further require groups seeking registration under the party-list system to submit evidence showing their track record. Pursuant to *Atong Paglaum*, not all groups are required to represent the marginalized and underrepresented sectors and, accordingly, there is no longer any incentive in merely feigning representation of the marginalized and underrepresented sectors.

In the case of sectoral organizations, although they are still required to represent the marginalized and underrepresented, they are likewise not required to show a track record since there would be no reason for them to feign representation of the marginalized and underrepresented as they can just register as a national or regional party or organization. Thus, the Court, in *Atong Paglaum*, stated that, for purposes of registration under the party-list system, it is enough that the principal advocacy of sectoral organizations pertains to the sector/s they represent.

There is thus no basis in law and established jurisprudence to insist that groups seeking registration under the party-list system still comply with the track record requirement. Indeed, nowhere in R.A. No. 7941 is it mandated that groups seeking registration thereunder must submit evidence to show their track record as a group.

The dissent likewise suggests that the deceit committed by ABANG LINGKOD goes into its qualification as a party-list group since it seriously puts in question the existence of ABANG LINGKOD as a group *per se* and the genuineness of its representation of the farmers and fisherfolk.

It must be stressed that the COMELEC cancelled ABANG LINGKOD's registration **solely** on the ground of the lack of its track record — that it falsely represented, by submitting digitally altered photographs of its supposed activities, that it had a track record in representing the marginalized and underrepresented. **The existence of ABANG LINGKOD as a party-list group *per se* and the genuineness of its representation of the farmers and fisherfolks were never raised in the proceedings before the COMELEC.** It would thus be the height of injustice if the Court, in this *certiorari*

action, would scrutinize the legitimacy of ABANG LINGKOD as a party-list group and the genuineness of its representation of the farmers and fisherfolk, and affirm the cancellation of its registration, when the issue is limited only to the track record of ABANG LINGKOD.

Moreover, ABANG LINGKOD had been previously registered as a party-list group, as in fact it participated in the May 2010 party-list elections, and it was able to obtain a sufficient number of votes in the May 2013 party-list elections to obtain a seat in the House of Representatives. These are circumstances, which clearly indicate that ABANG LINGKOD is indeed a legitimate party-list group.

ABANG LINGKOD, notwithstanding the cancellation of its registration three days prior to the May 13, 2013 elections, **was able to obtain a total of 260,215 votes out of the 26,722,131 votes that were cast for the party-list,**[14] thus entitling it to a seat in the House of Representatives. This is indicative of the fact that a considerable portion of the electorate considers ABANG LINGKOD as truly representative of peasant farmers and fisherfolk.

Anent the photographs submitted by ABANG LINGKOD, these only show book-giving and medical missions, which are activities it conducted. Suffice it to state, however, that said activities do not specifically or directly pertain to the interest or advocacy espoused by ABANG LINGKOD. As such, the misrepresentation committed by ABANG LINGKOD with regard to said activities would not necessarily militate against its representation of the farmers and fisherfolk.

Lest it be misunderstood, the Court does not condone the deceit perpetrated by ABANG LINGKOD in connection with its bid for continued registration under the party-list system. That ABANG LINGKOD, to establish its track record, submitted photographs that were edited to make it appear that it conducted activities aimed at ameliorating the plight of the sectors it

[14] National Board of Canvassers Resolution No. 0008-13, promulgated on May 28, 2013.

represents is a factual finding by the COMELEC, which the Court, considering that it is supported by substantial evidence, will not disturb. The Court does not tolerate ABANG LINGKOD's resort to chicanery and its shabby treatment of the requirements for registration under the party-list system.

Nevertheless, considering that track record is no longer a requirement, a group's misrepresentation as to its track record cannot be used as a ground to deny or cancel its registration — it is no longer material to its qualification under the party-list system. In this case, ABANG LINGKOD's submission of digitally altered photographs cannot be considered material to its qualification as a party-list group. Section 6 of R.A. No. 7941, in part, reads:

> Sec. 6. *Refusal and/or Cancellation of Registration.* — The COMELEC may, *motu propio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:
>
> x x x x x x x x x
>
> (6) It declares untruthful statements in its petition;

Declaration of an untruthful statement in a petition for registration, or in any other document pertinent to the registration and/or accreditation under the party-list system, as a ground for the refusal or cancellation of registration under Section 6 (6) of R.A. No. 7941, is akin to material misrepresentation in the certificate of candidacy filed by an individual candidate under Section 78 of the Omnibus Election Code. Both provisions disallow prospective candidates from participating in an election for declaring false statements in their eligibility requirements. Section 78 of the Omnibus Election Code reads:

> Sec. 78. A verified petition seeking to deny due course to or cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material misrepresentation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be

decided, after due notice and hearing, not later than fifteen days before the election.

Elucidating on what constitutes material misrepresentation in a certificate of candidacy under Section 78 of the Omnibus Election Code, the Court, in *Lluz v. Commission on Elections*,[15] explained that:

> From these two cases several conclusions follow. *First*, a misrepresentation in a certificate of candidacy is material *when it refers to a qualification for elective office and affects the candidate's eligibility*. x x x *Third*, **a misrepresentation of a non-material fact, or a non-material misrepresentation, is not a ground to deny due course to or cancel a certificate of candidacy** under Section 78. In other words, **for a candidate's certificate of candidacy to be denied due course or canceled by the COMELEC, the fact misrepresented must pertain to a qualification for the office sought by the candidate**. [16] (Emphasis ours)

In *Velasco v. Commission on Elections*,[17] the Court further clarified that a false representation under Section 78 of the Omnibus Election Code, in order to be a ground to deny due course or cancel a certificate of candidacy, must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. Thus:

> The false representation that [Sections 74 and 78 of the Omnibus Election Code] mention must necessarily pertain to a material fact, not to a mere innocuous mistake. This is emphasized by the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. Obviously, these facts are those that refer to a candidate's qualification for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious:

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[15] G.R. No. 172840, June 7, 2007, 523 SCRA 456.

[16] *Id.* at 471.

[17] G.R. No. 180051, December 24, 2008, 575 SCRA 590.

the candidate, if he or she wins, will work for and represent the local government under which he is running.

Separately from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. [18] (Citation omitted and emphasis ours)

Similarly, a declaration of an untruthful statement in a petition for registration under Section 6 (6) of R.A. No. 7941, in order to be a ground for the refusal and/or cancellation of registration under the party-list system, must pertain to the qualification of the party, organization or coalition under the party-list system. In order to justify the cancellation or refusal of registration of a group, there must be a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render the group disqualified from participating in the party-list elections.

The digitally altered photographs of activities submitted by ABANG LINGKOD to prove its continuing qualification under R.A. No. 7941 only pertain to its track record, which, as already discussed, is no longer a requirement under the new parameters laid down in *Atong Paglaum*. **Simply put, they do not affect the qualification of ABANG LINGKOD as a party-list group and, hence, could not be used as a ground to cancel its registration under the party-list system.**

Further, the Court notes that the COMELEC, in its Resolution dated November 7, 2012, asserted that ABANG LINGKOD failed to adduce evidence that would show the track record of its five nominees, composed of a non-government organization worker, an employee and three farmers, in uplifting the cause of the sector that the group represents. The COMELEC opined that the failure of ABANG LINGKOD to present a track record of its nominees justified the cancellation of its registration as a party-list group.

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[18] *Id.* at 603-604.

The Court does not agree. Assuming *arguendo* that the nominees of ABANG LINGKOD, as opined by the COMELEC, indeed do not have track records showing their participation in activities aimed at improving the conditions of the sector that the group represents, the same would not affect the registration of ABANG LINGKOD as a party-list group.

To stress, in *Atong Paglaum*, the Court pointed out that "[t]he nominees of sectoral parties or organizations that represent the 'marginalized and underrepresented,' or that represent those who lack 'well-defined political constituencies,' **either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors.** Stated otherwise, the nominee of a party-list groups may either be: *first*, one who actually belongs to the sector which the party-list group represents, in which case the track record requirement does not apply; or *second*, one who does not actually belong to the sector which the party-list group represents but has a track record showing the nominee's active participation in activities aimed at uplifting the cause of the sector which the group represents."

In the case under consideration, three of the five nominees of ABANG LINGKOD are farmers and, thus, are not required to present a track record showing their active participation in activities aimed to promote the sector which ABANG LINGKOD represents, *i.e.*, peasant farmers and fisherfolk. That two of ABANG LINGKOD's nominees do not actually belong to the sector it represents is immaterial and would not result in the cancellation of ABANG LINGKOD's registration as a party-list group. This is clear from the sixth parameter laid down by the Court in *Atong Paglaum*, which states that "[n]ational, regional and sectoral organizations **shall not be disqualified if some of their nominees are disqualified,** provided that they have at least one nominee who remains qualified." At the very least, ABANG LINGKOD has three (3) qualified nominees, being farmers by occupation.

Indeed, the disqualification of one or some of the nominees of a party-list group should not automatically result in the disqualification of the group. Otherwise it would accord the nominees the same significance, which the law holds for the party-list groups; it is still the fact that the party-list group satisfied the qualifications of the law that is material to consider. The disqualification of the nominees must simply be regarded as failure to qualify for an office or position. It should not, in any way, blemish the qualifications of the party-list group itself with defect. The party-list group must be treated as separate and distinct from its nominees such that qualifications of the latter must not be considered part and parcel of the qualifications of the former.

In sum, that ABANG LINGKOD's registration must be cancelled due to its misrepresentation is a conclusion derived from a simplistic reading of the provisions of R.A. No. 7941 and the import of the Court's disposition in *Atong Paglaum*. Not every misrepresentation committed by national, regional, and sectoral groups or organizations would merit the denial or cancellation of their registration under the party-list system. The misrepresentation must relate to their qualification as a party-list group. In this regard, the COMELEC gravely abused its discretion when it insisted on requiring ABANG LINGKOD to prove its track record notwithstanding that a group's track record is no longer required pursuant to the Court's pronouncement in *Atong Paglaum*.

Likewise, upholding the cancellation of ABANG LINGKOD's registration, notwithstanding that it was able to obtain sufficient number of votes for a legislative seat, would serve no purpose other than to subvert the will of the electorate who voted to give ABANG LINGKOD the privilege to represent them in the House of Representatives.

WHEREFORE, in light of the foregoing disquisitions, the instant petition is hereby **GRANTED**. The Resolution dated May 10, 2013 issued by the Commission on Elections in SPP Case No. 12-238 (PLM), insofar as it affirmed the cancellation

of ABANG LINGKOD's registration and disallowed it to participate in the May 13, 2013 elections is **REVERSED** and **SET ASIDE**.

The Commission on Elections is hereby **ORDERED** to **PROCLAIM** ABANG LINGKOD as one of the winning party-list groups during the May 13, 2013 elections with the number of seats it may be entitled to based on the total number of votes it garnered during the said elections.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Sereno, C.J., Carpio, and Brion, JJ., join the dissent of *J.* Leonen.

Leonen, J., see dissenting opinion.

Del Castillo, J., on official leave.

DISSENTING OPINION

LEONEN, *J.*:

I dissent. This Petition should be denied.

The Commission on Elections did not gravely abuse its discretion so as to give due course to this Petition. Reversing the Commission on Elections in this case makes us party to the mockery of the electoral process done by the petitioner.

Atong Paglaum v. Commission on Elections[1] did not remove the legal requirement that party-list groups must have proof of their existence and genuineness as provided by law. It did not remove the Commission on Elections' discretion to determine whether the party-list group that intends to be sectoral — as opposed to national or regional — **is genuine, has *bona fide* existence, and truly represents its sector**.

[1] G.R. No. 203766, April 2, 2013, 694 SCRA 477.

The petitioner submitted **clearly falsified evidence** to support its Manifestation before the Commission on Elections. This is a statutory ground for the cancellation of a party-list group's registration with the Commission on Elections. Allowing a party-list organization that willfully presents false credentials betrays the public trust, and We should not be party to its countenance.

The Procedural Antecedents

In this Petition for *Certiorari*,[2] Abang Lingkod Party List (ABANG LINGKOD) challenged the May 10, 2013 Resolution issued by the Commission on Elections *En Banc* in SPP No. 12-238 (PLM). The Resolution affirmed the cancellation of the party-list's registration with the Commission on Elections.

Petitioner ABANG LINGKOD filed its Petition for Registration and Accreditation as a sectoral party on December 19, 2000.[3] The Commission on Elections granted the Petition on December 22, 2009.[4] The petitioner participated in the 2010 party-list elections but failed to obtain the required 2% of the votes cast, and it was not able to get a seat in the House of Representatives.[5]

On May 31, 2012, ABANG LINGKOD filed its Manifestation of Intent to Participate in the Party-list System of Representation in the May 2013 elections.[6]

In a Resolution dated August 9, 2012, the Commission on Elections set the summary evidentiary hearing for all registered party-list groups. It required them to submit relevant documents to prove continuing compliance with the provisions of Republic Act No. 7941 or the Party-List System Act, including the names of the witnesses it would present to testify to their continuing compliance, and the judicial affidavits of these witnesses.

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[2] This Petition is under Rule 64 in relation to Rule 65 of the Revised Rules of Civil Procedure.

[3] This was docketed as SPP No. 08-16 (PL). *See Rollo,* p. 9.

[4] *Rollo,* p. 9.

[5] *Id.*

[6] Temporary *Rollo,* p. 2. The case was docketed as SP No. 12-238 (PLM).

According to the respondent, it set three (3) hearing dates (August 17, August 31, and September 3, 2012) for petitioner to present its witness and prove continuing compliance with the requirements under Republic Act No. 7941. Petitioner failed to present its witness on these hearing dates.[7]

On November 7, 2012, respondent promulgated a Resolution cancelling petitioner's Certificate of Registration/Accreditation for the then upcoming May 13, 2013 elections. The respondent stated in its Resolution that:

> x x x **it is not enough that the party-list organization claim representation of the marginalized and underrepresented because representation is easy to claim and feign**. A careful perusal of the records of the case would show that ABANG LINGKOD failed to establish its track record. The track record is very important to prove that the party-list organization continuously represents the marginalized and underrepresented. x x x.
>
> x x x x x x x x x x x x
>
> ABANG LINGKOD merely offered pictures of some alleged activities they conducted after the elections in 2010. However, there is nothing in the said records that would show that the party-list organization is indeed composed of organizations of farmers, fisherfolk and peasants or that they really conducted activities in line with its platform of government.
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> x x x x x x x x x x x x
>
> The importance of this examination of existing party-list organizations as to their continuing compliance with the requirements of the law must be greatly emphasized. It is the duty of the Commission to ensure that only those legitimate party-list organizations will have a chance to vie for a seat in the Congress. Even those party-list organizations which are previously accredited must pass the scrutiny of the Commission. Hence, the party-list organizations must provide pieces of evidence showing that it is indeed working for the upliftment of the lives of the x x x sector it represents even after the elections in 2010. x x x.[8]

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[7] Temporary *Rollo*, p. 2.

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

On November 22, 2012, the petitioner and more than fifty (50) other party-list groups filed a Petition for *Certiorari* with Prayer for Immediate Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order and/or Status *Quo Ante* Order assailing the November 7, 2012 Resolution of the Commission on Elections *En Banc*.

In *Atong Paglaum v. Commission on Elections*[9] promulgated on April 2, 2013, this Court resolved the Petitions of the party-list groups affected by the November 7, 2012 Resolution of the Commission on Elections. This Court also remanded the Petitions to determine if these party-list groups were qualified for registration under the parameters laid down in the Decision.

On May 10, 2013, the Commission on Elections issued the assailed Resolution, affirming the cancellation of ABANG LINGKOD's registration under the party-list system. The Commission on Elections issued the Resolution without any summary evidentiary hearing and explained its Decision, to wit:

> ABANG LINGKOD's registration was cancelled as it failed to establish a track record of continuously representing the peasant [and] farmers sector, and that its nominees are not marginalized and underrepresented, without any participation in its programs and advocacies.
>
> The Commission maintains its petition in the previous *en banc* ruling cancelling the registration of ABANG LINGKOD. To reiterate, it is not enough that the party-list organization claim representation of the marginalized and underrepresented because representation is easy to claim and to feign. It is but reasonable to require from groups and organizations consistent participation and advocacy in the sector it seeks to represent, and not just seasonal and "sporadic" programs which are unrelated to its sector.
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> ABANG LINGKOD submitted pictures showing a seminar held on 10 July 2010, Medical Mission on 11 November 2010, Disaster Management Training on 21 October 2011, Book-giving on 28 June 2011, and Medical Mission on 1 December 2011.

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[9] *Atong Paglaum v. Commission on Elections, supra*.

And as if to insult the Commission, the photographs submitted appear to have been edited to show in the banners that ABANG LINGKOD participated in the activities. ABANG LINGKOD's name and logo was superimposed on some banners to feign participation in the activities (Joint Medical-Dental Mission, Book-giving).

Under The Party-List System Act, a group's registration may be cancelled for declaring unlawful statements in its petition. Photoshopping images to establish a fact that did not occur is tantamount to declaring unlawful statements. It is on this ground that the Commission cancels ABANG LINGKOD's registration.[10]

On May 12, 2013, petitioner ABANG LINGKOD filed an Extremely Urgent Motion for Reconsideration before the Commission on Elections *En Banc*. However, because of the exigencies of the case, the petitioner filed on May 15, 2013 a Manifestation with Motion to Withdraw its Extremely Urgent Motion for Reconsideration since the results of the May 13, 2013 elections were then being canvassed, and the public respondent Commission on Elections may not have the time to pass upon the merits of the case.

The petitioner then filed the current Petition for *Certiorari* (With Prayer for Immediate Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order and/or Status *Quo Ante* Order).

The material issues in this case are the following:

I. Whether national, regional, and sectoral parties and organizations are required under the law to show their genuineness and *bona fide* existence in determining if they are eligible for registration with the Commission on Elections; and

II. Whether the Commission on Elections gravely abused its discretion in cancelling ABANG LINGKOD's registration under the party-list system.

The petitioner submitted that the Commission on Elections *En Banc* committed grave abuse of discretion amounting to

[10] *Rollo*, p. 34.

lack or excess of jurisdiction in affirming the cancellation of ABANG LINGKOD's Certificate of Registration/Accreditation under the party-list system of representation. It claimed that ABANG LINGKOD was not given the opportunity to show that it meets the six-point parameters set by this Honorable Court in *Atong Paglaum v. Commission on Elections.*[11] It also claimed that, since it had previously been registered with the Commission on Elections, it is, therefore, qualified to participate in the May 13, 2013 elections. Thus, it concluded that the Commission on Elections violated ABANG LINGKOD's constitutional right to due process.

The petitioner also submitted that the Commission on Elections *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the cancellation of ABANG LINGKOD's Certificate of Registration/Accreditation on the sole basis that it supposedly "photoshopped" or digitally manipulated images through Adobe Photoshop — an act tantamount to declaring unlawful statements. It claimed that the fact sought to be proven by these pieces of evidence is not part of the six-point criteria set by this Honorable Court in the *Atong Paglaum* case and that it was not given its day in court to refute these findings.

Respondent, on the other hand, asserted that proof of track record and the proscription against declaring untruthful statements in a party-list organization's Petition are requirements of the law reiterated in the cases of *Ang Bagong Bayani* and *Atong Paglaum*.

It added that the petitioner does not have a vested right in its registration and accreditation as a party-list organization.

Finally, the respondent Commission on Elections reiterated that its findings of facts are supported by substantial evidence. Hence, the Commission on Elections' determination that the pieces of evidence submitted by the petitioner were falsified is now final and non-reviewable.

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[11] *Atong Paglaum v. Commission on Elections*, *supra* note 1.

We should deny the Petition for the reason that the Commission on Elections did not commit grave abuse of discretion in denying the registration of petitioner ABANG LINGKOD.

Certiorari exercised only when grave abuse of discretion is sufficiently shown

The jurisdiction of this Court in cases involving *certiorari* and the decisions, orders or rulings of the Commission on Elections must be discussed first.

Section 7 of Article IX-A of the 1987 Constitution provides that:

> Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.** (Emphasis provided)

This constitutional provision serves as the basis for this Court's review of the Commission on Elections' rulings under the standards of Rule 65 through Rule 64 of the Rules of Court.[12] Such power of review of this Court must be exercised under the standard of **grave abuse of discretion**. In *Ocate v. Commission on Elections*,[13] this Court laid down the rule in resolving petitions for *certiorari* under Rule 64, to wit:

> The purpose of a petition for *certiorari* is to determine whether the challenged tribunal **has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or**

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[12] *Mitra v. Commission on Elections*, G.R. No. 191938, October 19, 2010, 633 SCRA 580, 590 citing *Aratuc v. Commission on Elections*, G.R. Nos. L-49705-09 and L-49717-21, February 8, 1979, 88 SCRA 251 and *Dario v. Mison*, G.R. No. 81954, August 8, 1989, 176 SCRA 84.

[13] G.R. No. 170522, November 20, 2006, 507 SCRA 426.

excess of jurisdiction. Thus, any resort to a petition for *certiorari* under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure is **limited to the resolution of jurisdictional issues.**[14] (Emphasis provided)

Thus, in *Typoco v. Commission on Elections*,[15] We said that:

In a special civil action for *certiorari*, the burden rests on petitioner to prove not merely reversible error, but **grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent issuing the impugned order, decision or resolution.** "Grave abuse of discretion" is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof. It must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. "Grave abuse of discretion" arises when a court or tribunal violates the Constitution, the law or existing jurisprudence.[16] (Emphasis provided)

The rule on limited jurisdiction on *certiorari* should be applied in this case. It is only when the petitioner has sufficiently shown that the Commission on Elections may have committed grave abuse of discretion amounting to lack or excess of jurisdiction that this Court should take cognizance of the Petition filed under Rule 64.

Requirement of genuineness and bona fide existence

Proof that national, regional, and sectoral parties and organizations exist and are genuine is required by the law to determine whether a party-list group is eligible for registration

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[14] *Id.* at 437.

[15] G.R. No. 186359, March 5, 2010, 614 SCRA 391.

[16] *Id.* at 400 citing *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233; *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000); *Sen. Defensor Santiago v. Sen. Guingona, Jr.*, 359 Phil. 276, 304 (1998); *Cabrera v. Commission on Elections*, G.R. No. 182084, October 6, 2008, 567 SCRA 686, 691.

with the Commission on Elections and may participate in the national elections. The kind of record that is required by law is not the same as that which was formerly required in *Ang Bagong Bayani*. This requirement is evident from an analysis of the provisions of Republic Act No. 7941 and the interpretations of this Court.

The Declaration of Principles or Section 2 of Republic Act No. 7941 provides that:

> x x x the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.

A party, by law, is either "a political party or a sectoral party or a coalition of parties."[17] A political party is defined as:

> x x x an organized group of citizens **advocating an ideology or platform, principles and policies for the general conduct of government** and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.[18] (Emphasis provided)

A party is a national party "when its **constituency** is spread over the geographical territory of at least a majority of the regions. It is a regional party when its **constituency** is spread over the geographical territory of at least a majority of the cities and provinces comprising the region."[19]

On the other hand, a sectoral party:

> x x x refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof whose **principal advocacy pertains to the special interest and concerns of their sector[.]**[20] (Emphasis provided)

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[17] Republic Act No. 7941 (1995), Sec. 3 (b).

[18] Republic Act No. 7941 (1995), Sec. 3 (c) par. 1.

[19] Republic Act No. 7941 (1995), Sec. 3 (c) par. 2.

[20] Republic Act No. 7941 (1995), Sec. 3 (d).

The use of ideology, platform, principles, policies, advocacy of special interests and concerns of the sector, and the existence of constituencies in defining parties **all pertain to evidence of a duly existing and genuine party-list group**. All these are what the law, Republic Act No. 7941, requires from parties that aspire to participate in the party-list elections.

With regard to this Court's interpretation of the provisions of the law, We recently redefined party-list groups and set new parameters in determining who may participate in the party-list elections, to wit*:*

1. Three different groups may participate in the party-list system: (1) national parties or organizations, (2) regional parties or organizations, and (3) sectoral parties or organizations.

2. National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector.

3. Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.

4. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth.

5. A majority of the members of sectoral parties or organizations that represent the "marginalized and underrepresented" must belong to the "marginalized and underrepresented" sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack "well-defined political constituencies" must belong to the sector they represent. The nominees of sectoral parties or

organizations that represent the "marginalized and underrepresented," or that represent those who lack "well-defined political constituencies," either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors. The nominees of national and regional parties or organizations must be *bona fide* members of such parties or organizations.

6. National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified.[21]

This redefinition was based on a plain reading of Article VI, Section 5(1) of the 1987 Constitution. In *Atong Paglaum*, We said that:

Section 5(1), Article VI of the Constitution is crystal-clear that there shall be "**a party-list system of registered national, regional, and sectoral parties or organizations**." The commas after the words "national[**,**]" and "regional[**,**]" separate national and regional parties from sectoral parties. Had the framers of the 1987 Constitution intended national and regional parties to be at the same time sectoral, they would have stated "national and regional sectoral parties." They did not, precisely because it was never their intention to make the party-list system exclusively sectoral.

x x x x x x x x x

Moreover, Section 5(2), Article VI of the 1987 Constitution mandates that, during the first three consecutive terms of Congress after the ratification of the 1987 Constitution, "one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector." This provision clearly shows again that the party-list system is not exclusively for sectoral parties for two obvious reasons.

First, the other one-half of the seats allocated to party-list representatives would naturally be open to non-sectoral party-list representatives, clearly negating the idea that the party-list system is exclusively for sectoral parties representing the "marginalized and underrepresented." *Second*, the reservation of one-half of the party-

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[21] *Atong Paglaum v. Commission on Elections*, *supra* note 1, at 571-572.

list seats to sectoral parties applies only for the first "three consecutive terms after the ratification of this Constitution," clearly making the party-list system fully open after the end of the first three congressional terms. This means that, after this period, there will be no seats reserved for any class or type of party that qualifies under the three groups constituting the party-list system.

Hence, the clear intent, express wording, and party-list structure ordained in Section 5(1) and (2), Article VI of the 1987 Constitution cannot be disputed: the party-list system is not for sectoral parties only, but also for non-sectoral parties.

x x x x x x x x x

Section 3(a) of R.A. No. 7941 defines a "party" as "**either a political party or a sectoral party** or a coalition of parties." Clearly, a political party is different from a sectoral party. Section 3(c) of R.A. No. 7941 further provides that a "**political party** refers to an organized **group of citizens *advocating an ideology or platform, principles and policies* for the general conduct of government**." On the other hand, Section 3(d) of R.A. No. 7941 provides that a "**sectoral party** refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof **whose principal advocacy pertains to the special interest and concerns of their sector**." R.A. No. 7941 provides different definitions for a political and a sectoral party. Obviously, they are separate and distinct from each other.

R.A. No. 7941 does not require national and regional parties or organizations to represent the "marginalized and underrepresented" sectors. To require all national and regional parties under the party-list system to represent the "marginalized and underrepresented" is to deprive and exclude, by judicial fiat, ideology-based and cause-oriented parties from the party-list system. x x x.[22]

To reiterate and as I have explained in my Concurring and Dissenting Opinion[23] in *Atong Paglaum*, the Constitution acknowledges that **there are different kinds of party-list groups aside from sectoral groups**. "To require that all the seats for party-list representatives continue to be sectoral is

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[22] *Id.* at 557-560.

[23] Justice Marvic M.V.F. Leonen, Concurring and Dissenting Opinion, *Atong Paglaum v. COMELEC*, *supra* note 1, at 774.

clearly and patently unconstitutional."[24] "Article VI, [S]ection[s] 5 (1) and (2) already imply a complete Constitutional framework for the party-list system."[25] Congress should not legislate if it adds requirements laid down in the Constitution such that even national and regional parties or organizations may be considered sectoral.[26]

The *ponencia* in this case supposes that when the majority in *Atong Paglaum* declared as part of the fifth (5th) parameter that the "nominees of the sectoral party either must belong to the sector, or must have a track record of advocacy for the sector represented," it meant that the track record requirement **will only apply to the sectoral groups.** I take a contrary view, especially since this Court in several cases already deemed track record as one of the factors considered in allowing groups to participate in party-list elections, although discussed in the previous definition or framework of party-list groups.[27]

The redefinition of the parameters for party-list registration to include national and regional parties or organizations **did not** remove the requirement of showing that these groups existed prior to the elections they wish to participate in and that they indeed operate as genuine organizations. **I maintain that the record of a party or an organization's genuineness and *bona fide* existence is necessary for all parties and organizations, whether national, regional or sectoral**. **This will show whether the party-list group is genuine and not an expediently created formation that does not have any advocacy.** This is evident from the law, particularly from Section 5 of Republic Act No. 7941, to wit:

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[24] *Id.* at 784.

[25] *Id.* at 785.

[26] *Id.*

[27] See *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, G.R. No. 147589, June 26, 2001, 359 SCRA 698; *Aklat-Asosasyon Para sa Kaunlaran ng Lipunan at Adhikain Para sa Tao, Inc. v. Commission on Elections*, G.R. No. 162203, April 14, 2004, 427 SCRA 712; *Dayao v. Commission on Elections*, G.R. No. 193643, January 29, 2013, 689 SCRA 412.

Section 5. *Registration.* Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, **attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require**: Provided, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. (Emphasis provided)

Atong Paglaum declared that there may be national or regional parties or organizations apart from sectoral groups. Thus, the requirements for each of these groups have been modified. All national, regional or sectoral parties or organizations should show that they have been existing as *bona fide* organizations. Sectoral organizations should, therefore, prove links with the sector that they represent. Reading the text of Republic Act No. 7941 and previous rulings of this Court, this record may be established by presenting an organization's constitution, by-laws, platform or program of government, list of officers, coalition agreement, and other relevant information as may be required by the Commission on Elections.

It is important for the groups to show that they are capable of participating in the elections and that they will not make a mockery of the electoral system, specifically the party-list system.

It is the parties or organizations, and not only the nominees, that must have a concrete and verifiable record of political participation that shows how their political platforms have been translated into action. It must be noted that when the Commission on Elections cancelled ABANG LINGKOD's registration, it reasoned that:

ABANG LINGKOD merely offered pictures of some alleged activities they conducted after the elections in 2010. However, there is nothing in the said records that would show that the party-list organization is indeed composed of organizations of farmers, fisherfolk

and peasants or that they really conducted activities in line with its platform of government.[28] (Emphasis provided)

When the Commission on Elections made this statement, it was clearly reviewing the qualifications of the party and not just its nominees.

Atong Paglaum did not in any way remove the genuineness and *bona fide* existence requirements for registration with the Commission on Elections, contrary to the stand taken by the *ponencia*. It only qualified that the **nominees** of sectoral parties or organizations need not prove both membership in their sector and record of advocacy for their respective sectors. *Atong Paglaum* did not categorically state that **party-list groups** are not required to show records of its genuineness and *bona fide* existence.

Petitioner is a sectoral party-list group that purports to represent the peasant farmers.[29] However, it did not even comply with the bare requirement that sectoral party-list groups representing a sector should show that their principal advocacy pertains to the special interest and concerns of their sector.[30] As correctly argued by the public respondent,[31] petitioner will not, therefore, qualify even under the new parameters set forth in *Atong Paglaum*.

Untruthful statements

The Commission on Elections did not commit grave abuse of discretion in cancelling ABANG LINGKOD's registration under the party-list system when the party-list group made an "untruthful statement" in its Petition, thereby violating Section 6 of Republic Act No. 7941. Section 6 provides:

Section 6. *Refusal and/or Cancellation of Registration.* The COMELEC may, *motu propio* or upon verified complaint of any

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[28] *Rollo,* p. 40.

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

[30] See fourth parameter set in *Atong Paglaum*.

[31] Temporary *Rollo,* p. 12.

interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

xxx x x x xxx

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. (Emphasis provided)

In the Commission on Elections Resolution No. 9366,[32] the Commission laid down the rules applicable to party-list groups expecting to participate in the May 13, 2013 national elections:

RULE 1
FILING OF PETITIONS FOR REGISTRATION

Section 7. Documents to support petition for registration. The following documents shall support petitions for registration:

a. Constitution and by-laws as an organization seeking registration under the party-list system of representation;

b. Platform or program of government;

xxx x x x xxx

[32] Entitled "Rules and Regulations Governing the: 1) Filing of Petitions for Registration; 2) Filing of Manifestation of Intent to Participate; 3) Submission of Names of Nominees; and 4) Filing of Disqualification Cases against Nominees of Party-list Groups or Organizations participating under the Party-list system of representation in Connection with the May 13, 2013 National and Local Elections, and Subsequent Elections Thereafter," promulgated on February 1, 2012.

f. Track record summary showing that it represents and seeks to uplift the marginalized and underrepresented sector/s it seeks to represent;

g. Coalition agreement, if any, and the detailed list of affiliates comprising the coalition, including the signed coalition agreement;

h. Sworn proof/s of existence in the areas where the organization is claiming representation; and

i. Other information required by the Commission.

x x x x x x x x x

RULE 2
OPPOSITION TO A PETITION FOR REGISTRATION

Section 2. Grounds for opposition to a petition for registration. The Commission may deny due course to the petition *motu proprio* or upon verified opposition of any interested party, after due notice and hearing, on any of the following grounds:

x x x x x x x x x

f. It violates or fails to comply with laws, rules or regulations relating to elections;

g. It has made untruthful statements in its Petition;

h. It has ceased to exist for a period of at least one (1) year;

i. It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered; or

j. The petition has been filed to put the election process in mockery or disrepute, or to cause confusion among the voters by the similarity of names or registered parties, or by other circumstances or acts which clearly demonstrate that the petitioner has no *bona fide* intention to represent the sector for which the petition has been filed and thus prevent a faithful determination of the true will of the electorate.

Section 3. Removal and/or cancellation of registration; Grounds. The Commission may *motu proprio* or upon a verified complaint of any interested party, remove or cancel, after due notice and hearing,

the registration of any party-list group organization or coalition on any of the grounds mentioned in Section 2 of this Rule. Any party whose registration has been removed or cancelled shall not be allowed to participate in the party-list system, or from being proclaimed if the evidence is strong. (Emphasis provided)

All these clearly state that the declaration of untruthful statements is a ground for cancelling the registration of a party-list group. However, the *ponencia* states that:

> x x x a declaration of an untruthful statement in a petition for registration under Section 6(6) of R.A. No. 7941, in order to be a ground for the refusal and/or cancellation of registration under the party-list system, must pertain to the qualification of the party, organization or coalition under the party-list system. x x x
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> The digitally altered photographs of activities submitted by ABANG LINGKOD to prove its continuing qualification under R.A. No. 7941 only pertains to its track record, which, as already discussed, is no longer a requirement under the new parameters laid down in *Atong Paglaum*. Simply put, it does not affect the qualification of ABANG LINGKOD as a party-list group and, hence, could not be used as a ground to cancel its registration under the party-list system.[33]

I do not question the point that the disqualification of one or some of the nominees of party-list groups will not automatically result to disqualification. I agree that a party-list group must be treated separately and distinctly from its nominees, such that the qualifications of the nominees are not considered part and parcel of the qualifications of the party-list itself. However, in this case, when the digitally manipulated pictures were submitted by ABANG LINGKOD, it was done to prove the continuous **qualifications of the party-list group** for registration with the Commission on Elections.[34] The "photoshopped" or

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[33] *Abang Lingkod v. COMELEC*, Main Opinion Revised as of September 17, 2013, G.R. No. 206952, p. 12.

[34] "Factual findings of the Commission on Elections are binding on this Court." See *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331; *Dagloc v. COMELEC*,463 Phil. 263, 288 (2003); *Pasandalan v. Commission on Elections*, G.R. No. 150312, July 18, 2002, 384 SCRA 695, 703; *Mastura v. COMELEC*, 349 Phil. 423, 429 (1998).

altered pictures indicating the name of the party-list group were intended to deceive people into thinking that the group was engaging in joint medical and dental mission and book-giving activities.

The reliance of the *ponencia* on *Lluz v. Commission on Elections*[35] in relating the act of declaring an untruthful statement to the concept of material misrepresentation is not precise. The circumstances and provisions of law involved in *Lluz* do not square with the present case. In *Lluz*, this Court determined whether the respondent committed material misrepresentation when he declared his profession as "Certified Public Accountant" in his Certificate of Candidacy. As We said in that case, "Profession or occupation not being a qualification for elective office, misrepresentation of such does not constitute a material misrepresentation."[36] **In the present case, what is at issue is the genuineness and existence of the party-list group. This includes the question as to whether they truly represent the sector.** The claim of representation can be supported by proof of their activities in relation to their sector. As established above, this record of genuineness and existence is a continuing requirement of the law and goes into the qualifications of the party-list.

The brazen use of falsified documents of ABANG LINGKOD in its compliance for registration is deplorable and appalling because of the obvious intent to deceive the Commission on Elections and the electorate. It cannot be tolerated. It denigrates the right to suffrage. Submitting falsified documents is tantamount to making declarations of untruthful statements. It is a ground for cancellation of the registration/accreditation of the party-list group under Section 6 of Republic Act No. 7941.

In *V.C. Cadangen v. Commission on Elections*,[37] this Court denied the Alliance of Civil Servants, Inc.'s (or Civil Servants')

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[35] G.R. No. 172840, June 7, 2007, 523 SCRA 456.

[36] *Id.* at 458.

[37] G.R. No. 177179, June 5, 2009, 588 SCRA 738.

Petition for failing to comply with the law and **for declaring an untruthful statement** in its Memorandum, as found by the Commission on Elections. As proof of a nationwide constituency, Civil Servants presented a picture of its website where members allegedly discussed different issues confronting government employees and where it was asserted that its membership was divided into different working committees to address several issues of its sectors. Upon verification, the Commission on Elections' election officers reported that Civil Servants existed only in Parañaque City's First and Second Districts and in Quezon City's Fourth District. This finding was contrary to the petitioner's claim of national constituency in its Memorandum. In holding that the Commission on Elections **did not commit grave abuse of discretion in issuing the assailed Resolutions**,[38] this Court said:

> The COMELEC, after evaluating the documents submitted by petitioner, denied the latter's plea for registration as a sectoral party, not on the basis of its failure to prove its nationwide presence, but for its failure to show that it represents and seeks to uplift marginalized and underrepresented sectors. Further, **the COMELEC found that petitioner made an untruthful statement in the pleadings and documents it submitted**.
>
> x x x The findings of fact made by the COMELEC, or by any other administrative agency exercising expertise in its particular field of competence, are binding on the Court."[39]

The actions of the group amounted to declaring untruthful statements, which the Commission on Elections correctly considered as a ground for the cancellation of the petitioner's Certificate of Registration under Section 6 of Republic Act No. 7941. Again, to constitute grave abuse of discretion, the abuse of discretion must be 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

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[38] *Id.* at 743.

[39] *Id.* at 745.

or despotic manner by reason of passion or personal hostility."[40] It "must be so patent and gross to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law."[41] The Commission on Elections, therefore, did not commit grave abuse of discretion in promulgating the assailed Resolution.

WHEREFORE, I vote to DENY the Petition. The Resolution dated May 10, 2013 issued by the Commission on Elections in SPP Case No. 12-238 (PLM) should be AFFIRMED.

EN BANC

[G.R. Nos. 207199-200. October 22, 2013]

WIGBERTO R. TAÑADA, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS, ANGELINA D. TAN, and ALVIN JOHN S. TAÑADA,** *respondents.*

SYLLABUS

POLITICAL LAW; ELECTIONS; PROCLAMATION OF A CONGRESSIONAL CANDIDATE FOLLOWING THE ELECTION DIVESTS THE COMELEC OF JURISDICTION OVER DISPUTES RELATING TO THE ELECTION, RETURNS,

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[40] *Torres v. Abundo,* G.R. No. 174263, January 24, 2007, 512 SCRA 556, 564 citing *Olanolan v. Commission on Elections*, G.R. No. 165491, March 31, 2005, 454 SCRA 807, 814.

[41] *Benito v. Commission on Elections*, G.R. No. 134913, January 19, 2001, 349 SCRA 705, 713-714 citing *Cuison v. Court of Appeals*, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171; *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18, 79; *Alafriz v. Nable*, 72 Phil. 278, 280 (1941); *Abad Santos v. Prov. of Tarlac*, 67 Phil. 480 (1939).

AND QUALIFICATIONS OF THE PROCLAIMED REPRESENTATIVE IN FAVOR OF THE HRET; PRINCIPLE, APPLIED.— Case law states that the proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET. The phrase "election, returns and qualifications" refers to all matters affecting the validity of the contestee's title. In particular, the term "election" refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" refers to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" refers to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his CoC. In the foregoing light, considering that Angelina had already been proclaimed as Member of the House of Representatives for the 4th District of Quezon Province on May 16, 2013, as she has in fact taken her oath and assumed office past noon time of June 30, 2013, the Court is now without jurisdiction to resolve the case at bar. As they stand, the issues concerning the conduct of the canvass and the resulting proclamation of Angelina as herein discussed are matters which fall under the scope of the terms "election" and "returns" as above-stated and hence, properly fall under the HRET's sole jurisdiction.

APPEARANCES OF COUNSEL

Jehremiah C. Asis, Wilfred D. Asis and *Tañada Vivo & Tan* for petitioner.

The Solicitor General for public respondent.

V.Y. Eleazar Law Office for Alvin John S. Tañada.

George Erwin M. Garcia for Angelina D. Tan.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] under Rule 65 in relation to Rule 64 of the Rules of Court is the Resolution[2] dated April 25, 2013 of the Commission on Elections (COMELEC) *En Banc* declaring respondent Alvin John S. Tañada not a nuisance candidate.

The Facts

Petitioner Wigberto R. Tañada, Jr., (Wigberto) and respondents Angelina D. Tan (Angelina) and Alvin John S. Tañada (Alvin John) were contenders for the position of Member of the House of Representatives for the 4th District of Quezon Province in the just concluded May 13, 2013 National Elections.[3] Wigberto ran under the banner of the Liberal Party; Alvin John was the official congressional candidate of Lapiang Manggagawa; while Angelina was fielded by the National People's Coalition.[4]

On October 10, 2012, Wigberto filed before the COMELEC two separate petitions: first, to cancel Alvin John's CoC;[5] and, second, to declare him as a nuisance candidate.[6] The said petitions were docketed as SPA Nos. 13-056 (DC) and 13-057 (DC), respectively.

In a Resolution[7] dated January 29, 2013, the COMELEC First Division dismissed both petitions for lack of merit. On

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[1] *Rollo*, pp. 5-48.

[2] *Id.* at 457-472. Signed by COMELEC Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca.

[3] See *id.* at 78-79 (Certificate of Candidacy [CoC] of Wigberto), *id.* at 80-81 (CoC of Alvin John), and *id.* at 82-83 (CoC of Angelina).

[4] *Id.* at 11-12.

[5] *Id.* at 479-487.

[6] *Id.* at 527-536.

[7] *Id.* at 446-456. Signed by Presiding Commissioner Rene V. Sarmiento and Commissioners Armando C. Velasco and Christian Robert S. Lim.

Wigberto's motion for reconsideration,[8] the COMELEC *En Banc*, in a Resolution[9] dated April 25, 2013, upheld the COMELEC First Division's ruling in SPA No. 13-057 (DC) that Alvin John was not a nuisance candidate as defined under Section 69[10] of Batas Pambansa Bilang 881, as amended, otherwise known as the "Omnibus Election Code of the Philippines" (OEC).[11] However, in SPA No. 13-056 (DC), it granted the motion for reconsideration and cancelled Alvin John's CoC for having committed false material representations concerning his residency in accordance with Section 78[12] of the OEC.[13]

On May 15, 2013, Wigberto filed a 2nd Motion for Partial Reconsideration[14] of the COMELEC *En Banc*'s ruling in SPA No. 13-057 (DC) on the ground of newly discovered evidence. He alleged that Alvin John's candidacy was not *bona fide* because: (*a*) Alvin John was merely forced by his father to file his CoC; (*b*) he had no election paraphernalia posted in official

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[8] *Id.* at 642-652.

[9] *Id.* at 457-472.

[10] Section 69. *Nuisance candidates.* - The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

[11] *Rollo,* pp. 464-466.

[12] Section 78. *Petition to deny due course to or cancel a certificate of candidacy.* - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[13] *Rollo,* pp. 466-471.

[14] *Id.* at 665-669.

COMELEC posting areas in several *barangays* of Gumaca, Quezon Province; (*c*) he did not even vote during the May 13, 2013 National Elections; and (*d*) his legal representation appeared to have been in collusion with the lawyers of Angelina.[15]

On May 15 and 16, 2013, Wigberto filed with the COMELEC *En Banc* an Extremely Urgent Motion to Admit Additional and Newly Discovered Evidence and to Urgently Resolve Motion for Reconsideration[16] and an Urgent Manifestation and Supplemental[17] thereto. These motions, however, remained un-acted upon until the filing of the present petition before the Court on May 27, 2013. Thus, in order to avoid charges of forum-shopping, said motions were withdrawn by Wigberto.

In a related development, despite the cancellation of Alvin John's CoC due to his material misrepresentations therein, his name was not deleted from – and thus, remained printed on – the ballot, prompting Wigberto to file a motion[18] with the Provincial Board of Canvassers of Quezon Province (PBOC) asking that the votes cast in the name of Alvin John be credited to him instead in accordance with the Court's ruling in *Dela Cruz v. COMELEC*[19] and COMELEC Resolution No. 9599.[20] The PBOC, however, denied Wigberto's motion in a Resolution[21] dated May 16, 2013, holding that the votes of Alvin John could not be counted in favor of Wigberto because the cancellation of the former's CoC was on the basis of his material misrepresentations under Section 78 of the OEC and not on

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[15] See *id.* at 20-22, and 33-37.

[16] *Id.* at 689-695.

[17] *Id.* at 708-713.

[18] The said motion is not attached to the records of this case.

[19] G.R. No. 192221, November 13, 2012, 685 SCRA 347.

[20] Entitled "IN THE MATTER OF THE AMENDMENT TO RULE 24 OF THE COMELEC RULES OF PROCEDURE, AS AMENDED BY RESOLUTION NO. 9523"; dated December 21, 2012.

[21] See *rollo*, p. 841. The said resolution is not attached to the records of this case.

being a nuisance candidate under Section 69 of the same law. Consequently, the PBOC canvassed the votes of all three contenders separately, and thereafter, on May 16, 2013, proclaimed Angelina as the winning candidate for the position of Member of the House of Representatives for the 4th District of Quezon Province.[22] According to Wigberto, it was for the foregoing reason that he impleaded Angelina as a party-respondent in the instant petition for *certiorari*.[23]

It appears, however, that Wigberto had already filed with the COMELEC a Petition to Annul the Proclamation of Angelina (Petition to Annul) under SPC No. 13-013, asserting that had the PBOC followed pertinent rulings,[24] the votes cast for Alvin John would have been counted in his favor which could have resulted in his victory.[25] While the Petition to Annul was still pending resolution, Wigberto initiated the instant *certiorari* case against the COMELEC *En Banc* Resolution dated April 25, 2013 declaring Alvin John not a nuisance candidate.

On July 3, 2013, Wigberto filed a Manifestation[26] informing the Court that he had caused the filing of an Election Protest *Ad Cautelam* entitled "*Wigberto R. Tañada, Jr. v. Angelina 'Helen' D. Tan,*" before the House of Representatives Electoral Tribunal (HRET), which was docketed as Electoral Protest Case No. 13-018.

The Office of the Solicitor General (OSG), on behalf of public respondent COMELEC, affirmed in its Comment dated August 18, 2013,[27] that an Election Protest *Ad Cautelam* had, indeed, been filed by Wigberto against Angelina before the HRET,

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[22] *Id.* at 9.

[23] *Id.* at 8.

[24] Referring to, *inter alia*, the rulings in *Fernandez v. Fernandez* (G.R. No. L-32675, November 3, 1970, 36 SCRA 1) and *Dela Cruz v. COMELEC* (*supra* note 19).

[25] *Rollo*, p. 9.

[26] *Id.* at 830-831.

[27] *Id.* at 836-856.

praying that he be declared the winner in the 2013 congressional race in the 4th District of Quezon Province. It also alleged that on June 28, 2013, the COMELEC Second Division issued a Resolution annulling the proclamation of Angelina as Member of the House of Representatives for the 4th District of Quezon Province. The propriety of this ruling is now pending resolution before the COMELEC *En Banc*.[28]

The Issues Before the Court

Wigberto assails the COMELEC *En Banc* Resolution dated April 25, 2013 declaring that Alvin John was not a nuisance candidate as defined under Section 69 of the OEC. In consequence, he seeks that the votes cast in favor of Alvin John be credited to him and, thereafter, to be declared the winning candidate for the congressional post.

The Court's Ruling

The petition must fail.

Section 17, Article VI of the 1987 Philippine Constitution provides that the HRET is the sole judge of all contests relating to the election, returns, and qualifications of its respective members:

> Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the **sole judge of all contests relating to the election, returns, and qualifications** of their respective Members. Each Electoral Tribunal, shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. (Emphasis and underscoring supplied)

Case law states that the proclamation of a congressional candidate following the election divests the COMELEC of

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[28] *Id.* at 842.

jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET.[29] The phrase "election, returns and qualifications" refers to all matters affecting the validity of the contestee's title. [30] In particular, the term "election" refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" refers to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" refers to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his CoC.[31]

In the foregoing light, considering that Angelina had already been proclaimed as Member of the House of Representatives for the 4th District of Quezon Province on May 16, 2013, as she has in fact taken her oath and assumed office past noon time of June 30, 2013,[32] the Court is now without jurisdiction to resolve the case at bar. As they stand, the issues concerning the conduct of the canvass and the resulting proclamation of Angelina as herein discussed are matters which fall under the scope of the terms "election" and "returns" as above-stated and hence, properly fall under the HRET's sole jurisdiction.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

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[29] *Jalosjos, Jr. v. COMELEC*, G.R. Nos. 192474, 192704, and 193566, June 26, 2012, 674 SCRA 530, 534-535.

[30] *Vinzons-Chato v. COMELEC*, G.R. No. 172131, April 2, 2007, 520 SCRA 167, 178, citing *Rasul v. COMELEC*, 371 Phil. 760, 766 (1999).

[31] *Id.* at 179, citing *Barbers v. COMELEC*, G.R. No. 165691, June 22, 2005, 460 SCRA 569, 582.

[32] *Rollo*, pp. 807-808. See Angelina's Manifestation (In Lieu of Comment) dated July 24, 2013.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Abad, Villarama, Jr., Mendoza, Reyes, and *Leonen, JJ.,* concur.

Velasco, Jr., J., no part being the HRET Chairman.

Bersamin, J., no part being a member of the HRET.

Del Castillo and *Perez, JJ.,* on official leave.

EN BANC

[G.R. No. 207264. October 22, 2013]

REGINA ONGSIAKO REYES, *petitioner, vs.* **COMMISSION ON ELECTIONS and JOSEPH SOCORRO B. TAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; WHERE THE CERTIFICATE OF CANDIDACY HAS ALREADY BEEN ORDERED CANCELLED BY THE COMMISSION ON ELECTIONS (COMELEC), THE PROCLAMATION SECURED BY THE CONCERNED CANDIDATE WAS BASELESS AND INVALID; PETITIONER FAILED TO AVAIL OF THE REMEDY TO REMOVE THE EFFECT OF SUCH CANCELLATION.— As the point has obviously been missed by the petitioner who continues to argue on the basis of her "due proclamation," the instant motion gives us the opportunity to highlight the undeniable fact we here repeat that the proclamation which petitioner secured on 18 May 2013 was WITHOUT ANY BASIS. 1. Four (4) days BEFORE the 18 May 2013 proclamation, or on 14 May 2013, the COMELEC *En Banc* has already denied for lack of merit the petitioner's motion to reconsider the decision of the COMELEC First Division that CANCELLED petitioner's certificate of candidacy. 2. On 18 May 2013, there was already

a standing and unquestioned cancellation of petitioner's certificate of candidacy which cancellation is a definite bar to her proclamation. On 18 May 2003, that bar has not been removed, there was not even any attempt to remove it. 3. The COMELEC Rules indicate the manner by which the impediment to proclamation may be removed. Rule 18, Section 13(b) provides: "(b) In Special Actions and Special Cases a decision or resolution of the Commission *En Banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court." Within that five (5) days, petitioner had the opportunity to go to the Supreme Court for a restraining order that will remove the immediate effect of the *En Banc* cancellation of her certificate of candidacy. Within the five (5) days the Supreme Court may remove the barrier to, and thus allow, the proclamation of petitioner. That did not happen. Petitioner did not move to have it happen. It is error to argue that the five days should pass before the petitioner is barred from being proclaimed. Petitioner lost in the COMELEC as respondent. Her certificate of candidacy has been ordered cancelled. She could not be proclaimed because there was a final finding against her by the COMELEC. She needed a restraining order from the Supreme Court to avoid the final finding. After the five days when the decision adverse to her became executory, the need for Supreme Court intervention became even more imperative. She would have to base her recourse on the position that the COMELEC committed grave abuse of discretion in cancelling her certificate of candidacy and that a restraining order, which would allow her proclamation, will have to be based on irreparable injury and demonstrated possibility of grave abuse of discretion on the part of the COMELEC. In this case, before and after the 18 May 2013 proclamation, there was not even an attempt at the legal remedy, clearly available to her, to permit her proclamation. What petitioner did was to "take the law into her hands" and secure a proclamation in complete disregard of the COMELEC *En Banc* decision that was final on 14 May 2013 and final and executory five days thereafter.

2. ID.; ID.; ID.; A CANDIDATE WHO SECURED A BASELESS PROCLAMATION IS NOT A MEMBER OF THE HOUSE OF REPRESENTATIVES; A BASELESS PROCLAMATION CANNOT BE USED TO OUST COMELEC OF ITS JURISDICTION AND INSIST ON THE EXCLUSIVE JURISDICTION OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET).—

8. Petitioner, therefore, is in error when she posits that at present it is the HRET which has exclusive jurisdiction over her qualifications as a Member of the House of Representatives. That the HRET is the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives is a written constitutional provision. It is, however unavailable to petitioner because she is NOT a Member of the House at present. The COMELEC never ordered her proclamation as the rightful winner in the election for such membership. Indeed, the action for cancellation of petitioner's certificate of candidacy, the decision in which is the indispensable determinant of the right of petitioner to proclamation, was correctly lodged in the COMELEC, was completely and fully litigated in the COMELEC and was finally decided by the COMELEC. On and after 14 May 2013, there was nothing left for the COMELEC to do to decide the case. The decision sealed the proceedings in the COMELEC regarding petitioner's ineligibility as a candidate for Representative of Marinduque. The decision erected the bar to petitioner's proclamation. The bar remained when no restraining order was obtained by petitioner from the Supreme Court within five days from 14 May 2013.

3. ID.; ID.; ID.; JURISDICTION OF THE COMELEC AND THE HRET, EXPLAINED AND DISTINGUISHED.— 11. It may need pointing out that there is no conflict between the COMELEC and the HRET insofar as the petitioner's being a Representative of Marinduque is concerned. The COMELEC covers the matter of petitioner's certificate of candidacy, and its due course or its cancellation, which are the pivotal conclusions that determines who can be legally proclaimed. The matter can go to the Supreme Court but not as a continuation of the proceedings in the COMELEC, which has in fact ended, but on an original action before the Court grounded on more than mere error of judgment but on error of jurisdiction for grave abuse of discretion. At and after the COMELEC *En Banc* decision, there is no longer any certificate cancellation matter than can go to the HRET. In that sense, the HRET's constitutional authority opens, over the qualification of its MEMBER, who becomes so only upon a duly and legally based proclamation, the first and unavoidable step towards such membership. The HRET jurisdiction over the qualification of the Member of the House of Representatives is original and

exclusive, and as such, proceeds *de novo* unhampered by the proceedings in the COMELEC which, as just stated has been terminated. The HRET proceedings is a regular, not summary, proceeding. It will determine who should be the Member of the House. It must be made clear though, at the risk of repetitiveness, that no hiatus occurs in the representation of Marinduque in the House because there is such a representative who shall sit as the HRET proceedings are had till termination. Such representative is the duly proclaimed winner resulting from the terminated case of cancellation of certificate of candidacy of petitioner. The petitioner is not, cannot, be that representative. And this, all in all, is the crux of the dispute between the parties: who shall sit in the House in representation of Marinduque, while there is yet no HRET decision on the qualifications of the Members.

4. REMEDIAL LAW; COURTS; JURISDICTION ONCE ACQUIRED CANNOT BE LOST BY UNILATERAL WITHDRAWAL OF THE PETITION; PETITIONER CANNOT WITHDRAW HER PETITION TO ERASE THE RULING ADVERSE TO HER INTEREST.— The motion to withdraw petition filed AFTER the Court has acted thereon, is noted. It may well be in order to remind petitioner that jurisdiction, once acquired, is not lost upon the instance of the parties, but continues until the case is terminated. When petitioner filed her Petition for *Certiorari*, jurisdiction vested in the Court and, in fact, the Court exercised such jurisdiction when it acted on the petition. Such jurisdiction cannot be lost by the unilateral withdrawal of the petition by petitioner. More importantly, the Resolution dated 25 June 2013, being a valid court issuance, undoubtedly has legal consequences. Petitioner cannot, by the mere expediency of withdrawing the petition, negative and nullify the Court's Resolution and its legal effects. At this point, we counsel petitioner against trifling with court processes. Having sought the jurisdiction of the Supreme Court, petitioner cannot withdraw her petition to erase the ruling adverse to her interests. Obviously, she cannot, as she designed below, subject to her predilections the supremacy of the law.

SERENO, *C.J., separate concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS OF LAW; WHERE THE PETITIONER HAD ALL THE RIGHT

TO OBJECT TO THE DOCUMENTARY EVIDENCE OFFERED AGAINST HER BUT FAILED TO DO SO, HER RIGHT TO DUE PROCESS WAS NEVER VIOLATED.— The right of petitioner to due process was never violated, as she was given every opportunity to present her side during the reception of evidence at the Division level. She was furnished a copy of the Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits. She had all the right to interpose her objections to the documentary evidence offered against her, but she failed to exercise that right. The COMELEC First Division, therefore, did not commit any grave abuse of discretion when it admitted in evidence the documents offered, even if the printed Internet article showing that petitioner had used a U.S. passport might have been hearsay, and even if the copy of the Bureau of Immigration Certification was merely a photocopy and not even a certified true copy of the original.

2. **REMEDIAL LAW; EVIDENCE; EVIDENCE OFFERED BUT NOT OBJECTED TO MAY BE DEEMED ADMITTED AND VALIDLY CONSIDERED BY THE COURT; PRINCIPLE APPLIED IN ELECTORAL CASE.—** Section 1, Rule 41 of the COMELEC Rules of Procedure provides for the suppletory application of the Rules of Court. The third paragraph of Section 36, Rule 132 of the Revised Rules of Evidence provides that "an offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court." Petitioner failed to raise any objection to the offer of evidence on time. It is now too late for her to question its admissibility. The rule is that evidence not objected to may be deemed admitted and validly considered by the court in arriving at its judgment.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*: GRAVE ABUSE OF DISCRETION, NOT A CASE OF; WHEN THE COMMISSION ON ELECTIONS (COMELEC) DECIDED THE CASE BASED ON THE PLEADINGS AND THE SUBMITTED EVIDENCE, IT CANNOT BE SAID TO HAVE ACTED WITH GRAVE ABUSE OF DISCRETION.—** There was no grave abuse of discretion when, based on the records, the COMELEC cancelled the Certificate of Candidacy of petitioner after finding that she had committed false material misrepresentation with respect to her citizenship and residency. It thereafter declared that she should have complied with the requirements of

renouncing her foreign citizenship and taking the oath of allegiance under R.A. 9225 before she could qualify to run for any elective office. It bears stressing that when the petition to deny due course or to cancel her Certificate of Candidacy was filed alleging that she possessed American citizenship, petitioner denied the allegation, claiming that no evidence whatsoever was presented to support the claim. When herein private respondent filed her Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits, petitioner did not object to the documentary evidence offered to support the allegation that the latter possessed American citizenship. In her Motion for Reconsideration of the COMELEC First Division Resolution dated 27 March 2013, petitioner, without providing any basis, claimed that she had not lost her Filipino citizenship. Yet, she attached an Affidavit of Renunciation of Foreign Citizenship. She claimed that even if it was a superfluity, she was attaching her duly accomplished personal and sworn renunciation of any and all foreign citizenships in compliance with the requirements under R.A. 9225, "if only to show [her] desire and zeal to serve the people and comply with rules." In her original Petition before this Court, petitioner contends that "even granting for the sake of argument but without conceding that the 'newly discovered evidence' of Respondent Tan were admissible, it merely established the fact that Petitioner is an American citizen which does not translate to her not being a Filipino." Yet, in her present Motion for Reconsideration, petitioner begs the indulgence of this Court for the belated submission of her Identification Certificate recognizing her as a citizen of the Philippines pursuant to the provisions and implementing regulations of R.A. 9225. This submission of the Affidavit of Renunciation of Foreign Citizenship and the Identification Certificate issued by the Bureau of Immigration confirms the acquisition of foreign citizenship by petitioner and the applicability of R.A. 9225 to her. Thus, the COMELEC was correct in ruling that she was no longer a Filipino citizen when she filed her Certificate of Candidacy and that without complying with the requirements of R.A. 9225, she was not qualified to run for public office. Since these two documents were not submitted to the COMELEC, there can be no grave abuse of discretion either on the part of the COMELEC First Division when it cancelled her Certificate of Candidacy, or on the part of the COMELEC *En Banc* when it affirmed the cancellation.

4. POLITICAL LAW; ELECTIONS; WHERE THE COMELEC EXERCISED JURISDICTION OVER A PETITION UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE INVOLVING A CANDIDATE FOR MEMBER OF THE HOUSE OF REPRESENTATIVES AND ITS JURISDICTION WAS NEVER QUESTIONED, SUCH EXERCISE OF JURISDICTION CANNOT BE DECLARED AS UNCONSTITUTIONAL.— Let me now proceed to an explanation why – despite my view that under the 1987 Constitution, the HRET is given the power to be the "sole judge of all contests relating to the [x x x] qualifications of its Members" – the present case cannot be the basis for declaring the unconstitutionality of the COMELEC's action of exercising jurisdiction over Section 78 petitions involving candidates for Member of the House of Representatives or the Senate. It must be pointed out that the jurisdiction of the COMELEC to entertain and rule on the Petition to Deny Due Course or to Cancel the Certificate of Candidacy in the instant case was never questioned. In fact, petitioner fully participated in the action, by filing her Answer and Memorandum before the First Division and subsequently filing a Motion for Reconsideration before the COMELEC after the First Division cancelled her Certificate of Candidacy on 27 March 2013. The COMELEC had the legal duty to decide on the matter and, in fact, the COMELEC *En Banc* resolved to affirm the cancellation of the Certificate of Candidacy on 14 May 2013.

5. ID.; ID.; WHEN THE CERTIFICATE OF CANDIDACY HAS ALREADY BEEN CANCELLED BY THE COMELEC, THE PROCLAMATION OF THE CONCERNED CANDIDATE SHOULD HAVE BEEN SUSPENDED AS THE INCIDENT WAS ANALOGOUS TO A PREJUDICIAL QUESTION IN CRIMINAL CASES.— The law provides for the suspension of a proclamation whenever there are pending disqualification cases or petitions to deny due course to or cancel a certificate of candidacy, and the evidence of guilt is strong. This provision points to the legislative intent to be cautious in proceeding with the proclamation of candidates against whom pending disqualification cases or petitions for cancellation of certificate of candidacy are filed. When the petition for cancellation of the certificate of candidacy is no longer pending as when the COMELEC *En Banc* had, in fact, affirmed the cancellation of the certificate of candidacy, the need for the suspension of the proclamation becomes more apparent. In this case, the

technical requirement of Secs. 6 and 7 of R.A. 6646 – to suspend the proclamation in the face of the motion of a complainant or any intervenor to suspend the proclamation was, in fact, substantially complied with. The compliance was when the other candidate, through his counsel, moved for his proclamation in view of the affirmation by the COMELEC *En Banc* of the cancellation of petitioner's Certificate of Candidacy and actually provided a copy of the Resolution to the PBOC. That Motion, together with a copy of the COMELEC *En Banc* Resolution, should have given enough notice to the PBOC that there was an incident analogous to a prejudicial question in criminal cases, an incident that called for the suspension of the proclamation of the candidate whose Certificate of Candidacy had already been cancelled. x x x Applying the elements of a prejudicial question to Secs. 6 and 7 of R.A. 6646 on the pendency of disqualification cases or of petitions filed under Sec. 78 call for the suspension of the proclamation of a candidate when the evidence of guilt or the likelihood of the cancellation of the certificate of candidacy is strong. The main issue in the disqualification case or the Petition to cancel the Certificate of Candidacy is directly related to and, is, in fact, the crucial element that must be decided before a proclamation can be had.

6. ID.; ID.; EFFECT OF THE PROCLAMATION OF A CANDIDATE WHOSE CERTIFICATE OF CANDIDACY HAS ALREADY BEEN CANCELLED BY THE COMELEC.— The PBOC denied the motion to proclaim candidate Velasco on the ground that neither the counsel of petitioner nor the PBOC was duly furnished or served an official copy of the COMELEC *En Banc* Resolution dated 14 May 2013 and forthwith proceeded with the proclamation of herein petitioner, whose Certificate of Candidacy has already been cancelled, bespeaks *mala fide* on its part. As early as 27 March 2013, when the COMELEC First Division cancelled petitioner's Certificate of Candidacy, the people of Marinduque, including the COMELEC officials in the province, were already aware of the impending disqualification of herein petitioner upon the finality of the cancellation of her Certificate of Candidacy. When the COMELEC *En Banc* affirmed the cancellation of the certificate of candidacy on the day of the elections, but before the proclamation of the winner, it had the effect of declaring that herein petitioner was not a candidate. Thus, when the PBOC proclaimed herein petitioner, it proclaimed not a winner but a non-candidate. The proclamation of a non-

candidate cannot take away the power vested in the COMELEC to enforce and execute its decisions. It is a power that enjoys precedence over that emanating from any other authority, except the Supreme Court, and that which is issued in *habeas corpus* proceedings as provided in Sec. 52(f) of the Omnibus Election Code.

ABAD, *J., concurring opinion:*

1. POLITICAL LAW; ELECTIONS; JURISDICTION OF THE COMMISSION ON ELECTIONS (COMELEC) *VIS-À-VIS* JURISDICTION OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) OVER ELECTION CONTESTS, EXPLAINED; TWO CONFLICTING VIEWS.— When Congress enacted the Omnibus Election Code, among its concerns were persons who, although not qualified, seek public office and mar the orderly conduct of the elections. To address this problem and for the public good, Congress empowered the Commission on Elections (COMELEC) to hear and decide petitions for the cancellation of their certificates of candidacies on the ground of false material representations that such certificates contain. x x x The validity of Section 78 has never been challenged since it simply addresses a reprehensible mischief committed during elections. Anticipating this need, Section 2 of Article IX-C of the Constitution gives the COMELEC the duty and the power to enforce this and other laws relative to the conduct of the elections[.] x x x Clearly then, actions to cancel certificates of candidacies of members of the House of Representatives (the House), allegedly containing material misrepresentation, are within the constitutional and statutory power of the COMELEC to hear and adjudicate. But related to this is the exclusive power of the House of Representatives Electoral Tribunal (HRET) to hear and decide all contests also relating to the qualifications of the members of the House [under] x x x Section 17, Article VI, of the Constitution[.] x x x The problem is that a contest over the qualifications of a candidate for the House often begins in the form of a petition filed with the COMELEC for the cancellation of his certificate of candidacy on ground of false representation regarding his qualifications. At times, the COMELEC case is overtaken by the elections and the subsequent proclamation of the challenged candidate as winner. It is inevitable that,

after taking his oath and assuming membership in the House, he would insist that any pending question relating to his qualifications before the COMELEC should now be heard and decided by the HRET. To avoid a conflict of jurisdiction, the Court recognized and established the rule that the jurisdiction of the COMELEC over the case ceases where the jurisdiction of the HRET begins. Ultimately, this brings about the issue of when this turnover of jurisdiction takes place. Past precedents appear to be divided into two views: the first is that the proclamation of the winning candidate for the House divests the COMELEC of its jurisdiction over pending disputes relating to his qualifications in favor of the HRET. The second is that the turnover of jurisdiction over a pending action from the COMELEC to the HRET takes place only after the winning candidate has been proclaimed, taken his oath, and assumed office.

2. ID.; ID.; ID.; ID.; HRET HAS JURISDICTION ONLY IF THE CASE INVOLVES A MEMBER OF THE HOUSE OF REPRESENTATIVES; A MEMBER OF THE HOUSE IS ONE WHO WON IN THE ELECTION, TOOK AN OATH AND ASSUMED OFFICE ON THE 30TH OF JUNE FOLLOWING HIS ELECTION; REASON.— These conflicting views should now be settled with finality. And the solution lies in the provision of the Constitution that defines the jurisdiction of the HRET. It says: Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x The above categorically states that the HRET's jurisdiction covers only contests relating, among other things, to "the qualifications of their respective Members." This power is inherent in all organizations as a means of preserving their integrity. For the HRET to have jurisdiction, the case must involve a "member" of the House. The fact alone that one won the elections and has been proclaimed does not, to be sure, make him a "member" of the House. To become a member, the candidate to the position must win the election, take an oath, and assume office when his term begins. The term of a "member" of the House begins on the 30th of June next following his election. Section 7, Article VI of the Constitution, provides: Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by

law, at noon on the thirtieth day of June next following their election. Clearly, a proclaimed winner will be a "member" of the House only at noon of June 30 following his election and not earlier when he was merely proclaimed as a winning candidate. The reason is simple. There is no vacancy in that office before noon of June 30. It is implicit that the term of the member whom he would succeed would continue until noon of that day when the term of the new member begins. Consequently, the proclaimed winner in the elections remains an outsider before June 30. Only on June 30 will his term begin. And only then will the COMELEC be divested of its jurisdiction over any unresolved petition for the cancellation of his certificate of candidacy.

3. ID.; ID.; ID.; ID.; A CANDIDATE WHOSE CERTIFICATE OF CANDIDACY HAS BEEN CANCELLED DID NOT BECOME A MEMBER OF THE HOUSE DESPITE HER PROCLAMATION AS A WINNER; SHE IN EFFECT WAS NOT VALIDLY VOTED UPON AS A CANDIDATE.— [O]n March 27, 2013 the COMELEC's Second Division rendered a decision cancelling petitioner Reyes' certificate of candidacy. She filed a motion for reconsideration but on May 14, 2013 the COMELEC *En Banc* issued a Resolution denying it. Since her counsel received a copy of the *En Banc* Resolution on May 16, 2013, she had until May 21, 2013 within which to file a petition before the Court assailing the COMELEC's action. But she did not, thus rendering its decision against her final and executory as of May 22, 2013. This prompted the COMELEC to issue a certificate of finality on June 5, 2013. Consequently, since the COMELEC Decision in petitioner Reyes' case already became final and executory on May 22, 2013, it cannot be said that the HRET can still take over some unfinished COMELEC action in her case. The COMELEC's final decision, rendered pursuant to its constitutional and statutory powers, binds her, the HRET, and the Court. Further, given the cancellation of her certificate of candidacy, she in effect was not validly voted upon as a candidate for the position of Representative of the lone District of Marinduque on May 13, 2010. Parenthetically, a reading of the COMELEC *En Banc*'s Resolution of July 19, 2013 shows that its process server, Pedro P. Sta. Rosa arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing was being held prior to petitioner Reyes' proclamation to serve a copy of the COMELEC *En Banc*'s Resolution of May 14, 2013 and Order of May 18, 2013 but the Provincial Election Supervisor (PES) refused

to accept them. x x x The above shows bad faith on the part of the Provincial Election Supervisor and Provincial Board of Canvassers in proclaiming petitioner Reyes despite COMELEC *En Banc*'s resolution denying her motion for reconsideration of the decision cancelling her certificate of candidacy.

4. ID.; ID.; ID.; ID.; HRET CANNOT TAKE OVER A CANCELLATION CASE THAT HAS BEEN DECIDED BY THE COMELEC EVEN WHEN THE CHALLENGED WINNER HAS ALREADY ASSUMED OFFICE IF SUCH DECISION HAS BEEN ELEVATED TO THE SUPREME COURT ON *CERTIORARI*; HRET CANNOT OUST THE SUPREME COURT OF ITS JURISDICTION UNDER THE CONSTITUTION.— [I]t is understood that the HRET can take over only those cancellation cases that have remained unresolved by the COMELEC by the time the House member assumes office. Cases that the COMELEC has already decided cannot be taken over by the HRET, even when the challenged winner has already assumed office, if such decision has been elevated to the Supreme Court on *certiorari* as provided under the pertinent portion of Section 7, Article IX of the Constitution. Section 7. x x x Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. The HRET cannot oust the Supreme Court of its jurisdiction under the Constitution. As the Court held in *Codilla, Sr. v. Hon. De Venecia*, the HRET cannot assume jurisdiction over a cancellation case involving members of the House that had already been decided by the COMELEC and is under review by the Supreme Court.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; ELECTIONS; PROCLAMATION ALONE OF THE WINNING CONGRESSIONAL CANDIDATE FOLLOWING THE ELECTIONS DIVESTS COMMISSION ON ELECTIONS (COMELEC) OF ITS JURISDICTION OVER DISPUTES RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF THE PROCLAIMED REPRESENTATIVE IN FAVOR OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) DESPITE ANY ALLEGATION OF INVALIDITY OF SUCH PROCLAMATION.— We have

consistently ruled that proclamation **alone** of a winning congressional candidate following the elections divests COMELEC of its jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET. Proclamation alone of a winning congressional candidate is sufficient, and is the only essential act to vest jurisdiction upon the HRET. Taking of the oath and assumption of office are merely descriptive of what necessarily comes after proclamation. x x x Section 17, Article VI of the Constitution provides that the HRET is the "sole judge of all contests relating to the election, returns, and qualifications" of the House Members. *Certiorari* will not lie considering that there is an available and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceedings before the COMELEC. Indeed, even if Joseph Socorro B. Tan alleged, as he did allege in his Comment to Reyes' Motion for Reconsideration, that Reyes' proclamation is "null, void and without legal force and effect," such allegation does not divest the HRET of its jurisdiction. Upon proclamation of the winning candidate as House Member and **despite any allegation of invalidity of his or her proclamation**, the HRET alone is vested with jurisdiction to hear the election contest. The COMELEC's jurisdiction ends where the HRET's jurisdiction begins. x x x Upon proclamation, jurisdiction over any election contest against the proclaimed candidate is vested in the HRET by operation of the Constitution. Any challenge to the validity of the proclamation falls under the HRET's jurisdiction as "sole judge of all contests relating to the election, returns, and qualifications" of House Members. To hold that the HRET does not have jurisdiction over a challenge to the validity of a proclamation is to hold that while jurisdiction vests in the HRET upon proclamation, the HRET loses such jurisdiction if a challenge is filed assailing the validity of the proclamation.

BRION, *J.*, *dissenting opinion:*

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* A PARTY CANNOT UNILATERALLY WITHDRAW HER PETITION: RULE ON ADHERENCE TO JURISDICTION, APPLIED.— I submit that Reyes can no longer and should not be allowed to unilaterally withdraw her petition. x x x The rule on adherence [to] jurisdiction applies to the present case. This

rule states that once the jurisdiction of a court attaches, the court cannot be ousted by subsequent happenings or events, although of a character that would have prevented jurisdiction from attaching in the first instance; the court retains jurisdiction until it finally disposes of the case. If at all possible, the withdrawal should be for a meritorious and justifiable reason, and subject to the approval of the Court. x x x [T]he Court had acquired jurisdiction and has in fact ruled on Reyes' petition; thus the Court's jurisdiction should continue until it finally disposes of the case. Reyes cannot invoke the jurisdiction of this Court and thereafter simply withdraw her petition, especially after the Court has ruled and after its ruling has generated a lot of public attention and interest, some of them adverse to the reputation of the Court.

2. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; WHERE A BLOG ARTICLE PUBLISHED ONLINE AND UNVERIFIED PHOTOCOPIES OF DOCUMENTS ARE USED AS BASIS FOR CANCELLATION OF CERTIFICATE OF CANDIDACY (COC), IT IS A CLEAR VIOLATION OF BOTH PROCEDURAL AND SUBSTANTIVE DUE PROCESS.— The violation of Reyes' deliberation stage rights, however, is a different matter altogether and one that this Court cannot close its eyes to, most especially after this violation was made glaring in the rulings below. To recall, the COMELEC First Division, in this case, found — based on Tan's submitted evidence (Eli J. Obligacion's blog article and the Sanchez certification) — that Reyes was a holder of a U.S. passport, which she continued to use until June 30, 2012. The COMELEC also found that she also failed to establish that she had applied for repatriation under RA 9225 by taking the required Oath of Allegiance and by executing an Affidavit of Renunciation of her American Citizenship. Based on these findings, the COMELEC First Division ruled that Reyes remains an American citizen who is ineligible to run and hold any elective office. This conclusion and the use of the hearsay evidence occasioned a strong dissent from no less than COMELEC Chairman Sixto S. Brillantes, Jr. x x x For reasons only known to the Commission, the COMELEC egregiously ignored the settled principle in jurisprudence that uncorroborated hearsay does not constitute substantial evidence. x x x At the very least, the COMELEC should have considered whether purported **evidence from a person not before the court** and whose statement cannot be confirmed for the

genuineness, accuracy and truth of the basic fact sought to be established in the case should be taken as the "truth." Even without the use of technical rules of evidence, common sense and the minimum sense of fairness, to my mind, dictate that a blog article published online or unidentified documents cannot simply be taken to be evidence of the truth of what they say, nor can photocopies of documents not shown to be genuine can be taken as proof of the "truth" on their faces. By accepting these materials as statements of the "truth," the COMELEC clearly violated Reyes' right to both procedural and substantive due process.

3. **ID.; ID.; ID.; WHERE THE DENIAL OF THE FUNDAMENTAL RIGHT TO DUE PROCESS IS APPARENT, A DECISION RENDERED IN DISREGARD OF THAT RIGHT SHOULD BE DECLARED VOID FOR LACK OF JURISDICTION; APPLICATION.—** I submit that the violation of Reyes' right to due process raises a **serious jurisdictional issue** that cannot be glossed over or disregarded at will, and cannot be saved by the claim that she had been accorded her hearing rights. The latter relates purely to the actual hearing process and is rendered meaningless where there is failure at the more substantive deliberation stage. **Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right should be declared void for lack of jurisdiction**. The rule is equally true for quasi-judicial bodies (such as the COMELEC), for the constitutional guarantee that no man shall be deprived of life, liberty or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where the violation occurs. **Consequently, the assailed March 27, 2013 and May 14, 2013 COMELEC resolutions cancelling Reyes' CoC should be declared void for having been rendered in violation of her right to due process**.

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT CANNOT DECIDE AN ISSUE NOT RAISED IN THE PETITION; WHERE THE PETITION QUESTIONED ONLY THE COMELEC'S CANCELLATION OF PETITIONER'S COC, ANY DECISION ON THE VALIDITY OR INVALIDITY OF PETITIONER'S PROCLAMATION IS BEYOND THE COURT'S JURISDICTION.—** A very critical point to appreciate in considering the present petition for *certiorari* is that it was

filed by Reyes who is **pointedly questioning the cancellation of her CoC**. **She never asked this Court in her petition to act on her proclamation**. The party who has the interest and the personality to seek the annulment of Reyes' proclamation is **the losing candidate** – former Cong. Velasco – who is not even a party to the present petition and who **never raised the issue of the validity of Reyes' proclamation before this Court**. Thus, **the fact of proclamation is an undisputed matter** before this Court and cannot be attacked directly or collaterally until after the issue of Reyes' qualifications (which would necessarily include the merits of the validity or invalidity of her CoC) is resolved before the proper tribunal. The entity, too, that can annul or set aside the proclamation – at this stage of the case – should be the HRET, not this Court. Any other manner or forum for the resolution of the Marinduque election dispute would result in a **clash of jurisdiction** that the law and the decided cases have sought to avoid. x x x I submit that the Court cannot rule on the issue of the validity or invalidity of Reyes' **proclamation** as this is **NOT an issue raised in the present petition before this Court, nor an issue in the COMELEC proceedings that is now under review.** Proclamation is a separate COMELEC action that came after and separately from the CoC cancellation ruling. As a cautionary note, any ruling by the Court on the validity or invalidity of Reyes' proclamation is beyond the Court's jurisdiction at the present time since the **Court does not have original jurisdiction over annulment of proclamations** and **no petition is before this Court seeking to impugn or sustain Reyes' proclamation**. By law, it is the COMELEC that has the original and exclusive jurisdiction over pre-proclamation controversies, including the annulment of proclamations for positions other than the President, the Vice President, and the Members of the two Houses of Congress which all have their specific constitutional rules on the resolution of their elections, returns and qualifications. As matters now stand, from the perspective of the petition for *certiorari* now before this Court, the proclamation is simply ***an event*** (albeit, an important one) that transpired in the course of the election process and in Reyes' assumption to office as Member of the House of Representatives. If it can be an issue at all, the issue is **whether it did or did not transpire**; its legal standing or **legality is not in issue** and cannot be questioned before this Court simply because **no such issue is before us**.

5. POLITICAL LAW; ELECTIONS; JURISDICTION OVER ELECTION CONTESTS; UPON PROCLAMATION, THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) ALONE HAS JURISDICTION OVER PETITIONER'S QUALIFICATIONS INCLUDING THE VALIDITY OF HER PROCLAMATION.— With the fact of Reyes' proclamation established or undisputed, the **HRET alone – to the exclusion of any other tribunal – has jurisdiction over Reyes' qualifications, including the matter of the validity or invalidity of her proclamation.** Prevailing jurisprudence dictates that **upon proclamation** of the winning candidate and **despite the allegation of the invalidity of the proclamation**, the **HRET acquires jurisdiction** to hear the election contest involving the election, returns and qualifications of a member of the House of Representatives. As early as 1988, in *Lazatin v. The Commission on Elections*, the Court held that upon proclamation, oath and assumption to office of the winning candidate as Member of the House of Representatives, any question relating to the invalidity of the winning candidate's proclamation should be addressed to the sound judgment of the HRET.

6. ID.; ID.; ID.; THE COMELEC'S CANCELLATION OF PETITIONER'S COC DID NOT RENDER HER PROCLAMATION VOID.— The *ponencia's* position that the COMELEC *en banc* already cancelled with finality Reyes' CoC on May 14, 2013 prior to her proclamation on May 18, 2013 is simply **incorrect**. The COMELEC *en banc's* May 14, 2013 Resolution (cancelling Reyes' CoC) could not have attained finality as Reyes' valid proclamation on May 18, 2013 had the effect of divesting the COMELEC of jurisdiction over matters pending before it relating to Reyes' eligibility. Two material records are critical in considering this point. The ***first*** is the proclamation on May 18, 2013 which came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 resolution, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure. Under this COMELEC Rule, "decisions in x x x petitions to deny due course to or cancel certificates of candidacy, x x x shall become final and executory after the lapse of five (5) days from their promulgation unless restrained by the Supreme Court." As has been mentioned earlier, this proclamation was based on the results of the voting on the May 13, 2013 elections and the PBOC canvass that Reyes

secured **52,209 votes**, as against former Cong. Velasco's **48,396 votes**. **This election result is the silent argument in this case that can hardly be contested, or, if at all, must be addressed before the proper tribunal.** Before this proper tribunal rules, the Marinduque electorate – who had voted for Reyes on May 13, 2013 despite the COMELEC First Division ruling cancelling her CoC – should not be disenfranchised, particularly not by this Court through its flawed June 25, 2013 ruling. The ***second*** material record is the COMELEC Order of June 5, 2013 which declared its resolution of May 14, 2013 final and executory. **When the COMELEC made this declaration, Reyes had long been proclaimed by the PBOC as the candidate who had garnered the highest number of votes.** This material record further strengthens the conclusion that no legal impediment existed for the PBOC on May 18, 2013 when it proclaimed Reyes.

7. ID.; ID.; ID.; PETITIONER'S PROCLAMATION DIVESTED THE COMELEC OF JURISDICTION OVER HER QUALIFICATIONS IN FAVOR OF THE HRET.— I reiterate my previous Dissenting Opinion position that the **proclamation** of the winning candidate is the **operative fact that triggers the jurisdiction of the HRET** over election contests relating to the winning candidate's election, returns, and qualifications. In other words, the proclamation of a winning candidate divests the COMELEC of its jurisdiction **over matters pending before it at the time of the proclamation;** the party questioning the election, returns and the qualifications of the winning candidate should now present his or her case in a proper proceeding (*i.e., an election protest or a quo warranto petition)* before the HRET that, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualifications of members of the House of Representatives. I take ***firm exception*** to the majority's conclusion that the COMELEC retains jurisdiction over disputes relating to the election, returns and qualifications of the representative who has been proclaimed but who has not yet assumed office. This ruling is contrary to the Court's prevailing jurisprudence on the matter. Prevailing jurisprudence dictates that the **proclamation alone** of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representatives in favor of the HRET, although some of these decided cases

mention that the COMELEC's jurisdiction ends and the HRET's own jurisdiction begins once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives.

8. ID.; ID.; ID.; ONLY THE HRET CAN NOW RULE ON THE PENDING ELECTION DISPUTES; THE COURT ONLY COMES IN UNDER RULE 65 IF THE HRET GRAVELY ABUSES THE EXERCISE OF ITS DISCRETION.— Despite the recourse to this Court and the original jurisdiction we now exercise over the petition, our action on the present petition should understandably be limited. **We can only rule on the existence of the grave abuse of discretion we found and on the consequent invalidity of the COMELEC action in the cancellation case before it**; **we cannot rule on the issue of Reyes' qualifications** (*i.e.*, on the issue of citizenship and residency). We have so held in *Perez v. Commission on Elections* and *Bello v. Commission on Elections* and **we have no reason to change tack now**. The HRET, as the constitutionally designated tribunal to rule at the first instance, should resolve the issues presented before it, including the task of appreciating the supposed admission of Reyes that she married an American citizen.

LEONEN, *J., dissenting opinion:*

1. POLITICAL LAW; ELECTIONS; JURISDICTION OVER ELECTION CONTESTS; FUNDAMENTAL REASONS WHY THE SUPREME COURT SHOULD BE CAUTIOUS IN EXERCISING ITS JURISDICTION TO DETERMINE WHO ARE MEMBERS OF THE HOUSE OF REPRESENTATIVES; PROCLAMATION IS THE OPERATIVE FACT THAT REMOVES JURISDICTION FROM THE SUPREME COURT OR THE COMMISSION ON ELECTIONS (COMELEC) AND VESTS IT ON THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET).— In case of doubt, there are fundamental reasons for this Court to be cautious in exercising its jurisdiction to determine who the members are of the House of Representatives. We should maintain our consistent doctrine that proclamation is the operative act that removes jurisdiction from this Court or the Commission on Elections and vests it on the House of Representatives Electoral Tribunal (HRET). The first reason is that the Constitution

unequivocably grants this discretion to another constitutional body called the House of Representatives Electoral Tribunal. This is a separate organ from the Judiciary. x x x The authority of electoral tribunals as the sole judge of all contests relating to the election, returns, and qualifications of their members was described in *Roces v. House of Representatives Electoral Tribunal*: The HRET is the **sole judge** of all contests relating to the election, returns, and qualifications of the members of the House of Representatives and has the power to promulgate procedural rules to govern proceedings brought before it. This exclusive jurisdiction includes the power to determine whether it has the authority to hear and determine the controversy presented, and the right to decide whether that state of facts exists which confers jurisdiction, as well as all other matters which arise in the case legitimately before it. Accordingly, **it has the power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction**. x x x Initially, our organic act envisioned both the House of Representatives and the Senate to determine their members by creating tribunals that would decide on contests relating to the election, returns and qualifications of its members. This was to maintain the integrity of the Legislature as a separate branch of government. The House of Representatives and the Senate act collectively, and the numbers that determine the outcome of their respective actions are sensitive to the composition of their memberships. x x x Both the 1935 and the 1987 Constitution, however, did not intend the Judiciary to take over the function of deciding contests of the election, returns, and qualification of a member of either the House of Representatives or the Senate. The earliest moment when there can be members of the House of Representatives or the Senate is upon their proclamation as winners of an election. Necessarily, this proclamation happens even before they can actually assume their office as the elections happen in May, and their terms start "at noon on the thirtieth day of June next following their election." Contests of elected representatives or senators can happen as soon as they are proclaimed. We should remain faithful to the intention of the Constitution. It is at the time of their proclamation that we should declare ourselves as without jurisdiction. *This is clear doctrine, and there are no reasons*

to modify it in the present case. x x x The second fundamental reason for us to exercise caution in determining the composition of the House of Representatives is that this is required for a better administration of justice. Matters relating to factual findings on election, returns, and qualifications must first be vetted in the appropriate electoral tribunal before these are raised in the Supreme Court.

2. ID.; ID.; ID.; RULINGS OF THE SUPREME COURT DID NOT CHANGE THE TIME-HONORED RULE THAT "WHERE A CANDIDATE HAS ALREADY BEEN PROCLAIMED WINNER IN THE CONGRESSIONAL ELECTIONS, THE REMEDY OF THE PETITIONER IS TO FILE AN ELECTION PROTEST OR *QUO WARRANTO* WITH THE HRET"; *AQUINO* AND *ROMUALDEZ-MARCOS* CASES DID NOT RULE THAT THREE REQUISITES MUST CONCUR SO THAT ONE MAY BE CONSIDERED MEMBER OF THE HOUSE SUBJECT TO THE JURISDICTION OF THE HRET.— It is my opinion that this Court did not, in any of the cases cited in the main *ponencia*, change the time-honored rule that "***where a candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest [or a petition for quo warranto] with the [House of Representatives Electoral Tribunal]***." The main *ponencia* cites several cases to support its *ratio decidendi* that three requisites must concur before a winning candidate is considered a "member" of the House of Representatives to vest jurisdiction on the electoral tribunal. These cases appear to have originated from *Guerrero v. Commission on Elections.* In *Guerrero*, this Court held that "x x x once a winning candidate has been **proclaimed**, **taken his oath**, and **assumed office** as a member of the House of Representatives, [the] COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins." The case cited *Aquino v. Commission on Elections* and *Romualdez-Marcos v. Commission on Elections* to support the statement. A closer reading of *Aquino* and *Romualdez-Marcos* will reveal that this Court did not rule that three requisites must concur so that one may be considered a "member" of the House of Representatives subject to the jurisdiction of the electoral tribunal. x x x To be sure, the petitioners who were the winning candidates in *Aquino* and *Romualdez-Marcos* invoked the jurisdiction of the House of Representatives Electoral Tribunal

though they had not yet been proclaimed. Thus, this Court held that the Commission on Elections still had jurisdiction over the disqualification cases. This Court did not create a new doctrine in *Aquino*[.] x x x [T]he pronouncement in *Guerrero* that is used in the main *ponencia* as the basis for its ruling is **not** supported by prior Decisions of this Court. More importantly, it cannot be considered to have changed the doctrine in *Angara v. Electoral Commission*. Instead, it was only made in the context of the facts in *Guerrero* where the Decision of the Commission on Elections *En Banc* was issued only after the proclamation and the assumption of office of the winning candidate. In other words, the contention that there must be proclamation, taking of the oath, and assumption of office before the House of Representatives Electoral Tribunal takes over is not *ratio decidendi*.

3. ID.; ID.; ID.; IT HAS BEEN THE CONSISTENT RULING OF THE COURT THAT IT IS THE PROCLAMATION OF THE WINNING CANDIDATE VYING FOR A SEAT IN CONGRESS THAT DIVESTS THE COMELEC OF JURISDICTION OVER AN ELECTORAL PROTEST; ISSUES ON THE INVALIDITY OF THE PROCLAMATION MAY BE THRESHED OUT BEFORE THE HRET.— [T]here is only **one** rule that this Court has consistently applied: It is the proclamation of the winning candidate vying for a seat in Congress that divests the Commission on Elections of jurisdiction over any electoral protest. This rule is consistent with the Constitution, the 2011 Rules of the House of Representatives Electoral Tribunal, the Omnibus Election Code, and jurisprudence. An electoral protest that also assails the validity of the proclamation will not cause the Commission on Elections to regain jurisdiction over the protest. Issues regarding the validity or invalidity of the proclamation may be threshed out before the electoral tribunals. x x x We have said that "the proclamation of the petitioners enjoys the presumption of regularity and validity." Unless it is annulled by the House of Representatives Electoral Tribunal after giving petitioner Reyes' due notice and hearing, her proclamation as a member-elect in the House of Representatives must stand.

4. ID.; ID.; ID.; SINCE THE VALIDITY OF PETITIONER'S PROCLAMATION WAS NEVER RAISED AS AN ISSUE, THE COURT SHOULD HAVE DISMISSED THE PETITION AND

ALLOWED THE PARTIES TO LITIGATE AT THE HRET.— The main *ponencia* went beyond dismissal of the Petition. The initial resolution of this case supported by the majority attempted to declare new doctrine. It should just have simply dismissed the Petition and allowed the parties to litigate at the House of Representatives Electoral Tribunal. The better part of prudence should have been to require the respondent to file a Comment assuming, without agreeing, that there may have been a need to revisit doctrine because of the unique facts of this case. In my view, the personalities in this case may have been different. However, the facts and circumstances were not unique to unsettle existing rational doctrine. A Comment is required so that there may be a fuller exposition of the issues from the point of view of the respondent. It is also required to prevent any suspicion that judges and justices litigate, not decide. x x x The majority persisted in declaring that the petitioner's proclamation was "without any basis" despite the absence of a responsive pleading. This may not be cured by the Comment on the Motion for Reconsideration. In my view, the validity of the proclamation of petitioner Reyes was never raised as an issue. No responsive pleading exists to have sufficiently tendered it as an issue.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices and *Larrazabal Law Office* for petitioner

The Solicitor General for public respondent.

Herminio F. Valerio and *Marcelino Michael I. Atanante* for private respondent.

R E S O L U T I O N

PEREZ, *J.*:

This is a Motion for Reconsideration of the *En Banc* Resolution of 25 June 2013 which stated that:

"IN VIEW OF THE FOREGOING, the instant petition is DISMISSED, finding no grave abuse of discretion on the part of the Commission on Elections. The 14 May 2013 Resolution of the

COMELEC *En Banc* affirming the 27 March 2013 Resolution of the COMELELEC First Division is upheld."

In her Motion for Reconsideration, petitioner summarizes her submission, thus:

"81. Stated differently, the Petitioner x x x is not asking the Honorable Court to make a determination as regards her qualifications, she is merely asking the Honorable Court to affirm the jurisdiction of the HRET to solely and exclusively pass upon such qualifications and to set aside the COMELEC Resolutions for having denied Petitioner her right to due process and for unconstitutionally adding a qualification not otherwise required by the constitution."[1] (as originally underscored)

The first part of the summary refers to the issue raised in the petition, which is:

"31. Whether or not Respondent Comelec is without jurisdiction over Petitioner who is duly proclaimed winner and who has already taken her oath of office for the position of Member of the House of Representatives for the lone congressional district of Marinduque."[2]

Tied up and neatened the propositions on the COMELEC-or-HRET jurisdiction go thus: petitioner is a duly proclaimed winner and having taken her oath of office as member of the House of Representatives, all questions regarding her qualifications are outside the jurisdiction of the COMELEC and are within the HRET exclusive jurisdiction.

The averred proclamation is the critical pointer to the correctness of petitioner's submission. The crucial question is whether or not petitioner could be proclaimed on 18 May 2013. Differently stated, was there basis for the proclamation of petitioner on 18 May 2013?

Dates and events indicate that there was no basis for the proclamation of petitioner on 18 May 2013. Without the proclamation, the petitioner's oath of office is likewise baseless,

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[1] *Rollo*, p. 325.

[2] *Id.* at 9.

and without a precedent oath of office, there can be no valid and effective assumption of office.

We have clearly stated in our Resolution of 25 June 2013 that:

"More importantly, we cannot disregard a fact basic in this controversy – that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* had already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner's qualifications to run for the position of Member of the House of Representatives. x x x"

As the point has obviously been missed by the petitioner who continues to argue on the basis of her "due proclamation," the instant motion gives us the opportunity to highlight the undeniable fact we here repeat that the proclamation which petitioner secured on 18 May 2013 was WITHOUT ANY BASIS.

1. Four (4) days BEFORE the 18 May 2013 proclamation, or on 14 May 2013, the COMELEC *En Banc* has already denied for lack of merit the petitioner's motion to reconsider the decision of the COMELEC First Division that CANCELLED petitioner's certificate of candidacy.

2. On 18 May 2013, there was already a standing and unquestioned cancellation of petitioner's certificate of candidacy which cancellation is a definite bar to her proclamation. On 18 May 2003, that bar has not been removed, there was not even any attempt to remove it.

3. The COMELEC Rules indicate the manner by which the impediment to proclamation may be removed. Rule 18, Section 13 (b) provides:

"(b) In Special Actions and Special Cases a decision or resolution of the Commission *En Banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court."

Within that five (5) days, petitioner had the opportunity to go to the Supreme Court for a restraining order that will remove the immediate effect of the *En Banc* cancellation of her certificate of candidacy. Within the five (5) days the Supreme Court may remove the barrier to, and thus allow, the proclamation of petitioner. That did not happen. Petitioner did not move to have it happen.

It is error to argue that the five days should pass before the petitioner is barred from being proclaimed. Petitioner lost in the COMELEC as respondent. Her certificate of candidacy has been ordered cancelled. She could not be proclaimed because there was a final finding against her by the COMELEC.[3] She needed a restraining order from the Supreme Court to avoid the final finding. After the five days when the decision adverse to her became executory, the need for Supreme Court intervention

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[3] "The concept of 'final' judgment, as distinguished from one which has "become final" (or 'executory' as of right [final and executory]), is definite and settled. A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res adjudicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'" *See Investments, Inc. v. Court of Appeals*, 231 Phil. 302, 307 (1987).

Thus, when the Comelec *En Banc* rendered its Resolution dated 14 May 2013, such was a final judgment – the issue of petitioner's eligibility was already definitively disposed of and there was no longer any pending case on petitioner's qualifications to run for office, and the COMELEC's task of ruling on the propriety of the cancellation of petitioner's COC has ended. This final judgment, by operation of Sec. 3, Rule 37 of the COMELEC Rules of Procedure, became final and executory on 19 May 2013, or five days from its promulgation, as it was not restrained by the Supreme Court. See *rollo*, pp. 163-165.

became even more imperative. She would have to base her recourse on the position that the COMELEC committed grave abuse of discretion in cancelling her certificate of candidacy and that a restraining order, which would allow her proclamation, will have to be based on irreparable injury and demonstrated possibility of grave abuse of discretion on the part of the COMELEC. In this case, before and after the 18 May 2013 proclamation, there was not even an attempt at the legal remedy, clearly available to her, to permit her proclamation. What petitioner did was to "take the law into her hands" and secure a proclamation in complete disregard of the COMELEC *En Banc* decision that was final on 14 May 2013 and final and executory five days thereafter.

4. There is a reason why no mention about notice was made in Section 13(b) of Rule 18 in the provision that the COMELEC *En Banc* or decision "[SHALL] become [FINAL AND EXECUTORY] after five days from its promulgation unless restrained by the Supreme Court." On its own the COMELEC *En Banc* decision, unrestrained, moves from promulgation into becoming final and executory. This is so because in Section 5 of Rule 18, it is stated:

> Section 5. Promulgation. – The promulgation of a decision or resolutions of the Commission or a division shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram.

5. Apart from the presumed notice of the COMELEC *En Banc* decision on the very date of its promulgation on 14 May 2013, petitioner admitted in her petition before us that she in fact received a copy of the decision on 16 May 2013.[4] On that

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[4] *Rollo*, p. 5.

Parenthetically, the surrounding facts of the case show that the Provincial Board of Canvassers (PBOC), as well as the parties, already had notice of the Comelec *En Banc* Resolution dated 14 May 2013 before petitioner was proclaimed. As alleged in the Comment on the Motion for Reconsideration, and which was not disputed by petitioner, the Comelec *En Banc* found that "On May 15, 2013, the Villa PBOC was already in

date, she had absolutely no reason why she would disregard the available legal way to remove the restraint on her proclamation, and, more than that, to in fact secure a proclamation two days thereafter. The utter disregard of a final COMELEC *En Banc* decision and of the Rule stating that her proclamation at that point MUST be on permission by the Supreme Court is even indicative of bad faith on the part of the petitioner.

6. The indicant is magnified by the fact that petitioner would use her tainted proclamation as the very reason to support her argument that she could no longer be reached by the jurisdiction of the COMELEC; and that it is the HRET that has exclusive jurisdiction over the issue of her qualifications for office.

7. The suggestions of bad faith aside, petitioner is in error in the conclusion at which she directs, as well as in her objective quite obvious from such conclusion. It is with her procured proclamation that petitioner nullifies the COMELEC's decision, by Division and then *En Banc*, and pre-empts any Supreme Court action on the COMELEC decision. In other words, petitioner repudiates by her proclamation all administrative and judicial actions thereon, past and present. And by her

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receipt of the May 14, 2013 Resolution denying the motion for reconsideration of [petitioner] thereby affirming the March 27, 2013 Resolution of the First Division that cancelled [petitioner's] COC. The receipt was acknowledged by Rossini M. Ocsadin of the PBOC on May 15, 2013. On May 16, 2013, [A]tty. Nelia S. Aureus, [petitioner's] counsel of record, received a copy of the same resolution. On May 18, 2013, the PBOC under ARED Ignacio is already aware of the May 14, 2013 Resolution of the Commission *En Banc* which is already on file with the PBOC. Furthermore, PBOC members Provincial Prosecutor Bimbo Mercado and Magdalena Lim knew of the 14 May 2013 Resolution since they are the original members of the Villa PBOC. However, while counsel for [petitioner], Atty. Aureus, already received a copy of said resolution on May 16, 2013, the counsel for [petitioner], Atty. Ferdinand Rivera (who is an UNA lawyer), who appeared before the Ignacio PBOC on Ma[y] 18, 2013, misrepresented to said PBOC that [petitioner] has not received a copy of the said May 14, 2013 Resolution of this Commission. This has mislead the Ignacio PBOC in deciding to proclaim [petitioner] believing that [petitioner] is not yet bound by the said resolution." See *rollo*, pp. 392-393.

proclamation, she claims as acquired the congressional seat that she sought to be a candidate for. As already shown, the reasons that lead to the impermissibility of the objective are clear. She cannot sit as Member of the House of Representatives by virtue of a baseless proclamation knowingly taken, with knowledge of the existing legal impediment.

8. Petitioner, therefore, is in error when she posits that at present it is the HRET which has exclusive jurisdiction over her qualifications as a Member of the House of Representatives. That the HRET is the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives is a written constitutional provision. It is, however unavailable to petitioner because she is NOT a Member of the House at present. The COMELEC never ordered her proclamation as the rightful winner in the election for such membership.[5] Indeed, the action for cancellation of petitioner's certificate of candidacy, the decision in which is the indispensable determinant of the right of petitioner to proclamation, was correctly lodged in the COMELEC, was completely and fully litigated in the COMELEC and was finally decided by the COMELEC. On and after 14 May 2013, there was nothing left for the COMELEC to do to decide the case. The decision sealed the proceedings in the COMELEC regarding petitioner's

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[5] In the case at bar, as the PBOC and the parties all had notice of the Comelec *En Banc* Resolution dated 14 May 2013, the PBOC should have, at the very least, suspended petitioner's proclamation. Although Comelec Resolution No. 9648 or the *General Instructions for the Board of Canvassers on the Consolidation/Canvass and Transmission of Votes in Connection with the 13 May 2013 National and Local Elections* authorizes the PBOC to proclaim a winning candidate if there is a pending disqualification or petition to cancel COC and no order of suspension was issued by the Comelec, the cancellation of petitioner's COC, as ordered in the Comelec *En Banc* Resolution dated 14 May 2013, is of greater significance and import than an order of suspension of proclamation. The PBOC should have taken the Comelec *En Banc*'s cue. To now countenance this precipitate act of the PBOC is to allow it to render nugatory a decision of its superior. Besides, on 18 May 2013, there was no longer any "pending" case as the Comelec *En Banc* Resolution dated 14 May 2013 is already a final judgment.

ineligibility as a candidate for Representative of Marinduque. The decision erected the bar to petitioner's proclamation. The bar remained when no restraining order was obtained by petitioner from the Supreme Court within five days from 14 May 2013.

9. When petitioner finally went to the Supreme Court on 10 June 2013 questioning the COMELEC First Division ruling and the 14 May 2013 COMELEC *En Banc* decision, her baseless proclamation on 18 May 2013 did not by that fact of promulgation alone become valid and legal. A decision favorable to her by the Supreme Court regarding the decision of the COMELEC *En Banc* on her certificate of candidacy was indispensably needed, not to legalize her proclamation on 18 May 2013 but to authorize a proclamation with the Supreme Court decision as basis.

10. The recourse taken on 25 June 2013 in the form of an original and special civil action for a writ of *Certiorari* through Rule 64 of the Rules of Court is circumscribed by set rules and principles.

a) The special action before the COMELEC which was a Petition to Cancel Certificate of Candidacy was a SUMMARY PROCEEDING or one "heard summarily." The nature of the proceedings is best indicated by the COMELEC Rule on Special Actions, Rule 23, Section 4 of which states that the Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence. COMELEC Rule 17 further provides in Section 3 that when the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence; x x x and that "[t]his provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its officials x x x."

b) The special and civil action of *Certiorari* is defined in the Rules of Court thus:

When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The accepted definition of grave abuse of discretion is: a capricious and whimsical exercise of judgment 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, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[6]

It is the category of the special action below providing the procedural leeway in the exercise of the COMELEC summary jurisdiction over the case, in conjunction with the limits of the Supreme Court's authority over the FINAL COMELEC ruling that is brought before it, that defines the way petitioner's

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[6] *Beluso v. COMELEC*, G.R. No. 180711, 22 June 2010, 621 SCRA 450, 456.

In *De la Cruz v. COMELEC and Pacete*, the Court ruled that the COMELEC being a specialized agency tasked with the supervision of elections all over the country, its factual findings, conclusions, rulings and decisions rendered on matters falling within its competence shall not be interfered with by this Court in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law. (G.R. No. 192221, 13 November 2012, 685 SCRA 347, 359).

In *Mastura v. COMELEC,* the Court ruled that the rule that factual findings of administrative bodies will not be disturbed by the courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the Comelec, as the framers of the Constitution intended to place the Comelec – created and explicitly made independent by the Constitution itself – on a level higher than statutory administrative organs. The Comelec has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence. (G.R. No. 124521, 29 January 1998, 285 SCRA 493, 499).

submission before the Court should be adjudicated. Thus further explained, the disposition of 25 June 2013 is here repeated for affirmation:

Petitioner alleges that the COMELEC gravely abused its discretion when it took cognizance of "*newly-discovered evidence*" without the same having been testified on and offered and admitted in evidence. She assails the admission of the blog article of Eli Obligacion as hearsay and the photocopy of the Certification from the Bureau of Immigration. She likewise contends that there was a violation of her right to due process of law because she was not given the opportunity to question and present controverting evidence.

Her contentions are incorrect.

It must be emphasized that the COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. Under Section 2 of Rule I, the COMELEC Rules of Procedure "shall be liberally construed in order x x x to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission." In view of the fact that the proceedings in a petition to deny due course or to cancel certificate of candidacy are summary in nature, then the "newly discovered evidence" was properly admitted by respondent COMELEC.

Furthermore, there was no denial of due process in the case at bar as petitioner was given every opportunity to argue her case before the COMELEC. From 10 October 2012 when Tan's petition was filed up to 27 March 2013 when the First Division rendered its resolution, petitioner had a period of five (5) months to adduce evidence. Unfortunately, she did not avail herself of the opportunity given her.

Also, in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. As held in the case of *Sahali v. COMELEC*:

> The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process

in its strict judicial sense. Indeed, **deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.** (Emphasis supplied)

As to the ruling that petitioner is ineligible to run for office on the ground of citizenship, the COMELEC First Division, discoursed as follows:

"x x x *for respondent to reacquire her Filipino citizenship and become eligible for public office*, the law requires that she must have accomplished the following acts: (1) take the **oath of allegiance** to the Republic of the Philippines before the Consul-General of the Philippine Consulate in the USA; and (2) make a **personal and sworn renunciation of her American citizenship** before any public officer authorized to administer an oath.

In the case at bar, there is no showing that respondent complied with the aforesaid requirements. Early on in the proceeding, respondent hammered on petitioner's lack of proof regarding her American citizenship, contending that it is petitioner's burden to present a case. She, however, specifically denied that she has become either a permanent resident or naturalized citizen of the USA.

Due to petitioner's submission of newly-discovered evidence thru a Manifestation dated February 7, 2013, however, establishing the fact that *respondent is a holder of an American passport which she continues to use until June 30, 2012*, petitioner was able to substantiate his allegations. The burden now shifts to respondent to present substantial evidence to prove otherwise. This, the respondent utterly failed to do, leading to the conclusion inevitable that respondent falsely misrepresented in her COC that she is a natural-born Filipino citizen. **Unless and until she can establish that she had availed of the privileges of RA 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines**." (Emphasis in the original.)

Let us look into the events that led to this petition: In moving for the cancellation of petitioner's COC, respondent submitted records

of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a "*balikbayan*." At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen, however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.

Notably, in her Motion for Reconsideration before the COMELEC *En Banc*, petitioner admitted that she is a holder of a US passport, but she averred that she is only a dual Filipino-American citizen, thus the requirements of R.A. No. 9225 do not apply to her. Still, attached to the said motion is an Affidavit of Renunciation of Foreign Citizenship dated 24 September 2012. Petitioner explains that she attached said Affidavit "if only to show her desire and zeal to serve the people and to comply with rules, even as a superfluity." We cannot, however, subscribe to petitioner's explanation. If petitioner executed said Affidavit "if only to comply with the rules," then it is an admission that R.A. No. 9225 applies to her. Petitioner cannot claim that she executed it to address the observations by the COMELEC as the assailed Resolutions were promulgated only in 2013, while the Affidavit was executed in September 2012.

Moreover, in the present petition, petitioner added a footnote to her oath of office as Provincial Administrator, to this effect: "This does not mean that Petitioner did not, prior to her taking her oath of office as Provincial Administrator, take her oath of allegiance for purposes of re-acquisition of natural-born Filipino status, which she reserves to present in the proper proceeding. The reference to the taking of oath of office is in order to make reference to what is already part of the records and evidence in the present case and to avoid injecting into the records evidence on matters of fact that was not previously passed upon by Respondent COMELEC." This statement raises a lot of questions – Did petitioner execute an oath of allegiance for re-acquisition of natural-born Filipino status? If she did, why did she not present it at the earliest opportunity before the COMELEC? And is this an admission that she has indeed lost her natural-born Filipino status?

To cover-up her apparent lack of an oath of allegiance as required by R.A. No. 9225, petitioner contends that, since she took her oath of allegiance in connection with her appointment as Provincial

Administrator of Marinduque, she is deemed to have reacquired her status as a natural-born Filipino citizen.

This contention is misplaced. For one, this issue is being presented for the first time before this Court, as it was never raised before the COMELEC. For another, said oath of allegiance cannot be considered compliance with Sec. 3 of R.A. No. 9225 as certain requirements have to be met as prescribed by Memorandum Circular No. AFF-04-01, otherwise known as the Rules Governing Philippine Citizenship under R.A. No. 9225 and Memorandum Circular No. AFF-05-002 (Revised Rules) and Administrative Order No. 91, Series of 2004 issued by the Bureau of Immigration. Thus, petitioner's oath of office as Provincial Administrator cannot be considered as the oath of allegiance in compliance with R.A. No. 9225.

These circumstances, taken together, show that a doubt was clearly cast on petitioner's citizenship. Petitioner, however, failed to clear such doubt.[7]

11. It may need pointing out that there is no conflict between the COMELEC and the HRET insofar as the petitioner's being a Representative of Marinduque is concerned. The COMELEC covers the matter of petitioner's certificate of candidacy, and its due course or its cancellation, which are the pivotal conclusions that determines who can be legally proclaimed. The matter can go to the Supreme Court but not as a continuation of the proceedings in the COMELEC, which has in fact ended, but on an original action before the Court grounded on more than mere error of judgment but on error of jurisdiction for grave abuse of discretion. At and after the COMELEC *En Banc* decision, there is no longer any certificate cancellation matter than can go to the HRET. In that sense, the HRET's constitutional authority opens, over the qualification of its MEMBER, who becomes so only upon a duly and legally based proclamation, the first and unavoidable step towards such membership. The HRET jurisdiction over the qualification of the Member of the House of Representatives is original and exclusive, and as such, proceeds *de novo* unhampered by

[7] *Rollo*, pp. 181-184.

the proceedings in the COMELEC which, as just stated has been terminated. The HRET proceedings is a regular, not summary, proceeding. It will determine who should be the Member of the House. It must be made clear though, at the risk of repetitiveness, that no hiatus occurs in the representation of Marinduque in the House because there is such a representative who shall sit as the HRET proceedings are had till termination. Such representative is the duly proclaimed winner resulting from the terminated case of cancellation of certificate of candidacy of petitioner. The petitioner is not, cannot, be that representative. And this, all in all, is the crux of the dispute between the parties: who shall sit in the House in representation of Marinduque, while there is yet no HRET decision on the qualifications of the Member.

12. As finale, and as explained in the discussion just done, no unwarranted haste can be attributed, as the dissent does so, to the resolution of this petition promulgated on 25 June 2013. It was not done to prevent the exercise by the HRET of its constitutional duty. Quite the contrary, the speedy resolution of the petition was done to pave the way for the unimpeded performance by the HRET of its constitutional role. The petitioner can very well invoke the authority of the HRET, but not as a sitting member of the House of Representatives.[8]

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[8] Petitioner before the HRET, can manifest what she desires in this Motion for Reconsideration concerning the existence of Identification Certificate No. 05-05424 issued by the Bureau of Immigration dated 13 October 2005, ostensibly recognizing her "as a citizen of the Philippines as per (pursuant) to the Citizenship Retention and Re-acquisition Act of 2003 (R.A. 9225) in relation to Administrative Order No. 91, S. of 2004 and Memorandum Circular No. AFF-2004-01 per order of this no. CRR No. 05-10/03-5455 AFF No. 05-4961 signed by Commissioner ALIPIO F. FERNANDEZ dated October 6, 2005." Petitioner belatedly submitted this manifestation in her Motion for Reconsideration for the stated reason that "her records with the Bureau of Immigration has been missing. Fortunately, her Index Card on file at the Fingerprint Section was found and it became the basis, together with Petitioner's copy of the certificate which she just unearthed lately, for the issuance of a certified true copy of her Identification Certificate No. 05-05424." See *rollo*, pp. 364 and 311.

The inhibition of this *ponente* was moved for. The reason for the denial of the motion was contained in a letter to the members of the Court on the understanding that the matter was internal to the Court. The *ponente* now seeks the Courts approval to have the explanation published as it is now appended to this Resolution.

The motion to withdraw petition filed AFTER the Court has acted thereon, is noted. It may well be in order to remind petitioner that jurisdiction, once acquired, is not lost upon the instance of the parties, but continues until the case is terminated.[9] When petitioner filed her Petition for *Certiorari,* jurisdiction vested in the Court and, in fact, the Court exercised such jurisdiction when it acted on the petition. Such jurisdiction cannot be lost by the unilateral withdrawal of the petition by petitioner.

More importantly, the Resolution dated 25 June 2013, being a valid court issuance, undoubtedly has legal consequences. Petitioner cannot, by the mere expediency of withdrawing the petition, negative and nullify the Court's Resolution and its legal effects. At this point, we counsel petitioner against trifling with court processes. Having sought the jurisdiction of the Supreme Court, petitioner cannot withdraw her petition to erase the ruling adverse to her interests. Obviously, she cannot, as she designed below, subject to her predilections the supremacy of the law.

WHEREFORE, The Motion for Reconsideration is **DENIED**. The dismissal of the petition is affirmed. Entry of Judgment is ordered.

SO ORDERED.

Leonardo-de Castro and *Reyes, JJ.,* concur.

Sereno, C.J., see separate concurring opinion.

Abad, J., see concurring opinion.

Carpio, Brion, and *Leonen, JJ.,* see dissenting opinion.

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[9] *Office of the Ombudsman v. Rodriguez,* G.R. No. 172700, 23 July 2010, 625 SCRA 299, 307.

Villarama, Jr., J., joins *J.* Carpio's dissent.

Velasco, Jr., Peralta, Bersamin, Mendoza, and *Perlas-Bernabe, JJ.,* no part.

Del Castillo, J., on official leave.

SEPARATE CONCURRING OPINION

SERENO, *C.J.:*

Certain views, distinctly different from the *ponencia* and from the Concurring and Dissenting Opinions, prompt me to write this Separate Opinion.

Guided by consistency in the interpretation of constitutional language, it is my view that the 1987 Constitution "intended to give [the electoral tribunals] full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners."[1]

Javier v. COMELEC[2], decided under the auspices of the 1973 Constitution, is instructive and sheds light on the extent of the constitutional grant of jurisdiction to the electoral tribunal as the sole judge of all contests relating to the elections, returns, and qualifications of their respective members.

Under the 1973 Constitution, COMELEC was given the power to "be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials."[3]

The Court, speaking through Justice Isagani Cruz, interpreted this constitutional grant of jurisdiction as follows:

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[1] Javier v. COMELEC, G.R. Nos. 68379-81, 22 September 1986, substituting "electoral tribunals" for "it,"referring to the COMELEC.

[2] *Op. cit.*

[3] 1973 Constitution, Art. XII.C.2(2)

We believe that in making the Commission on Elections the sole judge of all contests involving the election, returns and qualifications of the members of the Batasang Pambansa and elective provincial and city officials, the Constitution intended to give it full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners.[4]

The 1987 Constitution transferred the jurisdiction of the COMELEC to the electoral tribunals of the Senate and the House of Representatives to "be the sole judge[s] of all contests relating to the election, returns, and qualifications of their respective Members,"[5] but the constitutional language has not changed. The jurisdiction granted was similar to that of the COMELEC under the 1973 Constitution, which the Court interpreted to mean "full authority to hear and decide these cases from beginning to end and on all matters related thereto, including those arising before the proclamation of the winners."[6]

When the same language was adopted in the 1987 Constitution, it must be interpreted in the same way. Thus, petitions to deny due course or to cancel the certificate of candidacy of those aspiring to be members of the Senate or the House of Representatives under Section 78 of the Omnibus Election Code[7] should be under the jurisdiction of the electoral tribunals and not of the COMELEC.

Be that as it may, this view cannot be applied to petitioner's cause, as she has never questioned the jurisdiction of the

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[4] *Supra*, Note 1.

[5] Constitution, Art. VI, Sec. 17, 1987.

[6] *Id.*

[7] **Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.** - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

COMELEC to take cognizance of and rule on Section 78 petitions. Petitioner came to this Court to assail both the Resolution of the COMELEC First Division dated 27 March 2013 and the Resolution of the COMELEC *En Banc* dated 14 May 2013 based on grave abuse of discretion, and not on patent lack of jurisdiction on constitutional grounds.

As will be discussed, there is nothing on record to show any grave abuse of discretion on the part of the COMELEC, either the First Division or *En Banc*, in promulgating the assailed Resolutions.

Petitioner reiterates in her Motion for Reconsideration the imputation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC in the following manner:

1) By denying her right to due process

   a. when the COMELEC First Division admitted evidence without granting her opportunity to present controverting evidence;

   b. when the COMELEC *En Banc* denied her motion for a hearing;

2) By declaring her not to be a Filipino citizen and not to have met the residency requirement; and

3) By imposing additional qualifications when it enforced the provisions of Republic Act No. 9225.

The right of petitioner to due process was never violated, as she was given every opportunity to present her side during the reception of evidence at the Division level. She was furnished a copy of the Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits.[8] She had all the right to interpose her objections to the documentary evidence offered against her, but she failed to exercise that right.

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[8] *Rollo*, p. 129, see Registry Receipt & Explanation on 3rd page of the Manifestation.

The COMELEC First Division, therefore, did not commit any grave abuse of discretion when it admitted in evidence the documents offered, even if the printed Internet article showing that petitioner had used a U.S. passport might have been hearsay, and even if the copy of the Bureau of Immigration Certification was merely a photocopy and not even a certified true copy of the original.

Section 1, Rule 41 of the COMELEC Rules of Procedure[9] provides for the suppletory application of the Rules of Court. The third paragraph of Section 36, Rule 132 of the Revised Rules of Evidence provides that "an offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court."

Petitioner failed to raise any objection to the offer of evidence on time. It is now too late for her to question its admissibility. The rule is that evidence not objected to may be deemed admitted and validly considered by the court in arriving at its judgment.[10] As a corollary point, the COMELEC *En Banc* committed no grave abuse of discretion when it did not set petitioner's Motion for Reconsideration for hearing. Setting a case for hearing is discretionary on its part. In fact, in summary proceedings like the special action of filing a petition to deny due course or to cancel a certificate of candidacy, oral testimony is dispensed with and, instead, parties are required to submit their position paper together with affidavits, counter affidavits and other pieces of documentary evidence.[11]

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[9] Section 1. The Rules of Court. - In the absence of any applicable provisions in these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.

[10] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio,* G.R. No. 186027, 27 December 2007, 541 SCRA 479; *People v. Pansensoy,* G.R. No. 140634, 12 September 2002, 388 SCRA 669, 689; *People v. Barellano,* G.R. No. 121204, 2 December 1999, 319 SCRA 567, 590.

[11] Sec. 3. Rule 17, COMELEC Rules of Procedure:

Sec. 3. Oral Testimony Dispensed with Where Proceedings are Summary. - When the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit

There was no grave abuse of discretion when, based on the records, the COMELEC cancelled the Certificate of Candidacy of petitioner after finding that she had committed false material misrepresentation with respect to her citizenship and residency. It thereafter declared that she should have complied with the requirements of renouncing her foreign citizenship and taking the oath of allegiance under R. A. 9225 before she could qualify to run for any elective office.

It bears stressing that when the petition to deny due course or to cancel her Certificate of Candidacy was filed alleging that she possessed American citizenship, petitioner denied the allegation, claiming that no evidence whatsoever was presented to support the claim.[12] When herein private respondent filed her Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits, petitioner did not object to the documentary evidence offered to support the allegation that the latter possessed American citizenship.

In her Motion for Reconsideration of the COMELEC First Division Resolution dated 27 March 2013, petitioner, without providing any basis, claimed that she had not lost her Filipino citizenship. Yet, she attached an Affidavit of Renunciation of Foreign Citizenship. She claimed that even if it was a superfluity, she was attaching her duly accomplished personal and sworn renunciation of any and all foreign citizenships in compliance with the requirements under R.A. 9225, "if only to show [her] desire and zeal to serve the people and comply with rules."[13]

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their position paper together with affidavits, counter-affidavits and other documentary evidence; and when there is a need for clarification of certain matters, at the discretion of the Commission or the Division, the parties may be allowed to cross-examine the affiants.

This provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its officials; and when there is a need for clarification of certain matters, the hearing officer may schedule a hearing to propound clarificatory questions, observing for that purpose Section 6 of Rule 34 of these Rules.

[12] *Rollo*, p. 94, Answer filed by Reyes dated 9 November 2012.

[13] *Id.* p. 149, Motion for Reconsideration filed by Reyes on 8 April 2013.

In her original Petition before this Court, petitioner contends that "even granting for the sake of argument but without conceding that the 'newly discovered evidence' of Respondent Tan were admissible, it merely established the fact that Petitioner is an American citizen which does not translate to her not being a Filipino."[14] Yet, in her present Motion for Reconsideration, petitioner begs the indulgence of this Court for the belated submission of her Identification Certificate recognizing her as a citizen of the Philippines pursuant to the provisions and implementing regulations of R.A. 9225.[15]

This submission of the Affidavit of Renunciation of Foreign Citizenship and the Identification Certificate issued by the Bureau of Immigration confirms the acquisition of foreign citizenship by petitioner and the applicability of R.A. 9225 to her. Thus, the COMELEC was correct in ruling that she was no longer a Filipino citizen when she filed her Certificate of Candidacy and that without complying with the requirements of R.A. 9225, she was not qualified to run for public office. Since these two documents were not submitted to the COMELEC, there can be no grave abuse of discretion either on the part of the COMELEC First Division when it cancelled her Certificate of Candidacy, or on the part of the COMELEC *En Banc* when it affirmed the cancellation.

Petitioner also imputes grave abuse to the COMELEC for enforcing and applying R.A. 9225 to her, claiming that by doing so, the Commission added a requirement to the qualifications set to become a member of the House of Representatives as set by the Constitution. Petitioner must be reminded that it was the legislature that added the requirement of renunciation of foreign citizenship by those who have lost their citizenship and who seek elective office. COMELEC has the constitutional duty to enforce this law.

Let me now proceed to an explanation why — despite my view that under the 1987 Constitution, the HRET is given the

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[14] *Id.* p. 26.

[15] *Id.* p. 311.

power to be the "sole judge of all contests relating to the [x x x] qualifications of its Members" — the present case cannot be the basis for declaring the unconstitutionality of the COMELEC's action of exercising jurisdiction over Section 78 petitions involving candidates for Member of the House of Representatives or the Senate.

It must be pointed out that the jurisdiction of the COMELEC to entertain and rule on the Petition to Deny Due Course or to Cancel the Certificate of Candidacy in the instant case was never questioned. In fact, petitioner fully participated in the action, by filing her Answer and Memorandum before the First Division and subsequently filing a Motion for Reconsideration before the COMELEC after the First Division cancelled her Certificate of Candidacy on 27 March 2013. The COMELEC had the legal duty to decide on the matter and, in fact, the COMELEC *En Banc* resolved to affirm the cancellation of the Certificate of Candidacy on 14 May 2013.

This Court has held in *Tajonera v. Lamaroza*:[16]

> The rule is that jurisdiction is conferred by law and the objection to the authority of the tribunal to take cognizance of a case may be raised at any stage of the proceedings. However, considering the attendant circumstances in the cases at bar, petitioners are now barred from claiming lack of jurisdiction at this stage with their active participation. […] They never mentioned lack of jurisdiction in their memorandum of appeal, in their motion for reconsideration or in their position paper. They are now estopped from raising such objection. It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after failing to obtain such relief, repudiate or question that same jurisdiction. (citing the case of *Tijam v. Sibunghanoy*, 23 SCRA 35).

In the instant Petition, petitioner questioned the jurisdiction of the COMELEC after it cancelled the Certificate of Candidacy, and after the proclamation was made by the Provincial Board of Canvassers. Contending that her proclamation as winner

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[16] G.R. Nos. L-48907 & 49035. 19 December 1981.

in the congressional race in the Province of Marinduque effectively ousted COMELEC of any jurisdiction, she claimed "that its disqualification of the Petitioner should be declared to have no legal force and effect and may not be made the basis to annul petitioner's proclamation or to unseat her from office."[17]

It was this prayer of petitioner in her original Petition before this Court that prompted this Court to declare:

> More importantly, we cannot disregard a fact basic in this controversy - that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* had already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending case on petitioner's qualifications to run for the position of Member of the House of Representatives. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC *En Banc* decision. The Board of Canvassers which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC *En Banc* which affirmed a decision of the COMELEC First Division.[18]

Petitioner now states in her Motion for Reconsideration that her proclamation is not and has never been an issue in her Petition. She must be reminded that she is anchoring her claim that COMELEC has been ousted of any jurisdiction, to even enforce its final decision by virtue of her proclamation.

Petitioner's contention necessarily raises the following questions:

1. Can the proclamation of a candidate by the Provincial Board of Canvassers (PBOC) negate a COMELEC *En Banc* Resolution cancelling the certificate of candidacy?
2. Can the PBOC proclaim a candidate whose certificate of candidacy has already been cancelled?

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[17] *Rollo*, p. 36.

[18] Resolution, p. 9, June 25, 2013; *Rollo*, p. 180.

These questions compel us to look into the set of circumstances surrounding petitioner's proclamation.

On 14 May 2013, the COMELEC *En Banc* had already resolved the Amended Petition to Deny Due Course or to Cancel the Certificate of Candidacy filed against Reyes. Based on Sec. 3, Rule 37 of the COMELEC Rules of Procedure,[19] this Resolution was already final and should have become executory five days after its promulgation. But despite this unrestrained ruling of the COMELEC *En Banc*, the PBOC still proclaimed Reyes as the winning candidate on 18 May 2013.

On 16 May 2013, petitioner had already received the judgment cancelling her Certificate of Candidacy. As mentioned, two days thereafter, the PBOC still proclaimed her as the winner. Obviously, the proclamation took place notwithstanding that petitioner herself already knew of the COMELEC *En Banc* Resolution.

It must also be pointed out that even the PBOC already knew of the cancellation of the Certificate of Candidacy of petitioner when it proclaimed her. The COMELEC *En Banc* Resolution dated 9 July 2013 and submitted to this Court through the Manifestation of private respondent, quoted the averments in the Verified Petition of petitioner therein as follows:

xxx While the proceedings of the PBOC is suspended or in recess, the process server of this Honorable Commission, who identified himself as PEDRO P. STA. ROSA II ("Sta. Rosa," for brevity), arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing is being held.

xxx The process server, Sta. Rosa, was in possession of certified true copies of the *Resolution* promulgated by the Commission on Elections *En Banc* on 14 May 2013 in SPA No. 13-053 (DC) entitled "Joseph Socorro B. Tan vs. Atty. Regina Ongsiako Reyes" and an *Order* dated 15 May 2013 to deliver the same to the Provincial Election Supervisor

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[19] Sec. 13. Finality of Decisions or Resolutions. –

(b) In Special Actions and Special Cases a decision or resolutions of the Commission *en banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

of Marinduque. The said Order was signed by no less than the Chairman of the Commission on Elections, the Honorable Sixto S. Brillantes, Jr.

xxx Process Server Pedro Sta. Rosa II immediately approached Atty. Edwin Villa, the Provincial Election Supervisor (PES) of Marinduque, upon his arrival to serve a copy of the aforementioned Resolution dated 14 May 2013 in SPA No. 13-053 (DC). Despite his proper identification that he is a process server from the COMELEC Main Office, the PES totally ignored Process Server Pedro Sta. Rosa II.

xxx Interestingly, the PES likewise refused to receive the copy of the Commission on Elections *En Banc* Resolution dated 14 May 2013 in SPA No. 13-053 (DC) despite several attempts to do so.

xxx Instead, the PES immediately declared the resumption of the proceedings of the PBOC and instructed the Board Secretary to immediately read its Order proclaiming Regina Ongsiako Reyes as winner for the position of Congressman for the Lone District of Marinduque.[20]

This narration of the events shows that the proclamation was in contravention of a COMELEC *En Banc* Resolution cancelling the candidate's Certificate of Candidacy.

The PBOC, a subordinate body under the direct control and supervision of the COMELEC,[21] cannot simply disregard a COMELEC *En Banc* Resolution brought before its attention and hastily proceed with the proclamation by reasoning that it has not officially received the resolution or order.

The relevance of Secs. 6 and 7 of R.A. 6646 is brought to the fore. These provisions read:

Sec. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for,

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[20] COMELEC *En Banc* Resolution dated 19 July 2013, pp. 4-5, attached to the Manifestation filed before this Court on 16 August 2013.

[21] Omnibus Election Code, Sec. 227. Supervision and control over board of canvassers. - The Commission shall have direct control and supervision over the board of canvassers.

Any member of the board of canvassers may, at any time, be relieved for cause and substituted *motu proprio* by the Commission.

and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Sec. 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy. - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

The law provides for the suspension of a proclamation whenever there are pending disqualification cases or petitions to deny due course to or cancel a certificate of candidacy, and the evidence of guilt is strong. This provision points to the legislative intent to be cautious in proceeding with the proclamation of candidates against whom pending disqualification cases or petitions for cancellation of certificate of candidacy are filed. When the petition for cancellation of the certificate of candidacy is no longer pending as when the COMELEC *En Banc* had, in fact, affirmed the cancellation of the certificate of candidacy, the need for the suspension of the proclamation becomes more apparent.

In this case, the technical requirement of Secs. 6 and 7 of R.A. 6646 — to suspend the proclamation in the face of the motion of a complainant or any intervenor to suspend the proclamation was, in fact, substantially complied with. The compliance was when the other candidate, through his counsel, moved for his proclamation in view of the affirmation by the COMELEC *En Banc* of the cancellation of petitioner's Certificate of Candidacy and actually provided a copy of the Resolution to the PBOC.[22] That Motion, together with a copy of the COMELEC *En Banc* Resolution, should have given enough

[22] *Rollo*, p. 438, COMELEC *En Banc* Resolution dated 9 July 2013, submitted as Exhibit A of the Manifestation filed before the Court on 16 Aug. 2013.

notice to the PBOC that there was an incident analogous to a prejudicial question in criminal cases,[23] an incident that called for the suspension of the proclamation of the candidate whose Certificate of Candidacy had already been cancelled.

The elements of a prejudicial question in criminal actions as set forth in Sec. 7, Rule 111 of the Rules of Criminal Procedure, as follows:

(a) The previously instituted civil action involves an issue similar or intimately related to that issue raised in the subsequent criminal action.

(b) The resolution of this issue determines whether or not the criminal action may proceed.

Applying the elements of a prejudicial question to Secs. 6 and 7 of R.A. 6646 on the pendency of disqualification cases or of petitions filed under Sec. 78 call for the suspension of the proclamation of a candidate when the evidence of guilt or the likelihood of the cancellation of the certificate of candidacy is strong. The main issue in the disqualification case or the Petition to cancel the Certificate of Candidacy is directly related to and, is, in fact, the crucial element that must be decided before a proclamation can be had.

The PBOC denied the motion to proclaim candidate Velasco on the ground that neither the counsel of petitioner nor the PBOC was duly furnished or served an official copy of the COMELEC *En Banc* Resolution[24] dated 14 May 2013 and forthwith proceeded with the proclamation of herein petitioner, whose Certificate of Candidacy has already been cancelled, bespeaks *mala fide* on its part.

As early as 27 March 2013, when the COMELEC First Division cancelled petitioner's Certificate of Candidacy, the people of Marinduque, including the COMELEC officials in the province, were already aware of the impending disqualification

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[23] Rules on Criminal Procedure, Rule 111, Sections 6 & 7.

[24] *Id.* p. 3.

of herein petitioner upon the finality of the cancellation of her Certificate of Candidacy. When the COMELEC *En Banc* affirmed the cancellation of the certificate of candidacy on the day of the elections, but before the proclamation of the winner, it had the effect of declaring that herein petitioner was not a candidate.

Thus, when the PBOC proclaimed herein petitioner, it proclaimed not a winner but a non-candidate.

The proclamation of a non-candidate cannot take away the power vested in the COMELEC to enforce and execute its decisions. It is a power that enjoys precedence over that emanating from any other authority, except the Supreme Court, and that which is issued in *habeas corpus* proceedings as provided in Sec. 52(f) of the Omnibus Election Code.[25]

On a final note, I respectfully take exception to my distinguished colleague's statement that "the novel argument from no less than the Chief Justice" regarding petitioner Reyes' bad faith was "(o)ut of the blue and without any previous circulated written opinion" considering that, from the very beginning of the deliberations of this case I, together with another colleague, had already clearly expressed my opinion that bad faith should never be rewarded. Furthermore, the argument of bad faith is neither "novel" nor "out of the blue," as it had been repeatedly raised in several deliberations on this matter. The bad faith element was further confirmed by the records through the antecedents cited in the Resolution of the COMELEC *En Banc* dated 09 July 2013.[26]

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[25] Sec. 52. Powers and functions of the Commission on Elections. - In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x x x x x x x

(f) Enforce and execute its decisions, directives, orders and instructions which shall have precedence over those emanating from any other authority, except the Supreme Court and those issued in habeas corpus proceedings.

[26] *Supra*, note 22.

Be that as it may, it is unseemly to question the participation in the deliberations by a member of this Court for lack of a previously circulated written opinion. Indeed, given the nature of our collegial discussions on the matters presented to us, every member of the Court has the right to participate in the deliberations *En Banc*, with or without having previously circulated his or her opinion on the cases before us.

I reiterate my view that the COMELEC Decision dated 14 May 2013 has already become final, and that the HRET has no jurisdiction over this electoral case.

For the foregoing reasons, I vote to **DENY** the Motion for Reconsideration.

CONCURRING OPINION

ABAD, *J.*:

I would like to explain why I vote to deny petitioner Regina Ongsiako Reyes' motion for reconsideration of the Court's Resolution of June 25, 2013.

When Congress enacted the Omnibus Election Code, among its concerns were persons who, although not qualified, seek public office and mar the orderly conduct of the elections. To address this problem and for the public good, Congress empowered the Commission on Elections (COMELEC) to hear and decide petitions for the cancellation of their certificates of candidacies on the ground of false material representations that such certificates contain.

Section 78 of the Code reads:

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing

of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

The validity of Section 78 has never been challenged since it simply addresses a reprehensible mischief committed during elections. Anticipating this need, Section 2 of Article IX-C of the Constitution gives the COMELEC the duty and the power to enforce this and other laws relative to the conduct of the elections, thus:

> Article IX, Title C, Sec. 2. The Commission on Elections shall exercise the following powers and functions:
>
> (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
>
> x x x x x x x x x

Clearly then, actions to cancel certificates of candidacies of members of the House of Representatives (the House), allegedly containing material misrepresentation, are within the constitutional and statutory power of the COMELEC to hear and adjudicate.

But related to this is the exclusive power of the House of Representatives Electoral Tribunal (HRET) to hear and decide all contests also relating to the qualifications of the members of the House. The pertinent portion of Section 17, Article VI, of the Constitution provides:

> Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x

The problem is that a contest over the qualifications of a candidate for the House often begins in the form of a petition filed with the COMELEC for the cancellation of his certificate of candidacy on ground of false representation regarding his qualifications. At times, the COMELEC case is overtaken by the elections and the subsequent proclamation of the challenged candidate as winner. It is inevitable that, after taking his oath and assuming membership in the House, he would insist that

any pending question relating to his qualifications before the COMELEC should now be heard and decided by the HRET.

To avoid a conflict of jurisdiction, the Court recognized and established the rule that the jurisdiction of the COMELEC over the case ceases where the jurisdiction of the HRET begins. Ultimately, this brings about the issue of when this turnover of jurisdiction takes place.

Past precedents appear to be divided into two views: the first is that the proclamation of the winning candidate for the House divests the COMELEC of its jurisdiction over pending disputes relating to his qualifications in favor of the HRET.[1] The second is that the turnover of jurisdiction over a pending action from the COMELEC to the HRET takes place only after the winning candidate has been proclaimed, taken his oath, and assumed office.[2]

These conflicting views should now be settled with finality. And the solution lies in the provision of the Constitution that defines the jurisdiction of the HRET. It says:

> Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x

The above categorically states that the HRET's jurisdiction covers only contests relating, among other things, to "the

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[1] Justice Antonio T. Carpio cites in his dissent the cases of *Jalosjos v. Commission on Elections*, G.R. Nos. 192474, 192704, 193566, June 26, 2012, 674 SCRA 530; *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761; *Limkaichong v. Commission on Elections*, G.R. Nos. 178831-32, April 1, 2009, 583 SCRA 1; *Planas v. Commission on Elections*, 519 Phil. 506 (2006); and *Perez v. Commission on Elections*, 375 Phil. 1106 (1999).

[2] Exemplified by the rulings in *Marcos v. Commission on Elections*, 318 Phil. 329, 397 (1995) and *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 726 (2007), citing *Aggabao v. Commission on Elections*, 490 Phil. 285, 290 (2005); *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

qualifications of their respective Members." This power is inherent in all organizations as a means of preserving their integrity. For the HRET to have jurisdiction, the case must involve a "member" of the House. The fact alone that one won the elections and has been proclaimed does not, to be sure, make him a "member" of the House. To become a member, the candidate to the position must win the election,[3] take an oath,[4] and assume office when his term begins. The term of a "member" of the House begins on the 30th of June next following his election.

Section 7, Article VI of the Constitution, provides:

> Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

Clearly, a proclaimed winner will be a "member" of the House only at noon of June 30 following his election and not earlier when he was merely proclaimed as a winning candidate. The reason is simple. There is no vacancy in that office before noon of June 30. It is implicit that the term of the member whom he would succeed would continue until noon of that day when the term of the new member begins. Consequently, the proclaimed winner in the elections remains an outsider before June 30. Only on June 30 will his term begin. And only then will the COMELEC be divested of its jurisdiction over any unresolved petition for the cancellation of his certificate of candidacy.

Here, on March 27, 2013 the COMELEC's Second Division rendered a decision cancelling petitioner Reyes' certificate of candidacy. She filed a motion for reconsideration but on May 14, 2013 the COMELEC *En Banc* issued a Resolution denying

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[3] Section 7, Article VI of the Constitution.

[4] Section 4, Article IX-B (Civil Service Commission), Constitution of the Philippines: All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution.

it. Since her counsel received a copy of the *En Banc* Resolution on May 16, 2013, she had until May 21, 2013 within which to file a petition before the Court assailing the COMELEC's action. But she did not, thus rendering its decision against her final and executory as of May 22, 2013. This prompted the COMELEC to issue a certificate of finality on June 5, 2013.

Consequently, since the COMELEC Decision in petitioner Reyes' case already became final and executory on May 22, 2013, it cannot be said that the HRET can still take over some unfinished COMELEC action in her case. The COMELEC's final decision, rendered pursuant to its constitutional and statutory powers, binds her, the HRET, and the Court. Further, given the cancellation of her certificate of candidacy, she in effect was not validly voted upon as a candidate for the position of Representative of the lone District of Marinduque on May 13, 2010.

Parenthetically, a reading of the COMELEC *En Banc*'s Resolution of July 19, 2013[5] shows that its process server, Pedro P. Sta. Rosa arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing was being held prior to petitioner Reyes' proclamation to serve a copy of the COMELEC *En Banc*'s Resolution of May 14, 2013 and Order of May 18, 2013 but the Provincial Election Supervisor (PES) refused to accept them. Thus, said the COMELEC:

> x x x While the proceedings of the PBOC is suspended or in recess, the process server of this Honorable Commission, who identified himself as PEDRO P. STA. ROSA II ("Sta. Rosa," for brevity), arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing is being held.
>
> x x x The process server, Sta. Rosa, was in possession of certified true copies of the *Resolution* promulgated by the Commission on Elections *En Banc* on 14 May 2013 in SPA No. 13-053 (DC) entitled "*Joseph Socorro B. Tan vs. Atty. Regina Ongsiako Reyes*" and an *Order* dated 15 May 2013 to deliver the same to the Provincial Election

[5] COMELEC *En Banc* Resolution dated July 19, 2013, pp. 4-5, attached to the Manifestation filed before this Court on August 16, 2013.

Supervisor of Marinduque. The said Order was signed by no less than the Chairman of the Commission on Elections, the Honorable Sixto S. Brillantes, Jr.

x x x Process Server Pedro Sta. Rosa II immediately approached Atty. Edwin Villa, the Provincial Election Supervisor (PES) of Marinduque, upon his arrival to serve a copy of the aforementioned Resolution dated 14 May 2013 in SPA No. 13-053 (DC). Despite his proper identification that he is a process server from the COMELEC Main Office, the PES totally ignored Process Server Pedro Sta. Rosa II.

x x x Interestingly, the PES likewise refused to receive a copy of the Commission on Elections *En Banc* Resolution dated 14 May 2013 in SPA No. 13-053 (DC) despite several attempts to do so.

x x x Instead, the PES immediately declared the resumption of the proceedings of the PBOC and instructed the Board Secretary to immediately read its Order proclaiming Regina Ongsiako Reyes as winner for the position of Congressman for the Lone District of Marinduque.

The above shows bad faith on the part of the Provincial Election Supervisor and Provincial Board of Canvassers in proclaiming petitioner Reyes despite COMELEC *En Banc*'s resolution denying her motion for reconsideration of the decision cancelling her certificate of candidacy. Such lawless conduct cannot be countenanced by the Court.

In his dissent, Justice Antonio T. Carpio claims that the Court's June 25, 2013 Resolution states that petitioner Reyes could assume office only upon taking her oath before the Speaker in open session when the new Congress convenes in late July. Thus, this would effectively cut her term short by a month since the Constitution provides that the term of office of newly elected members of the House begins "at noon on the thirtieth day of June next following their election."

But the Court's June 25 Resolution did not state that petitioner Reyes can only assume office after taking her oath pursuant to Section 6, Rule II of the Rules of the House. Such statement would have been clearly incorrect. That resolution merely said that she did not yet take the proper oath in accordance with

that Section 6. Actually, the Court's June 25 Resolution said that the term of office of a Member of the House begins at noon on the 30th day of June next following their election, thus:

> Here the petitioner cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the House of Representatives begins only "*at noon on the thirtieth day of June next following their election*." Thus, until such time, the COMELEC retains jurisdiction.

The Court said that petitioner Reyes did not yet take the proper oath as required by the rules of the House of Representatives merely to emphasize the fact that she filed her action with the Court even before Congress had buckled down to work and reorganize the HRET.

Justice Carpio also claims that it could happen that a losing candidate would assail the validity of the proclamation before the Supreme Court while another losing candidate could file an election protest before the HRET within 15 days of the proclamation. When this happens, he says, the jurisdiction of the Supreme Court and the HRET would be in direct clash.

But such supposed clash of jurisdiction between the HRET and the Court is illusory and cannot happen. Any clash of jurisdiction would essentially be between the COMELEC, asserting its power to hear and decide petitions for cancellation of certificates of candidacies of those who seek to be elected to the House, and the HRET, asserting its power to decide all contests relating to the qualifications of its members. The Supreme Court is the final arbiter of the jurisdictional boundaries of all constitutional bodies. The HRET has never claimed this role.

What is more, it is understood that the HRET can take over only those cancellation cases that have remained unresolved by the COMELEC by the time the House member assumes office. Cases that the COMELEC has already decided cannot be taken over by the HRET, even when the challenged winner

has already assumed office, if such decision has been elevated to the Supreme Court on *certiorari* as provided under the pertinent portion of Section 7, Article IX of the Constitution.

> Section 7. x x x Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

The HRET cannot oust the Supreme Court of its jurisdiction under the Constitution. As the Court held in *Codilla, Sr. v. Hon. De Venecia*,[6] the HRET cannot assume jurisdiction over a cancellation case involving members of the House that had already been decided by the COMELEC and is under review by the Supreme Court.

It can be said that it is for the above reasons that the Court heard and decided a number of petitions filed by losing party-list organizations that sought membership in the House. The Court did not inhibit itself from deciding their cases even if the winners had already been proclaimed since it was merely exercising its sole power to review the decisions of the COMELEC in their cases. The Court took cognizance of and decided their petitions in *Senior Citizens Party-List v. COMELEC*.[7]

Justice Carpio also claims that if the HRET jurisdiction begins only upon assumption of office of the winning candidate, then any petition filed with it within 15 days from his proclamation can be dismissed on the ground that the respondent is not yet a member of the House.

But, firstly, the HRET of the new Congress can be organized and can discharge its functions only after June 30 following the elections. Consequently, it cannot dismiss any petition filed with it before that date. When that date arrives, the respondent would have already assumed office, enabling the HRET to act on his case.

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[6] 442 Phil. 139 (2002).

[7] G.R. No. 206844-45, July 23, 2013.

Secondly, the 15-day period after proclamation is merely the deadline set for the filing of the election contest before the HRET. It enables the parties to immediately take steps to preserve the integrity of the ballots and other election records. It is of course to be assumed that the HRET is admitting the petition filed with it within 15 days from proclamation, conditioned on its having jurisdiction over the subject matter of the action.

For the above reasons, I vote to **DENY** petitioner Regina Ongsiako Reyes' motion for reconsideration.

DISSENTING OPINION

CARPIO, *J.*:

I dissent. Based on existing jurisprudence, jurisdiction over any election contest involving House Members is vested by the Constitution in the House of Representatives Electoral Tribunal (HRET) upon proclamation of the winning candidate. Any allegation that the proclamation is void does not divest the HRET of its jurisdiction. It is the HRET that has jurisdiction to resolve the validity of the proclamation as the "sole judge of all contests relating to the election, returns, and qualifications"[1] of House Members. To hold otherwise will result in a clash of jurisdiction between constitutional bodies.

HRET's jurisdiction vests upon proclamation alone

We must correct the error in the Court's 25 June 2013 Resolution that "to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office."[2] The 25 June 2013 Resolution amends the 1987 Constitution, overturns established jurisprudence, and results in absurdities.

To recall, Reyes was proclaimed on 18 May 2013. Reyes' term of office began, under the 1987 Constitution, at noon of

[1] 1987 PHILIPPINE CONSTITUTION, Art. VI, Sec. 17.

[2] Resolution (G.R. No. 207264), 25 June 2013, p. 7.

30 June 2013.[3] Reyes took her oath of office on 5 June 2013 before Speaker Feliciano Belmonte. Reyes again took her oath of office on 27 June 2013 before President Benigno S. Aquino III. Reyes then took her oath of office before Speaker Belmonte in open session on 22 July 2013.

Under the 25 June 2013 Resolution of the Court, Reyes could assume office only upon taking her oath before the Speaker in open session – an event that usually happens only after new House Members elect their Speaker sometime in mid-July. The 25 June 2013 Resolution effectively cuts short Reyes' constitutional term of office by a little less than one month, thereby amending the Constitution. In the meantime, new House Members, and their employees, cannot draw their salaries until the members take their oath of office before the Speaker. The Resolution of 25 June 2013 also requires that every new House Member should take his or her oath of office before the Speaker in open session – a requirement not found in the Constitution. While the Speaker is authorized to administer oaths,[4] the Constitution does not distinguish between an oath before officers authorized by law to administer oaths and an oath before the Speaker in open session. Members of this Court have been administering the oaths of Senators and House Members for the longest time.

We have consistently ruled that proclamation **alone** of a winning congressional candidate following the elections divests COMELEC of its jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in

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[3] 1987 PHILIPPINE CONSTITUTION, Art. VI, Sec. 7.

[4] Section 41, Book I of the 1987 Administrative Code reads as follows:

Sec. 41. *Officers Authorized to Administer Oath*. - The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

favor of the HRET.[5] Proclamation alone of a winning congressional candidate is sufficient, and is the only essential act to vest jurisdiction upon the HRET. Taking of the oath and assumption of office are merely descriptive of what necessarily comes after proclamation. In *Jalosjos v. COMELEC*,[6] the most recent decision on the matter, the *ponente* Justice Roberto A. Abad wrote:

> The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. **The proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representatives in favor of the HRET.** (Emphasis supplied.)

Section 17, Article VI of the Constitution provides that the HRET is the "sole judge of all contests relating to the election, returns, and qualifications" of the House Members. *Certiorari* will not lie considering that there is an available and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceedings before the COMELEC.[7] Indeed, even if Joseph Socorro B. Tan alleged, as he did allege in his Comment[8] to Reyes' Motion for Reconsideration, that Reyes' proclamation is "null, void and without legal force and effect,"[9] such allegation does not divest the HRET of its jurisdiction.[10]

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[5] The latest case with this pronouncement is that of *Jalosjos v. Commission on Elections*, G.R. No. 192474, 26 June 2012. See also the cases of *Gonzalez v. Commission on Elections*, G.R. No. 192856, 8 March 2011, 644 SCRA 761; *Limkaichong v. Commission on Elections*, G.R. Nos. 178831-32, 1 April 2009, 583 SCRA 1; *Planas v. Commission on Elections*, 519 Phil. 506 (2006); *Perez v. Commission on Elections*, 375 Phil. 1106 (1999).

[6] G.R. No. 192474, 26 June 2012.

[7] *Aggabao v. COMELEC*, 490 Phil. 285, 291 (2005).

[8] *Rollo*, pp. 380-408.

[9] *Id.* at 391.

[10] *Aggabao v. COMELEC, supra* note 6 at 285.

Upon proclamation of the winning candidate as House Member and **despite any allegation of invalidity of his or her proclamation**, the HRET alone is vested with jurisdiction to hear the election contest. The COMELEC's jurisdiction ends where the HRET's jurisdiction begins. We previously ruled in *Lazatin v. Commission on Elections*[11] that:

> The petition is impressed with merit because the petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. **For this Court to take cognizance of the electoral protest against him would be to usurp the functions of the House Electoral Tribunal. The alleged invalidity of the proclamation** (which has been previously ordered by the COMELEC itself) **despite alleged irregularities in connection therewith, and despite the pendency of the protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal.** (Emphasis supplied)

We underscored the purpose for the mutually exclusive jurisdictions of the COMELEC and the HRET in *Guerrero v. Commission on Elections*,[12] where we stated that:

> (I)n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as Congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for **it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate**. (Emphasis supplied)

Upon proclamation, jurisdiction over any election contest against the proclaimed candidate is vested in the HRET by operation of the Constitution. Any challenge to the validity of the proclamation falls under the HRET's jurisdiction as "sole judge of all contests relating to the election, returns, and qualifications" of House Members. To hold that the HRET does not have

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[11] 241 Phil. 343, 345 (1988).

[12] 391 Phil. 344, 354 (2000).

jurisdiction over a challenge to the validity of a proclamation is to hold that while jurisdiction vests in the HRET upon proclamation, the HRET loses such jurisdiction if a challenge is filed assailing the validity of the proclamation. If so, a party then exercises the power to terminate HRET's jurisdiction that is vested by the Constitution. This is an absurdity.

It may also happen that one losing candidate may assail the validity of the proclamation before the Supreme Court while another losing candidate will file an election protest before the HRET within 15 days from the proclamation. In such a situation, there will be a direct clash of jurisdiction between the Supreme Court and the HRET. The case in the Supreme Court can remain pending even after the House Members have assumed their office, making the anomaly even more absurd.

In the present case, the issue of the validity of Reyes' proclamation was never raised as an issue before the COMELEC. Reyes herself mentioned her proclamation as a statement of fact, and used it to support her claim that the HRET already has jurisdiction over her case. As the petitioner before this Court, Reyes will not question the validity of her own proclamation. In any event, the determination of the validity of Reyes' proclamation allegedly on the ground of bad faith on the part of the Board of Canvassers is a factual matter not within the jurisdiction of this Court.

Moreover, Rules 16 and 17 of the 2011 HRET Rules require a verified election protest or a verified petition for *quo warranto* to be filed within 15 days after the proclamation of the winner, thus:

> RULE 16. *Election Protest.* – **A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner.** The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.
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> No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and

hear and decide them jointly. Thus, where there are two or more protests involving the same protestee and common principal causes of action, the subsequent protests shall be consolidated with the earlier case to avoid unnecessary costs or delay. In case of objection to the consolidation, the Tribunal shall resolve the same. An order resolving a motion for or objection to the consolidation shall be unappealable.

The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and belief or based on verifiable information or authentic records. A verification based on "information and belief," or upon "knowledge, information and belief," is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

An election protest shall state:

1. **The date of proclamation of the winner** and the number of votes obtained by the parties per proclamation;

2. The total number of contested individual and clustered precincts per municipality or city;

3. The individual and clustered precinct numbers and location of the contested precincts; and

4. The specific acts or omissions complained of constituting the electoral frauds, anomalies or irregularities in the contested precincts.

RULE 17. *Quo Warranto*. – **A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner.** The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The provisions of the preceding paragraph to the contrary notwithstanding, **a petition for *quo warranto* may be filed by any registered voter of the district concerned against a member of the House of Representatives, on the ground of citizenship, at any time during his tenure.**

The rule on verification and consolidation provided in Section 16 hereof shall apply to petitions for *quo warranto*. (Emphasis supplied)

If we follow the 25 June 2013 Resolution's strict application of the concurrence of the three requisites and use the pertinent dates in the present case, any election protest filed against Reyes within 15 days from her proclamation in accordance with the present HRET Rules will be dismissed outright by the HRET for being premature. Under the 25 June 2013 Resolution, jurisdiction vests in the HRET only when the House Members take their oath of office before the Speaker in open session, an event that happens only sometime in mid-July following the elections. Thus, the earliest that any election contest arising from the May 2013 elections can be filed with the HRET is 22 July 2013, the day the House Members took their oath of office before the Speaker in open session. This amends the HRET Rules, and changes well-established jurisprudence, without any justifiable reason whatsoever.

The Court's ruling today is a **double flip-flop**: (1) it reverses the well-settled doctrine that upon proclamation of a winning congressional candidate, the HRET acquires sole jurisdiction over any contest relating to the "election, returns and qualifications" of House Members; and (2) it also reverses the well-settled doctrine that any question on the validity of such proclamation falls under the sole jurisdiction of the HRET.

I vote to **DENY** petitioner Regina Ongsiako Reyes' Manifestation and Notice of Withdrawal. I also vote to **GRANT** Reyes' Motion for Reconsideration to DISMISS her petition since jurisdiction over her petition had vested in the House of Representatives Electoral Tribunal upon her proclamation.

DISSENTING OPINION

BRION, *J.*:

This Dissent responds to the *ponencia's* ruling on the following pending incidents:

(1) the Motion for Reconsideration[1] filed by petitioner Regina Ongsiako Reyes dated July 15, 2013;

(2) the Comment on the Motion for Reconsideration[2] filed by respondent Joseph Socorro B. Tan dated July 20, 2013; and

(3) the Manifestation and Notice of Withdrawal of the Petition[3] filed by Reyes dated July 22, 2013.

I. PROLOGUE

A. The January 25, 2013 Resolution and the Dissent

Previous to these incidents, the majority – in its **June 25, 2013 Resolution** – dismissed outright Reyes' petition for *certiorari*, filed to nullify the Commission on Elections (*COMELEC*) ruling cancelling her certificate of candidacy (*CoC*).

In my Dissent to this Resolution, I characterized the ruling as **"unusual"** for several reasons, the most important of which is that it raised very substantial issues as shown by the discussions below. In this light, the outright dismissal was attended by **undue haste and without even hearing Tan and allowing him to defend his case by himself.** As a result, the grounds that the Court cited in its Resolution of dismissal were ***reasons that the Court raised on its own, on contentious issues that, in the usual course of Court processes, are resolved after hearing the respondent and after joinder of issues***. In this unusual ruling, the Court, among others, held that:

1. "[T]o be considered a Member of the House of Representatives, there must be concurrence of the following requisites:

1) a valid proclamation[;]

2) a proper oath[;] and

3) assumption of office[;]"[4] and

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[1] *Rollo*, pp. 308-376.

[2] *Id.* at 378-408.

[3] *Id.* at 409-412.

[4] Majority Resolution dated June 25, 2013, p. 7.

4) that "before there is a valid or official taking of the oath it must be made [a] before the Speaker of the House of Representatives, and [b] in open session."

2. The COMELEC committed no grave abuse of discretion when it ruled on the citizenship of Reyes as "[u]nless and until she can establish that she had availed of the privileges of Republic Act No. (*RA*) 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines."[5]

3. The petitioner was not denied due process because she was given the opportunity to be heard. To quote its ruling, "in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard."[6]

The Court's handling of the case was all the more "unusual" because the son of a member (Mr. Justice Presbitero J. Velasco, Jr.) of this Court, although not a direct party, directly stood to be benefited by the Court's ruling – a fact that was reiterated both during the deliberations of the Court and in the Dissenting Opinion filed.

As will be seen from the discussions below, the reason for the haste was apparently the desire to avoid the House of Representatives Electoral Tribunal (*HRET*) where Mr. Justice Velasco currently sits as Chairman and whose participation and ruling could result (if Reyes is unseated) in the declaration of the vacancy of the Marinduque congressional seat, not the seating of the second placer in the elections.

Aside from pointing out the undue haste that characterized the June 25, 2013 ruling, my previous Dissent argued that no outright dismissal should have been made because of the **intervening events** and "in light of the **gravity of the issues**

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[5] *Id.* at 11, quoting the ruling of the COMELEC First Division.

[6] *Id.* at 11, quoting *Sahali v. Commission on Elections*, G.R. No. 201796, January 15, 2013.

raised and the potential **effect on jurisprudence**" of the Court's ruling on the case.

B. Facts and Supervening Developments of the Case

For a full appreciation of the facts and supervening developments, outlined below is a brief summary of the antecedents and the supervening developments in the present case.

Reyes filed her CoC on **October 1, 2012** for the position of Representative for the lone district of Marinduque.[7] Her opponent was former Congressman Lord Allan Jay Velasco, the son of a sitting Member of this Court, Associate Justice Presbitero J. Velasco, Jr.

On **October 10, 2012**, Tan filed with the COMELEC a petition to deny due course to or to cancel Reyes' CoC on the ground that she committed material misrepresentations in her CoC when she declared that: (1) she is a resident of Barangay Lupac, Boac, Marinduque; (2) she is a natural born Filipino citizen; (3) she is not a permanent resident or an immigrant to a foreign country; (4) her date of birth is July 3, 1964; (5) she is single; and (6) she is eligible to the office she seeks to be elected.[8]

On **March 27, 2013**, the COMELEC First Division issued a resolution granting Tan's petition and cancelling Reyes' CoC based on its finding that Reyes committed false material representation in her citizenship and residency.[9] Reyes duly filed a motion for the reconsideration of the COMELEC First Division's ruling on **April 8, 2013**.[10]

On **May 14, 2013** or a day after the congressional elections, the COMELEC *en banc* issued a resolution denying Reyes' motion for reconsideration, thus affirming the COMELEC First Division's ruling.[11] This resolution would have lapsed to finality

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[7] *Rollo*, p. 68.

[8] *Id.* at 40-41.

[9] *Id.* at 40-51.

[10] *Id.* at 140-157.

[11] *Id.* at 52-60.

on May 19, 2013 or five (5) days after the resolution's issuance, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure.[12]

On **May 18, 2013**, the Marinduque Provincial Board of Canvassers (*PBOC*) – without being officially informed of the COMELEC's ruling – proclaimed Reyes as the duly elected member of the House of Representatives for Marinduque. **She garnered 52,209 votes as against the 48,396 votes for former Cong. Velasco**.[13]

On **May 31, 2013**, former Cong. Velasco filed an Election Protest *Ad Cautelam* against Reyes with the HRET.[14] On the same date, a certain Christopher Matienzo also filed a Petition for *Quo Warranto Ad Cautelam* questioning Reyes' eligibility before the HRET.[15]

On **June 5, 2013**, the COMELEC *en banc* issued a **Certificate of Finality** declaring its May 14, 2013 resolution final and executory.[16] Note that this came way after Reyes had been proclaimed the winner on May 18, 2013.

On **June 7, 2013**, Reyes – as the duly proclaimed winner – took her **oath of office** before House Speaker Feliciano R. Belmonte, Jr.[17]

On **June 10, 2013**, Reyes filed a petition for *certiorari* with prayer for a temporary restraining order, preliminary

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[12] Section 3, Rule 37 of the COMELEC Rules of Procedure states:

Section 3. *Decisions Final After Five Days.* - Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory **after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court**. [emphasis ours, italics supplied]

[13] *Rollo*, p. 161.

[14] *Id.* at 374.

[15] *Id.* at 375.

[16] *Id.* at 163-165.

[17] *Id.* at 162.

injunction and/or *status quo ante* order with the Court to annul the March 27, 2013 and the May 14, 2013 COMELEC resolutions **cancelling her CoC** for the position of Representative in the lone district of Marinduque, and the June 5, 2013 Certificate of Finality declaring the May 14, 2013 COMELEC resolution final and executory in SPA Case No. 13-053(DC).[18]

On **June 25, 2013**, the Court hastily, and without requiring the COMELEC and Tan to comment, dismissed Reyes' petition outright through a Resolution finding that the COMELEC did not commit any grave abuse of discretion in ruling on the case. The majority ruled as well that the COMELEC retained jurisdiction over the cancellation case considering that Reyes could not yet be considered a Member of the House of Representatives; thus, she could not assume office before the start of the congressional term at noon on June 30, 2013.[19]

On **June 28, 2013**, Reyes filed a Manifestation with the Court that on **June 19, 2013**, the COMELEC First Division denied former Cong. Velasco's petition to declare the proceedings of the Marinduque PBOC and her subsequent proclamation null and void.[20]

At noon of **June 30, 2013**, by the authority of the 1987 Constitution, the term of the outgoing (2010-2013) elective congressional officials expired and the term of the incoming (2013-2016) officials began.[21]

On **July 2, 2013**, Reyes filed another Manifestation with the Court stating that she had assumed office and had started performing her functions as a Member of the House of

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[18] *Id.* at 3-39.

[19] *Id.* at 172-188.

[20] The records of the case do not show whether former Cong. Velasco filed a motion for reconsideration before the COMELEC *en banc* from the June 19, 2013 First Division ruling denying his petition to declare the proceedings of the Marinduque PBOC and Reyes' proclamation void; *id.* at 212-215.

[21] CONSTITUTION, Article VI, Section 7.

Representatives on June 30, 2013.[22] As proof of her assumption to office, Reyes attached to the Manifestation a copy of a bill and a resolution she filed in the House of Representatives.[23]

On **July 9, 2013**, the COMELEC *en banc* issued a **Resolution annulling Reyes' proclamation** and proclaimed the second placer, former Cong. Velasco, as the duly elected Representative of the Lone District of Marinduque. **Notably, the COMELEC, at this point, was acting on the proclamation of a sitting member of the House of Representatives.**[24]

On **July 22, 2013**, the 16th Congress of the Republic of the Philippines formally convened, elected its officers, and, in a joint session, received the President of the Philippines for his State of the Nation Address.[25] Reyes, together with other Members of the House of Representatives, ceremonially took their oaths in open session before Speaker Feliciano Belmonte whom they earlier elected. Thus, the House of Representatives fully and formally accorded Reyes its recognition as the duly elected Member for the lone district of Marinduque.

C. The Motion for Reconsideration

In the interim, on **July 15, 2013, Reyes filed her Motion for Reconsideration with Motion for Inhibition of Justice Jose P. Perez** from the Court's June 25, 2013 Resolution.[26]

Reyes repleaded in her motion for reconsideration the arguments she raised in her petition for *certiorari* on **due**

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[22] *Rollo*, pp. 263-265.

[23] *Id.* at 266-299.

[24] *Id.* at 391-393.

[25] *Id.* at 409.

[26] *Supra* note 1. In his Comment on the Motion for Reconsideration, Tan likewise asked for the inhibition of Associate Justice Arturo D. Brion who manifested before the Court his denial of the request as the matter that had been settled before in the 2010 HRET case between former Cong. Velasco and Edmund Reyes, the brother of Reyes. The matter was brought to the Court on *certiorari*, only to be withdrawn by former Cong. Velasco later on. See *Velasco v. Associate Justice Arturo D. Brion*, G.R. No. 195380.

process, **citizenship** and **residency** requirements, and submitted the following **additional positions and arguments** in response to the arguments the majority made in dismissing her petition outright.

On the Issue of Jurisdiction

(1) **The COMELEC has lost jurisdiction over the cancellation of Reyes' CoC case considering that she had satisfied all the requirements stated in the Court's June 25, 2013 Resolution:**

(a) **She was the duly and validly proclaimed winner for the position of Representative of the lone district of Marinduque**. Also there is nothing in the records showing that her proclamation on May 18, 2013 has been annulled by the COMELEC prior to her assumption to office at noon on June 30, 2013. In fact, it was only on July 9, 2013 that the COMELEC annulled her proclamation and declared second placer former Cong. Velasco the winner.

(b) **She validly took her oath of office.** She took her oath of office before Speaker Belmonte on June 5, 2013 and also before President Benigno Simeon Aquino III on June 27, 2013.

The Court's interpretation of Section 6, Rule II of the House Rules that requires Members to take their oath before the Speaker in open session is completely illogical. ***First,*** the Speaker is an official authorized to administer oaths under Section 41 of the Administrative Code of 1987. This provision does not require that the oath be made in open session before Congress in order to be valid. ***Second***, it would be actually and legally impossible for Congress to convene considering that the congressmen-elect cannot be considered Members of the House of Representatives without the oath and the Speaker cannot as well be elected as such without Members of the House of Representatives qualified to vote and elect a Speaker. ***Third***, the oath before the Speaker in open session is a mere formality for those who have already taken their oath as the very same provision itself presupposes that the "Member" has already taken his or her oath.

(c) **She has assumed the duties of her office.** The Court can take judicial notice that June 30, 2013 has come to pass. She

legally assumed the duties of her office at noon on June 30, 2013 and in fact, she has already filed a bill and a resolution in Congress.

(2) The Court's June 25, 2013 Resolution is contrary to the prevailing jurisprudence that the proclamation of a congressional candidate, following the election, divests the COMELEC of jurisdiction over disputes relating to the election, returns and qualifications of the proclaimed representative in favor of the HRET; it also emasculates and usurps the jurisdiction of the HRET.

(3) The Court's June 25, 2013 Resolution violates the doctrine of *stare decisis* and is contrary to the HRET rules.

On the Issue of the Validity of Reyes' Proclamation

(1) The Court cannot pass upon the validity of Reyes' proclamation as it was never raised as an issue in the present case.

(2) The Court has no jurisdiction to rule on the legality of Reyes' proclamation since it is the COMELEC that has the original and exclusive jurisdiction over annulment of proclamations.

(3) The Court's June 25, 2013 Resolution is contrary to prevailing jurisprudence on the validity of the proclamation of a winning candidate. Reyes cites the cases of *Planas v. Commission on Elections*,[27] *Limkaichong v. Commission on Elections*[28] and *Gonzalez v. Commission on Elections*[29] where the Court upheld the validity of the proclamations made considering that the cancellation of their CoCs at that time had not attained finality. Even so, such questions on the validity of Reyes' proclamation are better addressed by the HRET which now has jurisdiction over the present case, citing *Lazatin v. The Commission on Elections*.[30]

(4) At any rate, based on the pronouncement of the Court in its June 25, 2013 Resolution that "until such time (June 30,

[27] G.R. No. 167594, March 10, 2006, 484 SCRA 529.

[28] G.R. Nos. 178831-32, 179120, 179132-33, 179240-41, April 1, 2009, 583 SCRA 1.

[29] G.R. No. 192856, March 8, 2011, 644 SCRA 761.

[30] 241 Phil. 343 (1988).

2013) the COMELEC retains jurisdiction," since the noon of June 30, 2013 has come and gone, COMELEC is now devoid of jurisdiction to annul Reyes' proclamation on May 18, 2013.

In the same motion, Reyes also alleges that there are now **two (2) pending cases filed against her in the HRET**: (1) **Election Protest *Ad Cautelam*** filed on **May 31, 2013**, entitled *Lord Allan Velasco v. Regina Ongsiako Reyes*, docketed as Case No. 13-028;[31] and (2) **Petition for *Quo Warranto Ad Cautelam* filed on May 31, 2013**, entitled *Christopher P. Matienzo v. Regina Ongsiako Reyes*, docketed as Case No. 13-027.[32]

D. The Comment

On July 22, 2013, Tan filed his **Comment** on Reyes' Motion for Reconsideration praying for the dismissal of her petition with finality.[33] Tan submitted the following arguments:

(1) The COMELEC did not commit grave abuse of discretion in its appreciation of the evidence and its conclusion that Reyes was a naturalized US citizen. ***First***, the original certification issued by Acting Chief Simeon Sanchez was submitted to the COMELEC First Division and Reyes did not object to the admission of both the blog article and Sanchez's certification. ***Second***, the COMELEC is not bound to strictly adhere to the technical rules of procedure. ***Third***, Reyes herself admitted that she is an American citizen in her motion for reconsideration before the COMELEC *en banc;*

(2) The documents attached to Reyes' motion for reconsideration are prohibited evidence under Section 2, Rule 56 of the Rules of Court and should be expunged from the records;

(3) Reyes failed to comply with the requirements stated in the June 25, 2013 Resolution in order to become a Member of the House of Representatives. ***First,*** as has been held by the

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[31] *Supra* note 14.

[32] *Supra* note 15.

[33] *Supra* note 2.

COMELEC, Reyes' proclamation was null and void considering that the May 14, 2013 Resolution of the COMELEC *en banc* cancelling her CoC became final and executory on May 19, 2013. ***Second,*** Reyes' oath was improper because it was not done before the Speaker in open session on July 22, 2013. ***Third,*** Reyes' assumption to office was invalid as she is an ineligible candidate and cannot, by law, be a Member of the House of Representatives;

(4) The COMELEC retains jurisdiction in a petition for cancellation of CoC until the candidate is deemed a member of the House of Representatives; and

(5) The Court has full discretionary authority to dismiss the present case which was prosecuted manifestly for delay and the issues raised are too insubstantial to warrant further proceedings.

On **July 23, 2013**, Reyes filed a **Manifestation and Notice of Withdrawal of Petition** in the present case, "without waiver of her arguments, positions, defenses/causes of action as will be articulated in the HRET which is now the proper forum." Reyes emphasized that she filed the Manifestation and Notice of Withdrawal of Petition "considering the absence of any comment or opposition from the respondents to the petition." In her Motion, Reyes alleged:[34]

2. Petitioner was among the Members of the House of Representatives, representing the lone congressional district of the province of Marinduque, who attended the opening session, was officially and formally recognized as the duly elected representative of the said congressional district and voted for the Speakership of House of Representatives of Congressman Feliciano "Sonny" Belmonte, Jr.

3. After the Speaker's election, the Members of the House of Representatives of the 16th Congress of the Republic of the Philippines formally took their oath of office before the Speaker in open session. With the Petitioner's admission and recognition in the House of Representatives, and the official opening and organization of the House of Representatives, all controversies regarding Petitioner's

[34] *Supra* note 3.

qualifications and election to office are now within the jurisdiction of the HRET.

II. THE DISSENT

A. Reyes cannot unilaterally withdraw her pending Petition for *Certiorari* before this Court.

Although not a disputed issue as the *ponencia* simply "Notes" Reyes' Manifestation and Notice of Withdrawal of Petition, I nevertheless address this point as a preliminary issue that the Court must rule upon on record in order to fully resolve all the outstanding issues.

I submit that Reyes can no longer and should not be allowed to unilaterally withdraw her petition.

a. The Rule on Adherence to Jurisdiction.

The rule on adherence of jurisdiction applies to the present case. This rule states that once the jurisdiction of a court attaches, the court cannot be ousted by subsequent happenings or events, although of a character that would have prevented jurisdiction from attaching in the first instance; the court retains jurisdiction until it finally disposes of the case.[35] If at all possible, the withdrawal should be for a meritorious and justifiable reason, and subject to the approval of the Court.

An illustrative case is *Aruego, Jr. v. Court of Appeals*,[36] where the Court ruled on whether the trial court, which acquired jurisdiction over the case through the filing of the complaint, lost that jurisdiction because of the passage of Executive Order No. 209 (Family Code of the Philippines). In ruling that the trial court cannot be ousted of its jurisdiction by subsequent happenings or events, the Court held:

Our ruling herein reinforces the principle that the jurisdiction of a court, whether in criminal or civil cases, once attached cannot be

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[35] *Aruego, Jr. v. Court of Appeals*, G.R. No. 112193, March 13, 1996, 254 SCRA 711, 719-720.

[36] *Id.*

ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case.[37]

In the present case, the Court had acquired jurisdiction and has in fact ruled on Reyes' petition; thus the Court's jurisdiction should continue until it finally disposes of the case. Reyes cannot invoke the jurisdiction of this Court and thereafter simply withdraw her petition, especially after the Court has ruled and after its ruling has generated a lot of public attention and interest, some of them adverse to the reputation of the Court.

b. Lack of Factual and Legal Bases.

Reyes' justification for filing her Manifestation and Notice of Withdrawal of the Petition – the absence of any comment or opposition from the respondents to the Petition – is no longer supported by existing facts; Tan filed a Comment on Reyes' motion for reconsideration dated July 22, 2013. Thus, as matters now stand, Reyes' move is *not supported* by any ***factual justification***.

Reyes' ***legal justification***, on the other hand, could be seen in her allegations that she had been proclaimed, had taken her oath, and Congress itself has convened on July 22, 2013. Thus, pursuant to the Constitution, the HRET now has exclusive jurisdiction over all matters relating to her elections, returns and qualifications that the COMELEC had not finally resolved. **This ground, however, is a submitted issue in the present case and is for the Court to appreciate and rule upon in this motion for reconsideration; it is not a ground that Reyes can act upon on her own independently of the ruling of this Court**.

That cases - an election protest and a *quo warranto* petition - have been filed against Reyes before the HRET all the more render it imperative for this Court to settle, in a well reasoned manner, whether the jurisdiction exercised by the COMELEC

[37] *Id.* at 719-720.

through the cancellation of a CoC filed against Reyes, now rests with the HRET. At this point and after the attention that media have given the case, **no less than a ruling by the Court is needed** to clear the air as, constitutionally, the election, returns and qualifications of a member of the House of Representatives are already involved — a matter that on its face appropriately lies within the competence and jurisdiction of the HRET.

c. No Right of Withdrawal is Involved.

Reyes' unilateral withdrawal of her petition **after** the Court had acted on the petition, in my view, was **not done in the exercise of any right of withdrawal** that Reyes can demand from this Court. While no express rule exists under the Rules of Court on the withdrawal of an original petition before the Supreme Court, this is the only conclusion that can be made, consistent with the spirit that pervades the Rules of Court. Rule 17 of the Rules of Court on the dismissal of actions at the instance of the plaintiff embodies this spirit and can be applied *by analogy*.

Under this Rule, dismissal *by notice* of the plaintiff can only be before service of the defendant's answer or before service of a motion for summary judgment. On the other hand, dismissal of a complaint *by motion* of the plaintiff can only be upon approval by the court and upon such terms and conditions that the court shall deem to be proper.

The points comparable to the markers laid down by Rule 17 have all been reached and left behind in the present case so that Reyes can no longer be said to have full and sole control over her petition: the Court has ruled on the petition and a Dissent has in fact been filed against the ruling; the petitioner has filed a motion for reconsideration and the respondent has filed its Comment on the Motion. External developments have also taken place, among them, the proclamation of Reyes as winner; the administration of her oath of office no less than by the Speaker of the House and by the President of the Philippines; and the convening of the House of Representatives where Reyes fully participated. All these developments cannot simply be

disregarded in one sweep by the simple act of withdrawal that Reyes wishes the Court to approve.

d. Implications from Court's Exercise of Jurisdiction.

Lastly, we must consider that **our exercise of jurisdiction over the present petition is an original one**, undertaken in the exercise of the Court's expanded jurisdiction under the second paragraph of Section 1, Article VIII of the Constitution, to determine whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC and in declaring the COMELEC's ruling final after Reyes had been proclaimed, taken her oath, and assumed office.

The fact that developments (properly raised and pleaded) have intervened and have cut across these questioned COMELEC actions **all the more render it necessary for the Court to determine whether the HRET's jurisdiction has already begun and where, in fact, the COMELEC's jurisdiction ended**. This approach will clear the air so that the substantive issues on Reyes' election, returns and qualifications can be resolved by the proper body without any doubt hanging over the question of jurisdiction.

B. The grave abuse of discretion in the CoC cancellation proceedings.

To proceed now to the crux and the overriding issue of the petition and one that the intervening developments have not overtaken under the circumstances of this case – **did the COMELEC sufficiently accord Reyes due process, or did a violation of her right to due process occur?**

The due process issue is important as a finding of violation, because of the inherent arbitrariness it carries, necessarily amounts to grave abuse of discretion, and lays to rest all questions regarding the COMELEC's continued exercise of jurisdiction.

In *Mendoza v. Commission on Elections*,[38] the Court elaborated on the due process standards that apply to the COMELEC's proceedings:

> The appropriate due process standards that apply to the COMELEC, as an administrative or quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations*, quoted below:
>
> (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. x x x
>
> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.
>
> (3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, **that of having something to support its decision. A decision with absolutely nothing to support it is a nullity**[.]
>
> (4) **Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."**
>
> (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.
>
> (6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.
>
> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

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[38] G.R. No. 188308, October 15, 2009, 603 SCRA 692.

These are now commonly referred to as cardinal primary rights in administrative proceedings.

The first of the enumerated rights pertain to the substantive rights of a party at hearing stage of the proceedings. The essence of this aspect of due process, we have consistently held, is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential; in the case of COMELEC, Rule 17 of its Rules of Procedure defines the requirements for a hearing and these serve as the standards in the determination of the presence or denial of due process.

The second, third, fourth, fifth, and sixth aspects of the *Ang Tibay* requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the deliberative stage, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making. *Briefly, the tribunal must consider the totality of the evidence presented which must all be found in the records of the case (i.e., those presented or submitted by the parties); the conclusion, reached by the decision-maker himself and not by a subordinate, must be based on substantial evidence.*

Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. As a component of the rule of fairness that underlies due process, this is the *"duty to give reason"* to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.[39] (citations omitted, italics supplied, emphasis ours)

Reyes invokes both the due process component rights at the hearing and deliberative stages and alleges that these component rights have all been violated. These allegations are discussed below.

[39] *Id.* at 712-714.

a. The right to be heard.

In her petition, Reyes argues that the COMELEC violated her right to due process when it took cognizance of the documents submitted by Tan that were not testified to and which were offered and admitted in evidence without giving her the opportunity to question the authenticity of these documents and to present controverting evidence.

Based on the pleadings filed in the present case, no factual and legal basis is evident for Reyes to complain of the denial of her **hearing stage rights**.

In the first place, she does not dispute that she fully participated in the proceedings of the cancellation of her CoC until the case was deemed submitted for resolution; she had representation during the proceedings before the COMELEC First Division where she duly presented her evidence and summed up her case through a memorandum.

In addition, she even filed a motion for reconsideration from the COMELEC First Division resolution dated March 27, 2013 cancelling her CoC. Under these circumstances, the COMELEC had more than satisfied the opportunity to be heard that the *Ang Tibay hearing stage rights* require. Reyes had her day in court from the perspective of her hearing rights, and she cannot now complain of any denial of this right.

b. Violation of Reyes' deliberation stage rights.

The violation of Reyes' deliberation stage rights, however, is a different matter altogether and one that this Court cannot close its eyes to, most especially after this violation was made glaring in the rulings below.

To recall, the COMELEC First Division, in this case, found — based on Tan's submitted evidence (Eli J. Obligacion's blog article and the Sanchez certification) — that Reyes was a holder of a U.S. passport, which she continued to use until June 30, 2012. The COMELEC also found that she also failed to establish that she had applied for repatriation under RA 9225 by taking

the required Oath of Allegiance and by executing an Affidavit of Renunciation of her American Citizenship. Based on these findings, the COMELEC First Division ruled that Reyes remains an American citizen who is ineligible to run and hold any elective office. This conclusion and the use of the hearsay evidence occasioned a strong dissent from no less than COMELEC Chairman Sixto S. Brillantes, Jr.

As likewise emphasized in my previous Dissenting Opinion, the COMELEC seemed to have recklessly thrown away the rules of evidence in concluding – to the point of grave abuse of discretion – that Reyes misrepresented that she is a natural born Filipino citizen and that she had abandoned and lost her domicile of origin when she became a naturalized American citizen. To quote and reiterate what I said:

> *First*, Tan submitted an article published online (**blog article**) written by one Eli J. Obligacion (*Obligacion*) entitled "Seeking and Finding the Truth About Regina O. Reyes." This printed blog article stated that the author had obtained records from the BID stating that Reyes is an American citizen; that she is a holder of a US passport and that she has been using the same since 2005.
>
> How the law on evidence would characterize Obligacion's blog article or, for that matter, any similar newspaper article, is not hard for a law student answering the Bar exam to tackle: the article is double hearsay or hearsay evidence that is twice removed from being admissible as it was offered to prove its contents (that Reyes is an American citizen) without any other competent and credible evidence to corroborate them. Separately of course from this consideration of admissibility is the question of probative value. On top of these underlying considerations is the direct and frontal question: did the COMELEC gravely abuse its discretion when it relied on this piece of evidence to conclude that Reyes is not a Filipino citizen?
>
> *Second*, Tan also submitted a **photocopy** of a certification issued by Simeon L. Sanchez of the BID showing the travel records of Reyes from February 15, 2000 to June 30, 2012 and that she is a holder of US Passport No. 306278853. This certification also indicates in some entries that Reyes is an American while other entries denote that she is Filipino. The same questions of admissibility and probative value of evidence arise, together with the direct query on the characterization of the COMELEC action since the COMELEC

concluded on the basis of these pieces of evidence that Reyes is not a Filipino citizen because it is not only incompetent but also lacks probative value as evidence.

Contributory to the possible answer is the ruling of this Court that a "certification" is not a certified copy and is not a document that proves that a party is not a Filipino citizen.[40] (italics and emphases supplied)

For reasons only known to the Commission, the COMELEC egregiously ignored the settled principle in jurisprudence that uncorroborated hearsay does not constitute substantial evidence. In *Rizal Workers Union v. Hon. Calleja*,[41] the Court, citing *Ang Tibay*, categorically ruled:

The clear message of the law is that even in the disposition of labor cases, due process must never be subordinated to expediency or dispatch. Upon this principle, the unidentified documents relied upon by the respondent Director must be seen and taken for what they are, mere inadmissible hearsay. They cannot, by any stretch of reasoning, be deemed substantial evidence of the election frauds complained of. And as this Court held in *Ang Tibay v. CIR:*

> **x x x (the) assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. *Mere uncorroborated hearsay or rumor does not constitute substantial evidence.***[42](citation omitted, italics supplied, emphases ours)

At the very least, the COMELEC should have considered whether purported **evidence from a person not before the court** and whose statement cannot be confirmed for the genuineness, accuracy and truth of the basic fact sought to be established in the case should be taken as the "truth."

Even without the use of technical rules of evidence, common sense and the minimum sense of fairness, to my mind, dictate that a blog article published online or unidentified documents

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[40] Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, p. 17.

[41] 264 Phil. 805 (1990).

[42] *Id.* at 811.

cannot simply be taken to be evidence of the truth of what they say, nor can photocopies of documents not shown to be genuine can be taken as proof of the "truth" on their faces. By accepting these materials as statements of the "truth," the COMELEC clearly violated Reyes' right to both procedural and substantive due process.

c. Tan did not submit the original immigration certification.

In his Comment to Reyes' motion for reconsideration, Tan apparently tried to give the COMELEC a helping hand in curing the fatal evidentiary deficiency of its case by claiming that the original certification issued by Acting Chief Simeon Sanchez was submitted to the COMELEC First Division, thus subtly belying the statement of Chairman Brillantes in his dissent that only a photocopy of the certification was before them. Chairman Brillantes pointedly stated:

> The travel records submitted by Petitioner are also without bearing. The printed internet article from the blog of a certain Eli Obligacion showing that Respondent used a US Passport on June 30, 2012 is hearsay while **the purported copy of the Bureau of Immigration Certification is merely a xerox copy and not even certified to be a true copy of the original, thus similarly inadmissible**.[43] (emphasis supplied)

This claim does not appear to have been refuted nor rebutted in the records before us, except in Tan's claim that came out of the blue. The records (specifically, the Certified True Copy from the MACHINE COPY ON FILE WITH THE OFFICE OF THE CLERK OF THE COMMISSION of the Sanchez Certification dated January 22, 2013 – submitted by Reyes),[44] however, plainly show that the copy on file with the COMELEC of the Sanchez certification is a machine copy and not an original copy. The statement that a machine copy is on file with the COMELEC came from no less than the Clerk of the Commission,

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[43] *Rollo,* p. 166.

[44] *Id.* at 135-137.

Ma. Josefina E. dela Cruz. Thus, Chairman Brillantes was correct – what was before the COMELEC, when it ruled on the Tan petition, was a mere machine copy of the Sanchez certification.

c.1. The Sanchez certification – even if admitted – is insufficient.

Even assuming for the sake solely of argument that the Sanchez certification is admissible and has probative value, the certification itself is not sufficient to establish that Reyes was a naturalized U.S. citizen.

In *Frivaldo v. Commission on Elections*,[45] the Court ruled that Juan Frivaldo was a naturalized U.S. citizen on the basis of a certification from a United States District Court that he was a **naturalized U.S. citizen** and was thus disqualified from serving as Governor of the Province of Sorsogon. In *Frivaldo,* the evidence clearly showed that Frivaldo was naturalized as a citizen of the United States in 1983 *per* the certification of the United States District Court, Northern District of California, as duly authenticated by Vice Consul Amado P. Cortez of the Philippine Consulate General in San Francisco, U.S.A.

In a similar case – *Labo, Jr. v. Commission on Elections*[46] – the Court also found Ramon Labo to be a naturalized Australian citizen on the basis of a certification from the Australian Government that he was indeed a naturalized Australian citizen and was thus disqualified from serving as Mayor of Baguio City. The *Labo* records showed that he had been **married to an Australian citizen and was naturalized as an Australian citizen** in 1976, pursuant to a certification from the Australian Government through its Consul in the Philippines which certification was later affirmed by the Department of Foreign Affairs.

In Reyes' case, the COMELEC's conclusion (based on the Sanchez certification) that Reyes was a naturalized American

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[45] 255 Phil. 934 (1989).

[46] 257 Phil. 1 (1989).

citizen was not grounded on the required premises and was thus not supported by substantial evidence. Unlike *Frivaldo and Labo,* **Tan miserably failed to submit relevant evidence showing that Reyes had been a naturalized American citizen (such as a certification from the U.S. government that Reyes was a naturalized U.S. citizen) who would now require the application of RA 9225 to run for elective office**. As emphasized in my previous Dissenting Opinion, Tan's submitted evidence does not adequately prove that Reyes was a naturalized American citizen. To quote my previous Dissent:

> To begin with, the evidence submitted by Tan, even assuming that it is admissible, arguably does not prove that Reyes was a naturalized American citizen. At best, the submitted evidence could only show that Reyes was the holder of a US passport indicating that she is American, nothing more. In *Aznar v. Comelec*, the Court ruled that the mere fact that respondent Osmeña was a holder of a certificate stating that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. In the present case, the fact that Reyes is a holder of a US passport does not portend that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship. In addition, how the Comelec arrived at a conclusion that Reyes is naturalized American citizen can be seen as baffling as it did not appear to have provided any factual basis for this conclusion.[47]

d. Reyes' alleged admission of American citizenship – discussed.

Tan interestingly argues that Reyes herself admitted before the COMELEC *en banc* (in her motion for reconsideration of the March 27, 2013 COMELEC First Division ruling cancelling her CoC) that she is an American citizen. Supposedly, this admission constitutes sufficient basis for the COMELEC *en banc* to cancel her CoC.

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[47] Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, pp. 20-21.

I must **reject this argument** for several reasons.

First, the COMELEC, both division and *en banc*, did not find the supposed admission material in resolving Reyes' motion for reconsideration. The COMELEC *en banc* itself, in its May 14, 2013 resolution, merely considered Reyes' motion for reconsideration[48] – the source of the supposed admission - "a mere rehash and a recycling of claims."[49] Thus, the alleged admission is not an issue at all in the present petition. Based on the COMELEC rulings, **what stands out before the Court is the utter lack of basis supporting the COMELEC's cancellation of Reyes' CoC.**

Second, from the perspective of the present petition for *certiorari*, Tan apparently overlooks the legal issues presented before the Court as these issues determine the scope of the Court's *certiorari* jurisdiction. The core issues before the Court are: (i) whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC; and (ii) whether the subsequent proclamation of Reyes (before the COMELEC *en banc's* May 14, 2013 resolution, cancelling her CoC, became final) divested the COMELEC of jurisdiction to rule on her qualifications and transferred the matter to the HRET.

In this light, the alleged admission is not an issue that can be submitted and appreciated by this Court in the present proceedings. If the Court appreciates at all the evidence that the COMELEC cited, appreciated and evaluated, it is for the purpose of determining if the appreciation and evaluation are so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[50] Note that – as pointed out above – the COMELEC never even considered the alleged admission in its rulings. Thus,

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[48] Before the COMELEC *en banc.*

[49] *Rollo,* p. 53.

[50] *Sabili v. Commission on Elections*, G.R. No. 193261, April 24, 2012, 670 SCRA 664, 681.

there is no basis for this Court to consider or appreciate this admission in the present proceedings.

Third, an admission of dual citizenship, without more, is not a sufficient basis for a CoC cancellation, as this Court has already held in its settled rulings.

While Reyes might have admitted in her motion for reconsideration before the COMELEC that she had been **married to an American citizen**, the admission did not mean that she had already lost her Philippine citizenship in the absence of any showing that, by her act or omission, she is deemed under the law to have renounced it. **Section 4, Article 4 of the Constitution** is very clear on this point – ***"Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it."***

As applied to Reyes, her possession and use of a U.S. passport, by themselves, did not signify that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship.

The latest related jurisprudence on this matter is *Cordora v. Commission on Elections*,[51] where the Court held that **the twin requirements of RA 9225 do not apply to a candidate who is a natural born Filipino citizen who did not become a naturalized citizen of another country**, thus:

> We have to consider the present case in consonance with our rulings in *Mercado v. Manzano, Valles v. COMELEC,* and *AASJS v. Datumanong. Mercado* and *Valles* involve similar operative facts as the present case. *Manzano* and *Valles*, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of *jus soli*. Valles was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result

[51] G.R. No. 176947, February 19, 2009, 580 SCRA 12.

of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. **Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process.** *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:

I _____ , solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship *per se*, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal and COMELEC*, *Velasco v. COMELEC*, and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. **In**

the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.[52]

e. Conclusion and consequences of the COMELEC's violation of Reyes' due process rights.

Based on these considerations, I submit that the violation of Reyes' right to due process raises a **serious jurisdictional issue** that cannot be glossed over or disregarded at will, and cannot be saved by the claim that she had been accorded her hearing rights. The latter relates purely to the actual hearing process and is rendered meaningless where there is failure at the more substantive deliberation stage.

Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right should be declared void for lack of jurisdiction. The rule is equally true for quasi-judicial bodies (such as the COMELEC), for the constitutional guarantee that no man shall be deprived of life, liberty or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where the violation occurs.[53] **Consequently, the assailed March 27, 2013 and May 14, 2013 COMELEC resolutions cancelling Reyes' CoC should be declared void for having been rendered in violation of her right to due process**.

As a relevant side observation, the nullity of the cancellation proceedings before the COMELEC fully validates the PBOC's action in proclaiming Reyes as the winner in the congressional elections. The proclamation of Reyes, of course, is not a material issue in the present case as I discuss at length below. I will dwell on it nevertheless in order *to clear the air*, to place matters in their proper perspective, and if only to clarify and rectify what has been erroneously and recklessly claimed by

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[52] *Id.* at 23-25; citations omitted, italics supplied, emphases ours.

[53] *Montoya v. Varilla*, G.R. No. 180146, December 18, 2008, 574 SCRA 831, 843.

the *ponencia*, particularly on the effect of a proclamation on the jurisdictional boundary separating the COMELEC and the HRET.

C. Proclamation is not a disputed and submitted issue.

a. The present petition is for the nullification of the COMELEC CoC proceedings and rulings.

A very critical point to appreciate in considering the present petition for *certiorari* is that it was filed by Reyes who is **pointedly questioning the cancellation of her CoC**. **She never asked this Court in her petition to act on her proclamation**.

The party who has the interest and the personality to seek the annulment of Reyes' proclamation is **the losing candidate** – former Cong. Velasco – who is not even a party to the present petition and who **never raised the issue of the validity of Reyes' proclamation before this Court**.

Thus, **the fact of proclamation is an undisputed matter** before this Court and cannot be attacked directly or collaterally until after the issue of Reyes' qualifications (which would necessarily include the merits of the validity or invalidity of her CoC) is resolved before the proper tribunal. The entity, too, that can annul or set aside the proclamation – at this stage of the case – should be the HRET, not this Court. Any other manner or forum for the resolution of the Marinduque election dispute would result in a **clash of jurisdiction** that the law and the decided cases have sought to avoid.

In this light, I note with concern the majority's attempt in the Court's June 25, 2013 Resolution to indirectly question the validity of Reyes' proclamation by holding that:

More importantly, we cannot disregard a fact basic in this controversy- that before the proclamation of petitioner on 18 May 2013, the COMELEC *En Banc* already finally disposed of the issue of petitioner's lack of Filipino citizenship and residency via its Resolution dated 14 May 2013. After 14 May 2013, there was, before the COMELEC, no longer any pending cases on petitioner's qualifications to run for the position of Member of the House of Representative. We will inexcusably disregard this fact if we accept the argument of the petitioner that the COMELEC was ousted of jurisdiction when she was proclaimed, which was four days after the COMELEC *En Banc* decision. **The Board of Canvassers which proclaimed petitioner cannot by such act be allowed to render nugatory a decision of the COMELEC *En Banc* which affirmed a decision of the COMELEC First Division.** [emphasis ours][54]

In the present *ponencia* that this Dissent disputes, the attack on the proclamation again surfaces, this time, directly and unabashedly. To quote the present *ponencia*:

The averred proclamation is the critical pointer to the correctness of petitioner's submission. **The crucial question is whether or not the petitioner could be proclaimed on 18 May 2013. Differently stated, was there basis for the proclamation of petitioner on 18 May 2013?**

Dates and events indicate that **there was no basis for the proclamation of petition on May 18, 2013**. Without the proclamation, the petitioner's oath of office is likewise baseless, and without a precedent oath of office, there can be no valid and effective assumption of office.[55]

I submit that the Court cannot rule on the issue of the validity or invalidity of Reyes' **proclamation** as this is **NOT an issue raised in the present petition before this Court, nor an issue in the COMELEC proceedings that is now under review.** Proclamation is a separate COMELEC action that came after and separately from the CoC cancellation ruling.

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[54] Resolution dated June 25, 2013, p. 9.

[55] *Ponencia*, p. 2.

As a cautionary note, any ruling by the Court on the validity or invalidity of Reyes' proclamation is beyond the Court's jurisdiction at the present time since the **Court does not have original jurisdiction over annulment of proclamations** and **no petition is before this Court seeking to impugn or sustain Reyes' proclamation**. By law, it is the COMELEC that has the original and exclusive jurisdiction over pre-proclamation controversies, including the annulment of proclamations[56] for positions other than the President, the Vice President, and the Members of the two Houses of Congress which all have their specific constitutional rules on the resolution of their elections, returns and qualifications.[57]

As matters now stand, from the perspective of the petition for *certiorari* now before this Court, the proclamation is simply ***an event*** (albeit, an important one) that transpired in the course of the election process and in Reyes' assumption to office as Member of the House of Representatives. If it can be an issue at all, the issue is **whether it did or did not transpire**; its legal standing or **legality is not in issue** and cannot be questioned before this Court simply because **no such issue is before us**.

Once proclamation is established as a fact, the COMELEC's jurisdiction ends and the HRET's jurisdiction begins. As Mr. Justice Antonio T. Carpio very ably argued in his own Dissenting Opinion, any legal issue on the validity or invalidity of the proclamation then passes on to the HRET; to hold otherwise would lead to conflicts of jurisdiction that the law could not have intended.

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[56] Section 242 of the Omnibus Election Code states:

Section 242. Commission's exclusive jurisdiction of all pre-proclamation controversies. -The Commission shall have exclusive jurisdiction of all pre-proclamation controversies. It may *motu proprio* or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annual partially or totally any proclamation, if one has been made, as the evidence shall warrant in accordance with the succeeding sections.

[57] RA 7166, Section 15.

To reiterate what I have stated above, the party who may have the standing to raise this issue is not before us. In her motion for reconsideration, Reyes – the party who presented the petition before this Court – pointedly stated that she never raised the issue of her proclamation before this Court.

Tan, in his Comment (*i.e.*, the first time he was ever heard by this Court), mentioned "proclamation" but only to assert that Reyes had not complied with the requirements of the June 25, 2013 Resolution of this Court to become a Member of the House of Representatives – a legal issue extraneous to the CoC cancellation that he initiated. Tan's claim that the May 14, 2013 COMELEC *en banc* ruling became final on May 19, 2013, on the other hand, clearly forgets that the proclamation took place a day before, or on May 18, 2013.

In sum, **it is only the *ponencia* that raises, argues about, and seeks to impugn the validity of Reyes' proclamation**. This, by itself, is another unusual feature of this case – self-raised arguments from the Court on an issue that had not been raised in the petition or in any significant manner, in the Comment.

b. Mere mention of the word "proclamation" in the petition is not sufficient basis to argue that the validity of such proclamation has already been raised before this Court.

In its bid to make an issue of the validity of Reyes' proclamation, the *ponencia* now argues that it was Reyes herself who raised the matter of her proclamation in her petition.

This is **a very misleading and careless claim** if indeed the *ponencia* would insist on this position. As has been repeatedly mentioned, Reyes' petition addresses the COMELEC's cancellation of her CoC, not her proclamation which she does not complain about and which she has not brought before this Court as an issue. This is the context in which any mention of the word "proclamation" should be read and understood, and such mention should not be unduly stretched to bring before this Court an issue that is not before it.

For the Court's ready and easy understanding of the context of Reyes' mention of the word "proclamation," her argument in her petition runs this way:

> **a. the COMELEC's cancellation of her CoC should be nullified as it was attended by grave abuse of discretion amounting to lack or excess of jurisdiction; and**
>
> **b. in any case, with the fact of proclamation by the PBOC, the COMELEC has now lost jurisdiction over the cancellation proceedings as jurisdiction now rests with the HRET.**[58]

Understood in this manner, Reyes' main cause of action is the nullity of the COMELEC's action on her CoC – the COMELEC ruling she wants the Court to nullify. This cause of action has nothing to do with her proclamation – a separate COMELEC action (through its PBOC) that came after the COMELEC *en banc's* ruling. **The mention of proclamation in Reyes' petition, examined closely, was an assertion of fact leading to a legal conclusion that was apparently made to support her position that the assailed COMELEC CoC cancellation never lapsed to finality and did not become executory**. It was nothing more and nothing less than this, yet this merited the June 25, 2013 Resolution's own conclusion that to be a member of the House of Representatives, there must be a proclamation, an assumption to office and an oath taken before the Speaker of the House while the House is assembled in session.

All these, of course, do not affect the main question raised before this Court – whether the COMELEC gravely abused its discretion in ruling on the cancellation of Reyes' CoC. If indeed it did, then there is no valid and standing COMELEC *en banc* ruling that would prevent the proclamation of Reyes as the duly-elected congresswoman of the lone district of Marinduque. If the COMELEC did not commit any grave abuse

[58] *Rollo,* p. 22.

of discretion, then the Court should so rule. What happens then to the proclamation – a legal question that is not before this Court – is a matter that should be taken up before the proper tribunal. Viewed in this manner, everything goes back to the allegation of grave abuse of discretion that Reyes brought before this Court.

c. Upon proclamation, the HRET alone has jurisdiction over Reyes' qualifications, including the validity of her proclamation.

With the fact of Reyes' proclamation established or undisputed, the **HRET alone – to the exclusion of any other tribunal – has jurisdiction over Reyes' qualifications, including the matter of the validity or invalidity of her proclamation.**

Prevailing jurisprudence dictates that **upon proclamation** of the winning candidate and **despite the allegation of the invalidity of the proclamation**, the **HRET acquires jurisdiction** to hear the election contest involving the election, returns and qualifications of a member of the House of Representatives.

As early as 1988, in *Lazatin v. The Commission on Elections*,[59] the Court held that upon proclamation, oath and assumption to office of the winning candidate as Member of the House of Representatives, any question relating to the invalidity of the winning candidate's proclamation should be addressed to the sound judgment of the HRET.

In this cited case, Carmelo Lazatin assailed the jurisdiction of the COMELEC to annul his proclamation after he had taken his oath and assumed his office as Congressman of the First District of Pampanga. In reversing the COMELEC's annulment of Lazatin's proclamation, the Court held:

The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in the first district

[59] 241 Phil. 343 (1988).

of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. For this Court to take cognizance of the electoral protest against him would be to usurp the functions of the House Electoral Tribunal. **The alleged invalidity of the proclamation (which had been previously ordered by the COMELEC itself) despite alleged irregularities in connection therewith, and despite the pendency of the protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal**.[60]

Guerrero v. Commission on Elections[61] explained the *rationale* behind the ruling in *Lazatin*, as follows:

But as we already held, in an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as Congressman is raised, that issue is best addressed to the HRET. **The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.**[62]

The Court reiterated the ruling in the subsequent cases of *Aggabao v. Commission on Elections*[63] *and Vinzons-Chato v. Commission on Elections.*[64] The latest jurisprudence on the matter is *Limkaichong v. Commission on Election.*[65] In *Limkaichong*, the petitioners therein argued that the irregularity that tainted Jocelyn Sy Limkaichong's proclamation should prevent the HRET from acquiring jurisdiction. In ruling against the petitioners, the Court held:

The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does

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[60] *Id.* at 345; emphasis ours.

[61] 391 Phil. 344 (2000).

[62] *Id.* at 354; emphasis ours.

[63] 490 Phil. 285 (2005).

[64] 548 Phil. 712 (2007).

[65] *Supra* note 28.

not divest the HRET of its jurisdiction. The Court has shed light on this in the case of *Vinzons-Chato*, to the effect that:

> x x x. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:
>
> x x x x x x x x x
>
> **In fine, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.**[66]

In the case now before us, Tan argues in his Comment on Reyes' Motion for Reconsideration that Reyes' proclamation on May 18, 2013 was null and void, citing the July 9, 2013 COMELEC *en banc* resolution annulling Reyes' proclamation. He emphasizes that the finality of the May 14, 2013 resolution on May 19, 2013 automatically voided Reyes' May 18, 2013 proclamation, rendering it a ministerial duty for the COMELEC to annul Reyes' proclamation and proclaim Velasco as the sole eligible candidate and winner for the position of Representative of Marinduque.

In his Concurring Opinion, Justice Abad argues that Reyes' case, which the COMELEC has already decided with finality, can no longer be taken over by the HRET even if Reyes had already assumed office, if such decision has been elevated to the Supreme Court on *certiorari.* He argues that the HRET cannot oust the Supreme Court of its jurisdiction under the Constitution.

These allegations fall within the type of situation that the above-cited cases cover so that the COMELEC (and even this Court) is now barred from ruling on the validity of Reyes' proclamation. The issue should now be left to the sound

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[66] *Id.* at 35-36; italics supplied, emphases ours, citations omitted.

discretion of the HRET. Even this Court is covered by this ruling as the grant of jurisdiction to the HRET is exclusive; the Court's turn will come in a duly filed petition for *certiorari* under Rule 65 of the Rules of Court.

c.1. *Codilla* is not applicable and cannot be used to support the view that the COMELEC, not the HRET, has jurisdiction over the validity of Reyes' proclamation.

In his Comment, Tan cited the case of ***Codilla, Sr. v. Hon. de Venecia***[67] to support his argument that it is the COMELEC, not the HRET, that has jurisdiction over the present case.

Eufrocino Codilla, Sr. and Ma. Victoria Locsin were candidates for the position of Representative of the 4th Legislative District of Leyte during the May 14, 2001 elections. Codilla garnered the highest number of votes (71,350 versus Locsin's 53,447 votes) but his proclamation was suspended because he was facing charges of indirect solicitation of votes. Codilla filed a motion to lift the suspension order. The COMELEC Second Division, without resolving Codilla's pending motion, issued a resolution declaring his disqualification and directing the immediate proclamation of Locsin. Despite Codilla's timely Motion for Reconsideration where he squarely raised the invalidity of Locsin's proclamation, the votes cast for Codilla were declared stray and Locsin was proclaimed winner.

Codilla duly filed with the COMELEC *en banc* a petition to annul Locsin's proclamation. The COMELEC *en banc* granted Codilla's petition and declared Locsin's proclamation as null and void. **Locsin did not appeal from this decision** and Codilla was proclaimed the duly-elected Representative of the 4th District of Leyte. In the meantime, Locsin took her oath of office on June 18, 2001 and assumed office on June 30, 2001.

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[67] 442 Phil. 139 (2002).

In the petition for *mandamus* and *quo warranto* Codilla filed with this Court to question Locsin's proclamation, the latter argued in defense that the COMELEC *en banc* had no jurisdiction to annul her proclamation. She maintained that the COMELEC *en banc* had been divested of jurisdiction to review the validity of her proclamation because she had become a member of the House of Representatives and the proper forum to question her membership was the HRET.

The Court disregarded Locsin's arguments and held that the HRET could not assume jurisdiction as Locsin's proclamation was invalid.

Even a cursory reading of *Codilla* would reveal that its factual antecedents and legal issues are far different from those of the present case; thus, *Codilla* cannot be used as basis to hold that the COMELEC, not the HRET, has jurisdiction over the issue of the validity of Reyes' proclamation.

First, **the *Codilla* ruling was made in a petition brought before this Court to question Locsin's proclamation**.

The Court found that Locsin's proclamation was **patently invalid** because: (1) Codilla's right to due process was denied during the entire proceedings leading to the proclamation of Locsin; (2) the order of disqualification was not yet final, hence the votes cast in favor of Codilla could not be considered stray; and (3) Locsin, as a mere second placer, could not be proclaimed. Specifically, the Court in *Codilla* characterized the hurried and premature proclamation of Locsin who obtained the second highest number of votes as "brazen" because the petition to disqualify the winning candidate had not yet been determined with finality.

Unlike *Codilla* and as I have repeatedly harped on, **the present Reyes petition relates to the COMELEC's cancellation of her CoC and is not about her proclamation.** In fact, her proclamation was never an issue before the COMELEC. Specifically, proclamation was not an issue in the Motion for Reconsideration Reyes filed on April 8, 2013 and which the COMELEC First Division ruled upon on March

27, 2013. It was this First Division ruling that the COMELEC *en banc* ruled upon on May 14, 2013. These facts alone show that **Reyes' proclamation was a separate COMELEC action that came after and separately from the CoC cancellation ruling.**

Second, as will be discussed at length below, the records before the Court do not support the patent invalidity of Reyes' proclamation. Without a final and executory ruling cancelling Reyes' CoC, and in the absence of any order from the COMELEC to suspend Reyes' proclamation, the PBOC acted well within its authority to proclaim Reyes who garnered the highest number of votes, unlike Locsin who was a mere second placer.

Third, the core issue in *Codilla* was whether the candidate who garnered the second highest number of votes could be validly proclaimed as the winner in the election contest in the event that the winner is disqualified. The Court took note in this case of the settled jurisprudence that a candidate who obtained the second highest number of votes is not entitled to assume the position in case the winner is disqualified.

In the present case, the core issues before the Court are: (i) whether the COMELEC committed grave abuse of discretion in cancelling Reyes' CoC; and (ii) as an *obiter* side issue, whether the subsequent proclamation of Reyes divested the COMELEC of jurisdiction to rule on her qualifications. Thus, the facts and issue raised are far different from *Codilla.* If this cited case is applicable at all, it is under the ruling that the Court has jurisdiction because grave abuse of discretion on the part of the COMELEC is involved.

Fourth, from the perspective of this Court, the jurisprudential rule that *Codilla* establishes is that the jurisdiction of this Court prevails when there is grave abuse of discretion rendering a ruling void. Thus, the Court assumed jurisdiction despite the previous proclamation of Locsin as the proclamation was void. Parenthetically, in *Codilla,* what was brought squarely before the Court was a petition questioning the proclamation of Locsin itself.

d. Nothing in the records support the view that Reyes' proclamation is invalid, even assuming that this issue is presently before this Court.

Assuming *arguendo* that the Court can rule on the validity of Reyes' proclamation, the records before this Court suggest that the PBOC correctly proclaimed Reyes.

The antecedents outlined above show that it was only on March 27, 2013 that the COMELEC First Division ruled on Tan's cancellation petition. It was also only May 14, 2013 that the COMELEC *en banc* denied Reyes' motion for reconsideration. By the COMELEC's own Rules, this *en banc* ruling does not become final and executory until after five (5) days from its promulgation.[68] Thus, it was only on May 19, 2013 that the *en banc* ruling should have lapsed to finality, but before then, on May 18, 2013, the PBOC had proclaimed Reyes.

In this regard, I find Justice Abad's position that the May 14, 2013 COMELEC *en banc* Resolution became final and executory on May 27, 2013 to be without factual and legal basis. As stated elsewhere in this Opinion, the assailed resolution could not have attained finality because Reyes' proclamation on May 18, 2013 divested the COMELEC of jurisdiction over matters pending before it with respect to Reyes' eligibility.

First, I note that Justice Abad failed to cite any legal basis for his proposition that the May 14, 2013 COMELEC *en banc* resolution became final and executory on May 27, 2013 after Reyes failed to file a petition within ten (10) days from receipt of the COMELEC's May 14, 2013 resolution. On the contrary, Section 3, Rule 37 of the COMELEC Rules of Procedure expressly states that "decisions in x x x petitions to deny due course to or cancel certificates of candidacy, x x x shall become final and executory after the lapse of **five (5) days from their promulgation** unless restrained by the Supreme Court." Thus,

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[68] COMELEC Rules of Procedure, Rule 37, Section 3. *Supra* note 12.

in the present case, Reyes' proclamation on May 18, 2013 came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 resolution, pursuant to the afore-cited rule.

Second, even if we reckon the date of finality of the May 14, 2013 COMELEC *en banc* resolution from the date of receipt (May 16, 2013) of the said resolution, Reyes' proclamation would still be three (3) days ahead of the deadline for finality. COMELEC Resolution No. 9648 dated February 22, 2013 provides that the ruling of the Commission *En Banc* shall become final and executory if no restraining order is issued by the Supreme Court **within five (5) days from receipt** of the decision or resolution. Applied in this case, Reyes' proclamation on May 18, 2013 came three (3) days ahead of the May 21, 2013 deadline for the finality of the May 14, 2013 COMELEC *en banc* resolution, pursuant to Section 28(1) of COMELEC Resolution No. 9648.

Significantly, the PBOC was legally in the position to make a proclamation as the canvass had been completed, with Reyes as the winner; at that point, the PBOC had no official notice of any final and executory COMELEC *en banc* ruling.

COMELEC Resolution No. 9648 which the *ponencia* conveniently ignores clearly provides that the Board is authorized to proclaim a candidate who obtained the highest number of votes ***except*** in case the CoC of the candidate who obtains the highest number of votes has been ***cancelled or denied due course by a final and executory decision or resolution***. In such cases, the Board is authorized to proceed to proclaim the candidate who obtained the second highest number of votes, provided the latter's CoC has not likewise been cancelled by a final and executory decision or resolution.[69]

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[69] It must be mentioned, however, that a recent COMELEC issuance, Resolution No. 9648 dated February 22, 2013, otherwise known as the "GENERAL INSTRUCTIONS FOR THE BOARD OF CANVASSERS ON THE CONSOLIDATION/CANVASS AND TRANSMISSION OF VOTES CONNECTION WITH THE MAY 13, 2013 NATIONAL AND LOCAL

Thus, without a final and executory ruling cancelling Reyes' CoC, and in the absence of any order from the COMELEC to suspend Reyes' proclamation, the PBOC acted well within its authority to proclaim Reyes as the winner in the Marinduque congressional elections.

d.1 The Allegations of Bad Faith

In its arguments, the *ponencia* harps on the COMELEC ruling of May 14, 2013 and claims that "What the petitioner did

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ELECTIONS," provides that a ruling of the Commission *En Banc* shall become final and executory if no restraining order is issued by the Supreme Court within five (5) days from **RECEIPT** of the Decision or Resolution. It pertinently states:

> Section 28. x x x
>
> **PROCLAMATION OF THE WINNING CANDIDATES**
>
> x x x x x x x x x
>
> A candidate who obtained the highest number of votes shall be proclaimed by the Board, except for the following:
>
> 1. In case the certificate of candidacy of the candidate who obtains the highest number of votes has been cancelled or denied due course by a final and executory Decision or Resolution, the votes cast for such candidate shall be considered stray, hence, the Board shall proceed to proclaim the candidate who obtains the second highest of number votes, provided, the latter's certificate of candidacy has not likewise been cancelled by a final and executory Decision or Resolution;
>
> x x x x x x x x x
>
> **In all cases, a Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of the ruling of the Commission *En Banc*, no restraining order was issued by the Supreme Court within five (5) days from receipt of the Decision or Resolution.**
>
> In cases where a Petition to Deny Due Course or cancel a Certificate of Candidacy, Declare a Nuisance Candidate, or for Disqualification remains pending with the Commission on the day of canvassing and no order of suspension of proclamation is issued by the Commission *En Banc* or Division where said Petition is pending, the Board shall proceed to proclaim the winner. [emphases ours]

was to 'take the law into her hands' and secure a proclamation in complete disregard of the COMELEC *en banc* decision that was final on May 14, 2013 and final and executory five days thereafter."[70] The *ponencia* thereafter proceeds to pointedly allege "bad faith" and claims that "[s]he cannot sit as Member of the House of Representatives by virtue of a baseless proclamation knowingly taken, with knowledge of the existing legal impediment."[71]

These arguments forget the existing legal realities pointed out above. It forgets, too, that it cannot single out and isolate a set of circumstances in a given case and, based on these, impute bad faith against a party to the case in the absence of a clear showing of such bad faith based on the totality of all the attendant circumstances.

Elementary fairness demands that if bad faith would be imputed, the *ponencia* should have viewed the Marinduque election dispute in its entirety, starting from the fact that **Reyes handily won over her opponent** and that the **only claim to negate this victory is the cancellation of her CoC** through **extremely questionable proceedings before the COMELEC**. Notably, in these proceedings, no less than COMELEC Chairman Brillantes spoke out to comment on the grave abuse of discretion that transpired. If only the *ponencia* had been mindful of this reality and the further reality that the **democratic choice of a whole province should be respected**, then perhaps it would not have carelessly imputed bad faith on Reyes.

Everything considered, Reyes was well within her rights to move for her proclamation as the winning candidate who garnered the highest number of votes. Stated in the context of the *ponencia*, it cannot attribute bad faith to Reyes since ***she was merely exercising her legal right as the winning candidate***, following the legal truism that the proper exercise of a lawful right cannot constitute a legal wrong for which an action will

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[70] *Ponencia*, p. 4.

[71] *Id.* at 5-6.

lie, although the act may result in damage to another, for no legal right has been invaded.[72]

e. The COMELEC *en banc*'s cancellation of Reyes' CoC on May 14, 2013 did not render her proclamation void.

The *ponencia's* position that the COMELEC *en banc* already cancelled with finality Reyes' CoC on May 14, 2013 prior to her proclamation on May 18, 2013 is simply **incorrect**.

The COMELEC *en banc's* May 14, 2013 Resolution (cancelling Reyes' CoC) could not have attained finality as Reyes' valid proclamation on May 18, 2013 had the effect of divesting the COMELEC of jurisdiction over matters pending before it relating to Reyes' eligibility.

Two material records are critical in considering this point.

The ***first*** is the proclamation on May 18, 2013 which came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 resolution, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure. Under this COMELEC Rule, "decisions in x x x petitions to deny due course to or cancel certificates of candidacy, x x x shall become final and executory after the lapse of five (5) days from their promulgation unless restrained by the Supreme Court."[73]

As has been mentioned earlier, this proclamation was based on the results of the voting on the May 13, 2013 elections and

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[72] See *Sps. Custodio v. Court of Appeals*, 323 Phil. 575, 588-589 (1996), where the Court held:

> The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded. One may use any lawful means to accomplish a lawful purpose and though the means adopted may cause damage to another, no cause of action arises in the latter's favor. Any injury or damage occasioned thereby is *damnum absque injuria*. The courts can give no redress for hardship to an individual resulting from action reasonably calculated to achieve a lawful end by lawful means. [citations omitted, italics supplied]

[73] *Supra* note 12.

the PBOC canvass that Reyes secured **52,209 votes**, as against former Cong. Velasco's **48,396 votes**. **This election result is the silent argument in this case that can hardly be contested, or, if at all, must be addressed before the proper tribunal.** Before this proper tribunal rules, the Marinduque electorate – who had voted for Reyes on May 13, 2013 despite the COMELEC First Division ruling cancelling her CoC – should not be disenfranchised, particularly not by this Court through its flawed June 25, 2013 ruling.

The ***second*** material record is the COMELEC Order of June 5, 2013 which declared its resolution of May 14, 2013 final and executory. **When the COMELEC made this declaration, Reyes had long been proclaimed by the PBOC as the candidate who had garnered the highest number of votes.** This material record further strengthens the conclusion that no legal impediment existed for the PBOC on May 18, 2013 when it proclaimed Reyes.

Given this conclusion, an interesting question that still arises is: has Reyes now fully and successfully blocked the objections to her candidacy?

The **short answer is NO**, far from it, as already impliedly suggested above. If former Cong. Velasco and the *quo warranto* petitioner before the HRET are determined to pursue their petitions, then they are free to do so without any hindrance from this Court; what simply transpires is the transfer of the forum of their disputes from the COMELEC to the HRET.

Hard though this conclusion may seem for the HRET petitioners, it is the command of no less than the Constitution and, as such, must be strictly obeyed. The upside, of course, of this observation is that they are not denied their legal remedies; these are simply relocated to another forum out of respect for their separation of powers and independence that the Constitution ordains.

D. Reyes' proclamation divested the COMELEC of jurisdiction over her

qualifications in favor of the HRET.

a. The latest applicable jurisprudential rulings.

I reiterate my previous Dissenting Opinion position that the **proclamation** of the winning candidate is the **operative fact that triggers the jurisdiction of the HRET** over election contests relating to the winning candidate's election, returns, and qualifications.

In other words, the proclamation of a winning candidate divests the COMELEC of its jurisdiction **over matters pending before it at the time of the proclamation;** the party questioning the election, returns and the qualifications of the winning candidate should now present his or her case in a proper proceeding (*i.e.*, *an election protest or a quo warranto petition)* before the HRET that, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualifications of members of the House of Representatives.

I take ***firm exception*** to the majority's conclusion that the COMELEC retains jurisdiction over disputes relating to the election, returns and qualifications of the representative who has been proclaimed but who has not yet assumed office. This ruling is contrary to the Court's prevailing jurisprudence on the matter.

Prevailing jurisprudence dictates that the **proclamation alone** of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representatives in favor of the HRET, although some of these decided cases mention that the COMELEC's jurisdiction ends and the HRET's own jurisdiction begins once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives.

The latest relevant ruling on COMELEC/HRET jurisdictional boundary came *via Jalosjos, Jr. v. Commission on Elections*[74]

[74] G.R. Nos. 192474, 192704 and 193566, June 26, 2012, 674 SCRA 530.

where **the Court, through Mr. Justice Roberto Abad no less,** categorically ruled that "*[t]he Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins*."[75] In *Jalosjos,* the Court held that the proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET. I note, at this point, that by arguing in his Concurring Opinion that the COMELEC's jurisdiction ends and the HRET begins only upon the assumption to the office on June 30 by the winning candidate, Justice Abad conveniently eschews the prevailing jurisprudence of the Court on the matter and makes an extraordinary *volte face* from his categorical declaration in *Jalosjos, Jr.*

In that case, the Court ruled that the COMELEC acted without jurisdiction when it issued its June 3, 2010 order granting the motion for reconsideration and declaring Jalosjos ineligible after he had already been proclaimed the winner for the position of Representative of the Second District of Zamboanga Sibugay. Significantly, **at the time the COMELEC issued the order, Jalosjos had yet to take his oath of office and assume the duties of his office**, *viz.:*

> **Here, when the COMELEC *En Banc* issued its order dated June 3, 2010, Jalosjos had already been proclaimed on May 13, 2010 as winner in the election. Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second District of Zamboanga Sibugay**.
>
> x x x x x x x x x

Here, however, the fact is that on election day of 2010 the COMELEC *En Banc* had as yet to resolve Erasmo's appeal from the Second Division's dismissal of the disqualification case against Jalosjos. Thus, there then existed no final judgment deleting Jalosjos' name from the list of candidates for the congressional seat he sought. The last standing official action in his case before election day was the ruling of the COMELEC's Second Division that allowed

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[75] *Id.* at 534-535.

his name to stay on that list. Meantime, the COMELEC *En Banc* did not issue any order suspending his proclamation pending its final resolution of his case. With the fact of his proclamation and assumption of office, any issue regarding his qualification for the same, like his alleged lack of the required residence, was solely for the HRET to consider and decide.

Consequently, the Court holds in G.R. 192474 that the COMELEC *En Banc* exceeded its jurisdiction in declaring Jalosjos ineligible for the position of representative for the Second District of Zamboanga Sibugay, which he won in the elections, since it had ceased to have jurisdiction over his case. **Necessarily, Erasmo's petitions (G.R. 192704 and G.R. 193566) questioning the validity of the registration of Jalosjos as a voter and the COMELEC's failure to annul his proclamation also fail. The Court cannot usurp the power vested by the Constitution solely on the HRET.**[76] (citations omitted, emphases ours, italics supplied)

Similarly, in the earlier *Perez v. Commission on Elections*,[77] the Court ruled that the COMELEC did not have jurisdiction to rule on a motion for reconsideration dated May 22, 1998 and could not have passed upon the eligibility of Marcita Mamba Perez who was already a Member of the House of Representatives. In this case, **the Court considered Perez a Member of the House of Representatives on the sole basis of her proclamation**. The Court also held that upon filing of the petition on June 16, 1998, the Court no longer had jurisdiction over the same:

As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact **that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998**, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC *en banc* denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A. No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. **The**

[76] *Id.* at 535-536.

[77] G.R. No. 133944, October 28, 1999, 317 SCRA 641.

COMELEC *en banc* had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, §17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility.[78] (italics supplied; emphases and underscore ours)

In *Planas v. Commission on Elections*,[79] a 2006 case, the Court held that the general rule is that the proclamation of a congressional candidate divests the COMELEC of jurisdiction in favor of the HRET, *viz.:*

The general rule is that the proclamation of a congressional candidate divests COMELEC of jurisdiction in favor of the HRET. This rule, however, is not without exception. As held in *Mutuc, et al. v. COMELEC, et al.,*

> x x x **It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest**. But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues.
>
> In the case at bar, at the time of the proclamation of Defensor who garnered the highest number of votes, the Division Resolution invalidating his certificate of candidacy was not yet final, hence, he had at that point in time remained qualified. Therefore, his proclamation was valid or legal.
>
> **Following *Mutuc* then, as at the time of Defensor's proclamation the denial of his CoC due course was not yet final, his proclamation was valid or legal and as he in fact had taken his oath of office and assumed his duties as representative, the COMELEC had been effectively divested of jurisdiction over**

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[78] *Id.* at 646-647.

[79] *Supra* note 27.

the case.[80] (citation omitted, italics supplied, emphases and underscores ours)

b. Refutation of the *ponencia's* jurisprudential claims.

To support its erroneous conclusion that the COMELEC still retained jurisdiction over the present case, the majority, in the Court's June 25, 2013 Resolution, ***disingenuously*** cites the cases of *Vinzons-Chato v. Commission on Elections*,[81] *Limkaichong v. Commission on Elections*[82] and *Gonzalez v. Commission on Elections*,[83] where the Court invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns and qualifications ends, and the HRET own jurisdiction begins.

What the majority conveniently failed to cite in these cases, however, was the Court's definitive qualification that where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an election protest with the HRET. In *Vinzons-Chato v. Commission on Elections*,[84] the Court pertinently held:

> The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. **Stated in another manner, where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest with the HRET.**

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[80] *Id.* at 536.

[81] *Supra* note 64.

[82] *Supra* note 28.

[83] *Supra* note 29.

[84] *Supra* note 64, at 179-180.

In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction[.] [emphases and underscore ours]

The majority also conveniently failed to note the Court's explicit qualification in *Limkaichong* that the proclamation of a winning candidate divests the COMELEC of jurisdiction over matters pending before it at the time of the proclamation. The Court pointedly stated in this case that -

We do not agree. The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**. **It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications.** The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.

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Accordingly, after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for *quo warranto*, within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections*, we ruled that where the candidate has already been proclaimed winner in the

congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.[85] (citations omitted, italics supplied, emphases and underscore ours)

c. Analysis and Observations.

This survey of jurisprudence delineating the jurisdiction of the COMELEC, *vis-à-vis* the HRET, indubitably shows that the **operative fact** that clearly divests the COMELEC of its jurisdiction is the **proclamation of the winning candidate** and not the assumption to the office as the majority erroneously concluded in the Court's June 25, 2013 Resolution. As I previously noted in my previous Dissent, the majority's conclusion on the issue of jurisdiction between the COMELEC and the HRET is a major retrogressive jurisprudential development; is a complete turnaround from the Court's prevailing jurisprudence; and is a ruling that can effectively emasculate the HRET.

As my previous Dissent discussed, under the HRET Rules of Procedure, no election protest or *quo warranto* petition can successfully be filed if the HRET's jurisdiction would be viewed in the manner the majority posits (*i.e.*, after proclamation, oath and assumption when Congress convenes) as the HRET Rules require that the election protest or *quo warranto* petition be filed fifteen (15) days after the winning candidate's proclamation.[86]

In this regard, I take exception to Justice Abad's view that the period for the filing of an election protest or a petition for *quo warranto* is merely a deadline. **The HRET Rules clearly state that filing periods are jurisdictional**. Rule 19 of the 2011 HRET Rules provides that the period for the filing of the appropriate petition, as prescribed in Rules 16[87] and Rule

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[85] *Supra* note 28, at 33-37.

[86] See Dissenting Opinion of Justice Arturo D. Brion dated June 25, 2013, pp. 15-16.

[87] RULE 16. Election Protest. – *A* verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner.

17,[88] is jurisdictional and cannot be extended. Significantly, the filing of an election protest or petition for *quo warranto* beyond the periods provided in Rule 16 and Rule 17 of the HRET Rules is a ground for summary dismissal of the petition.

Thus, using the facts of the present case, if indeed no election protest or *quo warranto* petition can be filed until after July 22, 2013 (the day that Congress convened), then the HRET would simply dismiss any petition filed after that date for having filed out of time since Reyes was proclaimed on May 18, 2013 or more than 2 months before Congress formally convened. We cannot simply close our eyes to this resulting absurdity proposed by the majority, considering that the presumption is always against absurdity, and it is the duty of the courts to interpret the law in such a way as to avoid absurd results.[89]

Interestingly, even the losing candidate, former Cong. Velasco, and the *quo warranto* petitioner do not appear to agree with the majority's position as they made sure they filed their petitions within fifteen (15) days from the time Reyes was proclaimed. They filed their petitions on May 31, 2013, or well within 15 days from May 18, 2013.

To reconcile the "apparent" conflicts in jurisprudence, I wish to point out the following observations to the Court:[90]

> (1) "The proclamation of a congressional candidate following the election divests the COMELEC of its jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representatives in favor

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[88] RULE 17. *Quo Warranto.* – A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

[89] *People of the Philippines v. Villanueva*, G.R.No. L-15014, April 29, 1961.

[90] See Dissenting Opinion of COMELEC Commissioner Christian Robert S. Lim in SPC No. 13-010; *rollo*, p. 256.

of the HRET."[91] This is the prevailing doctrine that has been consistently espoused by the Court and is, in fact, consistent with the HRET rules; thus, it should be upheld.

(2) "The statement that – 'once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC's jurisdiction over election contests relating to the candidate's election, returns, and qualifications ends and the HRET's own jurisdiction begins' - ***must be read in relation to the time the Supreme Court rendered its decision on the case it ruled upon, since at this juncture, the three aforementioned conditions (proclamation, oath and assumption) are already existing as a matter of fact.***" [92] In other words, this iteration of the rule only recognizes the simple fact that the three conditions are already existing at the time that the Court decides the case. To my mind, it does not and should not overcome the prevailing rule that the proclamation of the congressional candidate divests the COMELEC of its jurisdiction over the candidate's election, returns and qualifications in favor of the HRET.

d. Conclusion: ***Only the HRET can now rule on the pending election disputes; the Court only comes in under Rule 65 if the HRET gravely abuses the exercise of its discretion.***

Despite the recourse to this Court and the original jurisdiction we now exercise over the petition, our action on the present petition should understandably be limited. **We can only rule on the existence of the grave abuse of discretion we found and on the consequent invalidity of the COMELEC action in the cancellation case before it**; **we cannot rule on the issue of Reyes' qualifications** (*i.e.,* on the issue of citizenship and residency). We have so held in *Perez v. Commission on Elections*[93] and *Bello v. Commission*

[91] *Ibid.*

[92] *Ibid.*

[93] *Supra* note 77.

on Elections[94] and **we have no reason to change tack now**. The HRET, as the constitutionally designated tribunal to rule at the first instance, should resolve the issues presented before it, including the task of appreciating the supposed admission of Reyes that she married an American citizen.

III. EPILOGUE

In the Court's final deliberation on the case, the *ponente* – as expected – dwelt on the "proclamation" aspect of the case. The *ponente* essentially maintained that Reyes should not be allowed to evade the "final" COMELEC decision that cancelled her CoC, by having herself illegally proclaimed by the PBOC and subsequently claiming that the COMELEC cancellation ruling never became final because it was overtaken by the proclamation that divested the COMELEC of jurisdiction over the election dispute.

I likewise harped on the "grave abuse of discretion" argument that I have outlined above. I pointed out that the proclamation is not an issue before the Court as the petition is for the nullification of the COMELEC ruling cancelling Reyes' CoC – an event that stands by itself and that came way before the proclamation. I pointed, too, to the terms of Reyes' petition that, under the established rules of procedure, define the issues brought by her before the Court: Reyes never questioned her own proclamation, and the losing candidate – former Cong. Velasco – never questioned the proclamation before the Court. Justice Marvic Mario Victor F. Leonen and Justice Carpio raised their own arguments, too. Justice Leonen counseled caution and joined Justice Carpio in pointing out that the venue now to question the proclamation is the HRET.

All these arguments, of course, came to naught and this outcome – while patently objectionable for its own grave abuse of discretion – came after full argument, for and against, and could be charged to the usual vagaries of decision-making in the Court. What came as a surprise, however, was not the

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[94] G.R. Nos. 191998, 192769 and 192832, December 7, 2010, 637 SCRA 59.

argument that hewed to the *ponencia's* "proclamation" line, but the novel argument from no less than the Chief Justice.

Out of the blue and without any previous circulated written opinion, the Chief Justice argued that in the COMELEC's resolution of July 9, 2013, annulling Reyes' proclamation (*a resolution rendered by the COMELEC long after the disputed cancellation of CoC ruling on May 14, 2013, and likewise long after the proclamation of May 18, 2013 that the ponencia capitalized on*), she saw how Reyes acted in bad faith and the Court should not allow this kind of action to pass. She thus declared that she was voting based on this consideration.

To be sure, I tried to point out that the COMELEC July 9, 2013 resolution is not covered by the petition; that the COMELEC's statements in its resolution had never been placed in issue before the parties; that Reyes herself was never heard on this matter; and that bad faith cannot and should not be deduced from the cited incident but from the totality of the attendant circumstances: Reyes won the elections by a wide margin and is now being dispossessed of that victory through the grave abuse of discretion that the COMELEC committed in cancelling her CoC. But all these proved unavailing as the ensuing 5 to 4 vote showed.

It was in this manner – *through layer upon layer of grave abuse of discretion* – that the democratic choice of the people of the Province of Marinduque was subverted.

DISSENTING OPINION

LEONEN, *J.*:

I join Justices Carpio and Brion in their Dissent, but I wish to clarify my reasons further.

I

In case of doubt, there are fundamental reasons for this Court to be cautious in exercising its jurisdiction to determine who the members are of the House of Representatives. We should

maintain our consistent doctrine that proclamation is the operative act that removes jurisdiction from this Court or the Commission on Elections and vests it on the House of Representatives Electoral Tribunal (HRET).

The first reason is that the Constitution unequivocably grants this discretion to another constitutional body called the House of Representatives Electoral Tribunal. This is a separate organ from the Judiciary.

As early as the Act of Congress of August 29, 1916 known as the Jones Law, the Senate and the House of Representatives were granted the power to "be the sole judges of the elections, returns, and qualifications of their [respective] elective members."[1] Section 18 of this organic act provides:

> Section 18 – That the Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, and each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel an elective member. x x x.

The 1935 Constitution transferred the same power to an Electoral Commission which altered the composition of the electoral tribunal but still continued a membership that predominantly originated from the Legislature.

Thus, Section 4 of Article VI of the 1935 Constitution provided:

> Section 4 – There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its Chairman. The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the National Assembly.

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[1] *Veloso v. Provincial Board of Canvassers of the Province of Leyte*, 39 Phil. 886, 886-887 (1919).

In *Angara v. Electoral Commission*,[2] this Court noted the change in the composition of the electoral tribunal in the 1935 Constitution.[3] Nevertheless, the authority of the electoral tribunal remained the same as the **sole judge** of all contests relating to the election, returns, and qualifications of their members. The electoral tribunal in the 1935 Constitution was characterized as an independent tribunal, separate from the Legislative Department. However, "the grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as **complete and unimpaired** as if it had remained originally in the legislature."[4]

The 1973 Constitution briefly transferred the authority of an electoral tribunal to the Commission on Elections.[5] The 1987 Constitution reverted this authority back to electoral tribunals. The present Section 17 of Article VI provides:

> Section 17 – The Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

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[2] 63 Phil. 139 (1936).

[3] *Id.* at 175.

[4] *Id.*

[5] Section 2 (2) of Article XII-C of the 1973 Constitution provides: "The Commission on Elections shall have the following powers and functions:

1. x x x

2. Be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials.

x x x"

The authority of electoral tribunals as the sole judge of all contests relating to the election, returns, and qualifications of their members was described in *Roces v. House of Representatives Electoral Tribunal*:[6]

> The HRET is the **sole judge** of all contests relating to the election, returns, and qualifications of the members of the House of Representatives and has the power to promulgate procedural rules to govern proceedings brought before it. This exclusive jurisdiction includes the power to determine whether it has the authority to hear and determine the controversy presented, and the right to decide whether that state of facts exists which confers jurisdiction, as well as all other matters which arise in the case legitimately before it. Accordingly, **it has the power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction**. One of the three essential elements of jurisdiction is that **proper parties** must be present. Consequently, **the HRET merely exercised its exclusive jurisdiction when it ruled that Mrs. Ang Ping was a proper party to contest the election of Roces**.[7] (Citations omitted)

Initially, our organic act envisioned both the House of Representatives and the Senate to determine their members by creating tribunals that would decide on contests relating to the election, returns and qualifications of its members. This was to maintain the integrity of the Legislature as a separate branch of government. The House of Representatives and the Senate act collectively, and the numbers that determine the outcome of their respective actions are sensitive to the composition of their memberships.

The 1935 Constitution enhanced this ability by altering the composition of the electoral tribunals. Introducing members from the Judiciary to participate in the tribunal provided the necessary objectivity from the partisan politics of each chamber. Both the 1935 and the 1987 Constitution, however, did not intend the Judiciary to take over the function of deciding contests of

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[6] 506 Phil. 654 (2005).

[7] *Id.* at 667.

the election, returns, and qualification of a member of either the House of Representatives or the Senate.

The earliest moment when there can be members of the House of Representatives or the Senate is upon their proclamation as winners of an election. Necessarily, this proclamation happens even before they can actually assume their office as the elections happen in May, and their terms start "at noon on the thirtieth day of June next following their election."[8] Contests of elected representatives or senators can happen as soon as they are proclaimed. We should remain faithful to the intention of the Constitution. It is at the time of their proclamation that we should declare ourselves as without jurisdiction.

This is clear doctrine, and there are no reasons to modify it in the present case.

II

The jurisdiction of electoral tribunals as against other constitutional bodies has been put in issue in many cases.

In *Angara v. Electoral Commission*,[9] this Court held that the authority of the Electoral Commission as the "sole judge of all contests relating to the election, returns, and qualifications of the members of the National Assembly" begins from the certification by the proper provincial board of canvassers of the member-elect:[10]

> From another angle, Resolution No. 8 of the National Assembly confirming the election of members against whom no protests had been filed at the time of its passage on December 3, 1935, cannot be construed as a limitation upon the time for the initiation of election contests. While there might have been good reason for the legislative practice of confirmation of the election of members of the legislature at the time when the power to decide election contests was still lodged in the legislature, **confirmation alone by the legislature cannot be construed as depriving the Electoral Commission of the authority**

[8] 1987 CONSTITUTION, Art. VI, Sec. 7.

[9] *Angara v. Electoral Commission, supra* note 2.

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

incidental to its constitutional power to be "the sole judge of all contest relating to the election, returns, and qualifications of the members of the National Assembly," to fix the time for the filing of said election protests. Confirmation by the National Assembly of the returns of its members against whose election no protests have been filed is, to all legal purposes, unnecessary. As contended by the Electoral Commission in its resolution of January 23, 1936, overruling the motion of the herein petitioner to dismiss the protest filed by the respondent Pedro Ynsua, confirmation of the election of any member is not required by the Constitution before he can discharge his duties as such member. As a matter of fact, **certification by the proper provincial board of canvassers is sufficient to entitle a member-elect to a seat in the national Assembly and to render him eligible to any office in said body** (No. 1, par. 1, Rules of the National Assembly, adopted December 6, 1935).[11] (Emphasis supplied)

Since then, more Petitions, including this one, have been filed in this Court invoking the jurisdiction of the electoral tribunals against the Commission on Elections. Time and again, this Court has been asked to resolve the issue when jurisdiction over election contests vests on electoral tribunals. In all these cases, this Court has consistently held that it is the proclamation of a candidate in the congressional elections that vests jurisdiction on the electoral tribunals of any election contest, even though the candidate has not yet assumed his or her office or the protest was filed before June 30.[12] Once the **winning** candidate vying for a position in Congress is proclaimed, election contests must be lodged with the electoral tribunals and not with the Commission on Elections. To repeat, "certification by the proper x x x board of canvassers is sufficient to entitle a member-elect to a seat in [Congress] and to render him eligible to any office in the said body."[13]

Conversely, if a candidate for Congress was elected but was not proclaimed due to a suspension order issued by the

[11] *Id.*

[12] *See Jalosjos, Jr. v. Commission on Elections*, G.R. No. 192474, June 26, 2012, 674 SCRA 530, 535; *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 726 (2007); *Barbers v. Commission on Elections*, 499 Phil. 570, 585 (2005); *Aggabao v. Commission on Elections*, 490 Phil. 285, 291 (2005).

[13] *Angara v. Electoral Commission*, *supra* note 2, at 180.

Commission on Elections, the latter retains jurisdiction over protests concerning the candidate's qualifications.[14] Thus, we stated:

> The rule then is that candidates who are disqualified by final judgment before the election shall not be voted for and the votes cast for them shall not be counted. But those against whom no final judgment of disqualification had been rendered may be voted for and proclaimed, unless, on motion of the complainant, the COMELEC suspends their proclamation because the grounds for their disqualification or cancellation of their certificates of candidacy are strong. Meanwhile, the proceedings for disqualification of candidates or for the cancellation or denial of certificates of candidacy, which have been begun before the elections, should continue even after such elections and proclamation of the winners.[15]

In this case, the Commission on Elections *En Banc* Resolution ordering the cancellation of the petitioner's Certificate of Candidacy was issued only *after* the elections. The Resolution did not yet attain finality when the petitioner was proclaimed, and no Order was issued by the Commission on Elections to suspend the proclamation of the petitioner after the votes had been counted. Thus, the Provincial Board of Canvassers was well within its right and duty to proclaim the petitioner as the winning candidate.[16]

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[14] *Domino v. Commission on Elections*, 369 Phil. 798, 823 (1999).

[15] *Coquilla v. Commission on Elections*, 434 Phil. 861, 870-871 (2002).

[16] *See Ibrahim v. Commission on Elections*, G.R. No. 192289, January 8, 2013, 688 SCRA 129, 146-147. This Court held that:

> The MBOC has no authority to suspend Ibrahim's proclamation especially since the herein assailed resolutions, upon which the suspension was anchored, were issued by the COMELEC *en banc* outside the ambit of its jurisdiction.
>
> *Mastura v. COMELEC* is emphatic that:
>
> (T)he board of canvassers is a ministerial body. It is enjoined by law to canvass all votes on election returns submitted to it in due form. It has been said, and properly, that its powers are limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result

III

It is my opinion that this Court did not, in any of the cases cited in the main *ponencia*, change the time-honored rule that "***where a candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest [or a petition for quo warranto] with the [House of Representatives Electoral Tribunal]***."[17] The main *ponencia* cites several cases to support its *ratio decidendi* that three requisites must concur before a winning candidate is considered a "member" of the House of Representatives to vest jurisdiction on the electoral tribunal. These cases appear to have originated from *Guerrero v. Commission on Elections*.[18]

In *Guerrero*, this Court held that "x x x once a winning candidate has been **proclaimed**, **taken his oath**, and **assumed office** as a member of the House of Representatives, [the] COMELEC's jurisdiction over election contests relating to his

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of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained. x x x.

The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting while all other questions are to be tried before the court or other tribunal for contesting elections or in *quo warranto* proceedings.

In the case at bar, the MBOC *motu propio* suspended Ibrahim's proclamation when the issue of the latter's eligibility is a matter which the board has no authority to resolve. Further, under Section 6 of R.A. 6646, the COMELEC and not the MBOC has the authority to order the suspension of a winning candidate's proclamation. Such suspension can only be ordered upon the motion of a complainant or intervenor relative to a case for disqualification, or a petition to deny due course or cancel a certificate of candidacy pending before the COMELEC, and only when the evidence of the winning candidate's guilt is strong. Besides, the COMELEC *en banc* itself could not have properly ordered Ibrahim's disqualification because in taking cognizance of the matter, it had already exceeded its jurisdiction.

[17] *Vinzons-Chato v. Commission on Elections, et al.*, 548 Phil. 712, 726 (2007).

[18] 391 Phil. 344 (2000).

election, returns, and qualifications ends, and the HRET's own jurisdiction begins."[19] The case cited *Aquino v. Commission on Elections*[20] and *Romualdez-Marcos v. Commission on Elections*[21] to support the statement.

A closer reading of *Aquino* and *Romualdez-Marcos* will reveal that this Court did not rule that three requisites must concur so that one may be considered a "member" of the House of Representatives subject to the jurisdiction of the electoral tribunal. On the contrary, this Court held in *Aquino* that:

> Petitioner conveniently confuses the distinction between an unproclaimed candidate to the House of Representatives and a member of the same. Obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate.
>
> x x x x x x x x x
>
> Under the above-stated provision, the electoral tribunal clearly assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become members of either the Senate or the House of Representatives. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution. While the proclamation of the winning candidate in an election is ministerial, B.P. 881 in conjunction with Sec. 6 of R.A. 6646 allows suspension of proclamation under circumstances mentioned therein. x x x.[22] (Citations omitted)

In *Romualdez-Marcos*, this Court held that:

> As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns, and qualifications of members of Congress begins only after a

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[19] *Id.* at 352.

[20] G.R. No. 120265, September 18, 1995, 248 SCRA 400, 417-418.

[21] G.R. No. 119976, September 18, 1995, 248 SCRA 300, 340-341.

[22] *Aquino v. Commission on Elections*, *supra* at 417-418.

candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.[23] (Citations omitted)

To be sure, the petitioners who were the winning candidates in *Aquino* and *Romualdez-Marcos* invoked the jurisdiction of the House of Representatives Electoral Tribunal though they had not yet been proclaimed. Thus, this Court held that the Commission on Elections still had jurisdiction over the disqualification cases.[24]

This Court did not create a new doctrine in *Aquino* as seen in the Concurring and Dissenting Opinion of Justice Francisco where he said:

> The operative acts necessary for an electoral candidate's rightful assumption of the office for which he ran are his proclamation and his taking an oath of office. Petitioner cannot in anyway be considered as a member of the House of Representatives for the purpose of divesting the Commission on Elections of jurisdiction to declare his disqualification and invoking instead HRET's jurisdiction, it indubitably appearing that he has yet to be proclaimed, much less has he taken an oath of office. Clearly, petitioner's reliance on the aforecited cases which when perused involved Congressional members, is totally misplaced, if not wholly inapplicable. That the jurisdiction conferred upon HRET extends only to Congressional members is further established by judicial notice of HRET Rules of Procedure, and HRET decisions consistently holding that the proclamation of a winner in the contested election is the essential requisite vesting jurisdiction on the HRET.[25]

In fact, the Separate Opinion of Justice Mendoza in *Romualdez-Marcos* will tell us that he espoused a more radical approach to the jurisdiction of the electoral tribunals. Justice Mendoza is of the opinion that "the eligibility of a [candidate]

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[23] *Romualdez-Marcos v. Commission on Elections, supra* at 340-341.

[24] *Romualdez-Marcos v. Commission on Elections, supra* at 340, *Aquino v. Commission on Elections, supra* at 418.

[25] *Aquino v. Commission on Elections, supra* at 434.

for the office [in the House of Representatives] may only be inquired into by the [House of Representatives Electoral Tribunal],"[26] even if the candidate in *Romualdez-Marcos* was not yet proclaimed. Justice Mendoza explained, thus:

> Three reasons may be cited to explain the absence of an authorized proceeding for determining *before election* the qualifications of a candidate.
>
> x x x x x x x x x
>
> Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, Section 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals as "sole judges" under the Constitution of the *election, returns,* and *qualifications* of members of Congress of the President and Vice President, as the case may be.[27]

Thus, the pronouncement in *Guerrero* that is used in the main *ponencia* as the basis for its ruling is **not** supported by prior Decisions of this Court. More importantly, it cannot be considered to have changed the doctrine in *Angara v. Electoral Commission*. Instead, it was only made in the context of the facts in *Guerrero* where the Decision of the Commission on Elections *En Banc* was issued only after the proclamation and the assumption of office of the winning candidate. In other words, the contention that there must be proclamation, taking of the oath, and assumption of office before the House of Representatives Electoral Tribunal takes over is not *ratio decidendi*.

The other rulings cited in the main *ponencia* support our view.

In *Vinzons-Chato v. Commission on Elections*,[28] this Court ruled that:

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[26] *Romualdez-Marcos v. Commission on Elections, supra* at 399.

[27] *Id.* at 396-397.

[28] *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712 (2007).

x x x once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. **Stated in another manner, where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest with the HRET**.[29] (Emphasis supplied)

In *Limkaichong v. Commission on Elections*,[30] this Court held that:

x x x once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. **It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation.**[31] (Emphasis supplied)

In *Gonzalez v. Commission on Elections*[32] the paragraph that contains the statement cited in the main *ponencia* is as follows:

In any case, the point raised by the COMELEC is irrelevant in resolving the present controversy. It has long been settled that pursuant to Section 6 of R.A. No. 6646, a final judgment before the election is required for the votes of a disqualified candidate to be considered "stray." In the absence of any final judgment of disqualification against Gonzalez, the votes cast in his favor cannot be considered stray. **After proclamation, taking of oath and assumption of office by Gonzalez, jurisdiction over the matter of**

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[29] *Id.* at 725-726. The last statement was inadvertently excluded in the main *ponencia*.

[30] G.R. Nos. 178831-32, 179120, 179132-33, and 179240-41, July 30, 2009, 594 SCRA 434.

[31] *Id.* at 444-445. The last statement was inadvertently excluded in the main *ponencia*.

[32] G.R. No. 192856, March 8, 2011, 644 SCRA 761.

his qualifications, as well as questions regarding the conduct of election and contested returns – were transferred to the HRET as the constitutional body created to pass upon the same. The Court thus does not concur with the COMELEC's flawed assertion of jurisdiction premised on its power to suspend the effects of proclamation in cases involving disqualification of candidates based on commission of prohibited acts and election offenses. As we held in *Limkaichong*, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.[33] (Emphasis supplied)

The above discussion, including the statement cited in the main *ponencia*, is *obiter* because this Court already found that "the petition for disqualification and cancellation of the [Certificate of Candidacy] x x x was filed out of time. The [Commission on Elections] therefore erred in giving due course to the petition."[34] Further, the context of the statement cited in the main *ponencia* emphasized the doctrine that the votes for a candidate who is not yet disqualified by final judgement cannot be considered **stray** votes. In *Gonzalez*, this Court did not require the assumption of office of the candidate-elect before the electoral tribunal was vested with jurisdiction over electoral protests.

To reiterate, there is only **one** rule that this Court has consistently applied: It is the proclamation of the winning candidate vying for a seat in Congress that divests the Commission on Elections of jurisdiction over any electoral protest. This rule is consistent with the Constitution, the 2011 Rules of the House of Representatives Electoral Tribunal, the Omnibus Election Code, and jurisprudence.

An electoral protest that also assails the validity of the proclamation will not cause the Commission on Elections to regain jurisdiction over the protest.[35] Issues regarding the validity

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[33] *Id.* at 798-799. The statement emphasized was the one cited in the main *ponencia*.

[34] *Id.* at 786.

[35] *Aggabao v. Commission on Elections*, 490 Phil. 285, 291 (2005).

or invalidity of the proclamation may be threshed out before the electoral tribunals. As held in *Caruncho III v. Commission on Elections*,[36] the electoral tribunal has jurisdiction over a proclamation controversy involving a member of the House of Representatives:

> A crucial issue in this petition is what body has jurisdiction over a proclamation controversy involving a member of the House of Representatives. The 1987 Constitution cannot be more explicit in this regard. Article VI thereof states:
>
> > Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x.
>
> The foregoing constitutional provision is reiterated in Rule 14 of the 1991 Revised Rules of the Electoral Tribunal of the House of Representatives, to wit:
>
> > Rule 14. *Jurisdiction.* — The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.
>
> x x x x x x x x x
>
> In the same vein, considering that petitioner questions the proclamation of Henry Lanot as the winner in the congressional race for the sole district of Pasig City, his remedy should have been to file an electoral protest with the House of Representatives Electoral Tribunal (HRET).[37] (Citations omitted)

This Court may obtain jurisdiction over questions regarding the validity of the proclamation of a candidate vying for a seat in Congress without encroaching upon the jurisdiction of a constitutional body, the electoral tribunal. "[The remedies of] *certiorari* and prohibition will not lie in this case [to annul the proclamation of a candidate] considering that there is an available and adequate remedy in the ordinary course of law; [that is, the filing of an electoral protest before the electoral tribunals]."[38]

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[36] 374 Phil. 308 (1999).

[37] *Id.* at 321-322.

[38] *Barbers v. Commission on Elections*, 499 Phil. 570, 585 (2005).

These remedies, however, may lie only after a ruling by the House of Representatives Electoral Tribunal or the Senate Electoral Tribunal.

We have said that "the proclamation of the petitioners enjoys the presumption of regularity and validity."[39] Unless it is annulled by the House of Representatives Electoral Tribunal after giving petitioner Reyes' due notice and hearing,[40] her proclamation as a member-elect in the House of Representatives must stand.

IV

The second fundamental reason for us to exercise caution in determining the composition of the House of Representatives is that this is required for a better administration of justice. Matters relating to factual findings on election, returns, and

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[39] *Tan v. Commission on Elections*, 463 Phil. 212, 235 (2003).

[40] See *Bince, Jr., v. The Commission on Elections*, G.R. No. 106291, February 9, 1993, 218 SCRA 782, 792-793 where this Court held:

Petitioner cannot be deprived of his office without due process of law. Although public office is not *property* under Section 1 of the Bill of Rights of the Constitution, and one cannot acquire a vested right to public office, it is, nevertheless, a protected right. Due process in proceedings before the respondent COMELEC, exercising its quasi-judicial functions, requires due notice and hearing, among others. Thus, although the COMELEC possesses, in appropriate cases, the power to annul or suspend the proclamation of any candidate, we had ruled in *Fariñas vs. Commission on Elections*, *Reyes vs. Commission on Elections* and *Gallardo vs. Commission on Elections* that the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing.

In *Fariñas vs. COMELEC*, this Court further stated that:

As aptly pointed out by the Solicitor General, "to sanction the immediate annulment or even the suspension of the effects of a proclamation before the petition seeking such annulment or suspension of its effects shall have been heard would open the floodgates of [sic] unsubstantiated petitions after the results are known, considering the propensity of the losing candidate to put up all sorts of obstacles in an open display of unwillingness to accept defeat (*Guiao v. Comelec*, *supra*), or would encourage the filing of baseless petitions not only to the damage and prejudice of winning candidates but also to the frustration of the sovereign will of the electorate (*Singko v. Comelec*, 101 SCRA 420)."

qualifications must first be vetted in the appropriate electoral tribunal before these are raised in the Supreme Court.

V

I express some discomfort in terms of our procedural actions in this case.

Giving due course to a Petition for *Certiorari* is indeed discretionary before this Court. We do have the option to dismiss outright on the basis of the allegations in the Petition. In many cases, we have done so through Minute Resolutions. In other cases, this Court released Resolutions to state more fully its reasons why it dismissed the Petitions.

We have varied reasons for dismissing Petitions even without requiring a Comment from the respondent. We may find that the recital of facts and the procedure that was followed do not warrant a review of the interpretation and application of the relevant law. In other words, we may find that the allegations are insufficient to find grave abuse of discretion on the part of the respondents.

In appropriate cases, we dismiss without the need for a Comment from the respondent when we find that the Petition shows that a procedural prerequisite was not followed. We may also dismiss, without Comment, when we find that we do not have jurisdiction over the subject matter of the Petition or the remedy invoked.

The relief we grant for outright dismissals of Petitions without Comment ends with the dismissal of the Petition. It leaves the parties to where they were prior to the filing of the Petition. We grant no affirmative relief to the respondent simply because the basis for doing so has neither been pleaded nor argued with due process.

This case seems to have received a different treatment.

The main *ponencia* went beyond dismissal of the Petition. The initial resolution of this case supported by the majority attempted to declare new doctrine. It should just have simply dismissed the Petition and allowed the parties to litigate at the

House of Representatives Electoral Tribunal. The better part of prudence should have been to require the respondent to file a Comment[41] assuming, without agreeing, that there may have been a need to revisit doctrine because of the unique facts of this case. In my view, the personalities in this case may have been different. However, the facts and circumstances were not unique to unsettle existing rational doctrine.

A Comment is required so that there may be a fuller exposition of the issues from the point of view of the respondent. It is also required to prevent any suspicion that judges and justices litigate, not decide. This Court has expressed its disfavor of some judges, thus:

> We cannot close this opinion without expressing our disapproval of the action taken by Judge Tomas V. Tadeo in filing his own motion for reconsideration of the decision of the respondent court. He should be admonished for his disregard of a well-known doctrine imposing upon the judge the duty of detachment in case where his decision is elevated to a higher court for its review. **The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation.** The more circumspect policy is to recognize one's role in the scheme of things, remembering always that **the task of a judge is to decide and not to litigate**.[42] (Emphasis supplied)

The majority persisted in declaring that the petitioner's proclamation was "without any basis" despite the absence of a responsive pleading. This may not be cured by the Comment on the Motion for Reconsideration. In my view, the validity of the proclamation of petitioner Reyes was never raised as an issue. No responsive pleading exists to have sufficiently tendered it as an issue.

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[41] RULES OF COURT, Rule 65, Sec. 6.

[42] *La Campana Food Products, Inc. v. Court of Appeals,* G.R. No. 88246, June 4, 1993, 223 SCRA 151, 158.

VI

Good faith must be presumed in the conduct of the petitioner unless evidence to the contrary is submitted to this Court. We have already ruled that:

> When a litigant exhausts all the remedies which the rules allow, in order to seek an impartial adjudication of his case, the dignity of the judge is not thereby assailed or affected in the least; otherwise, all remedies allowed litigants, such as appeals from judgments, petitions for reconsideration thereof or for the disqualification of judges, or motions questioning the jurisdiction of courts, would be deemed derogatory to the respect due a judge. These remedies may be availed of by any litigant freely, without being considered guilty of an act of disrespect to the court or the judge.[43]

Similarly, the same presumption of good faith must be accorded to all Members of this Court. We may not be on all fours in our opinions, but we must believe in the courage of each Member of the Court to vote with the objectivity his or her office demands, guided only by his or her conscience, and our collective hope for a better future.

Our disagreement with the course taken by the majority neither endows us with the competence nor the entitlement to impute ill motives. However, motives notwithstanding, our people do have to live with the practical consequences of our words. That, definitely, is a formidable measure of what it is that we have done.

For these reasons, I vote to **GRANT** the petitioner's Motion for Reconsideration. The Petition should be dismissed. The House of Representatives Electoral Tribunal has jurisdiction after petitioner's proclamation.

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[43] *The People of the Philippines v. Rivera*, 91 Phil. 354, 358 (1952).

FIRST DIVISION

[A.M. No. P-11-3006. October 23, 2013]
(Formerly A.M. No. 11-9-105-MTCC)

THE OFFICE OF THE COURT OF ADMINISTRATOR, *complainant, vs.* **MA. THERESA G. ZERRUDO, Clerk of Court, Municipal Trial Court in Cities, Iloilo City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DUTY OF THE CLERKS OF COURT TO MANAGE AND SECURE THE FUNDS OF THE COURT, EXPLAINED.— The 2002 Revised Manual for Clerks of Court, Circular No. 50-95 dated 11 October 1995 requires all Clerks of Court to submit to the Chief Accountant of this Court a quarterly report on the Court Fiduciary Fund. A copy of the report must be furnished to the OCA, indicating the outstanding balance maintained with the depository bank or local treasurer. The report should also indicate the date, nature and amount of all deposits and withdrawals within that period. Administrative Circular No. 3-2000 dated 15 June 2000 requires that the daily collections for the Judicial Development Fund (JDF) must be deposited every day with the nearest Land Bank branch through a designated account number to which the deposit shall be made. If a daily deposit is not possible, the administrative circular instructs that the deposits be made at the end of every month, provided that if the JDF collection reaches ₱500, the money shall be deposited immediately before the period indicated. The strict guidelines provided by the above-cited circulars emphasize the importance and the seriousness of the duty imposed upon Clerks of Courts, who manage and secure the funds of the Court. We have considered mere delay by the Clerks of Court or cash clerks in remitting the funds collected as gross neglect of duty or as grave misconduct. Thus, serious penalties were meted out to erring employees as illustrated in the cases cited by the OCA in its subject Memorandum.

2. ID.; ID.; ID.; FAILURE TO PROMPTLY REMIT CASH COLLECTIONS AND INCURRING SHORTAGES,

COMMITTED; FAILURE TO ADMINISTER AND SECURE FUNDS COLLECTED IS TANTAMOUNT TO DEFRAUDING FELLOW EMPLOYEES.— We find that respondent Zerrudo has been remiss in her duty to promptly remit cash collections and to account for the shortages of court funds under her care. The OCA findings are not bereft of factual support, as shown by the following instances in which respondent was guilty of committing delays and incurring shortages[.] x x x Respondent herself admitted that she has been remiss in her duties and we note her candid admissions of her infractions. However, the subject OCA report also noted that even after the financial audits were conducted, she continued to commit the same infractions. To our mind, this indicates her failure to perform her duties faithfully and with competence, as expected of a Clerk of Court. We cannot emphasize enough the seriousness of her responsibilities in administering and securing the funds collected. The malfeasance of respondent Zerrudo in this case is tantamount to defrauding her fellow employees as some of those funds, by law, help augment the salaries of judicial employees.

3. ID.; ID.; ID.; ID.; FAMILY MISFORTUNES DO NOT CONSTITUTE EXTENUATING CIRCUMSTANCES.— We understand the misfortunes experienced by respondent, such as the affliction suffered by her son and the demise of her mother-in-law. However, these do not constitute extenuating circumstances in those instances when respondent was remiss in her duties. She should be reminded that her duties and responsibilities as Clerk of Court are imbued with public trust; thus, she is expected to discharge them with utmost competence.

R E S O L U T I O N

SERENO, *C.J.:*

This is an administrative case filed by the Office of the Court Administrator (OCA) against Ma. Theresa G. Zerrudo (hereinafter Respondent Zerrudo), Clerk of Court for the Municipal Trial Courts In Cities (MTCC), Iloilo City.

THE AUDIT FINDINGS

On 4 May 2009, the OCA initiated a financial audit in view of an anonymous letter it received from concerned Office of

the Clerk of Court (OCC) employees of MTCC-Iloilo City, alleging that respondent Zerrudo misappropriated court funds. The scope of the audit covered financial transactions from 12 September 2007 to 30 April 2009. The report contains the following findings:

1) Shortage amounting to ₱54,531.20;

2) Failure to present to the Financial Audit Team during the cash count the amount of ₱436,450.00 representing the undeposited Fiduciary Fund collections as of 30 April 2009;

3) Failure to deposit on time the Fiduciary Fund collections covering the period 3 March 2009 to 29 April 2009, amounting to ₱436,450.00; and

4) Failure to submit liquidation documents of the Sheriff's Trust Fund cash advance amounting to ₱35,000.00.

On 15 September 2009, then Court Administrator Jose P. Perez directed respondent to settle the shortage amounting to ₱54,531.20. The latter complied with the directive on 27 November 2009. Respondent also admitted her shortcomings to the OCA.

On account of another letter from a concerned employee dated 1 April 2010, the OCA ordered the conduct of another financial audit on allegations that respondent had misappropriated judiciary fund collection for her personal benefit. The scope of the second audit covered the period May 2009 to April 2010. The following shortages were noted by the audit team:

Fund	Collections	Deposits	Shortage
Fiduciary Fund	₱3,083,014.00	₱2,571,832.00	₱511,182.00
Sheriff's Trust Fund	₱ 417,000.00	₱ 395,000.00	₱ 22,000.00
Judiciary Development Fund	₱1,994,161.55	₱1,855,712.45	₱138,449.10

Based on the above findings, the OCA issued a Memorandum directing respondent to restitute the shortages found by the

audit team and to furnish the Fiscal Monitoring Division, Court Management Office, OCA, copies of proofs of the settlements.

Respondent, in her Answer dated 31 May 2011, admitted her infractions and explained that the delay in her compliance was due to the death of her mother-in-law and the serious illness suffered by her son. She alleged that the shortages incurred as of 30 April 2010 were already settled. In response, the audit team noted that there were still discrepancies in the computations of respondent and emphasized that even after the audit, she continued to fail to deposit her collections promptly.[1]

On 5 September 2012, another audit was conducted by the OCA covering the financial transactions from May 2010 to August 2012. The audit team reported the following findings:

Fund	Beginning Balance	Collections	Deposits	Shortage
Fiduciary Fund	₱ 511,182.00	₱7,175,089.80	₱7,668,271.88	₱ 17,999.92
Sheriff's Trust Fund	₱ 20,000.00	₱1,394,800.00	₱1,396,300.00	₱ 18,500.00
Judiciary Development Fund	₱ 138,449.10	₱3,828,978.70	₱3,852,961.45	₱114,466.35

The team noted again that respondent had still incurred delay in the remittance of collections to the Fiduciary Fund, Special Allowance for the Judiciary Fund and Judiciary Development Fund (JDF) accounts.

OUR RULING

After a thorough and judicious examination of the case records, we adopt the findings of the OCA.

The 2002 Revised Manual for Clerks of Court, Circular No. 50-95 dated 11 October 1995 requires all Clerks of Court to submit to the Chief Accountant of this Court a quarterly report on the Court Fiduciary Fund. A copy of the report must be furnished to the OCA, indicating the outstanding balance

[1] Fourth page of the OCA report (no pagination).

maintained with the depository bank or local treasurer. The report should also indicate the date, nature and amount of all deposits and withdrawals within that period.

Administrative Circular No. 3-2000 dated 15 June 2000 requires that the daily collections for the Judicial Development Fund (JDF) must be deposited every day with the nearest Land Bank branch through a designated account number to which the deposit shall be made. If a daily deposit is not possible, the administrative circular instructs that the deposits be made at the end of every month, provided that if the JDF collection reaches ₱500, the money shall be deposited immediately before the period indicated.

The strict guidelines provided by the above-cited circulars emphasize the importance and the seriousness of the duty imposed upon Clerks of Courts, who manage and secure the funds of the Court. We have considered mere delay by the Clerks of Court or cash clerks in remitting the funds collected as gross neglect of duty or as grave misconduct. Thus, serious penalties were meted out to erring employees as illustrated in the cases cited by the OCA in its subject Memorandum.

We find that respondent Zerrudo has been remiss in her duty to promptly remit cash collections and to account for the shortages of court funds under her care. The OCA findings are not bereft of factual support, as shown by the following instances in which respondent was guilty of committing delays and incurring shortages:

> In the instant case, respondent's failure to promptly remit cash collections and to account [for] shortages of court funds was discovered during the first financial audit on 24 May 2009, covering the transactions from 12 September 2007 to 30 April 2009; second audit on 27 May 2010 covered the transactions from 1 May 2009 to 30 April 2010, while the third audit on 6 September 2012, covered the transactions from 1 May 2010 to 31 August 2010. Despite the previous directives of the Court, respondent has repeatedly failed to faithfully perform her duties and responsibilities as custodian of

courts funds which compromised the integrity of the judiciary in the eyes of the public.[2]

We understand the misfortunes experienced by respondent, such as the affliction suffered by her son and the demise of her mother-in-law. However, these do not constitute extenuating circumstances in those instances when respondent was remiss in her duties. She should be reminded that her duties and responsibilities as Clerk of Court are imbued with public trust; thus, she is expected to discharge them with utmost competence. In *OCA v. Nini*,[3] we had explained the duties and responsibilities of a Clerk of Court, especially in administering court funds, as follows:

> Settled is the role of clerks of court as judicial officers entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds. Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. Hence, in case of a lapse in the performance of their sworn duties, the Court finds no room for tolerance and is then constrained to impose the necessary penalty to the erring officer. xxx Indeed, the Court zealously aims to safeguard the people's faith in the Judiciary by improving the route by which justice is served. Certainly, an officer who constantly bleats about the complexity of his responsibilities resultantly neglects his duties. Such an officer does not aid in the Judiciary's goal and must then bear the appropriate penalty.

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[2] OCA Memorandum dated 7 January 2013, p. 6, signed by Jose Midas P. Marquez, Court Administrator, Raul Bautista Villanueva, Deputy Court Administrator and Marina B. Ching, OCA, Chief of Office, Court Management Office.

[3] A.M. No. P-11-3002, (Formerly A.M. No. 11-9-96-MTCC), 11 April 2012.

It is hereby emphasized that it is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep those funds in their custody. The fact that the collected amounts were kept in the safety vault does not reduce the degree of defiance of the rules.

Respondent herself admitted that she has been remiss in her duties and we note her candid admissions of her infractions. However, the subject OCA report also noted that even after the financial audits were conducted, she continued to commit the same infractions. To our mind, this indicates her failure to perform her duties faithfully and with competence, as expected of a Clerk of Court. We cannot emphasize enough the seriousness of her responsibilities in administering and securing the funds collected. The malfeasance of respondent Zerrudo in this case is tantamount to defrauding her fellow employees as some of those funds, by law, help augment the salaries of judicial employees.

The administration of these funds entails strict compliance with the rules and guidelines provided by this Court through its concerned offices. All responsible officers are expected to follow strictly such guidelines and noncompliance therewith is sanctioned. These stringent rules were crafted to underscore an exacting duty of compliance imposed upon court personnel tasked in handling the funds of the judiciary.

Based on the evidence on record, we hereby **ADOPT** the findings and recommendations of the OCA as follows:

1) To **SUSPEND INDEFINITELY Mrs. Ma. Theresa G. Zerrudo**, Clerk of Court IV, Office of the Clerk of Court, MTCC, Iloilo City, for repeatedly committing infractions resulting in shortages and undeposited court collections, pending resolution of A.M. No. P-11-3006 (*Office of the Court Administrator v. Ma. Theresa G. Zerrudo, Clerk of Court, MTCC, Iloilo City [formerly A.M. No. 11-9-105-MTCC (Re: Final Report*

on the Financial Audit conducted at the Municipal Trial Court in Cities, Iloilo City)]);

2) **Hon. Ma. Theresa E. Gaspar, Executive Judge**, MTCC, Iloilo City, is **DIRECTED** to designate an officer-in-charge/ accountable officer in the Office of the Clerk of Court, MTCC, Iloilo City, vice Mrs. Ma. Theresa G. Zerrudo; and

3) The **Fiscal Monitoring Division**, Court Management Office, OCA, is **DIRECTED** to conduct a final audit on the cash accountabilities of Mrs. Ma. Theresa G. Zerrudo, COC IV, MTCC, Iloilo City, to determine her final accountability until the effectivity date of her suspension and to **SUBMIT** their findings within a period of 60 days from receipt of this Resolution.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.*, concur.

FIRST DIVISION

[A.M. No. RTJ-13-2359. October 23, 2013]
(Formerly O.C.A. IPI No. 12-3851-RTJ)

ATTY. JEROME NORMAN L. TACORDA for: ODEL L. GEDRAGA, *complainant, vs.* **JUDGE REYNALDO B. CLEMENS,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; REQUISITES BEFORE A JUDGE MAY BE HELD LIABLE FOR GROSS IGNORANCE OF THE LAW.— The OCA explained that for respondent judge to be held administratively liable for gross ignorance of the law, the

acts complained of must be gross or patent. To constitute gross ignorance of the law, not only must the acts be contrary to existing law and jurisprudence, but they must also be motivated by bad faith, fraud, malice or dishonesty.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW, NOT A CASE OF.— We sustain the findings of the OCA that the acts of Judge Clemens were far from being ill-motivated and in bad faith as to justify any administrative liability on his part. A complete reading of the TSN reveals that he was vigilant in his conduct of the proceedings. In the instances mentioned in the Complaint-Affidavit, he had been attentive to the manifestations made by Atty. Tacorda and had acted accordingly and with dispatch. It is doubtful that Judge Clemens failed to implement the directives he had issued during the conduct of the trial. Based on the TSN, Atty. Tacorda did not have to make repeated manifestations to respondent Judge after pointing out that the defense counsel tended to crowd the witness and/or that the court interpreter should be the one to translate the testimony. Further, contrary to the allegations of Atty. Tacorda, the TSN showed that respondent Judge was very much concerned with following the proper conduct of trial and ensuring that the One-Day Examination of Witness Rule was followed; but at the same time, he was sensitive to the fact that the witness was already exhausted, having testified for almost three hours.

R E S O L U T I O N

SERENO, C*.J.:*

The instant case stems from a Complaint-Affidavit dated 21 February 2012 filed by Atty. Jerome Norman Labor Tacorda (Atty. Tacorda) charging Judge Reynaldo B. Clemens (Judge Clemens), Presiding Judge of Regional Trial Court of Calbayog City, Branch 31, Western Samar for gross ignorance of the law and alleged violation of the Child Witness Examination Rule.

In the Complaint-Affidavit, Atty. Tacorda claimed that on 19 January 2012, he presented Odel Gedraga (Gedraga) as witness, then fifteen (15) years old, in Criminal Case No. 6433 entitled "*People of the Philippines v. Belleza*" pending before the *sala* of respondent Judge Clemens. The criminal case involved

the alleged murder of Beinvinido Gedraga, Gedraga's father. Atty. Tacorda alleged that the Child Witness Examination Rule was not properly followed by Judge Clemens, based on the following events that had transpired during the trial on 19 January 2012:

First, the trial in open court when Gedraga was presented lasted from 8:30 a.m. to 11:00 a.m., with only a two-minute break.

Second, Atty. Tacorda alleged that in the course of the proceedings Judge Clemens made certain rulings that were not implemented. In his Complaint-Affidavit, Atty. Tacorda cited a single example: Judge Clemen's alleged failure to castigate defense counsel Atty. Allan Mijares (Atty. Mijares) for standing beside the witness despite Judge Clemen's earlier order to Atty. Mijares and the court stenographer to keep their distance. Due to this incident, Gedraga felt humiliated and exhausted.

Third, although the Calendar of Scheduled Cases showed several other cases to be heard, Judge Clemens continued the hearing for three (3) hours, during which Gedraga was subjected to the long ordeal and rigors of trial. Judge Clemens knew that the witness was a minor.

Fourth, Atty. Tacorda claimed that despite his manifestation to let the official interpreter personally interpret the questions and answers, Judge Clemens remained passive on so many occasions. Thus, it was Atty. Mijares who also did the interpretations.

Atty. Tacorda attached to the Complaint the *Sinumpaang Salaysay* dated 24 February 2012 executed by Gedraga. The latter echoed therein the allegations of Atty. Tacorda. The witness narrated that he was exhausted after sitting on the witness stand from 8:30 a.m. to 11:00 a.m. with only a two-minute break.

In his Comment, Judge Clemens belied the allegations of Atty. Tacorda as having no basis. Respondent judge claimed that he did not know that allowing Gedraga to testify from 8:30 a.m. to 11:00 a.m. with only a two-minute break was a violation

of the Child Witness Examination Rule. He countered that it was Atty. Tacorda who demanded that the trial start at 8:30 a.m. Further, he said that Atty. Tacorda conducted a long direct examination. Further still, Judge Clemens explained that the cross-examination of the witness by the defense lawyers, Atty. Mijares and Atty. Vevelyn Monsanto (Atty. Monsanto), were in accordance with existing procedures. He added that, with respect to the two-minute break, it was even Atty. Monsanto, and not Atty. Tacorda, who requested it. The supposed two-minute break actually lasted 10 minutes.[1]

Judge Clemens vehemently denied letting Atty. Mijares and the court interpreter surround Gedraga. Respondent judge cited the Transcript of Stenographic Notes (TSN)[2] in this wise:

Atty. Jerome Tacorda:

Your Honor please, may I ask the Court that the Interpreter as well as the defense counsel will not surround the witness. The public is entitled to see the demeanor of the witness and in accordance with the Court procedure specially that this is a child witness. The defense counsel will maintain a distance because there might be an intimidation, your Honor.

Court:

All right, do not surround the witness.

Atty. Jerome Tacorda:

Thank you, your Honor, for the wisdom of the court.

Atty. Allan Mijares:

Your Honor, I would like to make my manifestation that from the view point of the public, the——(Interrupted)

I am making my manifestation, your honor. The child was not being surrounded, in fact, everyone was supposedly facing the public and he was not intimidated, he was being aided.

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[1] *See* TSN, 19 January 2012, p. 51.

[2] TSN, 19 January 2012, pp. 61-63.

Atty. Jerome Tacorda:

There is already a ruling, your Honor.

Atty. Allan Mijares:

And the intention is to aid and not to intimidate.

Atty. Jerome Tacorda:

Your Honor, that is the intention, but my concern is the ruling of the court.

Court:

Anyway, do not cover the witness.

Atty. Alan Mijares:

Anyway, we submit your honor.

Based on the foregoing, Judge Clemens claimed that he did not violate the Child Witness Examination Rule because, the demand of Atty. Tacorda was granted. If this accusation were true, the latter could have asked the Court to hold Atty. Mijares in contempt of court for violating the order not to surround the witness, but complainant did not.

Judge Clemens further explained that it was not true that he let Atty. Mijares do the interpretation. Allegedly, when Atty. Tacorda made a manifestation to that effect, respondent Judge immediately took appropriate action, as indicated by the TSN:[3]

Atty. Jerome Tacorda:

Your Honor, we request to read back the transcript your Honor, and not seek the statement from the defense counsel, since he already closed his question your Honor.

Court:

Never mind, anyway you continue.

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[3] TSN, 19 January 2012, pp. 86-88.

Atty. Jerome Tacorda:

May I move for the record, your honor, but my purpose is in consonance with the Supreme Court Circular that in case there is a question as to the presentation— (Interrupted)

Atty. Allan Mijares:

Actually there is no question on the statement being interpreted, only that the interpreter has a hard time interpreting the statement in tagalog.

Atty. Jerome Tacorda:

Your honor, our point is the court of record. What is more important that there is the official stenographer and with this kind of machinery that it be recorded officially in accordance with hierarchy in the plantilla of the Supreme Court.

Court:

Overruled, you continue your interpretation, we are wasting our time, there are other cases to be tried.

Continue, by the way, Rhea, do not ask the defense counsel, you interpret because that is your duty.

Atty. Jerome Tacorda:

I pray your honor, that the statement of the judge be duly recorded to inform the interpreter about her duty and not to ask the defense counsel about the interpretation because it is her duty.

Atty. Allan Mijares:

Your Honor, we only have good intentions here. This representation and was just observed by the court that I'm just trying to aid here because apparently there is an apparent lapse of memory, so we are trying to lead only, your honor.

Judge Clemens refused to accept any fault as to the duration of the examination. He explained that Atty. Tacorda conducted a very long direct examination of the witness. It was only when Atty. Monsanto had already finished her cross-examination after Atty. Mijares finished his, that Atty. Tacorda asked for a continuance. The request was at first denied supposedly because Atty. Monsanto had said that her cross-examination would be

short. When respondent judge noticed that this proceeding was taking too long, he granted the motion for postponement. He cited the TSN as follows:

Atty. Jerome Tacorda:

Your Honor, at this juncture, may I be allowed to speak and manifest that our hearing started at 8:30 o'clock in the morning and today it is closing to 11:00 and there are other cases to be heard, and in fact this case is set to February 22, secondly your honor…

Court:

Is your cross still long?

Atty. Vevelyn Monsanto:

Not too long, your Honor.

Atty. Jerome Tacorda:

Secondly, your Honor, I think the witness is already exhausted, so, I move for the continuance, with all due respect to the opposing counsel your Honor, and because there are too many calendar of cases today, and it is already 11:00 o'clock in the morning, and we have to pave way to the other cases.

x x x x x x x x x

Court

Continue, anyway the defense counsel is still not through and we are receiving complaints, and also we are observing the one (1) day cross examination rule. Continue, anyway, it is not 11:00 yet.[4]

x x x x x x x x x

Atty. Jerome Tacorda

At this juncture, your Honor, I am reiterating my compassionate motion to have for the continuance, since under the Child Witness Protection law, if the witness who is a child is exhausted, he has been in the witness stand since 8:30 your Honor.

Court

You said your cross is short only.

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[4] TSN, 19 January 2012, pp. 97-99.

Atty. Vevelyn Monsanto

That will also depend on the answer of the witness, your honor.

Court

All right, we will grant the motion for a continuance because the Court is not sure you have a short cross examination.[5]

Atty. Allan Mijares

Your Honor, in the interest of Justice, we would like to ask the indulgence of the Honorable Court that the testimony of the witness be terminated today in pursuance to the mandate of the Supreme Court on the day-witness rule and besides your honor, as we would like to be reiterating again and again, we are hearing in this case on the petition for bail.

This witness would be the last witness for the prosecution for the purpose of the petition for bail, and in the interest of justice, we have sufficiently heard his testimony so we will terminate his testimony now, so that, this hearing on the petition for bail for the accused be terminated today, so that, there will be no needless prolonging the proceeding. That is why, we are earnestly reiterating your Honor, that this petition for bail be terminated as soon as possible, your Honor.

Court

Denied because the counsel questions will still be long and the Court has also to try other cases and besides, the witness had been testifying for a long time already from 8:30 to 11:00 o'clock.[6]

THE FINDINGS OF THE OFFICE OF THE COURT ADMINISTRATOR

The OCA rendered its Report, with a recommendation that charges for gross ignorance of the law against Judge Clemens be dismissed. The OCA found that, aside from bare allegations, no other proof was adduced by Atty. Tacorda to substantiate his claims. On the other hand, respondent judge was able to establish the falsity of the claims against him. According to the

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[5] TSN, 19 January 2012, pp. 106-110.

[6] TSN, 19 January 2012, pp. 110-111.

OCA, the TSN showed that every time Atty. Tacorda would point out an error in the conduct of the trial, respondent judge would promptly correct the error.

The OCA further said that, in administrative proceedings, the presumption that the respondent has regularly performed the latter's duties would prevail and that the complainant has the burden of proving the contrary by substantial evidence. Charges based on suspicion and speculation cannot be given credence.

The OCA explained that for respondent judge to be held administratively liable for gross ignorance of the law, the acts complained of must be gross or patent. To constitute gross ignorance of the law, not only must the acts be contrary to existing law and jurisprudence, but they must also be motivated by bad faith, fraud, malice or dishonesty.[7] In this case, the OCA found that Atty. Tacorda failed to prove that the acts of Judge Clemens were ill-motivated.

ISSUE

Whether Judge Clemens is administratively liable for gross ignorance of the law for supposedly violating the Child Witness Examination Rule.

THE COURT'S RULING

We sustain the findings of the OCA that the acts of Judge Clemens were far from being ill-motivated and in bad faith as to justify any administrative liability on his part.[8] A complete reading of the TSN reveals that he was vigilant in his conduct of the proceedings.[9] In the instances mentioned in the Complaint-Affidavit, he had been attentive to the manifestations made by Atty. Tacorda and had acted accordingly and with dispatch.

It is doubtful that Judge Clemens failed to implement the directives he had issued during the conduct of the trial. Based

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[7] *GSIS v. Pacquing, et al.,* A.M. RTJ-04-1831, 02 February 2007.

[8] *Salvador v. Limsiaco, Jr.,* 519 Phil. 683, 687-688 (2006).

[9] *See* TSN, 19 January 2012, pp. 20-21, 23-25, 44-46, 51, 61-63, 76-77, 87-88, 97-99 and 105-114.

on the TSN, Atty. Tacorda did not have to make repeated manifestations to respondent Judge after pointing out that the defense counsel tended to crowd the witness and/or that the court interpreter should be the one to translate the testimony. Further, contrary to the allegations of Atty. Tacorda, the TSN showed that respondent Judge was very much concerned with following the proper conduct of trial and ensuring that the One-Day Examination of Witness Rule was followed;[10] but at the same time, he was sensitive to the fact that the witness was already exhausted, having testified for almost three hours.[11]

WHEREFORE, the Complaint-Affidavit dated 21 February 2012 filed by Atty. Jerome Norman Labor Tacorda against Hon. Judge Reynaldo B. Clemens, Regional Trial Court, Branch 31, Calbayog City, Western Samar, is **DISMISSED** for lack of merit.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171136. October 23, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LYDIA CAPCO DE TENSUAN, represented by CLAUDIA C. ARUELO,** *respondent.*

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[10] TSN, 19 January 2012, pp. 97-99

[11] TSN, 19 January 2012, pp. 105-114.

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; REQUISITES FOR THE FILING OF APPLICATION FOR REGISTRATION.— The requisites for the filing of an application for registration of title under Section 14(1) of the Property Registration Decree are: (1) that the property in question is alienable and disposable land of the public domain; and (2) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier. In *Heirs of Mario Malabanan v. Republic*, we affirmed our earlier ruling in *Republic v. Naguit*, that Section 14(1) of the Property Registration Decree merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed.

2. ID.; ID.; ID.; CENRO CERTIFICATION IS INSUFFICIENT TO PROVE THAT A PARCEL OF LAND IS ALIENABLE AND DISPOSABLE; THE COURT CANNOT BE LENIENT IN THE APPLICATION OF THE PRINCIPLE IN THE PRESENT CASE WHERE THE DENR ITSELF RECOGNIZED THE RIGHT OF THE LLDA TO OPPOSE THE INSTANT APPLICATION FOR REGISTRATION ON THE GROUND THAT THE SUBJECT PROPERTY IS PART OF THE LAGUNA LAKE BED.— As proof that the subject property is alienable and disposable, Tensuan presented a Certification dated July 29, 1999 issued by the CENRO-DENR which verified that "said land falls within alienable and disposable land under Project No. 27-B L.C. Map No. 2623 under Forestry Administrative Order No. 4-1141 dated January 3, 1968." However, we have declared unequivocally [in *Republic v. T.A.N. Properties, Inc.*] that a CENRO Certification, by itself, is insufficient proof that a parcel of land is alienable and disposable. x x x While we may have been lenient in some cases and accepted substantial compliance with the evidentiary requirements set forth in *T.A.N. Properties*, we cannot do the same for Tensuan in the case at bar. We cannot afford to be lenient in cases where the Land Registration Authority (LRA) or the DENR oppose the application for registration on the ground that the land subject thereof is inalienable. In the present case, the DENR recognized the right

of the LLDA to oppose Tensuan's Application for Registration; and the LLDA, in its Opposition, precisely argued that the subject property is part of the Laguna Lake bed and, therefore, inalienable public land. We do not even have to evaluate the evidence presented by the LLDA given the Regalian Doctrine. Since Tensuan failed to present satisfactory proof that the subject property is alienable and disposable, the burden of evidence did not even shift to the LLDA to prove that the subject property is part of the Laguna Lake bed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ungco and Ungco for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] dated January 13, 2006 of the Court of Appeals in CA-G.R. CV No. 84125, which affirmed the Decision[2] dated October 18, 2004 of the Metropolitan Trial Court (MeTC) of Taguig City, Branch 74 in LRC Case No. 172 (LRA Rec. No. N-70108). The MeTC confirmed the title of herein respondent, Lydia Capco de Tensuan (Tensuan), to the parcel of agricultural land, designated as Lot 1109-A, located at Ibayo, Sta. Ana, Taguig City, with an area of 4,006 square meters (subject property), and ordered the registration of said property in her name.

The following facts are culled from the records:

On August 11, 1998, Tensuan, represented by her sister, Claudia C. Aruelo (Aruelo), filed with the MeTC an Application

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[1] *Rollo*, pp. 27-36; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring.

[2] *Id.* at 72-74.

for Registration[3] of Lot Nos. 1109-A and 1109-B, docketed as LRC Case No. 172. In her Application for Registration, Tensuan alleged that:

2. That Applicant is the absolute owner and possessor of those two (2) paraphernal parcels of land situated at Sta. Ana, Taguig, Metro Manila, within the jurisdiction of this Honorable Court, bounded and described as Lot 1109-A and 1109-B in Conversion Subdivision Plan Swo-00-001456 as follows:

(a) Lot 1109-A, Swo-00-001456

"A PARCEL OF LAND (Lot 1109-A of the Plan Swo-00-001456, being a conversion of Lot 1109, MCadm 590-D, Taguig, [Cadastral] Mapping, L.R.C. Record No.), situated in Brgy. Sta. Ana, Mun. of Taguig, Metro Manila, Island of Luzon.

x x x x x x x x x"

(b) Lot 1109-B, Swo-00-001456

"A PARCEL OF LAND (Lot 1109-B, of plan Swo-00-001456, being a conversion of Lot 1109, MCadm 590-D, Taguig Cadastral Mapping, L.R.C. Record No.), situated in Sta. Ana, Mun. of Taguig, Metro Manila, Island of Luzon.

x x x x x x x x x"

3. That said two (2) parcels of land at the last assessment for taxation were assessed at Sixty Thousand Eight Hundred Twenty Pesos (₱60,820.00), Philippine currency, under Tax Declaration No. D-013-01563 in the name of the Applicant;

4. That to the best of the knowledge and belief of Applicant, there is no mortgage, encumbrance or transaction affecting said two (2) parcels of land, nor is there any other person having any interest therein, legal or equitable, or in adverse possession thereof;

5. That Applicant has acquired said parcels of land by inheritance from her deceased father, Felix Capco, by virtue of a "[*Kasulatan*] *ng Paghahati-hati at Pag-aayos ng Kabuhayan*" dated September 14, 1971, and Applicant specifically alleges that she and her deceased father, as well as the latter's predecessors-in-interest, have been in open, continuous, exclusive and notorious possession

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[3] *Id.* at 37-41.

and occupation of the said lands under a bonafide claim of ownership since June 12, 1945, and many years earlier, as in fact since time immemorial, as provided under Section 14(1) of Presidential Decree No. 1529;

6. That said parcels of land are and have been, since the inheritance thereof, occupied by Applicant herself;

x x x x x x x x x

WHEREFORE, it is respectfully prayed that after due notice, publication and hearing, the paraphernal parcels of land hereinabove described be brought under the operation of Presidential Decree No. 1529 and the same confirmed in the name of Applicant.[4] (Emphasis ours.)

On August 20, 1998, Tensuan filed an Urgent *Ex Parte* Motion to Withdraw Lot 1109-B from the Application for Registration and to Amend the Application.[5] According to Tensuan, she was withdrawing her Application for Registration of Lot 1109-B because a review of Plan Swo-00-001456 had revealed that said lot, with an area of 338 square meters, was a legal easement. The MeTC, in its Order[6] dated September 30, 1998, granted Tensuan's motion.

The Republic, through the Office of the Solicitor General (OSG), filed an Opposition to Tensuan's Application for Registration on December 28, 1998. The Republic argued that (1) neither Tensuan nor her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject property since June 12, 1945 or prior thereto; (2) the muniment/s of title and/or tax declaration/s and tax payment receipt/s attached to the application do/es not constitute competent and sufficient evidence of a *bona fide* acquisition of the subject property or of Tensuan's open, continuous, exclusive, and notorious possession and occupation of the subject property in the concept of owner since June 12, 1945 or prior thereto; (3) the claim of ownership in fee simple

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[4] *Id.*

[5] Records, pp. 29-30.

[6] *Id.* at 38.

on the basis of Spanish title or grant can no longer be availed of by Tensuan who failed to file an appropriate application for registration within the period of six months from February 16, 1976, as required by Presidential Decree No. 892; and (4) the subject property forms part of the public domain not subject of private appropriation.[7]

The Laguna Lake Development Authority (LLDA) also filed its own Opposition[8] dated February 12, 1999 to Tensuan's Application for Registration, averring as follows:

> 2. That projection of the subject lot in our topographic map based on the technical descriptions appearing in the Notice of the Initial Hearing indicated that the lot subject of this application for registration is located below the reglementary lake elevation of 12.50 meters referred to datum 10.00 meters below mean lower water. Site is, therefore, part of the bed of Laguna Lake considered as public land and is within the jurisdiction of Laguna Lake Development Authority pursuant to its mandate under R.A. 4850, as amended. x x x;
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> 3. That Section 41 of Republic Act No. 4850, states that, "whenever Laguna Lake or Lake is used in this Act, the same shall refer to Laguna de Bay which is that area covered by the lake water when it is at the average annual maximum lake level of elevation of 12.50 meters, as referred to a datum 10.0 meters below mean lower low water (MLLW). Lands located at and below such elevation are public lands which form part of the bed of said lake (Section 14, R.A. 4850, as amended, x x x);
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> 4. That on the strength of the oppositor's finding and applying the above-quoted provision of law, herein applicant's application for registration of the subject land has no leg to stand on, both in fact and in law;
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> 5. That unless the Honorable Court renders judgment to declare the land as part of the Laguna Lake or that of the public domain, the applicant will continue to unlawfully posses, occupy and claim the land as their own to the damage and

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

[8] *Id.* at 229-233.

prejudice of the Government in general and the Laguna Lake Development Authority in particular;

6. That moreover, the land sought to be registered remains inalienable and indisposable in the absence of declaration by the Director of Lands as required by law[.][9]

During the initial hearing on February 18, 1999, Tensuan marked in evidence the exhibits proving her compliance with the jurisdictional requirements for LRC Case No. 172. There being no private oppositor, a general default against the whole world, except the government, was declared.[10]

To prove possession, Tensuan presented two witnesses, namely, her sister Aruelo and Remigio Marasigan (Marasigan).

Aruelo, who was then 68 years old, testified that Tensuan and her predecessors-in-interest have been in possession of the subject property even before the Second World War. The subject property was originally owned by Candida de Borja, who passed on the same to her only child, Socorro Reyes, and the latter's husband, Felix Capco (spouses Capco). The subject property became part of the spouses Capco's conjugal property. Aruelo and Tensuan are among the spouses Capco's children. During the settlement of Felix Capco's estate, the subject property was adjudicated to Tensuan, as evidenced by the *Kasulatan ng Paghahati at Pag-aayos ng Kabuhayan*[11] dated September 14, 1971.[12]

Marasigan claimed that he had been cultivating the subject property for the last 15 years, and he personally knew Tensuan to be the owner of said property.[13] Marasigan's father was the caretaker of the subject property for the Capcos for more than 50 years, and Marasigan used to help his father till the

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

[10] *Id.* at 223-224.

[11] *Id.* at 16-22.

[12] TSN, March 16, 1999, pp. 7-9.

[13] *Id.* at 11-12.

same. Marasigan merely inherited the job as caretaker of the subject property from his father.

Among the evidence Tensuan presented during the trial were: (1) the *Kasulatan ng Paghahati-hati at Pagaayos ng Kabuhayan* dated September 14, 1971;[14] (2) Tax declarations, the earliest of which was for the year 1948, in the name of Candida de Borja, Tensuan's grandmother;[15] (3) Real property tax payment receipts issued to Tensuan for 1998;[16] (3) Blueprint copy of Plan Swo-00-001456 surveyed for Lydia Capco de Tensuan;[17] (4) Technical description of the subject property, duly prepared by a licensed Geodetic Engineer and approved by the Department of Environment and Natural Resources (DENR);[18] and (5) Certification dated July 29, 1999 from the Community Environment and Natural Resources Office of the DENR (CENRO-DENR) which states that "said land falls within alienable and disposable land under Project No. 27-B L.C. Map No. 2623 under Forestry Administrative Order No. 4-1141 dated January 3, 1968."[19]

Engineer Ramon Magalona (Magalona) took the witness stand for oppositor LLDA. He averred that based on the topographic map and technical description of the subject property, the said property is located below the prescribed lake elevation of 12.5 meters. Hence, the subject property forms part of the Laguna Lake bed and, as such, is public land. During cross-examination, Magalona admitted that the topographic map he was using as basis was made in the year 1967; that there had been changes in the contour of the lake; and that his findings would have been different if the topographic map was made at present time. He likewise acknowledged that the subject property is

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[14] Records, pp. 16-22.

[15] *Id.* at 235-256.

[16] *Id.* at 257-258.

[17] *Id.* at 25-27.

[18] *Id.* at 6.

[19] *Id.* at 270.

an agricultural lot. When Magalona conducted an ocular inspection of the subject property, said property and other properties in the area were submerged in water as the lake level was high following the recent heavy rains.[20]

On May 26, 2000, an Investigation Report was prepared, under oath, by Cristeta R. Garcia (Garcia), DENR Land Investigator, stating, among other things, that the subject property was covered by a duly approved survey plan; that the subject property is within the alienable and disposable zone classified under Project No. 27-B, L.C. Map No. 2623; that the subject property is not reserved for military or naval purposes; that the subject property was not covered by a previously issued patent; that the subject property was declared for the first time in 1948 under Tax Declaration No. 230 in the name of Candida de Borja;[21] that the subject property is now covered by Tax Declaration No. D-013-01408 in the name of Lydia Capco de Tensuan; that the subject property is agricultural in nature; and that the subject property is free from adverse claims and conflicts. Yet, Garcia noted in the same report that the "the applicant is not x x x in the actual occupation and possession of the land" and "LLDA rep. by Atty. Joaquin G. Mendoza possesses the legal right to file opposition against the application x x x."[22] The Investigation Report was submitted as evidence by the Republic.

In its Decision dated October 18, 2004, the MeTC granted Tensuan's Application for Registration, decreeing as follows:

WHEREFORE, from the evidences adduced and testimonies presented by the parties, the Court is of the considered view that herein applicant has proven by preponderance of evidence the allegations in the application, hence, this Court hereby confirms the title of applicant **LYDIA CAPCO DE TENSUAN married to RODOLFO TENSUAN,** of legal age, Filipino and a resident of No.

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[20] TSN, September 5, 2001, pp. 5-6, 12-14.

[21] An actual perusal of Tax Declaration No. 230 reveals that the name appearing thereon is "Candida de Borja." (Records, p. 255.)

[22] Records, p. 309.

43 Rizal Street, Poblacion, Muntinlupa City to the parcel of agricultural land (Lot 1109-A, Mcadm 590-D, Taguig Cadastral Mapping) located at Ibayo-Sta. Ana, Taguig, Metro Manila containing an area of Four Thousand Six (4,006) square meters; and order the registration thereof in her name.

After the finality of this decision and upon payment of the corresponding taxes due on said land subject matter of this application, let an order for issuance of decree be issued.[23]

The Republic appealed to the Court of Appeals, insisting that the MeTC should not have granted Tensuan's Application for Registration considering that the subject property is part of the Laguna Lake bed, hence, is not alienable and disposable. The appeal was docketed as CA-G.R. CV No. 84125.

In the herein assailed Decision of January 13, 2006, the Court of Appeals affirmed the MeTC Decision, thus:

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision dated October 18, 2004 is **AFFIRMED**.[24]

Hence, the Republic filed the present Petition with the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW WHEN IT AFFIRMED THE TRIAL COURT'S GRANT OF THE APPLICATION FOR LAND REGISTRATION OF [TENSUAN] DESPITE HER FAILURE TO PROVE OPEN, ADVERSE, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION IN THE CONCEPT OF AN OWNER OF THE SUBJECT LAND FOR THIRTY YEARS.

II

THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW WHEN IT AFFIRMED THE TRIAL COURT'S GRANT OF THE APPLICATION FOR LAND REGISTRATION OF [TENSUAN]

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[23] *Rollo*, p. 74.

[24] *Id.* at 36.

BECAUSE THE SUBJECT LAND BEING PART OF THE LAGUNA LAKE BED IS NOT ALIENABLE AND DISPOSABLE.[25]

The Republic contends that Tensuan failed to present incontrovertible evidence to warrant the registration of the property in the latter's name as owner. Aruelo's testimony that her father possessed the land even before the Second World War and Marasigan's claim that he and his father have been tilling the land for a total of more than 65 years are doubtful considering that the subject property is located below the reglementary lake elevation and is, thus, part of the Laguna Lake bed. Also, the CENRO Certification is not sufficient evidence to overcome the presumption that the subject property still forms part of the public domain, and is not alienable and disposable.

On the other hand, Tensuan asserts that the Petition should be dismissed outright for raising questions of fact. The findings of the MeTC and the Court of Appeals that the subject property is alienable and disposable, and that Tensuan and her predecessors-in-interest had been in open, adverse, continuous, exclusive, and notorious possession of the same for the period required by law, are supported by preponderance of evidence.

We find the instant Petition meritorious.

The Republic asserts that the assigned errors in its Petition are on questions of law, but in reality, these questions delve into the sufficiency of evidence relied upon by the MeTC and the Court of Appeals in granting Tensuan's Application for Registration of the subject property. It is basic that where it is the sufficiency of evidence that is being questioned, it is a question of fact.[26]

In petitions for review on *certiorari* under Rule 45 of the Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of

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[25] *Id.* at 18.

[26] *Republic v. Javier*, G.R. No. 179905, August 19, 2009, 596 SCRA 481, 491.

are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.[27] In *Reyes v. Montemayor*,[28] we did not hesitate to apply the exception rather than the general rule, setting aside the findings of fact of the trial and appellate courts and looking into the evidence on record ourselves, in order to arrive at the proper and just resolution of the case, to wit:

> Rule 45 of the Rules of Court provides that only questions of law shall be raised in a Petition for Review before this Court. This rule, however, admits of certain exceptions, namely, (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 misappreciation of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.
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> While as a general rule appellate courts do not usually disturb the lower court's findings of fact, unless said findings are not supported by or are totally devoid of or inconsistent with the evidence on record, such finding must of necessity be modified to conform with the evidence if the reviewing tribunal were to arrive at the proper and just resolution of the controversy. Thus, although the findings of fact of the Court of Appeals are generally conclusive on this Court, which is not a trier of facts, if said factual findings do not conform to the evidence on record, this Court will not hesitate to review and reverse the factual findings of the lower courts. In the instant case, the Court finds sufficient basis to deviate from the rule since the extant evidence and prevailing law support a finding different from the conclusion of the Court of Appeals and the RTC. (Citations omitted.)

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[27] *Republic v. De la Paz*, G.R. No. 171631, November 15, 2010, 634 SCRA 610, 618.

[28] G.R. No. 166516, September 3, 2009, 598 SCRA 61, 74-75.

Tensuan anchors her right to registration of title on Section 14(1) of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, which reads:

> SEC. 14. *Who may apply*. – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

The aforequoted provision authorizes the registration of title acquired in accordance with Section 48(b) of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended by Presidential Decree No. 1073, which provides:

> SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:
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> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors-in-interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, 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.

The requisites for the filing of an application for registration of title under Section 14(1) of the Property Registration Decree are: (1) that the property in question is alienable and disposable land of the public domain; and (2) that the applicants by themselves

or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[29] In *Heirs of Mario Malabanan v. Republic*,[30] we affirmed our earlier ruling in *Republic v. Naguit*,[31] that Section 14(1) of the Property Registration Decree merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed.

We proceed to determine first whether it has been satisfactorily proven herein that the subject property was already alienable and disposable land of the public domain at the time Tensuan filed her Application for Registration on August 11, 1998.

Under the Regalian doctrine, all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership of land and charged with the conservation of such patrimony. The same doctrine also states that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Consequently, the burden of proof to overcome the presumption of ownership of lands of the public domain is on the person applying for registration. Unless public land is shown to have been reclassified and alienated by the State to a private person, it remains part of the inalienable public domain.[32]

As to what constitutes alienable and disposable land of the public domain, we turn to our pronouncements in *Secretary of the Department of Environment and Natural Resources v. Yap*:[33]

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[29] *Lim v. Republic*, G.R. No. 158630, September 4, 2009, 598 SCRA 247, 257.

[30] G.R. No. 179987, April 29, 2009, 587 SCRA 172, 203.

[31] 489 Phil. 405, 414 (2005).

[32] *Zarate v. Director of Lands*, 478 Phil. 421, 433 (2004).

[33] G.R. Nos. 167707 & 173775, October 8, 2008, 568 SCRA 164, 184-192.

The 1935 Constitution classified lands of the public domain into agricultural, forest or timber. Meanwhile, the 1973 Constitution provided the following divisions: agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest and grazing lands, and such other classes as may be provided by law, giving the government great leeway for classification. Then the 1987 Constitution reverted to the 1935 Constitution classification with one addition: national parks. Of these, only agricultural lands may be alienated. x x x

x x x x x x x x x

A positive act declaring land as alienable and disposable is required. In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a positive act of the government, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. In fact, Section 8 of CA No. 141 limits alienable or disposable lands only to those lands which have been "officially delimited and classified."

The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable. There must still be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable. (Citations and emphasis omitted.)

As proof that the subject property is alienable and disposable, Tensuan presented a Certification dated July 29, 1999 issued by the CENRO-DENR which verified that "said land falls within alienable and disposable land under Project No. 27-B L.C. Map No. 2623 under Forestry Administrative Order No. 4-1141 dated

January 3, 1968." However, we have declared unequivocally that a CENRO Certification, by itself, is insufficient proof that a parcel of land is alienable and disposable. As we held in *Republic v. T.A.N. Properties, Inc.*:[34]

> [I]t is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. **The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable**, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition**, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.**

Only Torres, respondent's Operations Manager, identified the certifications submitted by respondent. The government officials who issued the certifications were not presented before the trial court to testify on their contents. The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable.

Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

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

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

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may

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[34] G.R. No. 154953, June 26, 2008, 555 SCRA 477, 489-491.

be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy x x x. **The CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. The CENRO should have attached an official publication of the DENR Secretary's issuance declaring the land alienable and disposable.**

Section 23, Rule 132 of the Revised Rules on Evidence provides:

> "Sec. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

The CENRO and Regional Technical Director, FMS-DENR, certifications do not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. The certifications are conclusions unsupported by adequate proof, and thus have no probative value. Certainly, the certifications cannot be considered *prima facie* evidence of the facts stated therein.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. **Such government certifications do not, by their mere issuance, prove the facts stated therein. Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, the certifications are *prima facie* evidence of their due execution and date of issuance but they do not constitute *prima facie* evidence of the facts stated therein.**

The Court has also ruled that a document or writing admitted as part of the testimony of a witness does not constitute proof of the facts stated therein. Here, Torres, a private individual and

respondent's representative, identified the certifications but the government officials who issued the certifications did not testify on the contents of the certifications. As such, **the certifications cannot be given probative value. The contents of the certifications are hearsay because Torres was incompetent to testify on the veracity of the contents of the certifications. Torres did not prepare the certifications, he was not an officer of CENRO or FMS-DENR, and he did not conduct any verification survey whether the land falls within the area classified by the DENR Secretary as alienable and disposable.** (Emphases ours, citations omitted.)

While we may have been lenient in some cases[35] and accepted substantial compliance with the evidentiary requirements set forth in *T.A.N. Properties*, we cannot do the same for Tensuan in the case at bar. We cannot afford to be lenient in cases where the Land Registration Authority (LRA) or the DENR oppose the application for registration on the ground that the land subject thereof is inalienable. In the present case, the DENR recognized the right of the LLDA to oppose Tensuan's Application for Registration; and the LLDA, in its Opposition, precisely argued that the subject property is part of the Laguna Lake bed and, therefore, inalienable public land. We do not even have to evaluate the evidence presented by the LLDA given the Regalian Doctrine. Since Tensuan failed to present satisfactory proof that the subject property is alienable and disposable, the burden of evidence did not even shift to the LLDA to prove that the subject property is part of the Laguna Lake bed.

Given the lack of evidence that the subject property is alienable and disposable, it becomes unnecessary for us to determine the other issue in this case, *i.e.*, whether Tensuan has been in open, continuous, exclusive and notorious possession and occupation; and that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier. Regardless of the character and length of her possession of the subject property, Tensuan cannot acquire registerable title to inalienable public land.

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[35] *Republic v. Serrano*, G.R. No. 183063, February 24, 2010, 613 SCRA 537; *Republic v. Vega*, G.R. No. 177790, January 17, 2011, 639 SCRA 541.

WHEREFORE, the instant Petition is **GRANTED**. The Decision dated January 13, 2006 of the Court of Appeals in CA-G.R. CV No. 84125 and Decision dated October 18, 2004 of the Metropolitan Trial Court of Taguig City, Branch 74 in LRC Case No. 172 (LRA Rec. No. N-70108) are **SET ASIDE**. The Application for Registration of Lydia Capco de Tensuan is **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174626. October 23, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LUIS MIGUEL O. ABOITIZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; INDISPENSABLE REQUISITES FOR AN APPLICATION FOR REGISTRATION OF LAND TITLE.— Based on [Section 14(1) of P.D. No. 1529 in relation to Section 48(b) of Commonwealth Act No. 141, as amended by Section 4 of P.D. No. 1073], applicants for registration of land title must establish and prove: (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 it is under a *bona fide* claim of ownership since June 12, 1945, or earlier. The foregoing requisites are indispensable for an application for registration of land title, under Section 14(1) of P.D. No. 1529, to validly prosper. The absence of any one

requisite renders the application for registration substantially defective.

2. ID.; ID.; ID.; REQUISITES, NOT PRESENT IN CASE AT BAR.— Anent the first requisite, to authoritatively establish the subject land's alienable and disposable character, it is incumbent upon the applicant to present a CENRO or Provincial Environment and Natural Resources Office *(PENRO)* Certification; and a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. Strangely, the Court cannot find any evidence to show the subject land's alienable and disposable character, except for a CENRO certification submitted by Aboitiz. Clearly, his attempt to comply with the first requisite of Section 14(1) of P.D. No. 1529 fell short due to his own omission. x x x With regard to the third requisite, it must be shown that the possession and occupation of a parcel of land by the applicant, by himself or through his predecessors-in-interest, started on June 12,1945 or earlier. A mere showing of possession and occupation for 30 years or more, by itself, is not sufficient. Unfortunately, Aboitiz likewise failed to satisfy this third requisite. As the records and pleadings of this case will reveal, the earliest that he and his predecessor-in-interest can trace back possession and occupation of the subject land was only in the year 1963. Evidently, his possession of the subject property commenced roughly eighteen (18) years beyond June 12, 1945, the reckoning date expressly provided under Section 14(1) of P.D. No. 1529. Here, he neglected to present any convincing and persuasive evidence to manifest compliance with the requisite period of possession and occupation since June 12, 1945 or earlier. Accordingly, his application for registration of land title was legally infirm.

3. ID.; ID.; ID.; FOR ACQUISITIVE PRESCRIPTION TO OPERATE AS A VALID BASIS FOR LAND REGISTRATION, THE APPLICANT MUST BE ABLE TO SHOW THAT, IN ADDITION TO CLASSIFICATION OF LAND AS ALIENABLE AND DISPOSABLE, THERE WAS AN EXPRESS DECLARATION BY THE STATE EITHER BY A LAW ENACTED BY CONGRESS OR A PROCLAMATION ISSUED BY THE PRESIDENT THAT THE LAND WAS NO LONGER RETAINED FOR PUBLIC SERVICE.— On September 3, 2013, the Court *En Banc* came out with its Resolution, in the same case of *Malabanan*, denying

the motion for reconsideration questioning the decision. In the said resolution, the Court authoritatively stated that "x x x the land continues to be ineligible for land registration under Section 14(2) of the *Property Registration Decree* unless Congress enacts a law or the President issues a proclamation declaring the land as no longer intended for public service or for the development of the national wealth." Thus, under Section 14(2) of P.D. No. 1529, for acquisitive prescription to commence and operate against the State, the classification of land as alienable and disposable alone is not sufficient. The applicant must be able to show that the State, in addition to the said classification, expressly declared through either a law enacted by Congress or a proclamation issued by the President that the subject land is no longer retained for public service or the development of the national wealth or that the property has been converted into patrimonial. Consequently, without an express declaration by the State, the land remains to be a property of public dominion and, hence, not susceptible to acquisition by virtue of prescription.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Roberto R. Palmares for respondent.

D E C I S I O N

MENDOZA, *J.:*

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Republic of the Philippines *(Republic)*, represented by the Office of the Solicitor General *(OSG)*, seeking to set aside the December 14, 2005 Amended Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 75032, and its September 12, 2006 Resolution[2]

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[1] *Rollo*, pp. 27-33. Penned by Associate Justice Enrico A. Lanzanas with Associate Justice Arsenio J. Magpale and Associate Justice Ramon M. Bato, Jr., concurring.

[2] *Id.* at 35-36.

affirming the February 21, 2002 Decision[3] of the Regional Trial Court, Cebu City, Branch 11 *(RTC)*, which granted the application for registration of respondent Luis Miguel O. Aboitiz *(Aboitiz)* in Land Registration Case *(LRC)* No. 1474-N.

The Facts

On September 11, 1998, respondent Aboitiz filed his Application for Registration of Land Title of a parcel of land with an area of 1,254 square meters, located in Talamban, Cebu City, and identified as Lot 11193 of the Cebu Cadastre 12 Extension, before the RTC.

After establishing the jurisdiction of the RTC to act on the application for registration of land title, hearing thereon ensued.

In support of his application, Aboitiz attached the original Tracing Cloth Plan with a blueprint copy, the technical description of the land, the certificate of the geodetic engineer surveying the land, and the documents evidencing possession and ownership of the land.

To prove his claim, Aboitiz presented his witness, Sarah Benemerito *(Sarah)*, his secretary, who testified that he entrusted to her the subject property and appointed her as its caretaker; that he purchased the subject property from Irenea Kapuno *(Irenea)* on September 5, 1994; that he had been in actual, open, continuous, and exclusive possession of the subject property in the concept of an owner; that as per record of the Department of Environment and Natural Resources *(DENR)*, Region VII, the subject property had been classified as alienable and disposable since 1957; that per certification of the Community Environment and Natural Resources Office *(CENRO)*, Cebu City, the subject property was not covered by any subsisting public land application; and that the subject property had been covered by tax declarations from 1963 to 1994 in Irenea's name, and from 1994 to present, in his name.

Another witness for Aboitiz, Luz Kapuno *(Luz)*, daughter of Irenea, the original owner of the subject property, testified that

[3] *Id.* at 50-53. Penned by Judge Isaias P. Dicdican.

she was one of the instrumental witnesses in the deed of sale of the subject property and that saw her mother affix her signature on the said document. She added that her mother was in open, continuous, peaceful, and exclusive possession of the said property.

Subsequently, the Republic, through Assistant City Prosecutor Edito Y. Enemecio, manifested that it would not adduce any evidence to oppose the application for registration of Aboitiz.

On February 21, 2002, the RTC granted Aboitiz's application for registration of the subject property. The dispositive portion of the decision states:

> WHEREFORE, in view of all the foregoing premises, the Court hereby renders judgment in this case granting the application filed by the applicant. The Court hereby accordingly adjudicates the land described on plan RS-07-000856 located in Talamban, Cebu City, together with all the improvements thereon, as belonging to the applicant, and confirms his title thereto. The Land Registration Authority is hereby ordered to issue the corresponding Decree of Registration to confirm the applicant's title to the said land and to subject the said land under the operation of the Torrens System of Registration.
>
> Upon this decision becoming final, let a decree of confirmation and registration be entered and, thereafter, upon payment of the fees required by law, let the corresponding original certificate of title be issued in the name of the applicant.
>
> Furnish copies of this decision to the Administrator of the LRA, the Director of Lands and the Director of the Bureau of Forestry, the Office of the Solicitor General and the Cebu City Prosecutor.
>
> SO ORDERED.[4]

Not in conformity, the Republic appealed the RTC ruling before the CA.

In its June 7, 2005 Decision,[5] the CA *reversed* the ruling of the RTC and denied Aboitiz's application for registration of land title, the decretal portion of which reads:

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[4] *Id.* at 52-53.

[5] *Id.* at 38-49.

WHEREFORE, the Decision of the trial court dated February 21, 2002 is hereby REVERSED and the application for registration of title is accordingly **DISMISSED**.

SO ORDERED.[6]

The CA ruled that it was only from the date of declaration of such lands as alienable and disposable that the period for counting the statutory requirement of possession since June 12, 1945 or earlier would commence. Possession prior to the date of declaration of the lands alienability was not included. The CA observed that the subject property was declared as alienable and disposable only in 1957, and so the application clearly did not meet the requirements of possession needed under the first requisite of Section 14 (1)[7] of Presidential Decree *(P.D.)* No. 1529 which must be since June 12, 1945, or earlier.

Thereafter, Aboitiz moved for reconsideration of the June 7, 2005 Decision of the CA which dismissed his application for registration of title. Aboitiz asserted, among others, that although the subject land was classified as alienable and disposable only in 1957, the tax declarations, from 1963 to 1994, for a period of thirty one (31) years, converted the land, by way of acquisitive prescription, to private property. He asserted that the evidence he presented substantially met the requisite nature and character of possession under P.D. No. 1529.

In its December 14, 2005 Amended Decision, the CA *reversed itself* and granted the application for registration of land title of Aboitiz. The pertinent portion of the said decision reads:

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[6] *Id*. at 48. Penned by Associate Justice Enrico Lanzanas and concurred in by Associate Justice Arsenio Magpale and Associate Justice Sesinando Villon.

[7] SEC. 14. Who may apply. - The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

WHEREFORE, in view of the foregoing, the June 7, 2005 Decision of this Court is hereby REVERSED and the Decision dated February 21, 2002 of the Regional Trial Court, Branch 11, Cebu City with respect to L.R.C. No. 1474-N is hereby AFFIRMED *in toto*.

SO ORDERED.[8]

In granting the application for registration of land title, the CA relied on Section 14(2) of P.D. No. 1529.[9] It stated that although the application for registration of Aboitiz could not be granted pursuant to Section 14(1) of P.D. No. 1529 because the possession of his predecessor-in-interest commenced in 1963 (beyond June 12, 1945), it could prosper by virtue of acquisitive prescription under Section 14(2) of P.D. No. 1529 upon the lapse of thirty (30) years. The CA explained that the original owner's (Irenea's) possession of the subject property beginning from 1963 up to 1994, the year Aboitiz purchased the subject property from Irenea, spanning thirty one (31) years, converted the said property into private land and, thus, susceptible to registration. The CA also declared that although tax declarations and real property tax payments were not by themselves conclusive evidence of ownership of land, they were nevertheless good indicia of possession in the concept of an owner.

The Republic moved for reconsideration but was denied by the CA on September 12, 2006.

Hence, this petition.

ASSIGNMENT OF ERROR

THE CA ERRED ON A QUESTION OF LAW IN GRANTING THE APPLICATION FOR REGISTRATION

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[8] *Rollo*, p. 32.

[9] Section 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:

x x x

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

OF LOT 11193 UNDER PLAN RS-07-000856 BASED ON THE EVIDENCE IT RELIED UPON EARLIER DISMISSING THE SAID APPLICATION.[10]

In his Memorandum,[11] Aboitiz contends that the Republic is raising questions of fact which is beyond the appellate jurisdiction of this Court. Consequently, the findings of fact by the RTC and affirmed by the CA are final, binding and conclusive upon the Court. Aboitiz claims that sufficient evidence was presented to establish the nature and character of his possession of the subject property as required by P.D. No. 1529.

In its Memorandum,[12] the Republic, citing *Republic v. T.A.N. Properties, Inc.*,[13] argues that Aboitiz failed to validly establish the alienability of the subject property because he only adduced a CENRO certification to that effect, without presenting a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. Further, a declaration that the property is alienable and disposable is not sufficient to make it susceptible to acquisitive prescription. An express government manifestation that the property is already patrimonial or no longer intended for public use, for public service or for the development for the national wealth pursuant to Article 422[14] of the New Civil Code must also be shown. The Republic asserts that it is only when the property has become patrimonial that the period of acquisitive prescription can commence to run against the State.

The Court's Ruling

The petition is meritorious.

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[10] *Rollo*, p. 17.

[11] *Id.* at 125-138.

[12] *Id.* at 143-166.

[13] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

[14] Art. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

The vital issue to be resolved by the Court is whether Aboitiz is entitled to the registration of land title under Section 14(1) of P.D. No. 1529, or, in the alternative, pursuant to Section 14(2) of P.D. No. 1529.

Section 14(1) of P.D. No. 1529

Section 14(1) of P.D. No. 1529 in relation to Section 48(b) of Commonwealth Act No. 141,[15] as amended by Section 4 of P.D. No. 1073,[16] provides:

> SECTION 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since **June 12, 1945, or earlier**.
>
> xxx x x x xxx
>
> 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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> xxx x x x xxx
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> (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

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[15] Public Land Act.

[16] 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.

> 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. [Emphases supplied]

Based on the above-quoted provisions, applicants for registration of land title must establish and prove: (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 it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

The foregoing requisites are indispensable for an application for registration of land title, under Section 14(1) of P.D. No. 1529, to validly prosper. The absence of any one requisite renders the application for registration substantially defective.

Anent the first requisite, to authoritatively establish the subject land's alienable and disposable character, it is incumbent upon the applicant to present a CENRO or Provincial Environment and Natural Resources Office *(PENRO)* Certification; and a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[17]

Strangely, the Court cannot find any evidence to show the subject land's alienable and disposable character, except for a CENRO certification submitted by Aboitiz. Clearly, his attempt to comply with the first requisite of Section 14(1) of P.D. No. 1529 fell short due to his own omission. In *Republic v. Hanover Worldwide Trading Corporation*,[18] the Court declared that the CENRO is not the official repository or legal custodian of

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[17] *Republic v. Bantigue Point Development Corporation,* G.R. No. 162322, March 14, 2012, 668 SCRA 158, 171.

[18] G.R. No. 172102, July 2, 2010, 662 SCRA 730, 743.

the issuances of the DENR Secretary declaring the alienability and disposability of public lands. Thus, the CENRO Certification should be accompanied by an official publication of the DENR Secretary's issuance declaring the land alienable and disposable. For this reason, the application for registration of Aboitiz should be denied.

With regard to the third requisite, it must be shown that the possession and occupation of a parcel of land by the applicant, by himself or through his predecessors-in-interest, started on June 12, 1945 or earlier.[19] A mere showing of possession and occupation for 30 years or more, by itself, is not sufficient.[20]

Unfortunately, Aboitiz likewise failed to satisfy this third requisite. As the records and pleadings of this case will reveal, the earliest that he and his predecessor-in-interest can trace back possession and occupation of the subject land was only in the year 1963. Evidently, his possession of the subject property commenced roughly eighteen (18) years beyond June 12, 1945, the reckoning date expressly provided under Section 14(1) of P.D. No. 1529. Here, he neglected to present any convincing and persuasive evidence to manifest compliance with the requisite period of possession and occupation since June 12, 1945 or earlier. Accordingly, his application for registration of land title was legally infirm.

Section 14(2) of P.D. No. 1529

Notwithstanding his failure to comply with the requirements for registration of land title under Section 14(1) of P.D. No. 1529, Aboitiz advances that he has, nonetheless, satisfied the requirements of possession for thirty (30) years to acquire title to the subject property *via* prescription under Section 14(2) of P.D. No. 1529.

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[19] *Republic v. Tsai*, G.R. No. 168184, June 22, 2009, 590 SCRA 423, 433.

[20] *Republic v. Hanover Worldwide Trading Corporation, supra* note 18, at 739, citing *Republic v. Tsai*, G.R. No. 168184, June 22, 2009, 590 SCRA 423, 433.

Regrettably, the Court finds Itself unable to subscribe to applicant's proposition.

Significantly, Section 14(2) of P.D. No. 1529 provides:

SEC. 14. Who may apply. – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

x x x x x x x x x

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

In the case of *Heirs of Mario Malabanan v. Republic*,[21] the Court clarified the import of Section 14(1) as distinguished from Section 14(2) of P.D. No. 1529, *viz*:

(1) In connection with Section 14(1) of the Property Registration Decree, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.

(a) Since Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47[22] of the Public Land Act.

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[21] G.R. No. 179987, April 29, 2009, 587 SCRA 172, 210-211.

[22] Section 47. The persons specified in the next following section are hereby granted time, not to extend beyond December 31, 2020 within which to avail of the benefits of this Chapter: Provided, That this period shall apply only where the area applied for does not exceed twelve (12) hectares: Provided, further, That the several periods of time designated by the President in accordance with Section Forty-Five of this Act shall apply also to the

(b) The right to register granted under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.

(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. **However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run**.

(a) Patrimonial property is private property of the government. The person acquires ownership of patrimonial property by prescription under the Civil Code is entitled to secure registration thereof under Section 14(2) of the Property Registration Decree.

(b) There are two kinds of prescription by which patrimonial property may be acquired, one ordinary and other extraordinary. Under ordinary acquisitive prescription, a person acquires ownership of a patrimonial property through possession for at least ten (10) years, in good faith and with just title. Under extraordinary acquisitive prescription, a person's uninterrupted adverse possession of patrimonial property for at least thirty (30) years, regardless of good faith or just title, ripens into ownership.[23] [Emphasis supplied]

On September 3, 2013, the Court *En Banc* came out with its Resolution,[24] in the same case of *Malabanan*, denying the motion for reconsideration questioning the decision. In the said

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lands comprised in the provisions of this Chapter, but this Section shall not be construed as prohibiting any said persons from acting under this Chapter at any time prior to the period fixed by the President.

[23] The foregoing principles were reiterated in *Republic v. Metro Index Realty and Development Corporation*, G.R. No. 198585, July 2, 2012, 675 SCRA 439

[24] G.R. No. 179987.

resolution, the Court authoritatively stated that "x x x the land continues to be ineligible for land registration under Section 14(2) of the *Property Registration Decree* unless Congress enacts a law or the President issues a proclamation declaring the land as no longer intended for public service or for the development of the national wealth."[25]

Thus, under Section 14(2) of P.D. No. 1529, for acquisitive prescription to commence and operate against the State, the classification of land as alienable and disposable alone is not sufficient. The applicant must be able to show that the State, in addition to the said classification, expressly declared through either a law enacted by Congress or a proclamation issued by the President that the subject land is no longer retained for public service or the development of the national wealth or that the property has been converted into patrimonial. Consequently, without an express declaration by the State, the land remains to be a property of public dominion and, hence, not susceptible to acquisition by virtue of prescription.

In fine, the Court holds that the ruling of the CA lacks sufficient factual or legal justification. Hence, the Court is constrained to reverse the assailed CA Amended Decision and Resolution and to deny the application for registration of land title of Aboitiz.

WHEREFORE, the petition is **GRANTED**. The December 14, 2005 Amended Decision and the September 12, 2006 Resolution of the Court of Appeals, in CA-G.R. CV No. 75032, are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Application for Registration of Title of respondent Luis Miguel O. Aboitiz in Land Registration Case No. 1474-N is **DENIED**.

SO ORDERED.

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

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[25] G.R. No. 179987, p. 12. Underscoring supplied.

FIRST DIVISION

[G.R. No. 175365. October 23, 2013]

CANDIDO S. GEMINA, JR., *petitioner, vs.* **BANKWISE, INC. (Thrift Bank), LAZARO LL. MADARA, PERFECTO M. PASCUA and OSMENIO R. GALAPATE,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT.—** There is constructive dismissal when "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. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY CONCLUSIVE ON THE SUPREME COURT.—** "[S]ettled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." "The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court."

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; BARE ALLEGATIONS OF CONSTRUCTIVE DISMISSAL, WHEN UNCORROBORATED BY THE EVIDENCE ON RECORD, CANNOT BE GIVEN CREDENCE;**

CASE AT BAR.— It is a well-settled rule x x x that before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence. In the instant case, the records are bereft of substantial evidence that will unmistakably establish a case of constructive dismissal. An act, to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment. Here, the circumstances relayed by Gemina were not clear-cut indications of bad faith or some malicious design on the part of Bankwise to make his working environment insufferable.

4. ID.; ID.; ID.; ID.; AN EXERCISE OF MANAGEMENT PREROGATIVE CANNOT BE THE BASIS OF AN EMPLOYEE'S CLAIM OF CONSTRUCTIVE DISMISSAL; CASE AT BAR.— The Court x x x finds Bankwise's order to return the service vehicle assigned to Gemina inadequate to warrant his claim of constructive dismissal. It bears noting that the service vehicle was only temporarily assigned for Gemina's use. Nonetheless, it remains the property of the Bank and therefore may be disposed of or utilized by the company in the manner that it deems more beneficial for its interests. This is plainly an exercise of management prerogative. The employer's right to conduct the affairs of its business, according to its own discretion and judgment, is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment and the only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable. It must be noted that the service vehicle was assigned to Gemina in order to facilitate his field work. However, in January 2003, he went on official leave for almost two (2) weeks, thereby stalling his field work. Thereafter, he incurred absences without leave in the first two (2) weeks of February 2003. Believing that the service vehicle was not being put to its intended use, the management of Bankwise decided to re-assign the service vehicle to the marketing department so that it can instead be used as a car

pool for the unit's increasing manpower. The order to return the service vehicle came in only on February 17, 2003, after Gemina incurred absences without leave and ultimately stopped reporting for work. Even then, he refused to surrender the possession of the service vehicle and instead filed a complaint for illegal dismissal two (2) days after receiving the notice to return.

APPEARANCES OF COUNSEL

Cagatan Valmores & Associates Law Office for petitioner.
Gilroy V. Billones and *Mildred J. Marquez* for respondents.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated July 17, 2006 and Resolution[3] dated November 7, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 89343. In the assailed decision, the CA affirmed the Decision[4] dated December 29, 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-02-02298-2003.

Factual Antecedents

On August 9, 2002, petitioner Candido S. Gemina, Jr. (Gemina) signed an employment contract[5] with respondent Bankwise,

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[1] *Rollo*, pp. 19-37.

[2] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Andres B. Reyes (now Presiding Justice of Court of Appeals) and Hakim S. Abdulwahid, concurring; *id.* at 84-92.

[3] *Id.* at 101.

[4] Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; *id.* at 50-59.

[5] *Id.* at 111-113.

Inc. (Bankwise) as Marketing Officer with the rank of Senior Manager, with an annual salary of ₱750,000.00 based on a fifteen-month scheme or ₱50,000.00 per month and a service vehicle for his field work. The same contract stipulated for a fund level commitment of ₱100,000,000.00 for the first six (6) months of employment.

In his Memorandum,[6] Gemina alleged that during his first three (3) months at work, he had a satisfactory performance and was able to bring in new and former clients to Bankwise. However, when Bankwise was embroiled in a controversy involving the deposits of Foreign Retirees Association, he started to experience difficulty in soliciting new depositors. To alleviate the situation, he suggested innovations in Bankwise's marketing strategies to his immediate superiors, respondents Perfecto Pascua (Pascua) and Osmenio Galapate (Galapate), who then worked out promotional schemes without his participation. The schemes, however, failed to materialize and he was blamed for the failure. Thereafter, he was subjected to several forms of harassment by some officers of Bankwise by forcing him to file an indefinite leave of absence, demanding for the return of his service vehicle and intentionally delaying the release of his salaries and allowances.[7]

When the acts of harassment became intolerable, Gemina went on leave for eleven (11) days from January 17 to January 31, 2003. Upon his return to work, however, his salary for the period of his leave was withheld and was released only after he confronted Pascua and Galapate on the matter.[8] Subsequently, his salary for the payroll period of February 1 to 15, 2003 was again withheld and was released only on March 23, 2003, but only half of the amount he was entitled to, or ₱12,411.67 instead of ₱25,000.00.[9]

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[6] *Id.* at 146-165.

[7] *Id.* at 147.

[8] *Id.* at 43.

[9] *Id.* at 148.

On February 17, 2003, Bankwise, through Pascua and Galapate, wrote a letter to Gemina, directing him to turn over the service vehicle provided to him by the company to Mr. Joselito Hogar, Head of the Corporate Services Department. [10]

On February 19, 2003, Gemina filed a complaint[11] for constructive dismissal against Bankwise.

For its part, Bankwise pointed out that Gemina's employment contract stipulated for a fund level commitment of ₱100,000,000.00 for the first six (6) months of employment. It also contained a provision stating that his performance relative to his ability to generate deposits shall be monitored monthly starting from his 6th month. As of December 27, 2002, after almost five (5) months from his employment, Gemina had the lowest performance level among the members of the fund management group, contributing only ₱2,915,282.97 of deposits out of the ₱100,000,000.00 stipulated fund level commitment. Thus, Bankwise, through its concerned officers called his attention.[12]

In January 2003, Gemina's supervisors sternly warned him that his inability to perform his commitment under the employment contract constitutes a breach or violation of his contractual obligation. Notwithstanding this warning, Gemina went on leave for eleven (11) days from January 17 to 31, 2003. Thereafter, he incurred absences without leave from February 1 to 15, 2003 and did not bother to inform the bank regarding the reason therefor. Pascua and Galapate tried to contact him to inquire about the reason of his long absence and requested him to return the company vehicle but to no avail.[13]

On February 17, 2003, Pascua and Galapate formally issued a memorandum, ordering Gemina to turn over the service vehicle

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[10] *Id.* at 109.

[11] *Id.* at 41.

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

[13] *Id.* at 191-192.

assigned to him. Still, he refused to heed. On the following day, he submitted to Pascua his call report, reflecting his work schedule for the period of February 1 to 18, 2003. Even then, he did not report back to work and instead filed a complaint for illegal dismissal against Bankwise.[14]

The Ruling of the Labor Arbiter

On April 30, 2004, the Labor Arbiter (LA) rendered a Decision[15] holding that Gemina was illegally dismissed. The dispositive portion of the decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed. Accordingly, respondents are hereby ordered to reinstate the complainant to his former position without loss of seniority rights and benefits and payment of backwages from date of dismissal until actual reinstatement which up to the date of this decision already amounts to ₱725,000.00 plus 10% attorney's fees of the total monetary awards due to the complainant.
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> All other claims are dismissed.
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> SO ORDERED.[16]

The LA held that the officers of Bankwise performed acts of harassment constituting constructive dismissal against Gemina by: (1) depriving him of his duties, benefits and privileges; (2) delaying the release of his salary; and (3) demanding for the return of his service vehicle, in order to make him feel uncomfortable and unwanted in the company.[17] It was also ruled that the fund level commitment stated in Gemina's employment contract was merely a standard by which the latter's performance shall be evaluated. It is not the basis of his employment.

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[14] *Id.* at 192-193.

[15] Issued by LA Jaime M. Reyno; *id.* at 42-49.

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

[17] *Id.* at 46.

The Ruling of the NLRC

On appeal, the NLRC reversed the decision of the LA in its Decision[18] dated December 29, 2004, holding that Gemina was not constructively dismissed but rather abandoned his employment. The pertinent portions of the decision read:

> Anent the alleged delay and/or refusal in the payment of salary, [Gemina] claim[s] that he was not paid his salary for the second quincina of January 2003 (January 17 to 31, 2003) as well as his salary for the period of February 1 to 15, 2003.
>
> In this case, [Gemina] filed a leave of absence for eleven (11) days from January 17 to 31, 2003. Appellants clearly pointed out that during that period, [Gemina's] salary was still on process because the personnel department has yet to determine whether there were remaining available accrued leave credits. The plausible reason therefor was, if there were no remaining available leave credits, consequently [Gemina] is not entitled to the salary covering the said period. x x x.
>
> As regards [Gemina's] salary for the period February 1 to 15, 2003, it has been shown that after his leave of absence for the period January 17 to 31, 2003, he started to incur absences without leave (AWOL). x x x.
>
> Relative to the appellant[s'] demand to [Gemina] to surrender the service vehicle, we note that the said vehicle was temporarily assigned to [Gemina's] care as a service unit in the performance of [his] duties (Annex "2", Memorandum dated 04 October 2002). As aptly stressed upon by the appellants, the demand to return the service vehicle was made at that time that [Gemina] has no attendance record and went on AWOL. x x x.
>
> x x x x x x x x x
>
> Anent the finding that the fund level commitment in [Gemina's] contract of employment is not a contractual duty on his part, the same is untenable. One crucial fact to consider is that the fund level commitment is part and parcel of the employment contract (ANNEX "1"). Apropos, [Gemina] has the contractual obligation to fulfill and accomplish the said fund level commitment. We note that [Gemina] was hired by respondent bank as Marketing Officer with the rank of

[18] *Id.* at 50-59.

Senior Manager in view of his representation that he has a deposit portfolio of more than One Hundred Million Pesos (₱100,000,000.00) and was [to] further generate deposits. It appears that after several months, [Gemina] has not delivered his premised (sic) deposit portfolio of more than [₱]100M. x x x

x x x x x x x x x

There is no occasion, therefore, to delve into the question whether there was a constructive dismissal because there was never even any dismissal in the first place. [Gemina's] situation only constitutes a pure and clear case of abandonment of work. Although clear grounds existed to definitely cause the termination of [Gemina], it was [Gemina] who disassociate himself from respondent bank. Hence, there can be no substance to his present claim that he was constructively dismissed. In effect, [Gemina] is deemed to have abandoned his work.

x x x x x x x x x

WHEREFORE, premises considered, the appealed decision dated 30 April 2004 is hereby **REVERSED** and **SET ASIDE** and a new one entered **DISMISSING** this case.

SO ORDERED.[19]

The Ruling of the CA

Undeterred, Gemina filed a petition for *certiorari* with the CA, praying that the Decision dated December 29, 2004 of the NLRC be annulled and set aside. However, in its Decision[20] dated July 17, 2006, the CA denied the petition. The CA held:

The Contract of Employment, to which [Gemina] had agreed to be bound, specified as a condition therefor the fund level commitment of ₱100,000,000.00 for the first six months from the date of employment. The pertinent section thereof further provides that [Gemina's] performance relative to his ability to generate deposits shall be monitored monthly and reviewed on the sixth month. As of December 27, 2002, or on his fifth month at work, [Gemina] had the lowest performance level among the fund management group. He was able to generate only the amount of ₱2,915,282.97.

[19] *Id.* at 54-59.

[20] *Id.* at 84-92.

Upon the foregoing premises, it cannot be said that the warnings received by [Gemina] from his immediate supervisors *vis-à-vis* his deposit portfolio were calculated to harass him. His performance was merely monitored pursuant to the Contract. Unquestionably however, [Gemina] failed to deliver his fund level commitment. The fact that not one among the marketing managers attained the ₱100-million mark is of no moment. Having agreed to commit himself to generate that much deposits, [Gemina] cannot now be heard to complain about the impossibility of fulfillment thereof.

Neither can [Gemina] claim that his salary for the period of February 1 to 15, 2003 was intentionally withheld from him. By his own admission, the personnel[-]in-charge received his Daily Time Record and Attendance Record for the said period only on February 18, 2003. [Gemina], however, filed the complaint *a quo* on February 19, 2003 without giving private respondent sufficient opportunity to compute his salary on the basis of his attendance and to credit the same to his account. x x x

x x x x x x x x x

WHEREFORE, premises considered, the instant petition for *certiorari* is hereby **DENIED**.

SO ORDERED.[21] (Citations omitted)

On July 31, 2006, Gemina filed a Motion for Reconsideration[22] of the foregoing decision but the CA denied the same in its Resolution[23] dated November 7, 2006.

On January 2, 2007, Gemina filed the instant petition for review on *certiorari* with this Court. He contends that the CA erred in finding that he was not constructively dismissed despite the circumstances demonstrating that he had been subjected to several forms of harassment by some officers of Bankwise to make his employment unbearable. To cite a few instances, he claims that Bankwise deleted his name from the organizational chart as early as January 2003 while the names

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[21] *Id.* at 88-89, 92.

[22] *Id.* at 94-100.

[23] *Id.* at 101.

of other officers who also failed to comply with their respective deposit portfolio of ₱100,000,000.00 in six (6) months were retained. Further, his salaries for months of January and February were withheld. He was also ordered to return his service vehicle for no apparent reason at all.[24]

Gemina further argues that the CA erred in ruling that the fund level commitment of ₱100,000,000.00 stipulated in his employment contract is a condition for employment. He rebuffs the CA's insinuation that he left his employment and filed a complaint for illegal dismissal in order to preempt his termination.[25]

Meanwhile, in 2008, Bankwise was declared insolvent and the Philippine Deposit Insurance Corporation (PDIC) was designated as its receiver. Subsequently, on February 29, 2008, the PDIC entered its appearance on behalf of Bankwise.

The Ruling of this Court

The fund level commitment is a condition for Gemina's employment.

One of the points in which the LA had a conflicting resolution with the NLRC and the CA is the nature of the stipulation about the fund level commitment of ₱100,000,000.00 in Gemina's employment contract. The LA opined that the mentioned stipulation was not the basis of Gemina's employment such that he cannot be said to have breached a contractual duty when he failed to generate the stated amount of funds. If at all, it was only a measure by which Gemina's performance relative to his ability to generate deposits shall be gauged.[26] On the other hand, the NLRC believed that the fund level commitment was the main basis for Gemina's employment. It asseverated that it is the contractual duty of Gemina to fulfill the said fund level commitment considering that he was hired

[24] *Id.* at 34.

[25] *Id.* at 33.

[26] *Id.* at 48.

by Bankwise in view of his representation that he can generate said amount of funds for the latter.[27] For its part, the CA stressed that the fund level commitment to which Gemina had agreed to be bound in his contract of employment is a condition which he must fulfill. Having agreed to commit himself to generate that much amount of deposits, he cannot now complain about the impossibility of fulfillment thereof.[28]

The subject stipulation in Gemina's contract of employment states, thus:

Dear Mr. Gemina:

We are pleased to inform about your appointment effective **August 1, 2002 as Marketing Officer with the rank of Senior Manager** subject to the following terms and conditions:

1. Fund Level Commitment (ADB) from date of employment

Month 1	-	Month 6	= PHP 100 M
Month 7	-	Month 12	= PHP 200 M

Your performance relative to your ability to generate deposits shall be monitored monthly and reviewed on your 6th month.[29]

Indeed, a fund level commitment was stipulated as a term or condition on Gemina's contract of employment. Though not *per se* a ground for dismissal, it is the standard by which Gemina's performance will be evaluated by Bankwise's management. Thus, the contract states, "[y]our performance relative to your ability to generate deposits shall be monitored monthly and reviewed on your 6th month." The stated amount of funds sets the goal or target amount of funds which Gemina should strive to generate within a specific number of months.

It must be clear, however, that the fund level commitment is not the sole basis of Gemina's employment. In the same manner, the failure to comply with this undertaking does not

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[27] *Id.* at 56.

[28] *Id.* at 88-89.

[29] *Id.* at 111.

automatically lead to dismissal from employment. Gemina will still be subjected to the management's evaluation to determine his performance based on the amount of funds he was able to bring in to the coffers of Bankwise. Even then, Gemina may not conveniently brush aside compliance with the fund level commitment, thinking that it does not have any implication on employment. It bears stressing that while not an automatic ground for dismissal, the failure to generate the funds translates to a poor performance rating which may ultimately jeopardize his continued employment. Depending on the results of the periodic evaluation undertaken by the management, the failure to comply with the fund level commitment may eventually justify his dismissal from employment. Thus, Gemina must put forth all his efforts in order to fulfill his fund level commitment.

There was no constructive dismissal.

There is constructive dismissal when "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. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[30]

As correctly held by the NLRC and the CA, Gemina's claim of constructive dismissal is not supported by the facts of the case. Both tribunals ruled that the circumstances mentioned by Gemina do not partake of discriminatory acts calculated to force him to leave employment. The acts complained of merely pertain to the legitimate exercise of management prerogatives.

"[S]ettled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within

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[30] *Verdadero v. Barneys Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, 679 SCRA 545, 555, citing *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 117-118.

their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[31] "The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court."[32]

A close scrutiny of the facts of the case will bear out that Gemina indeed failed to state circumstances substantiating his claim of constructive dismissal. To begin with, he does not claim to have suffered a demotion in rank or diminution in pay or other benefits. What he claims is that he had been subjected to several acts of harassment by some of the officers of Bankwise by way of (1) asking him to take a forced leave of absence, (2) demanding for the return of his service vehicle, and (3) delaying the release of his salaries and allowances in order to compel him to quit employment.

It is a well-settled rule, however, that before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[33]

In the instant case, the records are bereft of substantial evidence that will unmistakably establish a case of constructive dismissal. An act, to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable

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[31] *Prince Transport, Inc. v. Garcia,* G.R. No. 167291, January 12, 2011, 639 SCRA 312, 324, citing *Philippine Veterans Bank v. NLRC*, G.R. No. 188882, March 30, 2010, 617 SCRA 204.

[32] *Career Philippines Shipmanagement, Inc. v. Serna,* G.R. No. 172086, December 3, 2012, 686, SCRA 676, 684, citing *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541.

[33] *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256.

for the employee to continue with his employment. Here, the circumstances relayed by Gemina were not clear-cut indications of bad faith or some malicious design on the part of Bankwise to make his working environment insufferable.

Moreover, Bankwise was able to address the allegations of harassment hurled against its officers and offered a plausible justification for its actions. It explained that the delay in the release of Gemina's salary was not intentional. It pointed out that Gemina went on leave for eleven (11) days from January 17 to 31, 2003 and reported back to work only in February. Considering that he had only worked for the company for less than six (6) months, the personnel department needed some time to compute his salary, taking into account his accrued leave credits and assessing if the same is enough to cover the number of days he went on leave. After determining that Gemina's leave of absence can be charged to his accrued leave credits, his salary was immediately credited to his account. As regards the delay in the release of his salary for February 1 to 15, 2003, it was shown that Gemina incurred absences without leave within the said payroll period and failed to submit his attendance record. The procedure for monitoring the attendance of employees on field work, like Gemina, requires the accomplishment of an attendance form, duly signed by the certifying officer and noted by their immediate supervisors.[34] However, Gemina failed to submit his attendance report promptly, hence, the delay in the release of his salary.

The Court also finds Bankwise's order to return the service vehicle assigned to Gemina inadequate to warrant his claim of constructive dismissal. It bears noting that the service vehicle was only temporarily assigned for Gemina's use. Nonetheless, it remains the property of the Bank and therefore may be disposed of or utilized by the company in the manner that it deems more beneficial for its interests. This is plainly an exercise of management prerogative. The employer's right to conduct the affairs of its business, according to its own discretion and judgment,

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[34] *Rollo,* p. 55.

is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment and the only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable.[35]

It must be noted that the service vehicle was assigned to Gemina in order to facilitate his field work. However, in January 2003, he went on official leave for almost two (2) weeks, thereby stalling his field work. Thereafter, he incurred absences without leave in the first two (2) weeks of February 2003. Believing that the service vehicle was not being put to its intended use, the management of Bankwise decided to re-assign the service vehicle to the marketing department so that it can instead be used as a car pool for the unit's increasing manpower.[36] The order to return the service vehicle came in only on February 17, 2003, after Gemina incurred absences without leave and ultimately stopped reporting for work. Even then, he refused to surrender the possession of the service vehicle and instead filed a complaint for illegal dismissal two (2) days after receiving the notice to return.

Finally, as regards Gemina's allegation that he was verbally being compelled to go on leave, enough it is to say that there was no evidence presented to prove the same. There was not a single letter or document that would corroborate his claim that he was being forced to quit employment. He even went on leave in January 2003 and never claimed that it was prompted by the management's prodding but did so out of his own volition.

Without substantial evidence to support his claim, Gemina's claim of constructive dismissal must fail. It is an inflexible rule that a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on

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[35] *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, December 15, 2010, 638 SCRA 377, 398-399.

[36] *Rollo*, p. 191.

unsubstantiated allegation cannot stand without offending due process.[37]

WHEREFORE, in view of the foregoing disquisition, the instant petition for review on *certiorari* is **DENIED**. The Decision dated July 17, 2006 and Resolution dated November 7, 2006 of the Court of Appeals in CA-G.R. SP No. 89343 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175822. October 23, 2013]

CALIFORNIA CLOTHING, INC. and MICHELLE S. YBAÑEZ, *petitioners, vs.* **SHIRLEY G. QUIÑONES,** *respondent.*

SYLLABUS

1. **CIVIL LAW; HUMAN RELATIONS; ABUSE OF RIGHTS; ELEMENTS.—** The elements of abuse of rights are as follows: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.

2. **ID.; ID.; ID.; GOOD FAITH AND MALICE OR BAD FAITH, DISTINGUISHED.—** Under the abuse of rights principle found in Article 19 of the Civil Code, a person must, in the exercise of legal right or duty, act in good faith. He would be liable if he instead acted in bad faith, with intent to prejudice another. Good faith refers to the state of mind which is manifested by

[37] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 505.

the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. Malice or bad faith, on the other hand, implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.

3. ID.; ID.; ID.; A PERSON WHO USES HIS RIGHT UNJUSTLY OR CONTRARY TO HONESTY AND GOOD FAITH OPENS HIMSELF TO LIABILITY.— It can be inferred x x x that in sending the demand letter to respondent's employer, petitioners intended not only to ask for assistance in collecting the disputed amount but to tarnish respondent's reputation in the eyes of her employer. To malign respondent without substantial evidence and despite the latter's possession of enough evidence in her favor, is clearly impermissible. A person should not use his right unjustly or contrary to honesty and good faith, otherwise, he opens himself to liability. The exercise of a right must be in accordance with the purpose for which it was established and must not be excessive or unduly harsh. In this case, petitioners obviously abused their rights.

4. ID.; DAMAGES; MORAL DAMAGES; AWARDED TO EASE THE COMPLAINANT'S GRIEF AND SUFFERING AND NOT TO ENRICH HIM.— Moral damages may be awarded whenever the defendant's wrongful act or omission is the proximate cause of the plaintiff's physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury in the cases specified or analogous to those provided in Article 2219 of the Civil Code. Moral damages are not a bonanza. They are given to ease the defendant's grief and suffering. They should, thus, reasonably approximate the extent of hurt caused and the gravity of the wrong done. They are awarded not to enrich the complainant but to enable the latter to obtain means, diversions, or amusements that will serve to alleviate the moral suffering he has undergone.

APPEARANCES OF COUNSEL

Rainero C. Roiles for petitioners.

Geraldez Suico-Le Chanco Peque Caracut-Arnibal Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Court of Appeals Decision[1] dated August 3, 2006 and Resolution[2] dated November 14, 2006 in CA-G.R. CV No. 80309. The assailed decision reversed and set aside the June 20, 2003 Decision[3] of the Regional Trial Court of Cebu City (RTC), Branch 58, in Civil Case No. CEB-26984; while the assailed resolution denied the motion for reconsideration filed by petitioner Michelle Ybañez (Ybañez).

The facts of the case, as culled from the records, are as follows:

On July 25, 2001, respondent Shirley G. Quiñones, a Reservation Ticketing Agent of Cebu Pacific Air in Lapu Lapu City, went inside the Guess USA Boutique at the second floor of Robinson's Department Store (Robinson's) in Cebu City. She fitted four items: two jeans, a blouse and a shorts, then decided to purchase the black jeans worth ₱2,098.00.[4] Respondent allegedly paid to the cashier evidenced by a receipt[5] issued by the store.[6] While she was walking through the skywalk connecting Robinson's and Mercury Drug Store (Mercury) where she was heading next, a Guess employee approached and informed her that she failed to pay the item she got. She, however, insisted

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[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 52-62.

[2] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Isaias P. Dicdican and Pampio A. Abarintos, concurring; *rollo*, pp. 70-71.

[3] Penned by Presiding Judge Gabriel T. Ingles; *rollo*, pp. 40-51.

[4] *Rollo*, pp. 52-53.

[5] Records, p. 8.

[6] *Id.* at 2.

that she paid and showed the employee the receipt issued in her favor.[7] She then suggested that they talk about it at the Cebu Pacific Office located at the basement of the mall. She first went to Mercury then met the Guess employees as agreed upon.[8]

When she arrived at the Cebu Pacific Office, the Guess employees allegedly subjected her to humiliation in front of the clients of Cebu Pacific and repeatedly demanded payment for the black jeans.[9] They supposedly even searched her wallet to check how much money she had, followed by another argument. Respondent, thereafter, went home.[10]

On the same day, the Guess employees allegedly gave a letter to the Director of Cebu Pacific Air narrating the incident, but the latter refused to receive it as it did not concern the office and the same took place while respondent was off duty.[11] Another letter was allegedly prepared and was supposed to be sent to the Cebu Pacific Office in Robinson's, but the latter again refused to receive it.[12] Respondent also claimed that the Human Resource Department (HRD) of Robinson's was furnished said letter and the latter in fact conducted an investigation for purposes of canceling respondent's Robinson's credit card. Respondent further claimed that she was not given a copy of said damaging letter.[13] With the above experience, respondent claimed to have suffered physical anxiety, sleepless nights, mental anguish, fright, serious apprehension, besmirched reputation, moral shock and social humiliation.[14] She thus filed the Complaint

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[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 3.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 4.

[14] *Id.* at 5.

for Damages[15] before the RTC against petitioners California Clothing, Inc. (California Clothing), Excelsis Villagonzalo (Villagonzalo), Imelda Hawayon (Hawayon) and Ybañez. She demanded the payment of moral, nominal, and exemplary damages, plus attorney's fees and litigation expenses.[16]

In their Answer,[17] petitioners and the other defendants admitted the issuance of the receipt of payment. They claimed, however, that instead of the cashier (Hawayon) issuing the official receipt, it was the invoicer (Villagonzalo) who did it manually. They explained that there was miscommunication between the employees at that time because prior to the issuance of the receipt, Villagonzalo asked Hawayon "*Ok na*?," and the latter replied "*Ok na*," which the former believed to mean that the item has already been paid.[18] Realizing the mistake, Villagonzalo rushed outside to look for respondent and when he saw the latter, he invited her to go back to the shop to make clarifications as to whether or not payment was indeed made. Instead, however, of going back to the shop, respondent suggested that they meet at the Cebu Pacific Office. Villagonzalo, Hawayon and Ybañez thus went to the agreed venue where they talked to respondent.[19] They pointed out that it appeared in their conversation that respondent could not recall whom she gave the payment.[20] They emphasized that they were gentle and polite in talking to respondent and it was the latter who was arrogant in answering their questions.[21] As counterclaim, petitioners and the other defendants sought the payment of moral and exemplary damages, plus attorney's fees and litigation expenses.[22]

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

[16] *Id.* at 5.

[17] *Id.* at 38-46.

[18] *Id.* at 41-42.

[19] *Id.* at 42.

[20] *Id.* at 43.

[21] *Id.*

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

On June 20, 2003, the RTC rendered a Decision dismissing both the complaint and counterclaim of the parties. From the evidence presented, the trial court concluded that the petitioners and the other defendants believed in good faith that respondent failed to make payment. Considering that no motive to fabricate a lie could be attributed to the Guess employees, the court held that when they demanded payment from respondent, they merely exercised a right under the honest belief that no payment was made. The RTC likewise did not find it damaging for respondent when the confrontation took place in front of Cebu Pacific clients, because it was respondent herself who put herself in that situation by choosing the venue for discussion. As to the letter sent to Cebu Pacific Air, the trial court also did not take it against the Guess employees, because they merely asked for assistance and not to embarrass or humiliate respondent. In other words, the RTC found no evidence to prove bad faith on the part of the Guess employees to warrant the award of damages.[23]

On appeal, the CA reversed and set aside the RTC decision, the dispositive portion of which reads:

> ***WHEREFORE***, the instant appeal is ***GRANTED***. The decision of the Regional Trial Court of Cebu City, Branch 58, in Civil Case No. CEB-26984 (for: Damages) is hereby ***REVERSED and SET ASIDE.*** Defendants Michelle Ybañez and California Clothing, Inc. are hereby ordered to pay plaintiff-appellant Shirley G. Quiñones jointly and solidarily moral damages in the amount of Fifty Thousand Pesos (₱50,000.00) and attorney's fees in the amount of Twenty Thousand Pesos (₱20,000.00).
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> ***SO ORDERED.***[24]

While agreeing with the trial court that the Guess employees were in good faith when they confronted respondent inside the Cebu Pacific Office about the alleged non-payment, the CA, however, found preponderance of evidence showing that they acted in bad faith in sending the demand letter to respondent's

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

[24] *Id.* at 61. (Italics and emphasis in the original)

employer. It found respondent's possession of both the official receipt and the subject black jeans as evidence of payment.[25] Contrary to the findings of the RTC, the CA opined that the letter addressed to Cebu Pacific's director was sent to respondent's employer not merely to ask for assistance for the collection of the disputed payment but to subject her to ridicule, humiliation and similar injury such that she would be pressured to pay.[26] Considering that Guess already started its investigation on the incident, there was a taint of bad faith and malice when it dragged respondent's employer who was not privy to the transaction. This is especially true in this case since the purported letter contained not only a narrative of the incident but accusations as to the alleged acts of respondent in trying to evade payment.[27] The appellate court thus held that petitioners are guilty of abuse of right entitling respondent to collect moral damages and attorney's fees. Petitioner California Clothing Inc. was made liable for its failure to exercise extraordinary diligence in the hiring and selection of its employees; while Ybañez's liability stemmed from her act of signing the demand letter sent to respondent's employer. In view of Hawayon and Villagonzalo's good faith, however, they were exonerated from liability.[28]

Ybañez moved for the reconsideration[29] of the aforesaid decision, but the same was denied in the assailed November 14, 2006 CA Resolution.

Petitioners now come before the Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court based on the following grounds:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE LETTER SENT TO THE CEBU PACIFIC OFFICE WAS MADE

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[25] *Id.* at 56.

[26] *Id.* at 57.

[27] *Id.* at 58.

[28] *Id.* at 61.

[29] CA *rollo*, pp. 84-90.

TO SUBJECT HEREIN RESPONDENT TO RIDICULE, HUMILIATION AND SIMILAR INJURY.

II.

THE HONORABLE COURT OF APPEALS ERRED IN AWARDING MORAL DAMAGES AND ATTORNEY'S FEES.[30]

The petition is without merit.

Respondent's complaint against petitioners stemmed from the principle of abuse of rights provided for in the Civil Code on the chapter of human relations. Respondent cried foul when petitioners allegedly embarrassed her when they insisted that she did not pay for the black jeans she purchased from their shop despite the evidence of payment which is the official receipt issued by the shop. The issuance of the receipt notwithstanding, petitioners had the right to verify from respondent whether she indeed made payment if they had reason to believe that she did not. However, the exercise of such right is not without limitations. Any abuse in the exercise of such right and in the performance of duty causing damage or injury to another is actionable under the Civil Code. The Court's pronouncement in *Carpio v. Valmonte*[31] is noteworthy:

> In the sphere of our law on human relations, the victim of a wrongful act or omission, whether done willfully or negligently, is not left without any remedy or recourse to obtain relief for the damage or injury he sustained. Incorporated into our civil law are not only principles of equity but also universal moral precepts which are designed to indicate certain norms that spring from the fountain of good conscience and which are meant to serve as guides for human conduct. First of these fundamental precepts is the principle commonly known as "abuse of rights" under Article 19 of the Civil Code. It provides that "*Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.*"x x x[32]

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[30] *Rollo*, p. 14.

[31] 481 Phil. 352 (2004).

[32] *Carpio v. Valmonte*, *supra*, at 361-362.

The elements of abuse of rights are as follows: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[33]

In this case, petitioners claimed that there was a miscommunication between the cashier and the invoicer leading to the erroneous issuance of the receipt to respondent. When they realized the mistake, they made a cash count and discovered that the amount which is equivalent to the price of the black jeans was missing. They, thus, concluded that it was respondent who failed to make such payment. It was, therefore, within their right to verify from respondent whether she indeed paid or not and collect from her if she did not. However, the question now is whether such right was exercised in good faith or they went overboard giving respondent a cause of action against them.

Under the abuse of rights principle found in Article 19 of the Civil Code, a person must, in the exercise of legal right or duty, act in good faith. He would be liable if he instead acted in bad faith, with intent to prejudice another.[34] Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another.[35] Malice or bad faith, on the other hand, implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[36]

Initially, there was nothing wrong with petitioners asking respondent whether she paid or not. The Guess employees were able to talk to respondent at the Cebu Pacific Office. The

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[33] *Dart Philippines, Inc. v. Calogcog*, G.R. No. 149241, August 24, 2009, 596 SCRA 614, 624; *Carpio v. Valmonte*, *supra* note 31, at 362.

[34] *Villanueva v. Rosqueta*, G.R. No. 180764, January 19, 2010, 610 SCRA 334, 339.

[35] *Dart Philippines, Inc. v. Calogcog*, *supra* note 33.

[36] *Gonzales v. Philippine Commercial and International Bank*, G.R. No. 180257, February 23, 2011, 644 SCRA 180, 202.

confrontation started well, but it eventually turned sour when voices were raised by both parties. As aptly held by both the RTC and the CA, such was the natural consequence of two parties with conflicting views insisting on their respective beliefs. Considering, however, that respondent was in possession of the item purchased from the shop, together with the official receipt of payment issued by petitioners, the latter cannot insist that no such payment was made on the basis of a mere speculation. Their claim should have been proven by substantial evidence in the proper forum.

It is evident from the circumstances of the case that petitioners went overboard and tried to force respondent to pay the amount they were demanding. In the guise of asking for assistance, petitioners even sent a demand letter to respondent's employer not only informing it of the incident but obviously imputing bad acts on the part of respondent. Petitioners claimed that after receiving the receipt of payment and the item purchased, respondent "was noted to hurriedly left (sic) the store." They also accused respondent that she was not completely being honest when she was asked about the circumstances of payment, thus:

> x x x After receiving the OR and the item, Ms. Gutierrez was noted to hurriedly left (*sic*) the store. x x x
>
> When I asked her about to whom she gave the money, she gave out a blank expression and told me, "I can't remember." Then I asked her how much money she gave, she answered, "₱2,100; 2 pcs 1,000 and 1 pc 100 bill." Then I told her that that would (*sic*) impossible since we have no such denomination in our cash fund at that moment. Finally, I asked her if how much change and if she received change from the cashier, she then answered, "I don't remember." ***After asking these simple questions, I am very certain that she is not completely being honest about this***. In fact, we invited [her] to come to our boutique to clear these matters but she vehemently refused saying that she's in a hurry and very busy.[37]

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[37] *Rollo*, p. 59. (Emphasis and italics in the original)

Clearly, these statements are outrightly accusatory. Petitioners accused respondent that not only did she fail to pay for the jeans she purchased but that she deliberately took the same without paying for it and later hurriedly left the shop to evade payment. These accusations were made despite the issuance of the receipt of payment and the release of the item purchased. There was, likewise, no showing that respondent had the intention to evade payment. Contrary to petitioners' claim, respondent was not in a rush in leaving the shop or the mall. This is evidenced by the fact that the Guess employees did not have a hard time looking for her when they realized the supposed non-payment.

It can be inferred from the foregoing that in sending the demand letter to respondent's employer, petitioners intended not only to ask for assistance in collecting the disputed amount but to tarnish respondent's reputation in the eyes of her employer. To malign respondent without substantial evidence and despite the latter's possession of enough evidence in her favor, is clearly impermissible. A person should not use his right unjustly or contrary to honesty and good faith, otherwise, he opens himself to liability.[38] The exercise of a right must be in accordance with the purpose for which it was established and must not be excessive or unduly harsh.[39] In this case, petitioners obviously abused their rights.

Complementing the principle of abuse of rights are the provisions of Articles 20 and 21 of the Civil Code which read:[40]

> Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals or good customs, or public policy shall compensate the latter for the damage.

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[38] *Uypitching v. Quiamco*, G.R. No. 146322, December 6, 2006, 510 SCRA 172, 179.

[39] *Dart Philippines, Inc. v. Calogcog*, *supra* note 33; *id.*

[40] *Carpio v. Valmonte*, *supra* note 31, at 362.

In view of the foregoing, respondent is entitled to an award of moral damages and attorney's fees. Moral damages may be awarded whenever the defendant's wrongful act or omission is the proximate cause of the plaintiff's physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury in the cases specified or analogous to those provided in Article 2219 of the Civil Code.[41] Moral damages are not a bonanza. They are given to ease the defendant's grief and suffering. They should, thus, reasonably approximate the extent of hurt caused and the gravity of the wrong done.[42] They are awarded not to enrich the complainant but to enable the latter to obtain means, diversions, or amusements that will serve to alleviate the moral suffering he has undergone.[43] We find that the amount of ₱50,000.00 as moral damages awarded by the CA is reasonable under the circumstances. Considering that respondent was compelled to litigate to protect her interest, attorney's fees in the amount of of ₱20,000.00 is likewise just and proper.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The Court of Appeals Decision dated August 3, 2006 and Resolution dated November 14, 2006 in CA-G.R. CV No. 80309, are **AFFIRMED.**

SO ORDERED.

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

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[41] *Id.* at 364.

[42] *Villanueva v. Rosqueta, supra* note 34, at 341.

[43] *Carpio v. Valmonte, supra* note 31, at 365.

FIRST DIVISION

[G.R. No. 179990. October 23, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DIOSDADA I. GIELCZYK,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SECTION 14(1) AND SECTION 14(2) THEREOF, DISTINGUISHED.— In *Heirs of Mario Malabanan v. Republic*, the Court further clarified the difference between Section 14(1) and Section 14(2) of P.D. No. 1529. The former refers to registration of title on the basis of **possession**, while the latter entitles the applicant to the registration of his property on the basis of **prescription**. Registration under the first mode is extended under the aegis of the P.D. No. 1529 and the Public Land Act (PLA) while under the second mode is made available both by P.D. No. 1529 and the Civil Code. Moreover, under Section 48(b) of the PLA, as amended by Republic Act No. 1472, the 30-year period is in relation to possession without regard to the Civil Code, while under Section 14(2) of P.D. No. 1529, the 30-year period involves extraordinary prescription under the Civil Code, particularly Article 1113 in relation to Article 1137.

2. ID.; ID.; ID.; SECTION 14(2); THIRTY-YEAR PERIOD OF POSSESSION; NOT COMPLIED WITH IN CASE AT BAR.— [T]he respondent failed to meet the required period of possession and occupation for purposes of prescription. From the time of the declaration on September 1, 1965 that the properties in question are purportedly alienable and disposable up to the filing of the application of the respondent on July 17, 1995, the respondent and her predecessors-in-interest had possessed and occupied the said properties for only 29 years and 10 months, short of two months to complete the whole 30-year possession period. Granting *por arguendo* that the respondent and her predecessors-in-interest had possessed and occupied the subject lots since 1948, the Court cannot still tack those years to complete the 30-year possession period since

the said lots were only declared alienable and disposable on September 1, 1965. In *Naguit*, we ruled that for as long as the land was declared alienable and disposable, the same is susceptible of prescription for purposes of registration of imperfect title. In *Lim v. Republic*, we further clarified that "while a property classified as alienable and disposable public land may be converted into private property by reason of open, continuous, exclusive and notorious possession of at least 30 years, public dominion lands become patrimonial property not only with a declaration that these are alienable or disposable but also with an express government manifestation that the property is already patrimonial or no longer retained for public use, public service or the development of national wealth. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run." While the subject lots were supposedly declared alienable or disposable on September 1, 1965 based on the Certifications of the CENRO, the respondent still failed to complete the 30-year period required to grant her application by virtue of prescription.

3. ID.; ID.; ID.; AN APPLICANT FOR A GRANT OVER A LOT MUST SHOW THAT HE HAS EXERCISED ACTS OF DOMINION OVER THE PROPERTY IN QUESTION.— [A] simple claim of "open, continuous, exclusive and notorious possession and occupation" does not suffice. An applicant for a grant or title over a lot must be able to show that he has exercised acts of dominion over the property in question. The applicant's possession must not be simply a nominal claim where he only plants a sign or symbol of possession. In other words, his possession of the property must be patent, visible, apparent, notorious and not clandestine; it should be uninterrupted, unbroken and not intermittent or occasional; it should demonstrate exclusive dominion over the land and an appropriation of it to his own use and benefit; and it should be conspicuous, which means generally known and talked of by the public or the people in the neighborhood.

4. ID.; ID.; TAX DECLARATIONS AND RECEIPTS; CANNOT BE CONSIDERED AS CONCLUSIVE EVIDENCE OF OWNERSHIP OR RIGHT OF POSSESSION OVER A PIECE OF LAND.— "Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess

land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Humility E. Sumayang for respondent.

D E C I S I O N

REYES, *J.*:

The present petition is one for review under Rule 45 of the 1997 Rules of Court. The Republic of the Philippines (petitioner) challenges the Decision[1] dated September 21, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 70078, affirming the Decision[2] of the Regional Trial Court (RTC) of Mandaue City, Branch 56, which granted the application of Diosdada I. Gielczyk (respondent) for the original registration of title of Lot Nos. 3135-A and 3136-A of Plans Csd-072219-004552 and Csd-072219-004551, both situated in Jugan, Consolacion, Cebu. The petitioner prays that the Court annuls the CA Decision dated September 21, 2007 in CA-G.R. CV No. 70078, and that it should dismiss Land Registration Commission (LRC) Case No. N-452 for utter lack of merit.[3]

Antecedent Facts

On July 17, 1995, the respondent sought the registration under her name of the lands denominated as Lot No. 3135-A and Lot No. 3136-A of Plans Csd-072219-004552 and Csd-072219-

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Antonio L. Villamor, concurring; *rollo*, pp. 28-39.

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

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

004551. Both lands were situated in Jugan, Consolacion, Cebu.

In her verified application in LRC Case No. N-452, the respondent claimed that she is the owner of the two parcels of land, which are situated, bounded and specifically described in Plans Csd-072219-004552 and Csd-072219-004551,[4] to wit:

TECHNICAL DESCRIPTIONS
Lot 2007, Cad. 545-D, identical to lot
3135-A, Csd-072219-004552
(Luisa Ceniza)

A parcel of land (lot 20047, Cad.545-D, identical to lot 3135-A, Csd-072219-004552), being a portion of lot 3135, Cad. 545-D (new), situated in the Barrio of Jugan, Municipality of Consolacion, Province of Cebu, Island of Cebu. Bounded on the NE., along line 1-2 by lot 20048 (identical to lot 3135-B, Csd-072219-004552), on the SE., along line 2-3 by Camino Vicinal Road, on the SW., along line 3-4 by lot 3126, on the NW., along line 4-1 by lot 3136, All [sic] of Cad. 545-D (New). Beginning at a point marked "1" on plan being S. 83 deg. 17'E., 1878.69 m. from BLLM No. 1, Consolacion, Cebu.

thence S. 61 deg. 20'E., 40.69 m. to point 2;
thence S. 26 deg. 14'W., 57.80 m. to point 3;
thence N. 61 deg. 26'W., 38.40 m. to point 4;
thence N. 23 deg. 59'E., 58.02 m. to point of the

beginning. Containing an area of TWO THOUSAND TWO HUNDRED EIGHTY FIVE (2,285) SQUARE METERS, more or less. All points referred to are indicated on the plan and are marked on the ground as follows; points 1 and 2 by P.S. cyl. conc. mons. 15x40 cms. and the rest are old P.S. cyl. conc. mons 15x60 cms. Bearings Grid; date of original survey July 14, 1987-November 11, 1987, and that of the subdivision survey executed by Geodetic Engineer Norvic S. Abella on November 12, 1993 and approved on May 24, 1994.[5]

TECHNICAL DESCRIPTIONS
Lot 20045, Cad. 545-D, identical to
Lot 3136-A, Csd-072219-004551
(Constancio Ceniza)

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[4] *Id.* at 41 and 46-47.

[5] *Id.* at 46.

A parcel of land (lot 20045, Cad.545-D, identical to lot 3136-A, Csd-072219-004551), being a portion of lot 3136, Cad. 545-D (New), situated in the Barrio of Jugan, Municipality of Consolacion, Province of Cebu, Island of Cebu. Bounded on the SE., along line 1-2 by lot 3135, on the SW., along line 2-3-4 by lot 3126, on the NW., along line 6-1 by lot 20046, All [sic] of Cad. 545-D (New), on the NE., along line 6-1 by lot 20046 (identical to lot 3136-B, Csd-072219-004551). Beginning at a point marked "1" on plan being S. 83 deg. 17'E., 1878.69 m. from B.L.L.M. No. 1, Consolacion, Cebu.

thence S. 23 deg. 59'W., 58.02 m. to point 2;
thence N. 65 deg. 10'W., 41.39 m. to point 3;
thence N. 35 deg. 15'W., 2.55 m. to point 4;
thence N. 20 deg. 43'E., 44.05 m. to point 5;
thence N. 20 deg. 44'E., 12.48 m. to point 6:
thence S. 65 deg. 37'E., 46.79 m. to point of the

beginning. Containing an area of TWO THOUSAND SIX HUNDRED TEN (2,610) SQUARE METERS, more or less. All points referred to are indicated on the plan and are marked on the ground as follows; points 1 and 6 by P.S. cyl. conc. mons. 15x40 cms. and the rest are old P.S. cyl. conc. mons 15x60 cms. Bearings Grid; date of original survey July 14, 1987-November 11, 1987, and that of the subdivision survey executed by Geodetic Engineer Norvic S. Abella on November 19, 1993 and approved on May 26, 1994.[6]

The respondent further alleged the following: (a) that the said parcels of land were last assessed for taxation at ₱2,400.00; (b) that to the best of her knowledge and belief, there is no mortgage nor encumbrance of any kind affecting said land, nor any person having interest therein, legal or equitable; (c) that she had been in open, complete, continuous, and peaceful possession in the concept of an owner over said parcels of land up to the present time for more than 30 years, including the possession of her predecessors-in-interest; (d) that she acquired title to said land by virtue of the deeds of absolute sale; and (e) that said land is not occupied.[7]

The respondent, as far as known to her, also alleged that the full names and complete addresses of the owners of all

[6] *Id.* at 47.

[7] *Id.* at 41 and 49-53.

lands adjoining the subject land are the following:

ADJOINING OWNERS OF LOT 3135-A:

North- Lot 3135-B owned by Mrs. Luisa Ceniza
Jugan, Consolacion, Cebu

East - Municipal Road
c/o Municipal Mayor
Consolacion, Cebu

South - Lot 3126 owned by Mr. Rene Pepito
Jugan, Consolacion, Cebu

West - Lot 3136-A owned by the applicant.

ADJOINING OWNERS OF LOT 3136-A:

North - Lot 3136-B, owned by Mr. Constancio Ceniza
Jugan, Consolacion, Cebu

East - Lot 3135-A, owned by the applicant;

South - Lot 3126, owned by Mr. Rogelio M. Pepito
Jugan, Consolacion, Cebu

West - Lot 3138, owned by Mr. Miguel Hortiguela
Jugan, Consolacion, Cebu[8]

To prove her claim, the respondent submitted the following pieces of evidence:

(a) Approved plans of Lot Nos. 3135-A and 3136-A;[9]

(b) Approved technical descriptions of the same lots;[10]

(c) Certification from the Chief, Technical Services Section, Department of Environment and Natural Resources (DENR), Region 7, Central Visayas Lands Management Services in lieu of surveyor's certificates;[11]

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[8] *Id.* at 42.

[9] *Id.* at 42 and 44-45.

[10] *Id.* at 42 and 46-47.

[11] *Id.* at 42 and 48.

(d) Latest tax declarations of the lots;[12]

(e) Latest tax clearance of the same lots;[13]

(f) Deeds of Sale in favor of the respondent;[14]

(g) Certifications from the Community Environment and Natural Resources Officer (CENRO), Cebu City, that the lots are alienable and disposable;[15] and

(h) Certification from the Chief, Records Section, DENR, Region 7, Cebu City that the same lots are not subject to public land application.[16]

Furthermore, when the respondent testified in court, her testimony sought to establish the following:

(i) That the respondent acquired Lot No. 3136-A (which is identical to Lot 20045, and is situated in Jugan, Consolacion, Cebu, with an area of 2,610 sq m), and Lot No. 3135-A (which is identical to Lot 20047, and is situated in Jugan, Consolacion, Cebu, with an area of 2,285 sq m) through purchase from Constancio Ceniza and Luisa Ceniza respectively;[17]

(ii) That the respondent was never delinquent in paying the taxes for the said lots. In fact the following tax declarations were issued for Lot No. 3136-A: Tax Dec. No. 01258 for the year 1948; Tax Dec. No. 012459 for the year 1965; Tax Dec. No. 20846 for the year 1980; Tax Dec. No. 29200 for the year 1981; Tax Dec. No. 04210 for the year 1985; and Tax Dec. No. 13275 for the year 1989; while the following tax declarations were issued for Lot No. 3135-A: Tax Dec. No. 01670 for the year 1948; Tax Dec. No. 012931 for the year 1965; Tax Dec. No. 021294 for the year 1968; Tax Dec. No. 25146 for the year 1973; Tax

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[12] *Id.* at 42 and 49-50.

[13] *Id.* at 42 and 51.

[14] *Id.* at 42 and 52-53.

[15] *Id.* at 42 and 54-55.

[16] *Id.* at 42 and 56.

[17] *Id.* at 62 and 63.

Dec. No. 01411 for the year 1974; Tax Dec. No. 20849 for the year 1980; Tax Dec. No. 04208 for the year 1985; Tax Dec. No. 13274 for the year 1989;[18]

(iii) That the said parcels of land are alienable and disposable and are not covered by subsisting public land application;[19]

(iv) That the respondent and her respective predecessors-in-interest had been in possession of Lot No. 3135-A and Lot No. 3136-A for more than 40 years in the concept of an owner, exclusively, completely, continuously, publicly, peacefully, notoriously and adversely, and no other person has claimed ownership over the same land;[20] and

(v) That the respondent is a Filipino Citizen and that despite her marriage to an American national, she has retained her Filipino citizenship.[21]

The petitioner filed an opposition dated September 18, 1995 to the respondent's application for registration of title, alleging among others:

(1) That neither the respondent nor her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto;[22]

(2) That the muniments of title and/or the tax declarations and tax payment receipts of the respondent attached to or alleged in the application do not constitute competent and sufficient evidence of a *bona fide* acquisition of the land applied for or of their open, continuous, exclusive and notorious possession and occupation thereof in the concept of an owner since June 12, 1945, or prior thereto; and that said muniments of title do not appear to be genuine and the tax declarations and/or tax

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 63.

[22] *Id.* at 58.

payment receipts indicate the pretended possession of the respondent to be of recent vintage;[23]

(3) That the respondent can no longer avail of the claim of ownership in fee simple on the basis of Spanish title or grant since she has failed to file an appropriate application for registration within the period of six months from February 16, 1976 as required by Presidential Decree (P.D.) No. 892. From the records, the petitioner further alleged that the instant application was filed on July 7, 1995;[24]

(4) That the parcel of land applied for is a portion of the public domain belonging to the petitioner and that the said parcel is not subject to private appropriation.[25]

On November 3, 1999, the RTC rendered its Decision[26] in favor of the respondent, the dispositive portion of which provides:

> WHEREFORE, from all the foregoing undisputed facts supported by oral and documentary evidence, the Court finds and so holds that the applicant has registrable title over subject lots, and the same title is hereby confirmed. Consequently, the Administrator, Land Registration Authority is hereby directed to issue Decree of Registration and Original Certificate of Title to Lots 3135-A and 3136-A [sic], both situated at Jugan, Consolacion, Cebu in the name of the applicant DIOSDADA I. GIELCZYK, 44 years old, Filipino, married to Philip James Gielczyk, American national, resident of No. 4 Noel St., UHV, Parañaque, Metro Manila, as her exclusive paraphernal property.
>
> Upon finality of this judgment, let a corresponding decree of registration and original certificate of title be issued to subject lot in accordance with Sec. 39, PD 1529.
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> SO ORDERED.[27]

Not convinced of the RTC's decision, the petitioner filed an appeal dated August 5, 2002 before the CA, which was also

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[23] *Id.* at 58-59.

[24] *Id.* at 59.

[25] *Id.*

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

[27] *Id.* at 63.

denied on September 21, 2007,[28] the dispositive portion of which provides:

WHEREFORE, the appeal is hereby ***DENIED*** and the assailed Decision ***AFFIRMED*** in its entirety.[29]

Thus, the petitioner filed the present Petition for Review under Rule 45 of the 1997 Rules of Court, raising the sole issue:

Issue

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN UPHOLDING THE RULING OF THE TRIAL COURT THAT RESPONDENT WAS ABLE TO PROVE THAT SHE AND HER PREDECESSORS-IN-INTEREST HAVE BEEN IN OPEN, COMPLETE, CONTINUOUS, NOTORIOUS, EXCLUSIVE AND PEACEFUL POSSESSION OVER THE LANDS SUBJECT OF THE APPLICATION FOR ORIGINAL REGISTRATION FOR A PERIOD OF OVER 40 YEARS THROUGH MERE TAX DECLARATIONS AND IN THE ABSENCE OF PROOF WHEN THE SUBJECT LOTS WERE DECLARED ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN.[30]

Our Ruling

It must be noted that the respondent did not file any comment on the petition despite efforts to notify her and her counsel of record. Thus, in the Resolution[31] dated March 30, 2011, this Court resolved to dispense with the respondent's comment and shall decide the instant petition based on available records.

After a thorough study of the records, the Court resolves to grant the petition.

The respondent failed to completely prove that there was an expressed

[28] *Id.* at 28-39.

[29] *Id.* at 38.

[30] *Id.* at 13.

[31] *Id.* at 123.

State declaration that the properties in question are no longer intended for public use, public service, the development of the national wealth and have been converted into patrimonial property, and to meet the period of possession and occupation required by law.

Section 14 of P.D. No. 1529 or *The Property Registration Decree* enumerates the persons who may apply for the registration of title to land, to wit:

Sec. 14. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

In the assailed decision granting the respondent's application for registration of title, the CA explained that the RTC's decision was based on Section 14(2) of P.D. No. 1529 and not on Section 14(1) of the same decree.[32] The CA said:

However, a judicious scrutiny of the attendant facts would reveal that the assailed decision of the RTC was based not on PD No. 1529,

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[32] *Id.* at 37.

Section 14(1), but under Section 14(2) of said issuance. The pertinent portion of the decision is quoted as follows:

> "From the documentary evidence presented and formally offered by the applicant, the Court is convinced that she and her predecessors-in-interest has (sic) been in open, complete, continuous, notorious, exclusive and peaceful possession over the lands herein applied for registration of title, for a period of over 40 years, in the concept of an owner and that applicant has registrable title over same lots in accordance with Sec. 14, PD 1529."

A closer scrutiny will show that the questioned decision was based on PD No. 1529, Section 14(2).

In the case of *Republic of the Philippines vs. Court of Appeals and Naguit*, it was ruled that:

> Did the enactment of the Property Registration Decree and the amendatory P.D. No. 1073 preclude the application for registration of alienable lands of the public domain, possession over which commenced only after June 12, 1945? It did not, considering Section 14(2) of the Property Registration Decree, which governs and authorizes the application of "those who have acquired ownership of private lands by prescription under the provisions of existing laws."
>
> **"Prescription is one of the modes of acquiring ownership under the Civil Code. There is a consistent jurisprudential rule that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least thirty (30) years. With such conversion, such property may now fall within the contemplation of "private lands" under Section 14(2), and thus susceptible to registration by those who have acquired ownership through prescription. Thus, even if possession of the alienable public land commenced on a date later than June 12, 1945, and such possession being been [sic] open, continuous and exclusive, then the possessor may have the right to register the land by virtue of Section 14(2) of the Property Registration Decree."**

In the instant case, applicant-appellee was able to present tax declarations dating back from 1948. Although tax declarations and realty tax payment of property are not conclusive evidence of

ownership, nevertheless, they are good *indicia* of the possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual, or at the least constructive, possession. They constitute proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests, not only one's sincere and honest desire to obtain title to the property, but it also announces his adverse claim against the State and all other interested parties, including his intention to contribute to the needed revenues of the Government. All told, such acts strengthen one's *bona fide* claim of acquisition of ownership.[33] (Citations omitted)

The Court agrees with the CA's finding that the RTC's grant of the respondent's application for registration of title was based on Section 14(2) of P.D. No. 1529 and not on Section 14(1) of the same decree. As the CA, citing *Republic of the Philippines v. Court of Appeals and Naguit*,[34] correctly explained, an applicant may apply for registration of title through prescription under Section 14(2) of P.D. No. 1529, stating that patrimonial properties of the State are susceptible of prescription and that there is a rich jurisprudential precedents which rule that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least 30 years.[35]

In *Heirs of Mario Malabanan v. Republic*,[36] the Court further clarified the difference between Section 14(1) and Section 14(2) of P.D. No. 1529. The former refers to registration of title on the basis of **possession**, while the latter entitles the applicant to the registration of his property on the basis of **prescription**. Registration under the first mode is extended under the aegis of the P.D. No. 1529 and the Public Land Act (PLA) while under the second mode is made available both by P.D. No. 1529 and the Civil Code. Moreover, under Section 48(b) of the PLA, as amended by Republic Act No. 1472, the

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

[34] 489 Phil. 405 (2005).

[35] *Rollo*, pp. 36-37.

[36] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

30-year period is in relation to possession without regard to the Civil Code, while under Section 14(2) of P.D. No. 1529, the 30-year period involves extraordinary prescription under the Civil Code, particularly Article 1113 in relation to Article 1137.[37]

Indeed, the foregoing jurisprudence clearly shows the basis of the respondent's application for registration of title. However, the petitioner argued that the respondent failed to show proof of an expressed State declaration that the properties in question are no longer intended for public use, public service, the development of the national wealth or have been converted into patrimonial property. It pointed out that the certification which the respondent submitted did not indicate when the lands applied for were declared alienable and disposable.[38]

On this point, the Court cannot completely agree with the petitioner. Indeed, the respondent attempted to show proof as to when the subject lands were declared alienable and disposable. While the RTC and the CA failed to cite the evidence which the respondent submitted, the Court cannot, in the name of substantial justice and equity, close its eyes to the September 23, 2004 *Certification* issued and signed by Fedencio P. Carreon (Carreon), OIC, CENRO, which the respondent attached in her Appellee's brief in the CA,[39] as a supplement to her earlier submissions, particularly Annex "G" and Annex "G-1" or the June 28, 1995 *Certifications* issued by Eduardo M. Inting, CENRO.[40]

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[37] *Id.* at 201-205.

Quoted hereunder for easy reference are Articles 1113 and 1137 of the CIVIL CODE OF THE PHILIPPINES, to wit:

Art. 1113. All things which are within the commerce of men are susceptible of prescription, unless otherwise provided. Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[38] *Rollo*, pp. 20-21.

[39] CA *rollo*, p. 62.

[40] *Rollo*, pp. 54-55.

Carreon's *Certification* is reproduced here:

Republic of the Philippines
Department of Environment and Natural Resources
COMMUNITY ENVIRONMENT AND
NATURAL RESOURCES OFFICE
Cebu City

23 September 2004

CENRO, Cebu City, Lands Verification
CONSTANCIO CENIZA *ET AL.* (Consolacion, Cebu)

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that per projection conducted by Forester Restituto A. Llegunas a tract of land lots 3135 and 3136, Cad 545-D(New) containing an area of FIFTEEN THOUSAND SIX HUNDRED EIGHTY SEVEN (15,687) square meters[,] more or less[,] situated at Jugan, Consolacion, Cebu as shown and described in the sketch plan at the back hereof as prepared by Geodetic Engineer Aurelio Q. Caña for CONSTANCIO CENIZA *ET AL.* **was found to be within Alienable and Disposable Block I of Land Classification Project No. 28 per L. C. Map No. 2545 of Consolacion, Cebu certified under Forestry Administrative Order No. 4-1063 dated September 1, 1965**. (Emphasis Supplied)

This is to certify further that the subject area is outside Kotkot-Lusaran Watershed Reservation per Presidential Proclamation No. 1074 dated Sept. 2, 1997.

This certification is issued upon the request of Mr. Constancio Ceniza for the purpose of ascertaining the land classification status only and does not entitle him preferential/priority rights of possession until determined by competent authorities.

FEDENCIO P. CARREON
OIC, Community Environment
& Natural Resources Officer

However, following our ruling in *Republic of the Philippines v. T.A.N. Properties, Inc.*,[41] this CENRO Certification by itself

[41] 578 Phil. 441 (2008).

is insufficient to establish that a public land is alienable and disposable. While the certification refers to Forestry Administrative Order No. 4-1063 dated September 1, 1965, the respondent should have submitted a certified true copy thereof to substantiate the alienable character of the land. In any case, the Court does not need to further discuss whether the respondent was able to overcome the burden of proving that the land no longer forms part of the public domain to support her application for original land registration because of other deficiencies in her application.

Indeed, the respondent failed to meet the required period of possession and occupation for purposes of prescription. From the time of the declaration on September 1, 1965 that the properties in question are purportedly alienable and disposable up to the filing of the application of the respondent on July 17, 1995, the respondent and her predecessors-in-interest had possessed and occupied the said properties for only 29 years and 10 months, short of two months to complete the whole 30-year possession period.

Granting *por arguendo* that the respondent and her predecessors-in-interest had possessed and occupied the subject lots since 1948, the Court cannot still tack those years to complete the 30-year possession period since the said lots were only declared alienable and disposable on September 1, 1965. In *Naguit*, we ruled that for as long as the land was declared alienable and disposable, the same is susceptible of prescription for purposes of registration of imperfect title.[42] In *Lim v. Republic*,[43] we further clarified that "while a property classified as alienable and disposable public land may be converted into private property by reason of open, continuous, exclusive and notorious possession of at least 30 years, public dominion lands become patrimonial property not only with a declaration that these are alienable or disposable but also with an express government manifestation that the property is already patrimonial or no longer retained for public use, public service or the

[42] *Supra* note 34, at 414.

[43] G.R. No. 158630, September 4, 2009, 598 SCRA 247.

development of national wealth. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run."[44]

While the subject lots were supposedly declared alienable or disposable on September 1, 1965 based on the Certifications of the CENRO, the respondent still failed to complete the 30-year period required to grant her application by virtue of prescription.

The respondent failed to present specific acts of ownership to substantiate her claim of open, continuous, exclusive, notorious and adverse possession in the concept of an owner.

The petitioner contends that the respondent failed to present specific acts of ownership to substantiate the latter's claim of open, continuous, exclusive, notorious and adverse possession in the concept of an owner. Here, the Court agrees with the petitioner's argument.

In *Roman Catholic Bishop of Kalibo, Aklan v. Municipality of Buruanga, Aklan*,[45] the Court ruled that for an applicant to *ipso jure* or by operation of law acquire government grant or vested title to a lot, he must be in open, continuous, exclusive and notorious possession and occupation of the lot.[46] In the said case, the Court clarified what it actually meant when it said "open, continuous, exclusive and notorious possession and occupation," to wit:

> The petitioner submits that even granting *arguendo* that the entire Lot 138 was not assigned to it during the Spanish regime or it is not the owner thereof pursuant to the Laws of the Indies, its open, continuous, exclusive and notorious possession and occupation of

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[44] *Id.*; *see* also *Heirs of Malabanan v. Republic*, G.R. No. 179987, September 3, 2013.

[45] 520 Phil. 753 (2006).

[46] *Id.* at 794.

Lot 138 since 1894 and for many decades thereafter vests *ipso jure* or by operation of law upon the petitioner a government grant, a vested title, to the subject property. It cites Subsection 6 of Section 54 of Act No. 926 and Subsection b of Section 45 of Act No. 2874.

This contention is likewise not persuasive.

One of the important requisites for the application of the pertinent provisions of Act No. 926 and Act No. 2874 is the "open, continuous, exclusive and notorious possession and occupation" of the land by the applicant. **Actual possession of 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.** The phrase "possession and occupation" was explained as follows:

> It must be underscored that 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 order [sic]. **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 one to qualify under paragraph (b) of the aforesaid section, his possession of the land must not be mere fiction.** As this Court stated, through then Mr. Justice Jose P. Laurel, in *Lasam v. The Director of Lands*:
>
> > x x x Counsel for the applicant invokes the doctrine laid down by us in *Ramos v. Director of Lands*. But it should be observed that the application of the doctrine of constructive possession in that case is subject to certain qualifications, and this court was careful to observe that among these qualifications is "one particularly relating to the size of the tract in controversy with reference to the portion actually in possession of the claimant." **While, therefore, "possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession," possession under paragraph 6 of Section 54 of Act No. 926, as amended by paragraph (b) of Section 45 of Act No. 2874, is not gained by mere nominal claim. The mere planting of a sign or symbol**

> **of possession cannot justify a Magellan-like claim of dominion over an immense tract of territory. Possession as a means of acquiring ownership, while it may be constructive, is not a mere fiction.** x x x.
>
> x x x xxx xxx
>
> **Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood.**
>
> **Use of land is adverse when it is open and notorious.**

Indisputably, the petitioner has been in open, continuous, exclusive and notorious possession and occupation of Lot 138-B since 1894 as evidenced by the church structure built thereon. However, the record is bereft of any evidence that would tend to show that such possession and occupation extended to Lots 138-A and 138-C beginning the same period. No single instance of the exercise by the petitioner of proprietary acts or acts of dominion over these lots was established. Its unsubstantiated claim that the construction of the municipal building as well as the subsequent improvements thereon, *e.g.*, the rural health center, Buruanga community Medicare hospital [sic], basketball court, Rizal monument and grandstand, was [sic] by its tolerance does not constitute proof of possession and occupation on its (the petitioner's) part.

Absent the important requisite of open, continuous, exclusive and notorious possession and occupation thereon since 1894, no government grant or title to Lots 138-A and 138-C had vested upon the petitioner *ipso jure* or by operation of law. Possession under paragraph 6 of Section 54 of Act No. 926, as amended by paragraph (b) of Section 45 of Act No. 2874, is not gained by mere nominal claim.[47] (Citations omitted and emphasis supplied)

In sum, a simple claim of "open, continuous, exclusive and notorious possession and occupation" does not suffice. An

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[47] *Id.* at 794-796.

applicant for a grant or title over a lot must be able to show that he has exercised acts of dominion over the property in question. The applicant's possession must not be simply a nominal claim where he only plants a sign or symbol of possession. In other words, his possession of the property must be patent, visible, apparent, notorious and not clandestine; it should be uninterrupted, unbroken and not intermittent or occasional; it should demonstrate exclusive dominion over the land and an appropriation of it to his own use and benefit; and it should be conspicuous, which means generally known and talked of by the public or the people in the neighborhood.[48]

The Court held in *Cruz v. Court of Appeals, et al.*,[49] that therein petitioners were able to show clear, competent and substantial evidence establishing that they have exercised acts of dominion over the property in question. These acts of dominion were the following:

(a) they constructed permanent buildings on the questioned lot;

(b) they collected rentals;

(c) they granted permission to those who sought their consent for the construction of a drugstore and a bakery;

(d) they collected fruits from the fruit-bearing trees planted on the said land;

(e) they were consulted regarding questions of boundaries between adjoining properties; and

(f) they religiously paid taxes on the property.[50]

However, in the present petition, the respondent failed to specifically show that she and her predecessors-in-interest had exercised acts of dominion over the subject lots. Admittedly, the respondent's best evidence to prove possession and ownership were tax declarations and receipts issued in her name or the names of her predecessors-

[48] *Id.*

[49] 182 Phil. 184 (1979).

[50] *Id.* at 195.

in-interest, but these tax declarations and receipts are not conclusive evidence of ownership or right of possession over a piece of land. "Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in- interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership."[51]

In the instant case, the respondent failed to show that she or her predecessors-in-interest have exercised acts of dominion over the said parcels of land. In fact, it was only the respondent who testified to substantiate her allegations in the application. She did not present anyone else to support her claim of "open, continuous, exclusive and notorious possession and occupation." Unfortunately, her testimony simply made general declarations without further proof, to wit:

DIRECT EXAMINATION:

Q - Mrs. Gielczyk, are you the same Diosdada Gielzcyk[,] the applicant in this case?
A - Yes.

Q - Are you familiar with [L]ots No. 3135 and 20045, both of Consolacion, Cebu?
A - Yes.

Court:

Excuse me, You can answer in English? You don't need an interpreter?
A - Yes[,] Your Honor.

Atty. Germino:

Who is the owner of these lots?
A - I am the one.

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[51] *Republic v. Manimtim*, G.R. No. 169599, March 16, 2011, 645 SCRA 520, 536, citing *Republic of the Philippines v. Dela Paz*, G.R. No. 171631, November 15, 2010, 634 SCRA 610, 623.

Q - How large is 20047?
A - It has an area of 2,286 square meters.

Q - How much is the assessed value of Lot 20047?
A - I do not think, [₱]430.00 per square meters is the assessed value reflected in the document.

Court:
Is that reflected in the tax declaration?
Atty. Germino:
Yes[,] Your Honor.

Court:
Then the tax declaration would be the best evidence.
Atty. Germino:
Q - Do you know if there are other persons who are interested whatsoever over the lots you have mentioned?
A - No sir.

Atty. Germino:
Q - Are there liens and encumbrances affecting the lots?
A - No[,] sir.

Q - Who is in possession of these lots?
A - I am in possession.

Court:
Physically? I thought you are residing in Manila?
A - Because my family is living there in Consolacion and I always come home every month. I have my parents and brothers there.

Court:
The same property?
A - Near my parents' house[,] Your Honor.

Court:
Proceed.

Atty. Germino:
Q - How long have you been in possession of the lots?
A - Including my predecessors-in-interest, for over a period of 40 years.

Q - What is the nature of your possession?
A - Adverse against the whole world, continous [sic], peaceful[,] open and uninterrupted.

Q - How did you acquire Lot 20047?
A - I purchased it from Luisa Ceniza.

Q - Do you know how did Luisa Ceniza acquire the same?
A - She inherited it from her father Remigio Ceniza.

Q - Do you have a deed of sale in your favor?
A - Yes, I have.[52]

x x x x x x x x x

Atty. Germino:
Q - You said that includ[i]ng your predecessors-in-interest, your possession including your predecessors-in-interest has been for over forty (40) years. Do you have the tax declaration of Lot 20047 since 1948 until the present?
A - Yes.

Q - Showing to you tax declaration No. 01670 in the name of the heirs of Remigio Ceniza covering land in Consolacion for the year 1948, please examine and tell the court whether that is the tax declaration of Lot 20047 for the year 1948?
A - Yes, this is the one.

x x x x x x x x x

Atty. Germino:

Q - Showing to you tax declaration No. 012931 in the name of heirs of Remigio Ceniza for the year 1965, please examine the same and tell the Honorable court what relation has that to the tax declaration of lot 20047 for the year 1965?
A - This is the same.

x x x x x x x x x

Atty. Germino:

Q - Showing to you tax declaration No. 021294 in the name of Luisa and Constancio Ceniza for the year 1968, please examine and tell the court whether that is the tax declaration of Lot 20047 for the year 1968?
A - Yes, this is the same.

x x x x x x x x x

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[52] Records, LRC Case No. N-452, pp. 83-84.

Atty. Germino:
Q - Showing to you tax declaration No. [no number was indicated in the TSN] in the name of Luisa Ceniza for the year 1963 tell the court whether that is the tax declaration for the year 1973?
A - Yes, this is the one.[53]

In the continuance of her testimony, the respondent added no further information for this Court to conclude that she indeed exercised specific acts of dominion aside from paying taxes. She testified thus:

xxx x x x xxxx

Atty. Germino:
Q - Mrs. Gielczyk, one of the last lot subject to [sic] your petition is Lot 20045, how large is this lot?
A - 2,610 square meters.

Q - How much i[s] the assess value of this lot?
A - [₱]970.00

Q - Who is in possession of this lot?
A - I am the one.

Q - How long have you been in possession?
A - Including my predecessors-in-interest is [sic] over a period of 40 years.

COURT: (to witness)
Q - Personally[,] how long have you been in possession of this property?
A - If I remember right, 1985.

ATTY. GERMINO:
Q - How did you acquire lot 20045?
A - I purchased it from Constancio Ceniza.

Q - Do you have a deed of sale in your favor?
A - Yes.

COURT:
We are talking about 3136-A?
ATTY. GERMINO:
Yes, we are through with Lot 3135?

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[53] *Id.* at 88-91.

COURT:

This is 3136-A equivalent to Lot 20045. Proceed.

ATTY. GERMINO:

I am showing to you a deed of absolute sale by Constancio Ceniza over lot 3136-A acknowledged before Notary Public Marino Martillano, as Doc. No. 2637 book 4, series of 1988, please examine this document and tell the Court if that is the deed of sale?

A - Yes.

x x x x x x x x x

Q - Are you not delinquent in the payment of taxes for lot 3136-A?

A - No, sir.

Q - Do you have a tax clearances [sic]?

A - Yes, I have.

Q - I am showing to you tax clearance issued by the municipal treasurer of Consolacion, Cebu, is that the tax clearance you referred to?

A - Yes, sir.

ATTY. GERMINO:

We ask your Honor the tax clearance be marked as double "C".

COURT:

Mark it.

x x x x x x x x x x

COURT: (to witness)

Q - You said that including your predecessor-in-interest[,] your possession of the land applied for is more than 40 years, do you have a Tax Declaration of lot 3136-A from 1948 until the present?

A - Yes.

Q - I am showing to you a bunch of Tax Declaration[,] 6 in all[,] from the (sic) year 1948, 1965, 1980, 1981, 1985 and 1989, please examine this Tax Declaration and tell us whether these are the Tax Declarations of Lot 3136-A from 1948 until the present in your name?

A - These are the ones.

ATTY. GERMINO:

We ask that the Tax Declaration in bunch be marked as Exhibit double "F" and the succeeding Tax Declaration to be marked as double "FF-1" up to double "F-5".

COURT:
Mark it.[54]

The respondent's cross-examination further revealed that she and her predecessors-in-interest have not exercised specific acts of dominion over the properties, to wit:

COURT:
Cross-examination?

FISCAL ALBURO:
May it please the Honorable Court.

COURT:
Proceed.

FISCAL ALBURO:
Q - Mrs. [G]ielczyk, how many lots are involved in this petition?
A - 2 portions.

Q - How did you acquire this lot [sic]?
A - I purchased it [sic] from Constancio Ceniza.

Q - When was that?
A - If I remember right in 1985 or 1986.

Q- In other words, you srarted [sic] possessing the property since 1985, until the present?
A- Yes.

Q- But you are not in actual occupant [sic] of the property because you are residing in Paranaque?
A- But I have a cousin in Consolacion.

Q- But you are not residing in Consolacion?
A- I used to go back and forth Cebu and Manila.

Q- Who is in charge of your property in Consolacion?
A- My brothers.

Q - In other words, your property is being taken cared of by your brothers?
A - Yes.

FISCAL ALBURO:
That is all, your Honor.

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

ATTY. GERMINO:
No redirect, your Honor.

COURT: (to witness)
By the way, where do you stay often?
A - Usually in Manila.

Q - Who takes care of the property in Mandaue City?
A - My brothers because there are coconut trees and some fruits and he watched it [sic].

Q - Who is using the coconut trees and the fruits?
A - Just for consumption, there are few coconuts.[55] (Emphasis supplied)

From the foregoing testimony of the lone witness (the applicant-respondent herself), the Court can deduce that, besides intermittently paying the tax dues on Lot No. 3135-A, the respondent did not exercise acts of dominion over it. Neither can the Court give credence to the respondent's claim that her predecessors-in-interest had exercised dominion over the property since the respondent failed to present any witness who would substantiate her allegation. The pieces of documentary evidence, specifically the tax declarations and the deeds of absolute sale, can neither be relied upon because the same revealed no indication of any improvement that would have the Court conclude that the respondent exercised specific acts of dominion. For instance, the deed of absolute sale simply said that the improvements on Lot No. 3135-A consisted of two (2) coconut trees, one (1) mango tree, one (1) *caimito* tree and one (1) jackfruit tree.[56] The tax declarations have not shown any indication supporting the respondent's claim that she exercised specific acts of dominion.[57]

As to Lot No. 3136-A, the deed of absolute sale showed that there were 14 coconut trees, eight (8) jackfruit trees, and a residential building, which was actually possessed by the vendor

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[55] *Id.* at 97-98.

[56] *Id.* at 12.

[57] *Id.* at 49-56.

Constancio Ceniza. Moreover, it was only in Tax Declaration Nos. 29200, 04210 and 13275 where it was declared that a residential building has been built in Lot No. 3136-A.[58] And based on the records, Tax Declaration No. 29200, where the residential building was first indicated, is dated 1981. It may be said then that it was only in 1981 when the respondent's predecessors-in-interest exercised specific acts of dominion over Lot No. 3136-A, the period of which consists barely of 14 years. Thus, the respondent has not completed the required 30 years of "open, continuous, exclusive and notorious possession and occupation."

Clearly, from the pieces of documentary and testimonial evidence, and considering that the respondent did not present any other witness to support her claim, the Court has no other recourse but to declare that she has not presented the premium of evidence needed to award her title over the two parcels of land.

Finally, the Court cannot end this decision without reiterating the final words of former Associate Justice Dante O. Tinga in the case of *Malabanan*.[59] Justice Tinga correctly pointed out the need to review our present law on the distribution of lands to those who have held them for a number of years but have failed to satisfy the requisites in acquiring title to such land. Justice Tinga eloquently put the matter before us, thus:

> A final word. The Court is comfortable with the correctness of the legal doctrines established in this decision. Nonetheless, discomfiture over the implications of today's ruling cannot be discounted. For, every untitled property that is occupied in the country will be affected by this ruling. The social implications cannot be dismissed lightly, and the Court would be abdicating its social responsibility to the Filipino people if we simply levied the law without comment.
>
> The informal settlement of public lands, whether declared alienable or not, is a phenomenon tied to long-standing habit and cultural

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

[59] *Supra* note 36.

acquiescence, and is common among the so-called "Third World" countries. This paradigm powerfully evokes the disconnect between a legal system and the reality on the ground. The law so far has been unable to bridge that gap. Alternative means of acquisition of these public domain lands, such as through homestead or free patent, have proven unattractive due to limitations imposed on the grantee in the encumbrance or alienation of said properties. Judicial confirmation of imperfect title has emerged as the most viable, if not the most attractive means to regularize the informal settlement of alienable or disposable lands of the public domain, yet even that system, as revealed in this decision, has considerable limits.

There are millions upon millions of Filipinos who have individually or exclusively held residential lands on which they have lived and raised their families. Many more have tilled and made productive idle lands of the State with their hands. They have been regarded for generation by their families and their communities as common law owners. There is much to be said about the virtues of according them legitimate states. Yet such virtues are not for the Court to translate into positive law, as the law itself considered such lands as property of the public dominion. **It could only be up to Congress to set forth a new phase of land reform to sensibly regularize and formalize the settlement of such lands which in legal theory are lands of the public domain before the problem becomes insoluble. This could be accomplished, to cite two examples, by liberalizing the standards for judicial confirmation of imperfect title, or amending the Civil Code itself to ease the requisites for the conversion of public dominion property into patrimonial.**

One's sense of security over land rights infuses into every aspect of well-being not only of that individual, but also to the person's family. Once that sense of security is deprived, life and livelihood are put on stasis. It is for the political branches to bring welcome closure to the long pestering problem.[60] (Citation omitted and emphasis supplied)

Indeed, the Court can only do as much to bring relief to those who, like herein respondent, wish to acquire title to a land that they have bought. It is for our lawmakers to write the

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

law amending the present ones and addressing the reality on the ground, and which this Court will interpret and apply as justice requires.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED** and the Decision dated September 21, 2007 of the Court of Appeals in CA-G.R. CV No. 70078 is **ANNULLED and SET ASIDE**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184369. October 23, 2013]

HEIRS OF FLORENTINO QUILO, NAMELY: BENJAMIN V. QUILO, JAIME V. QUILO, CELEDOÑA Q. RAMIREZ, IMELDA Q. ANCLOTE, ZENAIDA Q. BAITA, ORLANDO V. QUILO, EVANGELINE Q. PALAGANAS, ARTURO V. QUILO, and LOLITA Q. SEISMUNDO, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES-DAGUPAN BRANCH, and SPOUSES ROBERTO DEL MINDO and CARLINA DEL MINDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; QUESTIONS OF FACT ARE NOT PROPER THEREIN; EXCEPTION.— The determination of whether a person is an agricultural tenant is basically a question of fact. As a general rule, questions of fact are not

proper in a petition filed under Rule 45. Corollary to this rule, findings of fact of the CA are final, conclusive, and cannot be reviewed on appeal, provided that they are borne out by the records or based on substantial evidence. However, as we held in *Adriano v. Tanco*, when the findings of facts of the DARAB and the CA contradict each other, it is crucial to go through the evidence and documents on record as an exception to the rule.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; TENANCY RELATIONSHIP; REQUISITES.— A tenancy relationship is a juridical tie that arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land. The relationship cannot be presumed. All the requisite conditions for its existence must be proven, to wit: (1) The parties are the landowner and the tenant. (2) The subject is agricultural land. (3) There is consent by the landowner. (4) The purpose is agricultural production. (5) There is personal cultivation. (6) There is a sharing of harvests.

3. ID.; ID.; ID.; PROOF OF CONSENT IS NEEDED TO ESTABLISH TENANCY.— There is no evidence that the spouses Oliveros agreed to enter into a tenancy relationship with Quilo. His self-serving statement that he was a tenant was not sufficient to prove consent. Precisely, proof of consent is needed to establish tenancy. Independent and concrete evidence is needed to prove consent of the landowner. Although petitioners presented the Affidavits of Obillo and Bulatao, as well as the DAR Notice of Conference dated 12 September 1975, these documents merely established that Quilo occupied and cultivated the land. Specifically, the Notice of Conference and the affidavits only showed that *first*, Quilo filed a Complaint against the spouses Oliveros regarding the land he was cultivating; and *second*, the affidavits confirmed merely that Quilo had been planting on the land. These documents in no way confirm that his presence on the land was based on a tenancy relationship that the spouses Oliveros had agreed to.

4. ID.; ID.; ID.; MERE OCCUPATION OR CULTIVATION OF AN AGRICULTURAL LAND DOES NOT AUTOMATICALLY CONVERT THE TILLER INTO AN AGRICULTURAL TENANT.— Mere occupation or cultivation of an agricultural

land does not automatically convert the tiller into an agricultural tenant recognized under agrarian laws. Despite this jurisprudential rule, the DARAB chose to uphold the finding of the RARAB that there was a tenancy relationship between Quilo and the spouses Oliveros. Hence, the CA committed no error in reversing the DARAB Decision.

APPEARANCES OF COUNSEL

Villamor A. Tolete for petitioners.
Alejandro T. Tabula for Sps. Del Mindo.
Jose Manuel J. Calderon for DBP.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* of the Decision[1] dated 17 June 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 100542, which reversed and set aside the Decision[2] dated 30 September 2002 of the Regional Agrarian Reform Adjudication Board (RARAB) of Urdaneta City, Pangasinan and the Decision[3] dated 19 December 2006 of the Department of Agrarian Reform Adjudication Board (DARAB).

In reversing the RARAB and DARAB Decisions, the CA found that petitioners had failed to prove that their predecessor-in-interest was a bona fide tenant of the predecessor-in-interest of respondents; hence, petitioners cannot claim any right of redemption under Section 12 of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code.[4] The provision

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[1] *Rollo*, pp. 42-53; penned by then CA Associate Justice Jose Catral Mendoza (now a member of this Court) and concurred in by CA Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag.

[2] *Id.* at 100-106; in DARAB Case No. 1138 (Reg. Case No. 01-458-EP'91).

[3] *Id.* at 107-114; in Reg. Case No. XI-01-458-EP'91.

[4] *Id.* at 52.

gives agricultural tenants the right to redeem the landholdings they are cultivating when these are sold to a third person without their knowledge.

The facts, culled from the records, are as follows:

The spouses Emilio Oliveros and Erlinda de Guzman (spouses Oliveros) owned four parcels of land.[5] In 1966, Florentino Quilo (Quilo) started planting vegetables thereon.[6] Sometime in 1975, Quilo filed with the Department of Agrarian Reform (DAR) a Complaint against the spouses Oliveros regarding unspecified issues in their alleged agrarian relations.[7] Hence, on 12 September 1975, a Notice of Conference was sent to the spouses by a DAR Team Leader.[8] However, the Complaint did not prosper.

The spouses Oliveros later on mortgaged the parcels of land to the Development Bank of the Philippines, Dagupan City Branch (respondent bank) to secure a loan, for which they executed an Affidavit of Non-Tenancy.[9] Since they were unable to pay the loan, the mortgage was foreclosed, and the title to the landholding consolidated with respondent bank.[10]

On 15 April 1983, respondent bank sold the parcels of land to the spouses Roberto and Carlina del Mindo (respondent spouses) for ₱34,000.[11] Respondent spouses began to fence the subject landholding shortly after.[12]

Upon learning about the sale, Quilo filed a Complaint for Redemption with Damages against respondents with the Regional

[5] *Id.* at 43.

[6] *Id.*

[7] *Id.* at 113.

[8] *Id.*

[9] *Id.* at 43-44. The exact date of the mortgage transaction cannot be determined from the records.

[10] *Id.* at 43.

[11] *Id.*

[12] *Id.* at 44.

Trial Court, Branch 46, Urdaneta, Pangasinan (RTC). He alleged that as an agricultural tenant of the land, he had the preference and the priority to buy it.[13] He further said that he was ready to repurchase it, and that he had deposited with the Clerk of Court the amount of ₱34,000 and other necessary expenses as redemption price.[14]

However, on 6 May 1991, the RTC dismissed the case for lack of jurisdiction in view of the passage of Republic Act No. 6657,[15] which created the DARAB and gave the latter jurisdiction over agrarian disputes.[16] The RTC further directed the parties to litigate their case before the DARAB through the RARAB.[17] On 22 August 1992, Quilo died.[18] Hence, his heirs (petitioners) substituted for him in the pending case before the RARAB.[19] The RARAB dismissed the case "for lack of interest of the parties to proceed with the case,"[20] after which Quilo's heirs filed an appeal with the DARAB.[21]

On 29 April 1996, the DARAB promulgated a Decision granting the appeal and remanding the records of the case to the RARAB for its resolution on the merits.[22]

In the course of the trial before the RARAB, petitioners presented the records of Quilo's testimony, which was corroborated by former *Barangay* (*Brgy.*) Captain Norberto Taaca (Taaca), incumbent *Brgy.* Captain Hermogenes delos

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

[14] *Id.* at 44.

[15] Otherwise known as the Comprehensive Agrarian Reform Law of 1988.

[16] *Rollo*, p. 45.

[17] *Id.*

[18] *Id.* at 16.

[19] *Id.*

[20] *Id.* at 45.

[21] *Id.*

[22] *Id.*

Santos (Delos Santos), Rufino Bulatao (Bulatao), and Gerardo Obillo (Obillo).[23] Taaca and Delos Santos confirmed that the parcels of land in question had been tilled by Quilo and owned by the spouses Oliveros. They further swore that Quilo had delivered a share of the produce to the said spouses.[24] Bulatao and Obillo, neighbors of Quilo, testified that he had planted on the land.[25] In addition to the testimonies, the DAR Notice of Conference dated 12 September 1975 was offered as evidence.[26]

On the other hand, respondent spouses and respondent bank averred that Quilo was not a tenant, but a squatter on the land; thus, he was not entitled to redeem the property.[27] To support their claim, they presented the Affidavit of Non-Tenancy executed by the spouses Oliveros and the records of the Agrarian Reform Team. These records certified that Quilo was not an agricultural lessee of the properties, nor was the subject landholding within the scope of a leasehold or of Operation Land Transfer (OLT).[28]

The RARAB ruled for petitioners.[29] It said that Quilo was a bona fide tenant based on his testimony that he had been in possession of the land and had been cultivating it since 1975, a claim corroborated by other witnesses.[30] It also gave no weight to the Affidavit of Non-Tenancy issued by the spouses Oliveros, since it was common knowledge that landowners routinely execute such affidavits to enable them to mortgage their lands to banks.[31] Furthermore, the Certification that the subject landholding was not within the scope of an OLT was

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[23] *Id.* at 196.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 46.

[27] *Id.* at 44.

[28] *Id.* at 44-45.

[29] *Id.* at 106.

[30] *Id.* at 103-105.

[31] *Id.* at 104.

not final, because not every tenancy relationship was registered.[32] The dispositive portion of the Decision[33] dated 30 September 2002 reads:

> WHEREFORE, premises considered, judgment is hereby issued as follows:
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> 1. DECLARING the deceased complainant Florentino Quilo as the bona fide tenant of the subject landholding, hence, his heirs are entitled to the right of redemption on said land;
> 2. DECLARING that the reasonable redemption price of the said landholding is Thrity [sic] Four Thousand (₱34,000.00) pesos as appearing in the Deed of Absolute Sale;
> 3. ORDERING the spouses-respondents Roberto and Carlina del Mindo to execute a Deed of Reconveyance or Deed of Sale of subject landholding in favor of the Heirs of Florentino Quilo, the complainant.
> 4. DISMISSING the complaint with regard to respondent DBP; and
> 5. DISMISSING the ancillary claims of complainants and the counterclaims of respondents for lack of evidence and merit.
>
> SO ORDERED.[34]

Dissatisfied, respondents appealed to the DARAB, which upheld the RARAB ruling.[35] The DARAB ruled that Quilo was a tenant, because the records showed that he had been cultivating the subject landholding as early as 1975.[36] The tenancy was further bolstered by the Notice of Conference sent by DAR to the spouses Oliveros, informing them that Quilo had sought the assistance of the office regarding aspects of their agrarian relations.[37] Lastly, the DARAB said that the element

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[32] *Id.* at 104-105.

[33] *Id.* at 100-106.

[34] *Id.* at 106.

[35] *Id.* at 113.

[36] *Id.* at 112-113.

[37] *Id.* at 113.

of sharing was established, because Quilo had been depositing his lease rentals with the RTC Clerk of Court, and there were withdrawals of the deposits by respondent spouses.[38]

Undaunted, respondents filed a Rule 43 Petition for Review[39] with the CA, questioning the basis of both the RARAB and the DARAB rulings in fact and in law.[40]

The CA in its Decision[41] dated 17 June 2008 held that the RARAB and the DARAB were mistaken in finding the existence of a tenancy relationship, as the quantum of proof required for tenancy – substantial evidence — had not been successfully met.[42] It said that there was no evidence that the spouses Oliveros had given their consent to the tenancy relationship; and that although the corroborating witnesses testified that Quilo was cultivating the land, this did not necessarily mean that he was doing so as a tenant.[43] In addition, the element of sharing was not proven, because the DARAB's finding that Quilo had been depositing his lease rentals and that there had been withdrawals therefrom had no basis on the records.[44] Petitioners then filed a Motion for Reconsideration,[45] which was denied by the CA.[46]

Hence, the instant Petition[47] in which petitioners contend that a factual review by this Court is proper, because the findings of the CA are contrary to those of the DARAB and the RARAB.[48]

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[38] *Id.*

[39] *Id.* at 118-131.

[40] *Id.* at 123.

[41] *Id.* at 42-53.

[42] *Id.* at 51.

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

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

[45] *Id.* at 143-148.

[46] *Id.* at 11.

[47] *Id.* at 9-40.

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

We asked respondents to file a Comment,[49] and petitioners a Consolidated Reply[50] — requirements they both complied with.[51] The parties also filed their respective Memoranda in compliance with the Court's Resolution dated 8 July 2009.[52]

Petitioners, in their Memorandum,[53] reiterated the arguments in the earlier Petition they had filed. On the other hand, respondent bank and respondent spouses said in their respective Memoranda[54] that petitioners only raised factual issues, which were improper in a Rule 45 Petition.[55] Also, the CA's findings did not warrant a factual review as an exception to the general rule for Rule 45 Petitions.[56] According to respondents, the CA never deviated from the facts gathered and narrated by the DARAB. It merely exercised its sound judicial discretion in appreciating the facts based on existing laws and jurisprudence.[57]

The main issue before us is whether a tenancy relationship existed between Quilo and the spouses Oliveros.

We DENY the Petition.

Propriety of a Factual Review

As respondents question the propriety of a factual review of the case, the Court shall resolve this matter first.

The determination of whether a person is an agricultural tenant is basically a question of fact.[58] As a general rule, questions

[49] *Id.* at 150.

[50] *Id.* at 166.

[51] *Id.* at 162, 175.

[52] *Id.*

[53] *Id.* at 187-204.

[54] *Id.* at 177-185, 206-215.

[55] *Id.* at 181-183, 214.

[56] *Id.*

[57] *Id.*

[58] *Cornes v. Leal Realty Centrum, Co., Inc.*, G.R. No. 172146, 30 July 2008, 560 SCRA 545, 567.

of fact are not proper in a petition filed under Rule 45. Corollary to this rule, findings of fact of the CA are final, conclusive, and cannot be reviewed on appeal, provided that they are borne out by the records or based on substantial evidence.[59] However, as we held in *Adriano v. Tanco*,[60] when the findings of facts of the DARAB and the CA contradict each other, it is crucial to go through the evidence and documents on record as an exception[61] to the rule.

We now rule on the main issue.

Failure to Establish the Tenancy Relationship

A tenancy relationship is a juridical tie that arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land.[62] The relationship cannot be presumed.[63] All the requisite conditions for its existence must be proven, to wit:

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[59] *Milestone Realty and Co., Inc. v. CA,* 431 Phil. 119 (2002).

[60] G.R. No. 168164, 05 July 2010, 623 SCRA 218, citing *De Jesus v. Moldex Realty, Inc*., G.R. No. 153595, 23 November 2007, 538 SCRA 316, 320.

[61] The other recognized exceptions are (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) 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 the Court of Appeals went beyond the issues of the case in arriving at its findings, and these findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record. [*Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 (1998)]

[62] *Adriano v. Tanco*, G.R. No. 168164, 05 July 2010, 623 SCRA 218.

[63] *VHJ Construction and Development Corporation v. CA,* 480 Phil. 28 (2004).

(1) The parties are the landowner and the tenant.
(2) The subject is agricultural land.
(3) There is consent by the landowner.
(4) The purpose is agricultural production.
(5) There is personal cultivation.
(6) There is a sharing of harvests.[64]

We stress that petitioners have the burden of proving their affirmative allegation of tenancy.[65] Indeed, it is elementary that one who alleges the affirmative of the issue has the burden of proof.[66] Petitioners in the instant case failed to prove the elements of consent and sharing of harvests.

There is no evidence that the spouses Oliveros consented to a tenancy relationship with Quilo.

There is no evidence that the spouses Oliveros agreed to enter into a tenancy relationship with Quilo. His self-serving statement that he was a tenant was not sufficient to prove consent.[67] Precisely, proof of consent is needed to establish tenancy.

Independent and concrete evidence is needed to prove consent of the landowner.[68] Although petitioners presented the Affidavits of Obillo and Bulatao, as well as the DAR Notice of Conference[69] dated 12 September 1975, these documents merely established that Quilo occupied and cultivated the land.[70] Specifically, the Notice of Conference and the affidavits only showed that *first*,

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[64] *Id.*

[65] *Supra* note 63.

[66] *Id.*

[67] *Rodriguez v. Salvador,* G.R. No. 171972, 08 June 2011, 651 SCRA 429.

[68] *Supra* note 63 citing *Heirs of Nicolas Jugalbot v. Court of Appeals*, G.R. No. 170346, 12 March 2007, 518 SCRA 203, 220.

[69] *Rollo,* p. 46.

[70] *Id.* at 49.

Quilo filed a Complaint against the spouses Oliveros regarding the land he was cultivating; and *second*, the affidavits confirmed merely that Quilo had been planting on the land. These documents in no way confirm that his presence on the land was based on a tenancy relationship that the spouses Oliveros had agreed to.

Mere occupation or cultivation of an agricultural land does not automatically convert the tiller into an agricultural tenant recognized under agrarian laws.[71] Despite this jurisprudential rule, the DARAB chose to uphold the finding of the RARAB that there was a tenancy relationship between Quilo and the spouses Oliveros. Hence, the CA committed no error in reversing the DARAB Decision.

On the matter of the existence of a sharing agreement between the parties, the pieces of evidence presented by petitioners to show the sharing agreement were limited to Quilo's self-serving statement and the Affidavit of Bulatao. Bulatao was Quilo's neighbor who stated that the latter had given his share of the harvest to the spouses Oliveros.[72] These are not sufficient to prove the existence of a sharing agreement, as we have held in *Rodriguez v. Salvador*:[73]

> The affidavits of petitioners' neighbours declaring that respondent and her predecessors-in-interest received their share in the harvest are not sufficient. Petitioners should have presented receipts or any other evidence to show that there was sharing of harvest and that there was an agreed system of sharing between them and the landowners.

The CA was also on point when it said that nothing in the records supported the DARAB finding that a sharing agreement existed because of Quilo's deposited rentals with the Clerk of Court of the RTC of Urdaneta, Pangasinan, Branch 46.[74] Firstly,

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[71] *Danan v. Court of Appeals*, 510 Phil. 597 (2005).

[72] *Rollo,* pp. 195-196.

[73] G.R. No. 171972, 08 June 2011, 651 SCRA 429. See also *Berenguer, Jr. v. Court of Appeals*, G.R. No. 60287, 17 August 1988, 164 SCRA 431, 438-439.

[74] *Rollo,* pp. 50-51.

we do not see how that deposit can prove the existence of a sharing agreement between him and the spouses Oliveros. Secondly, a perusal of the findings of fact of the RARAB, as affirmed by the DARAB, reveals that there was never any allegation from any of the parties, or any finding by the RARAB, that Quilo had deposited his rentals with the branch Clerk of Court, much less, that there were withdrawals therefrom. The only mention of a deposit of any kind can be found in the RARAB Decision and Quilo's Complaint where it was merely claimed that Quilo was willing and able to pay the **redemption price** of ₱34,000, and that he had deposited the amount with the branch Clerk of Court.[75]

WHEREFORE, In view of the foregoing, we **AFFIRM *in toto*** the Decision[76] dated 17 June 2008 of the Court of Appeals in CA-G.R. SP No. 100542.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 186332. October 23, 2013]

PLANTERS DEVELOPMENT BANK, *petitioner, vs.* **SPOUSES ERNESTO LOPEZ and FLORENTINA LOPEZ, substituted by JOSEPH WILFRED JOVEN, JOSEPH GILBERT JOVEN and MARLYN JOVEN,** *respondents.*

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[75] *Id.* at 101.

[76] *Rollo,* pp. 42-53.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS; SERVICE BY REGISTERED MAIL; PRESENTATION OF AN AFFIDAVIT AND A REGISTRY RECEIPT IS NOT INDISPENSABLE IN PROVING SERVICE BY REGISTERED MAIL.—** Section 13, Rule 13 of the Rules of Court provides that if service is made by registered mail, proof shall be made by an **affidavit** of the person mailing of facts showing compliance with Section 7, Rule 13 of the Rules of Court and the **registry receipt** issued by the mailing office. **However, the presentation of an affidavit and a registry receipt is not indispensable in proving service by registered mail.** Other competent evidence, such as the certifications from the Philippine Post Office, may establish the fact and date of actual service. These certifications are direct and primary pieces of evidence of completion of service. We believe Planters Bank's assertion that its motion for reconsideration dated August 22, 2007 was filed on time. The Manila Central Post Office's certification states that the amended decision was only dispatched from the Manila Central Post Office to the Makati Central Post Office on August 2, 2007. On the other hand, the Makati Central Post Office's certification provides that Planters Bank's actual receipt of the decision was on August 7, 2007. These certifications conclusively show that Planters Bank's counsel received the amended decision on August 7, 2007 and not on August 2, 2007.

2. **ID.; ID.; JUDGMENTS; AMENDED JUDGMENT AND SUPPLEMENTAL JUDGMENT, DISTINGUISHED.—** [T]here is a difference between an *amended judgment* and a *supplemental judgment*. In an amended judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. **The amended and clarified decision is an entirely new decision which supersedes or takes the place of the original decision.** On the other hand, a supplemental decision does not take the place of the original; it only serves to add to the original decision.

3. **ID.; EVIDENCE; CONCLUSIVE PRESUMPTIONS; PRINCIPLE OF EQUITABLE ESTOPPEL; REQUISITES.—** The concurrence of the following requisites is necessary for the principle of

equitable estoppel to apply: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive, of the actual facts.

4. ID.; ID.; ID.; ID.; INACTION OR SILENCE MAY OPERATE AS AN ESTOPPEL; CASE AT BAR.— Inaction or silence may under some circumstances amount to a misrepresentation, so as to raise an equitable estoppel. When the silence is of such a character and under such circumstances that it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent. The principle of equitable estoppel prevents Planters Bank from raising the spouses Lopez's violation of the loan agreement. Planters Bank was already aware that the spouses Lopez were building six floors as early as September 30, 1983. Records disclose that Planters Bank also conducted a series of ocular inspections. Despite such knowledge, the bank kept silent on the violation of the loan agreement as Planters Bank still continued to release the loan in partial amounts to the spouses Lopez. As the CA correctly pointed out, Planters Bank only raised this argument during trial – a move that highly appears to be an afterthought.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RESCISSION; NOT PERMITTED FOR SLIGHT OR CASUAL BREACH OF CONTRACT.— Planters Bank indeed incurred in delay by not complying with its obligation to make further loan releases. Its refusal to release the remaining balance, however, was merely a **slight or casual breach** x x x. In other words, its breach was not sufficiently fundamental to defeat the object of the parties in entering into the loan agreement. The well-settled rule is that rescission will not be permitted for a slight or casual breach of the contract. The question of whether a breach of contract is substantial depends upon the attending circumstances.

6. ID.; ID.; ID.; CANNOT TAKE PLACE WHEN THE THINGS WHICH ARE THE OBJECT OF THE CONTRACT ARE LEGALLY IN THE POSSESSION OF THIRD PERSONS WHO DID NOT ACT IN BAD FAITH.— Even assuming that Planters Bank substantially breached its obligation, the fourth paragraph of Article 1191 of the Civil Code expressly provides that rescission is without prejudice to the rights of third persons who have acquired the thing, in accordance with Article 1385 of the Civil Code. In turn, Article 1385 states that **rescission cannot take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith**. In the present case, the mortgaged properties had already been foreclosed. They were already sold to the highest bidder at a public auction. We recognize that transferees *pendente lite* are proper, but not indispensable, parties in this case, as they would, in any event, be bound by the judgment against Planters Bank. However, the respondents did not overcome the presumption that the buyers bought the foreclosed properties in good faith. The spouses Lopez did not cause the annotation of notice of *lis pendens* at the back of the title of the mortgaged lot. Moreover, the respondents did not adduce any evidence that would show that the buyers bought the property with actual knowledge of the pendency of the present case.

7. ID.; ID.; RECIPROCAL OBLIGATIONS; THE OBLIGATION OR PROMISE OF EACH PARTY IS THE CONSIDERATION FOR THAT OF THE OTHER IN RECIPROCAL OBLIGATIONS.— Planters Bank and the spouses Lopez undertook reciprocal obligations when they entered into a loan agreement. In reciprocal obligations, the obligation or promise of each party is the consideration for that of the other. The mere pecuniary inability of one contracting party to fulfill an engagement does not discharge the other contracting party of the obligation in the contract. Planters Bank's slight breach does not excuse the spouses Lopez from paying the overdue loan in the amount of ₱3,500,000.00.

8. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL THROWS THE ENTIRE CASE OPEN FOR REVIEW.— [A]n appeal throws the entire case open for review once accepted by this Court. This Court has thus the authority to review matters not specifically raised or assigned as error by the parties,

if their consideration is necessary in arriving at a just resolution of the case.

9. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MUTUALITY OF CONTRACTS; THE VALIDITY OF OR COMPLIANCE TO THE CONTRACT CANNOT BE LEFT TO THE WILL OF ONE PARTY.— In the present case, Planters Bank *unilaterally* increased the monetary interest rate to 32% p.a. after the execution of the third amendment to the loan agreement. This is patently violative of the element of mutuality of contracts. Our Civil Code has long entrenched the basic principle that the validity of or compliance to the contract cannot be left to the will of one party.

10. ID.; ID.; INTEREST RATES; WHEN THE AGREED INTEREST RATE IS INIQUITOUS, IT IS CONSIDERED AS CONTRARY TO MORALS, IF NOT AGAINST THE LAW AND IS CONSIDERED VOID.— Even if we disregard the 32% p.a., the interest rate of 27% p.a. in the third amended agreement is still excessive. In *Trade & Investment Dev't. Corp. of the Phil. v. Roblett Industrial Construction Corp.*, we lowered the interest resulting charge for being excessive **in the context of its computation period**. We equitably reduced the interest rate from 18% p.a. to 12% p.a. because the case was decided with finality *sixteen years* after the filing of the complaint. We noted that the amount of the loan *swelled to a considerably disproportionate sum*, far exceeding the principal debt. A parallel situation prevails in the present case. Almost *29 years* have elapsed since the filing of the complaint in 1984. The amount of the principal loan already ballooned to an exorbitant amount unwarranted in fact and in operation. While the Court recognizes the right of the parties to enter into contracts, this rule is not absolute. We are allowed to temper interest rates when necessary. We have thus ruled in several cases that when the agreed rate is iniquitous, it is considered as contrary to morals, if not against the law. Such stipulation is void. The manifest unfairness caused to the respondents by this ruling and our sense of justice dictate that we judiciously reduce the monetary interest rate. Our imposition of the lower interest rate is based on the demands of substantial justice and in the exercise of our equity jurisdiction. We thus equitably reduce the monetary interest rate to 12% p.a. on the amount due computed from June 22, 1984 until full payment of the obligation.

11. ID.; ID.; ID.; COMPENSATORY INTEREST; HOW COMPUTED IN CASE AT BAR.— With respect to the computation of compensatory interest, Section 1 of Bangko Sentral ng Pilipinas (BSP) Circular No. 799, Series of 2013, which took effect on July 1, 2013, provides: "Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be **six percent (6%) per annum**." This provision amends Section 2 of Central Bank *(CB)* Circular No. 905-82, Series of 1982, which took effect on January 1, 1983. Notably, we recently upheld the constitutionality of CB Circular No. 905-82 in *Advocates for Truth in Lending, Inc., et al. v. Bangko Sentral ng Pilipinas Monetary Board, etc.* Section 2 of CB Circular No. 905-82 provides: "Section 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be **twelve [percent] (12%) per annum**." Pursuant to these changes, this Court modified the guidelines in *Eastern Shipping Lines, Inc. v. Court of Appeals* in the case of *Dario Nacar v. Gallery Frames, et al. (Nacar)*. x x x Since we declare void the monetary interest agreed upon by the parties, we impose a compensatory interest of 12% p.a. which accrues from June 22, 1984 until June 30, 2013, pursuant to CB Circular No. 905-82. x x x June 22, 1984 is the spouses Lopez's established date of default. In recognition of the prospective application of BSP Circular No. 799, we reduce the compensatory interest of 12% p.a. to 6% p.a. from July 1, 2013 until the finality of this Decision. Furthermore, the interest due shall earn legal interest from the time it is judicially demanded, pursuant to Article 2212 of the Civil Code. x x x Also, pursuant to the above-quoted Section 1 of BSP Circular No. 799, we impose an interest rate of 6% p.a. from the finality of this Decision until the obligation is fully paid, the interim period being deemed equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Domingo Dizon Leonardo & Rodillas for petitioner.
Stephen L. Monsanto for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Planters Development Bank *(Planters Bank)* to challenge the July 30, 2007 amended decision[2] and the February 5, 2009 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 61358.

The Factual Antecedents

Sometime in 1983, the spouses Ernesto and Florentina Lopez applied for and obtained a real estate loan in the amount of ₱3,000,000.00 from Planters Bank. The loan was intended to finance the construction of a *four-story concrete dormitory building*. The **loan agreement**[4] dated May 18, 1983 provided that the loan is payable for fourteen (14) years and shall bear a monetary interest at twenty-one percent (21%) per annum *(p.a.). Furthermore, partial drawdowns on the loan shall be based on project completion, and shall be allowed upon submission of job accomplishment reports by the project engineer.* To secure the payment of the loan, the spouses Lopez **mortgaged** a parcel of land covered by Transfer Certificate of Title No. T-16233.[5]

On July 21, 1983, the parties signed an **amendment to the loan agreement**. Accordingly, the interest rate was increased to twenty-three percent (23%) p.a. and the term of the loan

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[1] Dated February 24, 2009 and filed under Rule 45 of the Rules of Court; *rollo*, pp. 3-30.

[2] *Id.* at 34-65; penned by Presiding Justice Ruben T. Reyes, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S. E. Veloso.

[3] *Id.* at 67-69; penned by Associate Justice Arturo G. Tayag, and concurred in by Associate Justices Martin S. Villarama, Jr. and Noel G. Tijam.

[4] *Id.* at 76-85.

[5] *Id.* at 86-87.

was shortened to three years.[6] On March 9, 1984, the parties executed a **second amendment to the loan agreement**. The interest rate was further increased to twenty-five percent (25%) p.a. The contract also provided that releases on the loan shall be subject to Planters Bank's availability of funds.[7]

Meanwhile, the Philippine economy deteriorated as the political developments in the country worsened. The value of the peso plunged. The price of the materials and the cost of labor escalated.[8] Eager to finish the project, the spouses Lopez obtained an additional loan in the amount of ₱1,200,000.00 from Planters Bank.

On April 25, 1984, they entered into a **third amendment to the loan agreement**. The amount of the loan and the interest rate were increased to ₱4,200,000.00 and twenty-seven percent (27%) p.a., respectively. Furthermore, the term of the loan was shortened to one year. The contract also provided that the remaining loan shall only be available to the spouses Lopez until June 30, 1984.[9] On the same date, the spouses Lopez **increased the amount secured by the mortgage** to ₱4,200,000.00. [10] On August 15, 1984, Planters Bank unilaterally increased the interest rate to thirty-two percent (32%) p.a.[11]

The spouses Lopez failed to avail the full amount of the loan because Planters Bank refused to release the remaining amount of ₱700,000.00. On October 13, 1984, the spouses Lopez filed against Planters Bank a complaint for rescission of the loan agreements and for damages with the Regional Trial Court *(RTC)* of Makati City.[12] They alleged that they could not continue the construction of the dormitory building because Planters Bank had refused to release the remaining loan balance.

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[6] *Id.* at 91-93.

[7] *Id.* at 96-98.

[8] RTC *rollo*, Volume 3, p. 29.

[9] *Rollo*, pp. 99-103.

[10] *Id.* at 94-95.

[11] *Id.* at 39.

[12] RTC *rollo*, Volume 1, pp. 1-11.

In defense, Planters Bank argued that the spouses Lopez had no cause of action. It pointed out that its refusal to release the loan was the result of the spouses Lopez's violations of the loan agreement, namely: (1) non-submission of the accomplishment reports; and (2) construction of a six-story building. As a counterclaim, Planters Bank prayed for the payment of the overdue released loan in the amount of ₱3,500,000.00, with interest and damages.[13]

On November 16, 1984, Planters Bank foreclosed the mortgaged properties in favor of third parties after the spouses Lopez defaulted on their loan.[14]

The RTC Ruling

In a decision[15] dated August 18, 1997, the RTC ruled in Planters Bank's favor. It held that the spouses Lopez had no right to rescind the loan agreements because they were not the injured parties. It maintained that the spouses Lopez violated the loan agreement by failing to submit accomplishment reports and by deviating from the construction project plans. It further declared that rescission could not be carried out because the mortgaged properties had already been sold in favor of third parties. The dispositive portion of the RTC decision provides:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the plaintiffs to pay the defendant-bank the amount of Three Million Five Hundred Thousand Pesos (₱3,500,000.00) plus the 27% stipulated interest per annum commencing on **June 22, 1994** until fully paid minus the proceeds of the foreclosed mortgaged property in the auction sale.[16] (emphasis ours)

Subsequently, the RTC amended[17] its decision, upon Planters Bank's filing of a Motion for Partial Reconsideration and/or

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[13] *Id.* at 19-27.

[14] *Rollo*, p. 104.

[15] *Id.* at 161-165; penned by Judge Eriberto Rosario, Jr.

[16] *Id.* at 164-165.

[17] *Id.* at 172-173.

Amendment of the Decision dated August 18, 1997.[18] It clarified that the interest rate shall commence on June 22, 1984, as proven during trial, thus:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the plaintiffs to pay the defendant-bank the amount of Three Million Five Hundred Thousand Pesos (₱3,500,000.00) plus the 27% stipulated interest per annum commencing on **June 22, 1984** until fully paid minus the proceeds of the foreclosed mortgaged property in the auction sale.[19] (emphasis ours)

CA Ruling

The spouses Lopez died during the pendency of the case. On appeal to the CA, compulsory heirs Joseph Wilfred, Joseph Gilbert and Marlyn, all surnamed Joven[20] *(respondents)* substituted for the deceased Florentina Lopez.

On November 27, 2006, the CA reversed the RTC ruling.[21] It held that Planters Bank's refusal to release the loan was a substantial breach of the contract. It found that the spouses Lopez submitted accomplishment reports. It gave weight to Engineer Edgard Fianza's testimony that he prepared accomplishment reports prior to the release of the funds. Moreover, Planters Bank's appraisal department head, Renato Marayag, testified that accomplishment reports were a prerequisite for the release of the loan.

It also declared that Planters Bank was estopped from raising the issue of the spouses Lopez's deviation from the construction project. Planters Bank conducted several ocular inspections of the building from 1983 to 1987. Planters Bank continuously released partial amounts of the loan despite its knowledge of the construction of a six-story building.

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[18] *Id.* at 166-171.

[19] *Id.* at 173.

[20] CA *rollo*, p. 116.

[21] *Rollo*, pp. 175-203.

It further concluded that Planters Bank did not release the loan because the Development Bank of the Philippines *(DBP)* lacked funds. Ma. Agnes Jopson Angeles, Planters Bank's senior accountant for the marketing group, testified that Planters Bank's source of funds in real estate loans was DBP. According to the CA, Angeles admitted DBP's non-availability of funds in her testimony. The dispositive ruling of the CA decision provides:

> WHEREFORE, the appealed Decision is MODIFIED in that the loan interest to be paid by plaintiff-appellant to defendant-appellee is hereby reduced to 12% per annum computed from finality of this Decision until full payment of the amount of ₱3.5 million, minus the proceeds of auction sale of the foreclosed mortgaged property.[22]

Subsequently, the respondents filed a motion for reconsideration. They sought clarification of the dispositive portion which does not declare the rescission of the loan and accessory contracts. On the other hand, Planters Bank filed a Comment on March 2, 2007, praying for the reinstatement of the RTC ruling. The CA **re-examined** the case and treated the comment as a motion for reconsideration. It affirmed its previous decision but modified the dispositive portion, thus:

> ACCORDINGLY, defendant-appellee's motion for reconsideration is **DENIED** while plaintiffs-appellants' motion for reconsideration is **PARTLY GRANTED**. The dispositive part of Our Decision dated November 27, 2006 is hereby clarified and corrected to read as follows:
>
> **WHEREFORE**, the appealed Decision is **REVERSED and SET ASIDE.** The loan agreement between the parties, including all its accessory contracts, is declared RESCINDED.
>
> Plaintiffs-appellants are ordered to return to defendant-appellee bank the amount of ₱2,885,830.56 with interest of twelve percent (12%) per annum from the time this Decision becomes final and executory until it is fully paid.
>
> Defendant-appellee bank is ordered to convey and restore to plaintiffs-appellants the foreclosed property.[23] (emphases and underscores supplied)

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[22] *Id.* at 202.

[23] *Rollo,* pp. 64-65.

The CA also denied Planters Bank's Motion for Reconsideration dated August 22, 2007, prompting it to file the present petition.

The Petitioner's Position

Planters Bank reiterates in its petition before this Court that the respondents had no cause of action. It posits that the spouses Lopez violated the loan agreements for their failure to submit accomplishment reports and by constructing a six-story building instead of a four-story building. It maintains that there was no estoppel because only one year and twenty days have elapsed from the violation of the contract until the spouses Lopez's filing of the complaint. It argues that there must be an unjustifiable neglect for an unreasonable period of time for estoppel to apply. It also avers that even assuming that it breached the contract, it was only a slight breach because only ₱700,000.00 of the ₱4,200,000.00 loan was not released. Moreover, it highlights that it cannot convey the foreclosed properties because they were already sold to third parties.[24]

Planters Bank also clarifies its date of receipt of the CA amended decision in a Manifestation dated March 13, 2009.[25] It states that it received the amended decision on August 7, 2007, as evidenced by the attached certifications from the Makati and Manila Central Post Offices.

The Respondents' Position

In their *Comments*,[26] the respondents reiterate the CA's arguments. They also assert that the amended decision has already become final and executory due to Planters Bank's belated filing of a motion for reconsideration on August 22, 2007. They point out that Planters Bank unequivocably stated in the pleadings that it received a copy of the amended decision on August 2, 2007. Furthermore, they aver that Planters Bank's motion for reconsideration is a second motion for reconsideration disallowed by the Rules of Court. They highlight that Planters

[24] *Supra* note 1.

[25] *Rollo,* pp. 221-225.

[26] *Id.* at 270-282.

Bank's comment to the respondents' motion for reconsideration sought the reinstatement of the RTC ruling. Consequently, the comment is Planters Bank's first motion for reconsideration.

The Issues

This case presents to us the following issues:

1) Whether the CA's amended decision dated July 30, 2007 is final and executory;

2) Whether the spouses Lopez violated the loan agreement;

   a) Whether the spouses Lopez submitted accomplishment reports, and

   b) Whether the spouses Lopez deviated from the construction project;

3) Whether Planters Bank substantially breached the loan agreement; and

4) Whether the amount of awards rendered by the CA is proper.

The Court's Ruling

We reverse the CA's decision.

The CA's amended decision dated July 30, 2007 is not yet final and executory

Section 13, Rule 13 of the Rules of Court provides that if service is made by registered mail, proof shall be made by an **affidavit** of the person mailing of facts showing compliance with Section 7, Rule 13 of the Rules of Court and the **registry receipt** issued by the mailing office. **However, the presentation of an affidavit and a registry receipt is not indispensable in proving service by registered mail.** Other competent evidence, such as the certifications from the Philippine Post Office, may establish the fact and date of actual service. These certifications are direct and primary pieces of evidence of completion of service. [27]

[27] *Cortes v. Valdellon, etc., et al.*, 162 Phil. 745, 753 (1976).

We believe Planters Bank's assertion that its motion for reconsideration dated August 22, 2007 was filed on time. The Manila Central Post Office's certification states that the amended decision was only dispatched from the Manila Central Post Office to the Makati Central Post Office on August 2, 2007.[28] On the other hand, the Makati Central Post Office's certification provides that Planters Bank's actual receipt of the decision was on August 7, 2007.[29] These certifications conclusively show that Planters Bank's counsel received the amended decision on August 7, 2007 and not on August 2, 2007.

There is also no merit to the respondents' argument that Planters Bank's motion for reconsideration is disallowed under Section 2, Rule 52 of the Rules of Court.[30] We point out in this respect that there is a difference between an *amended judgment* and a *supplemental judgment*. In an amended judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. **The amended and clarified decision is an entirely new decision which supersedes or takes the place of the original decision.** On the other hand, a supplemental decision does not take the place of the original; it only serves to add to the original decision.[31]

In the present case, the CA promulgated an *amended decision* because it re-examined its factual and legal findings in its original decision. Thus, Planters Bank may file a motion for reconsideration. The amended decision is an entirely *new decision* which replaced the CA's decision dated November 27, 2006.

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[28] *Rollo,* p. 260.

[29] *Id.* at 259.

[30] Section 2, Rule 52 of the Rules of Court provides:

Section 2. *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. [italics supplied]

[31] *Magdalena Estate, Inc. v. Hon. Caluag and Nava,* 120 Phil. 338, 342 (1964); and *Lee v. Trocino,* G.R. No. 164648, June 19, 2009, 590 SCRA 32, 37.

In sum, the amended decision is not yet final and executory because Planters Bank filed a motion for reconsideration on time; its filing is allowed by the Rules of Court.

The spouses Lopez submitted accomplishment reports

We see no reason to disturb the CA's finding that the spouses Lopez religiously submitted accomplishment reports. The evidence on record[32] shows that Engr. Fianza submitted accomplishment reports from November 19, 1983 until June 9, 1984. Engr. Fianza also testified that he prepared these accomplishment reports.[33] His testimony is corroborated by the testimony of Marayag, Planters Bank's appraisal department head.[34] This latter testimony shows that the spouses Lopez indeed submitted accomplishment reports.

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[32] CA *rollo*, Volume 3, pp. 59-60, 67-69.

[33] TSN, September 8, 1986, p. 13.

[34] TSN, February 2, 1988, pp. 7-14 -

Q: What about the other documents you showed us?

A: I am familiar with this Progress Report.

Q: Specifically, what document are you referring to? I noted that these are xerox copies, who had that xeroxed, will you tell the Court?

A: Our policy then at Credit Department is we required (sic) the borrower to submit a copy of progress report to be prepared by the Engineer.

x x x x x x x x x

Court: In other words, the Court will assume that the originals are in the possession of the bank.

Atty. Cruz: **Yes, Your Honor, we admit.**

Atty. Monsanto: **Now, you mentioned progress reports. How many progress reports do you have in your possession?**

x x x x x x x x x

A: **Three (3). The first one is the Bill of Materials.**

x x x x x x x x x

Atty. Monsanto: At the time of the submission of these reports where were you connected then?

A: I was then the Head of the Appraisal Department.

x x x x x x x x x

Planters Bank is estopped from opposing the spouses Lopez's deviation from the construction project

We also affirm the CA's finding that Planters Bank is estopped from opposing the spouses Lopez's construction of a six-story building. Section 2, Rule 131 of the Rules of Court provides that whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe that a particular thing is true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

The concurrence of the following requisites is necessary for the principle of equitable estoppel to apply: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive, of the actual facts.

Q: I see. As Head of the Appraisal Department…By the way, what is the job of the Appraisal Department?

A: **Primarily, assistance to account of officers in terms of loan managing and for disposal of assets.**

Q: **There be any project in progress what do you do as head of the Department of Appraisal?**

A: **We require the borrower to submit a Progress Report.**

Q: **That is Standard Operating Procedure?**

A: **Yes.**

Q: **How often do you normally require the submission of progress reports?**

A: **Everytime the client request[s] for a release.**

Q: **Before any further release is made by the bank there is a progress report required and it is only upon the submission of this progress report and upon your satisfaction that you release funds to the client, is that correct?**

A: **That is right.** [emphases ours]

Inaction or silence may under some circumstances amount to a misrepresentation, so as to raise an equitable estoppel. When the silence is of such a character and under such circumstances that it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent.

The principle of equitable estoppel prevents Planters Bank from raising the spouses Lopez's violation of the loan agreement. Planters Bank was already aware that the spouses Lopez were building six floors as early as September 30, 1983. Records disclose that Planters Bank also conducted a series of ocular inspections.[35] Despite such knowledge, the bank kept silent on the violation of the loan agreement as Planters Bank still continued to release the loan in partial amounts to the spouses Lopez. As the CA correctly pointed out, Planters Bank only raised this argument during trial – a move that highly appears to be an afterthought.

Planters Bank only committed a slight or casual breach of the contract

Despite our affirmation of the CA's factual findings, we disagree with the CA's conclusion that rescission is proper. Planters Bank indeed incurred in delay by not complying with its obligation to make further loan releases.[36] Its refusal to release

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[35] RTC *rollo*, Volume 3, pp. 157-159, 163-172.

[36] Article 1169 of the Civil Code provides:

Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

the remaining balance, however, was merely a **slight or casual breach** as shown below. In other words, its breach was not sufficiently fundamental to defeat the object of the parties in entering into the loan agreement. The well-settled rule is that rescission will not be permitted for a slight or casual breach of the contract. The question of whether a breach of contract is substantial depends upon the attending circumstances.[37]

The factual circumstances of this case lead us to the conclusion that Planters Bank substantially complied with its obligation. To reiterate, Planters Bank released ₱3,500,000.00 of the ₱4,200,000.00 loan. Only the amount of ₱700,000.00 was not released. This constitutes 16.66% of the entire loan. Moreover, the progress report dated May 30, 1984 states that 85% of the six-story building was already completed by the spouses Lopez.[38] It is also erroneous to solely impute the non-completion of the building to Planters Bank. *Planters Bank is not an insurer of the building's construction*. External factors, such as the steep price of the materials and the cost of labor, affected the erection of the building. More importantly, the spouses Lopez took the risk that the project would not be finished when they constructed a six-story building instead of four-story structure.

Even assuming that Planters Bank substantially breached its obligation, the fourth paragraph of Article 1191 of the Civil Code expressly provides that rescission is without prejudice to the rights of third persons who have acquired the thing, in

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (1100a)

[37] *Ang v. Court of Appeals*, 252 Phil. 292, 303 (1989).

[38] *RTC rollo*, Volume 3, p. 167.

accordance with Article 1385 of the Civil Code. In turn, Article 1385 states that **rescission cannot take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith**.

In the present case, the mortgaged properties had already been foreclosed. They were already sold to the highest bidder at a public auction. We recognize that transferees *pendente lite* are proper, but not indispensable, parties in this case, as they would, in any event, be bound by the judgment against Planters Bank.[39] However, the respondents did not overcome the presumption that the buyers bought the foreclosed properties in good faith.[40] The spouses Lopez did not cause the annotation of notice of *lis pendens* at the back of the title of the mortgaged lot.[41] Moreover, the respondents did not adduce any evidence that would show that the buyers bought the property with actual knowledge of the pendency of the present case.

Furthermore, the spouses Lopez's failure to pay the overdue loan made them parties in default, not entitled to rescission under Article 1191 of the Civil Code.

The estate of Florentina Lopez shall pay Planters Bank the amount of ₱3,500,000.00 with 12% monetary interest p.a. from June 22, 1984 until full payment of the obligation

Planters Bank and the spouses Lopez undertook reciprocal obligations when they entered into a loan agreement. In reciprocal obligations, the obligation or promise of each party is the consideration for that of the other. The mere pecuniary inability of one contracting party to fulfill an engagement does not discharge the other contracting party of the obligation in the contract.[42]

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[39] *Santiago Land Dev't. Corp. v. CA*, 334 Phil. 741, 747-749 (1997).

[40] RULES OF COURT, Section 2(p), Rule 131.

[41] *Id.*, Section 14, Rule 13.

[42] *Central Bank of the Phil. v. Court of Appeals*, 223 Phil. 266, 273 (1985).

Planters Bank's slight breach does not excuse the spouses Lopez from paying the overdue loan in the amount of ₱3,500,000.00. **Despite this finding, however, we cannot sustain the imposition of the interest rate in the loan contract.**

We are aware that the parties did not raise this issue in the pleadings. However, it is a settled rule that an appeal throws the entire case open for review once accepted by this Court. This Court has thus the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[43]

In the present case, Planters Bank *unilaterally* increased the monetary interest rate to 32% p.a. after the execution of the third amendment to the loan agreement. This is patently violative of the element of mutuality of contracts. Our Civil Code has long entrenched the basic principle that the validity of or compliance to the contract cannot be left to the will of one party.[44]

Even if we disregard the 32% p.a., the interest rate of 27% p.a. in the third amended agreement is still excessive. In *Trade & Investment Dev't. Corp. of the Phil. v. Roblett Industrial Construction Corp.*,[45] we lowered the interest resulting charge for being excessive **in the context of its computation period**. We equitably reduced the interest rate from 18% p.a. to 12% p.a. because the case was decided with finality *sixteen years* after the filing of the complaint. We noted that the amount of the loan *swelled to a considerably disproportionate sum*, far exceeding the principal debt.

A parallel situation prevails in the present case. Almost *29 years* have elapsed since the filing of the complaint in 1984.

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[43] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 199, citing *Sociedad Europea de Financiacion SA v. CA*, G.R. No. 75787, January 21, 1991,193 SCRA 105, 114.

[44] Article 1308 of the Civil Code provides:

Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

[45] 523 Phil. 362, 367 (2006).

The amount of the principal loan already ballooned to an exorbitant amount unwarranted in fact and in operation. While the Court recognizes the right of the parties to enter into contracts, this rule is not absolute. We are allowed to temper interest rates when necessary. We have thus ruled in several cases that when the agreed rate is iniquitous, it is considered as contrary to morals, if not against the law. Such stipulation is void.[46]

The manifest unfairness caused to the respondents by this ruling and our sense of justice dictate that we judiciously reduce the monetary interest rate. Our imposition of the lower interest rate is based on the demands of substantial justice and in the exercise of our equity jurisdiction.

We thus equitably reduce the monetary interest rate to 12% p.a. on the amount due computed from June 22, 1984 until full payment of the obligation. We point out in this respect that the monetary interest accrues under the terms of the loan agreement until actual payment is effected[47] for the reason that its imposition is based on the stipulation of the parties.[48] In the present case, the lower courts found that the monetary interest accrued on June 22, 1984. Incidentally, the lower courts also found that June 22, 1984 is also the spouses Lopez's date of default.

The estate of Florentina Lopez shall further be liable for compensatory interest at the rates of 12% p.a. from June 22, 1984 until June 30, 2013 and 6% p.a. from July 1, 2013 until the finality of this Decision

With respect to the computation of compensatory interest, Section 1 of Bangko Sentral ng Pilipinas (BSP) Circular No. 799, Series of 2013, which took effect on July 1, 2013, provides:

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[46] *Imperial v. Jaucian*, 471 Phil. 484, 494-495 (2004); and *Castro v. Tan*, G.R. No. 168940, November 24, 2009, 605 SCRA 231, 237-238.

[47] *State Investment House, Inc. v. Court of Appeals*, G.R. No. 90676, June 19, 1991, 198 SCRA 390, 398.

[48] CIVIL CODE, Article 1956.

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be **six percent (6%) per annum**. [emphasis ours]

This provision amends Section 2 of Central Bank *(CB)* Circular No. 905-82, Series of 1982, which took effect on January 1, 1983. Notably, we recently upheld the constitutionality of CB Circular No. 905-82 in *Advocates for Truth in Lending, Inc., et al. v. Bangko Sentral ng Pilipinas Monetary Board, etc.*[49] Section 2 of CB Circular No. 905-82 provides:

Section 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be **twelve [percent] (12%) per annum**. [emphasis ours]

Pursuant to these changes, this Court modified the guidelines in *Eastern Shipping Lines, Inc. v. Court of Appeals*[50] in the case of *Dario Nacar v. Gallery Frames, et al.*[51] *(Nacar).* In *Nacar,* we established the following guidelines:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In

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[49] G.R. No. 192986, January 15, 2013.

[50] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[51] G.R. No. 189871, August 13, 2013.

the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. [emphasis ours]

Since we declare void the monetary interest agreed upon by the parties, we impose a compensatory interest of 12% p.a. which accrues from June 22, 1984 until June 30, 2013, pursuant

to CB Circular No. 905-82.[52] As we have earlier stated, June 22, 1984 is the spouses Lopez's established date of default. In recognition of the prospective application of BSP Circular No. 799, we reduce the compensatory interest of 12% p.a. to 6% p.a. from July 1, 2013 until the finality of this Decision. Furthermore, the interest due shall earn legal interest from the time it is judicially demanded, pursuant to Article 2212 of the Civil Code.

The estate of Florentina Lopez shall further be liable for interest at the rate of 6% p.a. from the finality of this decision until full payment of the obligation

Also, pursuant to the above-quoted Section 1 of BSP Circular No. 799, we impose an interest rate of 6% p.a. from the finality of this Decision until the obligation is fully paid, the interim period being deemed equivalent to a forbearance of credit.

Lastly, to prevent future litigation in the enforcement of the award, we clarify that **the respondents are not personally responsible for the debts of their predecessor.** The respondents' extent of liability to Planters Bank is limited to the value of the estate which they inherited from Florentina Lopez.[53] In our jurisdiction, "it is the estate or mass of the

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[52] In *Castelo v. CA,* 314 Phil. 1, 20 (1995), we explained:

Under Article 2209, the appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum of money is the *payment of penalty interest at the rate agreed upon in the contract of the parties*. In the absence of a stipulation of a particular rate of penalty interest, payment *of additional interest at a rate equal to the regular or monetary interest*, becomes due and payable. Finally, if no regular interest had been agreed upon by the contracting parties, then the damages payable will consist of payment of *legal interest* which is six percent (6%) or, in the case of loans or forbearances of money, twelve percent (12%) *per annum*. [italics supplied]

[53] Article 1311 of the Civil Code provides:

Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by

property left by the decedent, instead of the heirs directly, that becomes vested and charged with his rights and obligations which survive after his death."[54] To rule otherwise would unduly deprive the respondents of their properties.

WHEREFORE, premises considered, the assailed amended decision dated July 30, 2007 and resolution dated February 5, 2009 of the Court of Appeals are hereby **REVERSED**. Respondents Joseph Wilfred, Joseph Gilbert and Marlyn, all surnamed Joven, are ordered to pay THREE MILLION FIVE HUNDRED THOUSAND PESOS (₱3,500,000.00) with 12% monetary interest per annum commencing on June 22, 1984 until fully paid; 12% compensatory interest per annum commencing on June 22, 1984 until June 30, 2013; 6% compensatory interest per annum commencing on July 1, 2013 until the finality of this Decision; and 6% interest rate per annum commencing from the finality of this Decision until fully paid. The proceeds of the foreclosed mortgaged property in the auction sale shall be deducted from the principal of the loan from the time payment was made to Planters Bank and the remainder shall be the new principal from which the computation shall thereafter be made. Furthermore, the respondents' liability is limited to the value of the inheritance they received from the deceased Florentina Lopez.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Reyes,*[**] and *Perlas-Bernabe, JJ.,* concur.

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provision of law. **The heir is not liable beyond the value of the property he received from the decedent.** [emphasis ours]

[54] Desiderio P. Jurado, *Comments and Jurisprudence on Obligations and Contracts*, 2002 ed., p. 375.

[*] Designated as Acting Member in lieu of Associate Justice Jose P. Perez, per Special Order No. 1567 dated October 11, 2013.

[**] Designated as Acting Member in lieu of Associate Justice Mariano C. del Castillo, per Special Order No. 1564 dated October 11, 2013.

FIRST DIVISION

[G.R. No. 187899. October 23, 2013]

ROBERT DA JOSE and FRANCISCO OCAMPO *y* ANGELES, *petitioners, vs.* **CELERINA R. ANGELES, EDWARD ANGELO R. ANGELES and CELINE ANGELI R. ANGELES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; FACTUAL ISSUES CANNOT BE ENTERTAINED THEREIN; EXCEPTIONS; PRESENT IN CASE AT BAR.— On the propriety of the matters raised by petitioners in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, our ruling in *Asian Terminals, Inc. v. Simon Enterprises, Inc.* is instructive x x x. While indeed the petition raises a factual issue on the probative value of the cash vouchers submitted in support of the claim for lost earnings, the present case falls under two of the x x x exceptions because the findings of the CA conflict with the findings of the RTC and that the CA manifestly overlooked certain relevant and undisputed facts. Since petitioners raised these circumstances, it is but proper for this Court to resolve this case.

2. CIVIL LAW; DAMAGES; INDEMNITY FOR LOSS OF EARNING CAPACITY; PARTAKES OF THE NATURE OF ACTUAL DAMAGES WHICH MUST BE DULY PROVEN BY DOCUMENTARY EVIDENCE; EXCEPTION.— Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn money. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof and the best obtainable evidence thereof. Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed

and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

3. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; HEARSAY EVIDENCE; EXCLUSION THEREOF IS ANCHORED ON THE ABSENCE OF CROSS-EXAMINATION, ABSENCE OF DEMEANOR EVIDENCE AND ABSENCE OF OATH.—** Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath. Basic under the rules of evidence is that a witness can only testify on facts within his or her personal knowledge. This personal knowledge is a substantive prerequisite in accepting testimonial evidence establishing the truth of a disputed fact. Corollarily, a document offered as proof of its contents has to be authenticated in the manner provided in the rules, that is, by the person with personal knowledge of the facts stated in the document.

APPEARANCES OF COUNSEL

Jose T. Banday and *Meinrado Enrique A. Bello* for petitioners.

Nelson A. Loyola for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Decision[2] dated August 29, 2008 of

[1] *Rollo*, pp. 13-34.

[2] *Id.* at 37-58. Penned by Associate Justice Regalado E. Maambong with Associate Justices Monina Arevalo-Zenarosa and Myrna Dimaranan Vidal concurring.

the Court of Appeals (CA) in CA-G.R. CV No. 83309, which affirmed with modification the Decision[3] dated April 12, 2004 of the Regional Trial Court (RTC), Branch 9, of Malolos, Bulacan, in Civil Case No. 46-M-2002.

The facts are uncontroverted.

On December 1, 2001, at about 9:00 p.m., a vehicular collision took place along the stretch of the Doña Remedios Trinidad Highway in Brgy. Taal, Pulilan, Bulacan involving a Mitsubishi Lancer model 1997 with Plate No. ULA-679 registered under the name of, and at that time driven by the late Eduardo Tuazon Angeles[4] (Eduardo), husband of respondent Celerina Rivera-Angeles[5] (Celerina) and father of respondents Edward Angelo R. Angeles[6] (Edward) and Celine Angeli R. Angeles[7] (Celine), and a Nissan Patrol Turbo Intercooler model 2001 with Plate No. RDJ-444 registered under the name of petitioner Robert Da Jose[8] (Robert) and at that time driven by petitioner Francisco Ocampo *y* Angeles[9] (Francisco). Eduardo was rushed by unidentified persons to the F.M. Cruz Orthopedic and General Hospital in Pulilan, Bulacan. Despite treatment at said hospital, Eduardo died on the same day due to Hemorrhagic Shock as a result of Blunt Traumatic Injury.[10]

A criminal complaint for Reckless Imprudence Resulting in Homicide and Damage to Property was filed on December 3, 2001 against Francisco before the Municipal Trial Court (MTC) of Pulilan, Bulacan (Criminal Case No. 01-8154.[11] In a Decision[12]

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[3] Records, pp. 386-398. Penned by Judge D. Roy A. Masadao, Jr.

[4] *Id*. at 229.

[5] *Id*. at 237.

[6] *Id*. at 238.

[7] *Id*. at 239.

[8] *Id*. at 228.

[9] TSN, May 14, 2003, pp. 4-6.

[10] Records, pp. 231, 235.

[11] *Id*. at 240.

[12] *Rollo*, pp. 79-88. Penned by Presiding Judge Sita Jose-Clemente.

dated December 22, 2008, the MTC declared Francisco guilty beyond reasonable doubt of the crime charged.

During the pendency of the criminal case, respondents' counsel sent petitioners via registered mail a demand-letter[13] dated December 15, 2001 for the payment (within 5 days from receipt of the letter) of the amount of ₱5,000,000 representing damages and attorney's fees. Failing to reach any settlement, respondents subsequently filed a Complaint[14] for Damages based on tort against Robert and Francisco before the RTC on January 16, 2002. A pre-trial conference was held on May 6, 2002.[15] Trial on the merits ensued.

Police Officer 3 Jaime R. Alfonso (PO3 Alfonso), an investigator of the Philippine National Police (PNP) Pulilan Station, Bulacan, testified that after receiving a telephone call on December 1, 2001 regarding a vehicular accident, he immediately went to the place of the incident. Upon reaching the area at 9:30 p.m., PO3 Alfonso took photographs[16] of the two vehicles which were both heavily damaged. He also prepared a rough sketch[17] of the scene of the accident which showed that the Mitsubishi Lancer was at the time travelling towards the south, while the Nissan Patrol was bound for Isabela in the opposite direction; and that the debris denoting the point of impact lay on the proper lane of the Mitsubishi Lancer. PO3 Alfonso also submitted a Police Report[18] dated December 10, 2001 which indicated that the Nissan Patrol encroached on the proper lane of the Mitsubishi Lancer which caused the collision and ultimately the death of Eduardo.[19] PO3 Alfonso opined

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[13] Records, pp. 188-189.

[14] *Id*. at 1-10.

[15] TSN, May 6, 2002, pp. 1-16.

[16] Records, pp. 243-245.

[17] *Id*. at 242.

[18] *Id*. at 241.

[19] *Id*. The Police Report pertinently stated that

… at pagdating sa nasabing lugar ay sinakop ng Nissan Patrol ang lugar ng kalsada na tinatakbuhan ng Mitsubishi Lancer na naging dahilan

that the Nissan Patrol was travelling too fast which explains why it had to traverse 100 meters from the point of impact to where it finally stopped.[20]

Celerina testified on the various damages and attorney's fees prayed for in their complaint. She and Eduardo begot two children: Edward who was born on August 20, 1985 and Celine who was born on June 22, 1987. Celerina testified that she loved Eduardo so much that when he died, it was as if she also died. She also testified that their two children, who were very close to their father, were shocked by the tragedy that befell him. Celerina claimed, among others, that prior to his death, Eduardo at age 51, was physically fit and even played golf 2 to 3 times a week. A businessman during his lifetime, Celerina attested that Eduardo was earning a yearly gross income of over ₱1,000,000. She also testified that at the time of his death, Eduardo was the President of Jhamec Construction Corp., a family enterprise, from which he derived an annual salary of more or less ₱300,000; Vice-President of Classic Personnel, Inc. from which he received a regular annual allowance of ₱250,000 to ₱300,000; and part owner of Glennis Laundry Haus per Joint Affidavit[21] dated December 28, 1999 executed by Eduardo and his partner, one Glennis S. Gonzales. Celerina also claimed that the expenses for the medical attendance extended to Eduardo by the F.M. Cruz Orthopedic and General Hospital amounted to ₱4,830 per the corresponding Statement of Account.[22] She pegged the expenses incurred during the 4-day wake and subsequent burial of Eduardo at ₱150,000. In her assessment, Eduardo's unrealized income due to his untimely demise is about ₱98,000 a month and that the extensively damaged Mitsubishi Lancer was valued at more or less ₱700,000. Lastly, Celerina averred

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upang magkabunggo ang dalawang harapan ng behickulo (sic). Namatay ang driver ng Mitsubishi Lancer matapos madala sa FM Cruz Hospital samantalang walang nasaktan sa Nissan Patrol….

[20] TSN, July 3, 2002, pp. 7-24.

[21] Records, p. 190.

[22] *Id*. at 186.

that for the services of counsel, she paid ₱100,000 as acceptance fee and ₱3,000 per court hearing.[23]

Celine, then 15 years old, testified on the affection she and her late father had for each other and the grief she suffered due to the latter's untimely demise. Eduardo was a doting father and a good provider.[24] To prove that Eduardo was gainfully employed at the time, Celine identified cash vouchers which indicated that Eduardo received representation and transportation allowances in the amount of ₱20,000 per month from Glennis Laundry Haus,[25] Classic Personnel, Inc.[26] and Jhamec Construction Corp.[27] Cash vouchers were also presented showing that Eduardo received, among others, a fixed monthly salary in the amount of ₱20,000 from Glennis Laundry Haus for the period of January to November of 2001.[28]

On the other hand, Francisco testified that he was employed as a driver by Robert. He narrated that on the night of December 1, 2001, he was driving Robert's Nissan Patrol on their way home to Santiago City, Isabela after his companions purchased certain merchandise at Divisoria, Manila. Francisco was with Robert's wife who happens to be his cousin, the latter's daughter, the sibling of Robert's wife, and one helper. He claimed that while they were travelling along the Doña Remedios Trinidad Highway, he tried to overtake a truck. However, he failed to see the Mitsubishi Lancer coming from the opposite direction as its headlights were not on. After the collision, the airbags of the Nissan Patrol deployed. Confronted with the Police Report, Francisco said that the same is correct except for the statement therein that the Nissan Patrol encroached on the lane of the Mitsubishi Lancer and the lacking information about the

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[23] *Rollo*, pp. 62-64; TSN, August 19, 2002, pp. 6-12; TSN, October 18, 2002, pp. 8-10.

[24] TSN, November 13, 2002, pp. 2-5.

[25] Records, pp. 261-266.

[26] *Id*. at 279-284.

[27] *Id*. at 285-290.

[28] *Id*. at 267-278.

Mitsubishi Lancer's headlights being off at the time of the incident. He also insisted that the Nissan Patrol was already in its proper lane when the collision occurred.[29]

For his part, Robert admitted that he is the registered owner of the Nissan Patrol which was being driven by Francisco at the time of the collision. He testified that he engaged the services of Francisco as family driver not only because the latter is his wife's cousin but also because Francisco was a very careful driver. In open court, Robert intimated his desire to have the matter settled and manifested his intention to pay the respondents because he felt that indeed they are entitled to a compensation as a result of the incident.[30]

By stipulation of the parties' respective counsels, the corroborative testimonies of Robert's wife and the helper who were also aboard the Nissan Patrol at the time of the accident were dispensed with.[31]

On April 12, 2004, the RTC rendered the assailed Decision holding that "*it was recklessness or lack of due care on the part of defendant Ocampo while operating the Nissan Patrol [that] was the proximate cause of the vehicular collision which directly resulted in the death of Eduardo T. Angeles very soon thereafter*."[32] Thus, the RTC disposed of the case as follows:

> WHEREFORE, on the basis of the evidence on record and the laws/jurisprudence applicable thereto, judgment is hereby rendered ordering defendants Robert Da Jose and Francisco Ocampo *y* Angeles to solidarily pay plaintiffs Celerina Rivera-Angeles, Edward Angelo R. Angeles and Celine Angeli R. Angeles the following amounts:
>
> 1) ₱50,000.00 for the fact of death of the late Eduardo T. Angeles;
>
> 2) ₱500,000.00 as moral damages;

[29] TSN, May 14, 2003, pp. 3-13, 36-37.

[30] TSN, November 10, 2003, pp. 2-18.

[31] Records, p. 392.

[32] *Id*. Italics supplied.

3) ₱50,000.00 as exemplary damages;

4) ₱4,830.00 for the hospitalization and ₱50,000.00 for the burial expenses of the aforenamed deceased; and

5) ₱50,000.00 as attorney's fees, plus the costs of suit.

SO ORDERED.[33]

Dissatisfied, both parties sought recourse from the CA.[34] On August 29, 2008, the CA in its assailed Decision affirmed with modification the RTC's findings and ruling. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the appeal of both parties are **PARTLY GRANTED**. The April 12, 2004 Decision of the Regional Trial Court, Branch 9 of Malolos, Bulacan in Civil Case No. 46-M-2002 is **AFFIRMED** with **MODIFICATIONS** as to the following amounts of damages, to wit:

1. The ₱500,000.00 award of moral damages is reduced to ₱50,000.00;

2. The award of ₱50,000.00 as exemplary damages is further reduced to ₱25,000.00; [and]

3. ₱2,316,000.00 is awarded for lost earnings of the deceased Eduardo T. Angeles.

SO ORDERED.[35]

The CA agreed with the RTC's findings that Francisco was clearly negligent in driving the Nissan Patrol and that such negligence caused the vehicular collision which resulted in the death of Eduardo. Like the RTC, the CA also dismissed Francisco's claim that the Mitsubishi Lancer's headlights were not on at the time of the incident and found that petitioners failed to adduce any evidence to the contrary that Eduardo was of good health and of sound mind at the time. The CA thus ruled that no contributory negligence could be imputed against Eduardo.

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[33] *Id*. at 397-398.

[34] *Id*. at 400-401.

[35] *Rollo*, pp. 56-57.

While sustaining the RTC's award of civil indemnity in the amount of ₱50,000; actual damages in the amount of ₱4,830 as hospitalization expenses and ₱50,000 as burial expenses; and attorney's fees and costs of the suit in the amount of ₱50,000, the CA reduced the awards for moral and exemplary damages in the amounts of ₱50,000 and ₱25,000 respectively, in line with prevailing jurisprudence. Moreover, the CA awarded respondents indemnity for Eduardo's loss of earning capacity based on the documentary and testimonial evidence they presented. Excluding the other cash vouchers, the CA took into consideration the ₱20,000 monthly salary Eduardo received from Glennis Laundry Haus in the computation thereof, finding that the said cash vouchers were typewritten and duly signed by employees who prepared, checked and approved them and that said business venture was validated by the aforementioned Joint Affidavit. Thus, the CA awarded the amount of ₱2,316,000 for loss of earning capacity in favor of respondents.

Petitioners filed their Motion for Reconsideration[36] but the CA denied it under Resolution[37] dated April 23, 2009.

Hence, this petition raising the following issues:

I.

Whether or not the award of ₱2,316,000.00 for lost earnings is supported by competent evidence[; and]

II.

Whether or not the Joint Affidavit dated December 28, 1999 (Exh. U), and purported Cash Vouchers of Glennis Laundry Haus (Exhibits W, W-1 to W-31) are hearsay evidence and as such, they are inadmissible and have no probative value to establish the lost earnings of the deceased.[38]

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[36] CA *rollo*, pp. 173-183.

[37] *Rollo*, p. 60. Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Monina Arevalo-Zenarosa and Arturo G. Tayag concurring.

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

Petitioners claim that the CA erred in admitting the Glennis Laundry Haus cash vouchers as evidence to prove loss of earnings as the said vouchers are purely hearsay evidence, hence, inadmissible and of no probative value. Petitioners argue that contrary to the findings of the CA that Celerina identified said vouchers, records show that it was Celine who actually identified them and that the latter acknowledged her non-participation in the preparation of the same. Absent Celine's personal knowledge as to the due execution, preparation and authenticity of the Glennis Laundry Haus cash vouchers and consistent with the CA's ruling in disregarding the cash vouchers of Classic Personnel, Inc. and the Jhamec Construction Corp. as evidence, the cash vouchers from Glennis Laundry Haus are considered hearsay evidence. Petitioners point out that respondents did not present any employee who had knowledge of the preparation and due execution of said vouchers. Neither did they present Glennis S. Gonzales who executed the Joint Affidavit together with Eduardo.[39]

Petitioners rely on the ruling of the RTC which refused to render any award based on unrealized earnings because the alleged authors of said cash vouchers were not presented as witnesses in this case. They stress that whether objected to or not, the cash vouchers are hearsay evidence which possess no probative value. Since the Glennis Laundry Haus cash vouchers and the Joint Affidavit are inadmissible in evidence and without probative value, petitioners assert that there exists no competent evidence to support the award of lost earnings in the amount of ₱2,316,000, and consequently such award by the CA should be set aside.[40]

Respondents counter that the questions raised by petitioners, specifically, the adequacy of the amount of damages awarded and the admissibility of evidence presented, are not questions of law, hence, not proper under a petition for review on *certiorari* under Rule 45. They argue that a court's appreciation of evidence

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[39] *Id*. at 27-31.

[40] *Id*. at 131-140.

is an exercise of its sound judicial discretion, the abuse of which is correctible by a special civil action for *certiorari* under Rule 65.

Respondents claim that petitioners changed the theory of their case before this Court, *i.e.*, from that of Eduardo being the negligent party and not Francisco to the propriety of the award of unrealized income, which is proscribed. They maintain that the CA's award for lost earnings in the amount of ₱2,316,000 is supported by competent evidence on record and is a finding entitled to great respect. The evidence adduced at the trial and reviewed on appeal by the CA passed the test of preponderance of evidence and the rules on admissibility of evidence. Respondents further argue that personal knowledge of a document does not require direct participation for it is enough that the witness can convince the court of her awareness of the document's genuineness, due execution and authenticity. Thus, if not admitted or admissible as documentary proof, the document can be admissible as object evidence. Respondents submit that the convergence of testimonial and documentary evidence in this case established a preponderance of evidence in favor of respondents.[41]

At the outset it must be stressed that absent any issue raised by petitioners as regards the negligence of Francisco and the corresponding liabilities of Francisco and Robert arising therefrom, this Court finds no cogent reason to disturb much less deviate from the uniform findings of the RTC and the CA that Francisco was negligent in driving the Nissan Patrol, and that such negligence caused the vehicular collision which resulted in the death of Eduardo.

The sole issue to be resolved is whether the CA erred in awarding the sum of ₱2,316,000 for loss of earning capacity.

The petition is meritorious.

On the propriety of the matters raised by petitioners in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, our ruling in *Asian*

[41] *Id.* at 167-178.

Terminals, Inc. v. Simon Enterprises, Inc.[42] is instructive, to wit:

> A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.
>
> The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, 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. (Emphasis supplied)

While indeed the petition raises a factual issue on the probative value of the cash vouchers submitted in support of the claim for lost earnings, the present case falls under two of the abovementioned exceptions because the findings of the CA conflict with the findings of the RTC and that the CA manifestly overlooked certain relevant and undisputed facts. Since petitioners raised these circumstances, it is but proper for this Court to resolve this case.[43]

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[42] G.R. No. 177116, February 27, 2013, pp. 6-7.

[43] See *Heirs of Jose Marcial K. Ochoa v. G & S Transport Corporation*, G.R. Nos. 170071 & 170125, March 9, 2011, 645 SCRA 93, 112-113.

Under Article 2206[44] of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn money.[45] The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven[46] by competent proof and the best obtainable evidence thereof.[47] Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[48]

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[44] Article 2206 of the Civil Code pertinently provides:

Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

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[45] *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010, 612 SCRA 576, 591, citing *Heirs of George Y. Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009, 584 SCRA 152, 178.

[46] *People v. Bernabe*, G.R. No. 185726, October 16, 2009, 604 SCRA 216, 239.

[47] *People v. Ibañez*, G.R. No. 148627, April 28, 2004, 428 SCRA 146, 162-163, citing *People v. Panabang*, G.R. Nos. 137514-15, January 16, 2002, 373 SCRA 560, 575; *People v. De Vera*, G.R. No. 128966, August 18, 1999, 312 SCRA 640, 670; and *Chan v. Maceda, Jr.*, 450 Phil. 416, 431 (2003).

[48] *People v. Jadap*, G.R. No. 177983, March 30, 2010, 617 SCRA 179, 196-197; *People v. Garchitorena*, G.R. No. 175605, August 28, 2009, 597 SCRA 420, 448-449; *People v. Algarme*, G.R. No. 175978, February 12, 2009,

Based on the foregoing and in line with respondents' claim that Eduardo during his lifetime earned more or less an annual income of ₱1,000,000, the case falls under the purview of the general rule rather than the exceptions.

Now, while it is true that respondents submitted cash vouchers to prove Eduardo's income, it is lamentable as duly observed by the RTC that the officers and/or employees who prepared, checked or approved the same were not presented on the witness stand. The CA itself in its assailed Decision disregarded the cash vouchers from Classic Personnel, Inc. and the Jhamec Construction Corp. due to lack of proper identification and authentication. We find that the same infirmity besets the cash vouchers from Glennis Laundry Haus upon which the award for loss of earning capacity was based.

It bears stressing that the cash vouchers from Glennis Laundry Haus were not identified by Celerina contrary to the findings of the CA but by Celine in her testimony before the RTC on November 13, 2002[49] and Celine, under cross-examination, admitted by way of stipulation that she had no participation in the preparation thereof.[50] We thus agree with the RTC's ruling that said cash vouchers though admitted in evidence, whether objected to or not, have no probative value for being hearsay.[51]

Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and

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578 SCRA 601, 629; *Victory Liner, Inc. v. Gammad*, 486 Phil. 574, 590 (2004); *People v. Agudez*, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 711-712; *People v. Oco*, 458 Phil. 815, 855 (2003); *People v. Caraig*, G.R. Nos. 116224-27, 448 Phil. 78, 97 (2003); and *People v. Pajotal*, G.R. No. 142870, November 14, 2001, 368 SCRA 674, 689.

[49] TSN, November 13, 2002, pp. 6-10.

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

[51] *Asilo, Jr. v. People*, G.R. Nos. 159017-18 & 159059, March 9, 2011, 645 SCRA 41, 64.

(3) absence of oath.[52] Basic under the rules of evidence is that a witness can only testify on facts within his or her personal knowledge. This personal knowledge is a substantive prerequisite in accepting testimonial evidence establishing the truth of a disputed fact. Corollarily, a document offered as proof of its contents has to be authenticated in the manner provided in the rules, that is, by the person with personal knowledge of the facts stated in the document.[53]

Except for the award for the loss of earning capacity, the Court concurs with the findings of the CA and sustains the other awards made in so far as they are in accordance with prevailing jurisprudence. In addition, pursuant to this Court's ruling in *Del Carmen, Jr. v. Bacoy*[54] citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[55] an interest of 6% per annum on the amounts awarded shall be imposed, computed from the time of finality of this Decision until full payment thereof.

WHEREFORE, the instant petition is **GRANTED**. The award for the loss of earning capacity in the amount of ₱2,316,000 granted by the Court of Appeals in its Decision dated August 29, 2008 in CA-G.R. CV No. 83309 in favor of respondents is hereby **SET ASIDE**. All the other monetary awards are hereby **AFFIRMED** with **MODIFICATION** in that interest at the rate of 6% per annum on the amounts awarded shall be imposed, computed from the time of finality of this Decision until full payment thereof.

No pronouncement as to costs.

SO ORDERED.

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

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[52] *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013, pp. 7-8.

[53] *Jaca v. People*, G.R. Nos. 166967, 166974 & 167167, January 28, 2013, 689 SCRA 270, 299.

[54] G.R. No. 173870, April 25, 2012, 671 SCRA 91, 111.

[55] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 97.

SECOND DIVISION

[G.R. No. 189801. October 23, 2013]

OFFICE OF THE OMBUDSMAN (VISAYAS), *petitioner, vs.* **COURT OF APPEALS and BERMELA A. GABUYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; THE ACT OF FORUM SHOPPING AND THE VIOLATION OF THE CERTIFICATION REQUIREMENT SIMILARLY CONSTITUTE GROUNDS FOR THE DISMISSAL OF THE CASE.— The factual circumstances of the case reveal that Gabuya committed forum shopping when she filed a petition for review before the CA, *i.e.*, the CA Petition, seeking to reverse and set aside the Ombudsman's February 28, 2006 Decision dismissing her from service, notwithstanding the pendency before the Ombudsman of her motion for reconsideration of the **same decision** praying for the **same relief**. In relation thereto, she also failed to comply with the requirements of a certificate against forum shopping under Section 5, Rule 7 of the Rules of Court (certification requirement) since the certificate she attached to the CA Petition did not include a "complete statement of the present status" of the aforesaid motion for reconsideration pending before the Ombudsman. Notably, the act of forum shopping and the violation of the certification requirement — while considered as peculiar procedural infractions — similarly constitute grounds for the dismissal of the case.

2. ID.; ACTIONS; REMAND AND DISMISSAL, DISTINGUISHED.— [A] remand and a dismissal are distinct procedural concepts and hence should not be confused with one another, else the Rules be subverted. On the one hand, a remand means an order "to send back"; or the "sending of the case back to the same court out where it came for the purpose of having some action on it there"; and, on the other hand, a dismissal refers to an order or judgment finally disposing of an action, suit, motion, etc. which may either be with prejudice or without. The dismissal

is deemed "with prejudice" when the adjudication is based on the merits and bars the right to bring an action on the same claim or cause and "without prejudice" when the case can be refiled despite its having been previously dismissed.

3. ID.; CIVIL PROCEDURE; PROVISIONAL REMEDIES; AN ANCILLARY REMEDY WHICH CANNOT EXIST EXCEPT ONLY AS PART OR AN INCIDENT OF AN INDEPENDENT ACTION OR PROCEEDING.— [I]t is a standing rule that a writ of preliminary injunction is merely provisional in nature and is integrally linked to the subsistence of the proceedings in the main case. Stated differently, the ancillary remedy of preliminary injunction cannot exist except only as part or an incident of an independent action or proceeding. Thus, since the CA already remanded the case to the Ombudsman for the purpose of resolving Gabuya's pending motion for reconsideration, the writ of preliminary injunction issued by it, absent any countervailing justification therefor, must be dissolved. In this relation, it is observed that the CA's issuance of the aforesaid writ was essentially hinged on the 2008 *Samaniego* ruling which, however, did not contain any pronouncement on the legal status of the writ issued in that case. The Court only remarked that the injunctive writ issued in *Samaniego* was a "mere superfluity" and, in fact, ordered the same to be "lifted" since the appeal of the Ombudsman's decision already had the effect of staying its execution. In any case, the treatment of appeals of Ombudsman decisions had already been modified by the Court in the 2010 *Samaniego* ruling x x x. As such, the general postulate on writs of preliminary injunction x x x must be applied.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Nicanor V. Moreno, Jr. for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] are the Decision[2] dated March 19, 2009 and Resolution[3] dated July 31, 2009 of the Court of Appeals, Cebu City (CA) in CA-G.R. SP. No. 03874 which granted respondent Bermela A. Gabuya's (Gabuya) application for the issuance of a writ of preliminary injunction against the implementation of the Decision[4] dated February 28, 2006 rendered by the Office of the Ombudsman — Visayas (Ombudsman) in OMB-V-A-03-0736-L ordering Gabuya's dismissal from government service.

The Facts

Sometime in December 2003, Angelita Perez-Nengasca (Nengasca) and Teresita Candar-Bracero (Bracero), representing themselves as real estate agents, offered to mortgage to Vicente R. Teo (Teo) for the amount of ₱500,000.00 a parcel of land purportedly owned by the heirs of Melquiades S. Silva (Silva), covered by Transfer Certificate of Title (TCT) No. T-29438.[5] However, upon verification with the Registry of Deeds of the Province of Cebu, Teo learned that the said TCT was already cancelled, prompting him to seek the assistance of the National Bureau of Investigation (NBI).[6]

On December 10, 2003, the NBI set an entrapment operation at Teo's residence. In the process, Mario Padigos (Padigos) who posed as one of the heirs of Silva, and one Gwendolyn A.

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[1] *Rollo*, pp. 7-22.

[2] *Id*. at 24-32. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Francisco P. Acosta and Rodil V. Zalameda, concurring.

[3] *Id*. at 33-39.

[4] *Id*. at 64-77. Penned by Cynthia C. Maturan Sibi of the Graft Investigation & Prosecution Office.

[5] *Id*. at 64.

[6] *Id*. at 65.

Bascon (Bascon) were arrested in the act of counting the marked money representing the proceeds of the mortgage. The NBI also accosted Nengasca and Bracero who were stationed outside Teo's house.[7]

During the investigation, Padigos, Bascon, Nengasca and Bracero confessed that they acted under the instructions of Gabuya. Thus, the NBI hatched a second entrapment operation at the La Fortuna Bakery whereat Gabuya, after receiving from Nengasca a plastic bag with the marked money, was arrested.[8] At that time, Gabuya was a government employee, holding the position of Administrative Officer II in the Cebu Provincial Detention and Rehabilitation Center. Hence, following her arrest, the NBI filed an administrative complaint against Gabuya for grave misconduct before the Ombudsman, docketed as OMB-V-A-03-0736-L.[9]

For her part, Gabuya maintained her innocence claiming that: (*a*) she did not conspire to defraud Teo; (*b*) Teo never mentioned her in his affidavit;[10] (*c*) she was found negative of yellow fluorescent powder;[11] (*d*) Padigos attested that she (Gabuya) had no participation in the conspiracy;[12] and (*e*) she cannot be held administratively liable for the subject acts since they are not related to the functions of her office and her apprehension occurred during lunch break.[13]

The Ombudsman Ruling

In a Decision[14] dated February 28, 2006 (February 28, 2006 Decision), the Ombudsman found Gabuya guilty of grave

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[7] *Id*. at 25 and 65-66.

[8] *Id*. at 25-26.

[9] *Id*. at 24.

[10] *Id*. at 69.

[11] *Id*.

[12] *Id*. at 69-70.

[13] *Id*. at 70.

[14] *Id*. at 64-77.

misconduct and ordered her dismissal from service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service.[15]

On July 18, 2008, Gabuya filed a motion for reconsideration with the Ombudsman.[16] Pending its resolution, she filed a petition for review with prayer for the issuance of a writ of preliminary injunction[17] before the CA (CA Petition), docketed as CA-G.R. SP. No. 03874.

The CA Ruling and Subsequent Proceedings

In a Decision[18] dated March 19, 2009, the CA found that Gabuya has a pending motion for reconsideration of the Ombudsman's February 28, 2006 Decision which was not disclosed in the certificate of non-forum shopping attached to the CA Petition. As such, the CA remanded the case to the Ombudsman so that it may decide the motion with dispatch. [19]

Nevertheless, the CA granted Gabuya's application for the issuance of a writ preliminary injunction, temporarily enjoining the immediate implementation of her dismissal from service. It cited as basis the Court's Decision dated September 11, 2008 in G.R. No. 175573, entitled Office of the *Ombudsman v. Samaniego*[20] (2008 *Samaniego* ruling), where it was held that the mere filing of an appeal is sufficient to stay the execution of the Ombudsman's adverse decision involving disciplinary cases.[21]

Dissatisfied, the Ombudsman filed an Omnibus Motion[22] dated April 1, 2009 seeking the: (*a*) reconsideration of the Decision

[15] *Id*. at 75-76.

[16] *Id*. at 28.

[17] *Id*. at 50-63.

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

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

[20] G.R. No. 175573, September 11, 2008, 564 SCRA 567.

[21] *Rollo*, pp. 29-30.

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

dated March 19, 2009; and (*b*) lifting of the writ of preliminary injunction. However, said motion was denied by the CA in a Resolution[23] dated July 31, 2009. Hence, the instant petition.

Meanwhile, acting on a second motion for partial reconsideration in G.R. No. 175573, the Court modified its 2008 *Samaniego* ruling in a Resolution dated October 5, 2010 (2010 *Samaniego* ruling), "particularly [its] pronouncement with respect to the stay of the decision of the Ombudsman during the pendency of an appeal."[24] The dispositive portion of the 2010 *Samaniego* ruling thus reads:[25]

> WHEREFORE, the second motion for partial reconsideration is hereby GRANTED. **Our decision dated September 11, 2008 is MODIFIED** insofar as it declared that the imposition of the penalty is stayed by the filing and pendency of CA-G.R. SP No. 89999. **The decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ.**
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> SO ORDERED. (Emphases and underscoring supplied)

The Issue Before the Court

The essential issue in this case is whether or not the CA gravely abused its discretion in: (*a*) remanding the case to the Ombudsman; and (*b*) issuing a writ of preliminary injunction notwithstanding such remand.

The Court's Ruling

The petition is partly granted.

The factual circumstances of the case reveal that Gabuya committed forum shopping when she filed a petition for review before the CA, *i.e.*, the CA Petition, seeking to reverse and set aside the Ombudsman's February 28, 2006 Decision dismissing her from service, notwithstanding the pendency before

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[23] *Id*. at 33-39.

[24] G.R. No. 175573, October 5, 2010, 632 SCRA 140, 142.

[25] *Id*. at 145.

the Ombudsman of her motion for reconsideration of the **same decision** praying for the **same relief**. In relation thereto, she also failed to comply with the requirements of a certificate against forum shopping under Section 5, Rule 7 of the Rules of Court [26] (certification requirement) since the certificate she attached to the CA Petition did not include a "complete statement of the present status" of the aforesaid motion for reconsideration pending before the Ombudsman. Notably, the act of forum shopping and the violation of the certification requirement — while considered as peculiar procedural infractions — similarly constitute grounds for the dismissal of the case. As explained in *Abbott Laboratories Phils. v. Alcaraz*:[27]

> x x x The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. **The former constitutes sufficient cause for the dismissal without prejudice** [to the filing] of the complaint or initiatory pleading upon motion and after hearing, **while the latter is a ground for summary dismissal thereof** and for direct contempt. x x x . (Emphases supplied)

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[26] Section 5, Rule 7 of the Rules of Court (Rules) provides:

> Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) **if there is such other pending action or claim, a complete statement of the present status thereof**; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
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> x x x x. x x x x x x

[27] G.R. No. 192571, July 23, 2013; citations omitted.

Despite the foregoing violations, the Court observes that the CA, instead of dismissing the case as would have been warranted under the Rules, opted to remand the same to the Ombudsman for the latter to resolve Gabuya's motion for reconsideration. It must, however, be borne in mind that a remand and a dismissal are distinct procedural concepts and hence should not be confused with one another, else the Rules be subverted. On the one hand, a remand means an order "to send back"; or the "sending of the case back to the same court out where it came for the purpose of having some action on it there";[28] and, on the other hand, a dismissal refers to an order or judgment finally disposing of an action, suit, motion, *etc*. which may either be with prejudice or without.[29] The dismissal is deemed "with prejudice" when the adjudication is based on the merits and bars the right to bring an action on the same claim or cause[30] and "without prejudice" when the case can be refiled despite its having been previously dismissed.[31]

Be that as it may, the Court finds no grave abuse of discretion on the part of the CA in remanding the case to the Ombudsman for resolution of petitioner's motion for reconsideration, absent any showing that it exercised its discretion in a whimsical, capricious, and arbitrary manner.[32] In this respect, the instant petition for certiorari lacks merit[33] and the remand of the case

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[28] Federico B. Moreno, *Philippine Law Dictionary* 3rd Ed., 810; citations omitted.

[29] *Black's Law Dictionary*, 5th ed. p. 421 [1979].

[30] *Id*.

[31] Moreno, *supra* note 28, at 278.

[32] *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013.

[33] As held in *Toh v. CA*, G.R. No. 140274, November 15, 2000, 344 SCRA 831:

> We have set a clear demarcation line between an error of judgment and an error of jurisdiction. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal, while an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body

must stand. This is in addition to the fact that the nullification of the remand would only serve to unduly delay the proceedings in this case.

The petition, however, is partly granted insofar as it prays for the lifting of the writ of preliminary injunction.

Verily, it is a standing rule that a writ of preliminary injunction is merely provisional in nature and is integrally linked to the subsistence of the proceedings in the main case.[34] Stated differently, the ancillary remedy of preliminary injunction cannot exist except only as part or an incident of an independent action or proceeding.[35] Thus, since the CA already remanded the case to the Ombudsman for the purpose of resolving Gabuya's pending motion for reconsideration, the writ of preliminary injunction issued by it, absent any countervailing justification therefor, must be dissolved. In this relation, it is observed that the CA's issuance of the aforesaid writ was essentially hinged on the 2008 *Samaniego* ruling which, however, did not contain any pronouncement on the legal status of the writ issued in that case. The Court only remarked that the injunctive writ issued in *Samaniego* was a "mere superfluity" and, in fact, ordered the same to be "lifted" since the appeal of the Ombudsman's decision already had the effect of staying its execution.[36] In any case, the treatment of appeals of Ombudsman decisions had already been modified by the Court in the 2010 *Samaniego* ruling as above-explained. As such, the general postulate on writs of preliminary injunction, as above-discussed, must be applied.

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without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, and which error is correctable only by the extraordinary writ of *certiorari*. Thus, the Court of Appeals correctly ruled in dismissing the petition for *certiorari* of petitioner. The ruling is in accord with the settled principle that *certiorari* will not be issued to cure errors in proceedings or erroneous conclusions of law or fact, x x x .

[34] *BP Philippines, Inc. v. Clark Trading Corporation*, G.R. No. 175284, September 19, 2012, 681 SCRA 365, 374-376.

[35] *Manila Banking Corporation v. CA*, G.R. No. L-45961, July 3, 1990, 187 SCRA 138, 145.

[36] See *Office of the Ombudsman v. Samaniego*, *supra* note 24.

WHEREFORE, the petition is **GRANTED.** The Decision dated March 19, 2009 and Resolution dated July 31, 2009 of the Court of Appeals, Cebu City in CA-G.R. SP. No. 03874 are hereby **MODIFIED** in that the writ of preliminary injunction is **LIFTED** and **DISSOLVED.**

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Brion,* and *Reyes,* [**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 196036. October 23, 2013]

ELIZABETH M. GAGUI, *petitioner, vs.* **SIMEON DEJERO and TEODORO R. PERMEJO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FIFTEEN-DAY FRESH PERIOD RULE; A LITIGANT IS ALLOWED A FRESH PERIOD OF FIFTEEN DAYS WITHIN WHICH TO APPEAL COUNTED FROM THE RECEIPT OF THE RESOLUTION DENYING THE MOTION FOR RECONSIDERATION; CASE AT BAR.— We agree with petitioner that starting from the date she received the Resolution denying her Motion for Reconsideration, she had a "fresh period" of 15 days within which to appeal to this Court. x x x Since petitioner received the CA Resolution denying her two

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[*] Designated Acting Member per Special Order No. 1567 dated October 11, 2013.

[**] Designated Acting Member per Special Order No. 1564 dated October 11, 2013.

Motions for Reconsideration only on 16 March 2011, she had another 15 days within which to file her Petition, or until 31 March 2011. This Petition, filed on 30 March 2011, fell within the prescribed 15-day period.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8042 (THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); MONEY CLAIMS; CORPORATE DIRECTORS AND OFFICERS SHALL BE MADE JOINTLY AND SOLIDARILY LIABLE WITH THEIR COMPANY IF THEY WERE REMISS IN DIRECTING THE AFFAIRS OF THE COMPANY.— [W]e have declared that "R.A. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad." The pertinent portion of Section 10, R.A. 8042 reads as follows: "SEC. 10. MONEY CLAIMS. x x x **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval.** The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages." In *Sto. Tomas v. Salac*, we had the opportunity to pass upon the constitutionality of this provision. We have thus maintained: x x x **"But the Court has already held, pending adjudication of this case, that the liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities."** x x x Hence, for petitioner to be found jointly and solidarily liable, there must be a separate finding that she was remiss in directing the affairs of the agency, resulting in the illegal dismissal of respondents. Examination of the records would reveal that there was no finding of neglect on the part of the petitioner in directing the affairs of the agency.

In fact, respondents made no mention of any instance when petitioner allegedly failed to manage the agency in accordance with law, thereby contributing to their illegal dismissal.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENTS; ONCE A DECISION OR ORDER BECOMES FINAL AND EXECUTORY, IT IS REMOVED FROM THE POWER OR JURISDICTION OF THE COURT WHICH RENDERED IT TO FURTHER ALTER OR AMEND IT.— [P]etitioner is correct in saying that impleading her for the purpose of execution is tantamount to modifying a decision that had long become final and executory. The *fallo* of the 1997 Decision by the NLRC only held "respondents Pro Agency Manila Inc., and Abdul Rahman Al Mahwes to jointly and severally pay complainants x x x." By holding her liable despite not being ordained as such by the decision, both the CA and NLRC violated the doctrine on immutability of judgments. In *PH Credit Corporation v. Court of Appeals*, we stressed that "respondent's [petitioner's] obligation is based on the judgment rendered by the trial court. The dispositive portion or the *fallo* is its decisive resolution and is thus the subject of execution. x x x. Hence the execution must conform with that which is ordained or decreed in the dispositive portion of the decision." x x x "[O]nce a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity."

APPEARANCES OF COUNSEL

Jose A. Suing for petitioner.
Severino T. Cabañero for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Rule 45 Petition[1] dated 30 March 2011 assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 104292, which affirmed the Decision[4] of the National Labor Relations Commission (NLRC) in NLRC Case No. OCW-RAB-IV-4-392-96-RI, finding petitioner Elizabeth M. Gagui solidarily liable with the placement agency, PRO Agency Manila, Inc., to pay respondents all the money claims awarded by virtue of their illegal dismissal.

The antecedent facts are as follows:

On 14 December 1993, respondents Simeon Dejero and Teodoro Permejo filed separate Complaints[5] for illegal dismissal, nonpayment of salaries and overtime pay, refund of transportation expenses, damages, and attorney's fees against PRO Agency Manila, Inc., and Abdul Rahman Al Mahwes.

After due proceedings, on 7 May 1997, Labor Arbiter Pedro Ramos rendered a Decision,[6] the dispositive portion of which reads:

WHEREFORE, ALL FOREGOING CONSIDERED, judgment is hereby rendered ordering respondents Pro Agency Manila, Inc., and Abdul Rahman Al Mahwes to jointly and severally pay complainants, as follows:

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[1] *Rollo,* pp. 3-18.

[2] *Id.* at 20-32; CA Decision dated 15 November 2010 penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Amelita G. Tolentino and Normandie B. Pizarro.

[3] *Id.* at 34-38; CA Resolution dated 25 February 2011.

[4] *Id.* at 93-96; NLRC Decision dated 29 November 2007, penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

[5] *Id.* at 39-40; NLRC Case No. OCW-RAB-IV-4-392-96-RI.

[6] *Id.* at 48-56.

a) US$4,130.00 each complainant or a total of US$8,260.00, their unpaid salaries from July 31, 1992 up to September 1993, less cash advances of total of SR11,000.00, or its Peso equivalent at the time of payment;

b) US$1,032.00 each complainant for two (2) hours overtime pay for fourteen (14) months of services rendered or a total of US$2,065.00 or its Peso equivalent at the time of payment;

c) US$2,950.00 each complainant or a total of US$5,900.00 or its Peso equivalent at the time of payment, representing the unexpired portion of their contract;

d) Refund of plane ticket of complainants Teodoro Parejo and Simeon Dejero from Saudi Arabia to the Philippines, in the amount of ₱15,642.90 and ₱16,932.00 respectively;

e) Refund of excessive collection of placement fees in the amount of ₱4,000.00 each complainant, or a total of ₱8,000.00;

f) Moral and exemplary damages in the amount of ₱10,000.00 each complainant, or a total of ₱20,000.00;

g) Attorney's fees in the amount of ₱48,750.00.

SO ORDERED.

Pursuant to this Decision, Labor Arbiter Ramos issued a Writ of Execution[7] on 10 October 1997. When the writ was returned unsatisfied,[8] an *Alias* Writ of Execution was issued, but was also returned unsatisfied.[9]

On 30 October 2002, respondents filed a Motion to Implead Respondent Pro Agency Manila, Inc.'s Corporate Officers and Directors as Judgment Debtors.[10] It included petitioner as the Vice-President/Stockholder/Director of PRO Agency, Manila, Inc.

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[7] *Id.* at 57-59.

[8] *Id.* at 60; Sheriff's Return dated 4 November 1997, signed by Acting Sheriff Loysaga P. Macatangga.

[9] *Id.* at 22. CA Decision, p. 3.

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

After due hearing, Executive Labor Arbiter Voltaire A. Balitaan issued an Order[11] on 25 April 2003 granting respondents' motion, to wit:

> WHEREFORE, the motion to implead is hereby granted insofar as Merlita G. Lapuz and Elizabeth M. Gagui as parties-respondents and accordingly held liable to complainant jointly and solidarily with the original party-respondent adjudged liable under the Decision of May 7, 1998. Let 2nd *Alias* Writ of Execution be issued for the enforcement of the Decision consistent with the foregoing tenor.
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> SO ORDERED.

On 10 June 2003, a 2nd *Alias* Writ of Execution was issued,[12] which resulted in the garnishment of petitioner's bank deposit in the amount of ₱85,430.48.[13] However, since the judgment remained unsatisfied, respondents sought the issuance of a third alias writ of execution on 26 February 2004.[14]

On 15 December 2004, Executive Labor Arbiter Lita V. Aglibut issued an Order[15] granting respondents' motion for a third alias writ. Accordingly, the 3rd *Alias* Writ of Execution[16] was issued on 6 June 2005, resulting in the levying of two parcels of lot owned by petitioner located in San Fernando, Pampanga.[17]

On 14 September 2005, petitioner filed a Motion to Quash 3rd *Alias* Writ of Execution;[18] and on 29 June 2006, a Supplemental Motion to Quash *Alias* Writ of Execution.[19] In these motions,

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

[12] *Id.* at 66-67; cited in paragraph 1.

[13] *Id.*; cited in paragraph 2.

[14] *Id.*

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

[16] *Id.* at 125-127.

[17] *Id.* at 70-71. Sheriff's Report dated 16 September 2007, issued by Amelito D. Twano and Jacobo C. Abril.

[18] *Id.* at 75-76.

[19] *Id.* at 77-79.

petitioner alleged that apart from not being made aware that she was impleaded as one of the parties to the case,[20] the dispositive portion of the 7 May 1997 Decision *(1997 Decision)* did not hold her liable in any form whatsoever.[21] More importantly, impleading her for the purpose of execution was tantamount to modifying a decision that had long become final and executory.[22]

On 26 June 2006, Executive Labor Arbiter Lita V. Aglibut issued an Order[23] denying petitioner's motions on the following grounds: (1) records disclosed that despite having been given sufficient notices to be able to register an opposition, petitioner refused to do so, effectively waiving her right to be heard;[24] and (2) under Section 10 of Republic Act No. 8042 (R.A. 8042) or the Migrant Workers and Overseas Filipinos Act of 1995, corporate officers may be held jointly and severally liable with the placement agency for the judgment award.[25]

Aggrieved, petitioner appealed to the NLRC, which rendered a Decision[26] in the following wise:

> WHEREFORE, premises considered, the appeal of the respondent Elizabeth M. Gagui is hereby DENIED for lack of merit. Accordingly, the Order of Labor Arbiter Lita V. Aglibut dated June 26, 2006 is AFFIRMED.
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> SO ORDERED.

The NLRC ruled that "in so far as overseas migrant workers are concerned, it is R.A. 8042 itself that describes the nature of the liability of the corporation and its officers and directors. x x x [I]t is not essential that the individual officers and directors

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[20] *Id.* at 75.

[21] *Id.*

[22] *Id.* at 78.

[23] *Id.* at 80-85.

[24] *Id.* at 84.

[25] *Id.* at 85.

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

be impleaded as party respondents to the case instituted by the worker. A finding of liability on the part of the corporation will necessarily mean the liability of the corporate officers or directors."[27]

Upon appellate review, the CA affirmed the NLRC in a Decision[28] promulgated on 15 November 2010:

> From the foregoing, the Court finds no reason to hold the NLRC guilty of grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the Order of Executive Labor Arbiter Aglibut which held petitioner solidarily liable with PRO Agency Manila, Inc. and Abdul Rahman Al Mahwes as adjudged in the May 7, 1997 Decision of Labor Arbiter Pedro Ramos.
>
> **WHEREFORE,** the Petition is **DENIED.**
>
> **SO ORDERED.** (Emphasis in the original)

The CA stated that there was "no need for petitioner to be impleaded x x x because by express provision of the law, she is made solidarily liable with PRO Agency Manila, Inc., for any and all money claims filed by private respondents."[29] The CA further said that this is not a case in which the liability of the corporate officer must be established because an allegation of malice must be proven. The general rule is that corporate officers, directors and stockholders are not liable, except when they are made liable for their corporate act by a specific provision of law, such as R.A. 8042.[30]

On 8 and 15 December 2010, petitioner filed two Motions for Reconsideration, but both were denied in a Resolution[31] issued by the CA on 25 February 2011.

Hence, this Petition for Review filed on 30 March 2011.

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[27] *Id.* at 95.

[28] *Id.* at 20-32.

[29] *Id.* at 29.

[30] *Id.* at 30.

[31] *Id.* at 34-38.

On 1 August 2011, respondents filed their Comment,[32] alleging that the petition had been filed 15 days after the prescriptive period of appeal under Section 2, Rule 45 of the Rules of Court.

On 14 February 2012, petitioner filed a Reply,[33] countering that she has a fresh period of 15 days from 16 March 2011 (the date she received the Resolution of the CA) or up to 31 March 2011 to file the Petition.

ISSUES

From the foregoing, we reduce the issues to the following:

1. Whether or not this petition was filed on time; and
2. Whether or not petitioner may be held jointly and severally liable with PRO Agency Manila, Inc. in accordance with Section 10 of R.A. 8042, despite not having been impleaded in the Complaint and named in the Decision.

THE COURT'S RULING

Petitioner has a fresh period of 15 days within which to file this petition, in accordance with the Neypes rule.

We first address the procedural issue of this case.

In a misleading attempt to discredit this petition, respondents insist that by opting to file a Motion for Reconsideration instead of directly appealing the CA Decision, petitioner effectively lost her right to appeal. Hence, she should have sought an extension of time to file her appeal from the denial of her motion.

This contention, however, deserves scant consideration. We agree with petitioner that starting from the date she received the Resolution denying her Motion for Reconsideration, she had a "fresh period" of 15 days within which to appeal to this Court. The matter has already been settled in *Neypes v. Court of Appeals*,[34] as follows:

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[32] *Id.* at 227-230.

[33] *Id.* at 245-250.

[34] 506 Phil. 613, 626-627 (2005).

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.

Since petitioner received the CA Resolution denying her two Motions for Reconsideration only on 16 March 2011, she had another 15 days within which to file her Petition, or until 31 March 2011. This Petition, filed on 30 March 2011, fell within the prescribed 15-day period.

Petitioner may not be held jointly and severally liable, absent a finding that she was remiss in directing the affairs of the agency.

As to the merits of the case, petitioner argues that while it is true that R.A. 8042 and the Corporation Code provide for solidary liability, this liability must be so stated in the decision sought to be implemented.[35] Absent this express statement, a corporate officer may not be impleaded and made to personally answer for the liability of the corporation.[36] Moreover, the 1997 Decision had already been final and executory for five years and, as such, can no longer be modified.[37] If at all, respondents

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[35] *Rollo,* p. 12.

[36] *Id.*

[37] *Id.* at 14.

are clearly guilty of laches for waiting for five years before taking action against petitioner.[38]

In disposing the issue, the CA cited Section 10 of R.A. 8042, stating that there was "no need for petitioner to be impleaded x x x because by express provision of the law, she is made solidarily liable with PRO Agency Manila, Inc., for any and all money claims filed by private respondents."[39]

We reverse the CA.

At the outset, we have declared that "R.A. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad."[40]

The pertinent portion of Section 10, R.A. 8042 reads as follows:

SEC. 10. MONEY CLAIMS. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages. (Emphasis supplied)

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[38] *Id.* at 14-16.

[39] *Id.* at 29.

[40] *Sto. Tomas v. Salac*, G.R. No. 152642, 13 November 2012, 685 SCRA 245, 262.

In *Sto. Tomas v. Salac*,[41] we had the opportunity to pass upon the constitutionality of this provision. We have thus maintained:

> The key issue that Gumabay, *et al*. present is whether or not the 2nd paragraph of Section 10, R.A. 8042, which holds the corporate directors, officers, and partners of recruitment and placement agencies jointly and solidarily liable for money claims and damages that may be adjudged against the latter agencies, is unconstitutional.
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> x x x x x x x x x
>
> **But the Court has already held, pending adjudication of this case, that the liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities.** In the case of Becmen and White Falcon, while there is evidence that these companies were at fault in not investigating the cause of Jasmin's death, there is no mention of any evidence in the case against them that intervenors Gumabay, *et al*., Becmen's corporate officers and directors, were personally involved in their company's particular actions or omissions in Jasmin's case. (Emphasis supplied)

Hence, for petitioner to be found jointly and solidarily liable, there must be a separate finding that she was remiss in directing the affairs of the agency, resulting in the illegal dismissal of respondents. Examination of the records would reveal that there was no finding of neglect on the part of the petitioner in directing the affairs of the agency. In fact, respondents made no mention of any instance when petitioner allegedly failed to manage the agency in accordance with law, thereby contributing to their illegal dismissal.

Moreover, petitioner is correct in saying that impleading her for the purpose of execution is tantamount to modifying a decision that had long become final and executory.[42] The *fallo* of the 1997 Decision by the NLRC only held "respondents Pro Agency

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[41] *Id.* at 261-262.

[42] *Rollo,* p. 78.

Manila Inc., and Abdul Rahman Al Mahwes to jointly and severally pay complainants x x x."[43] By holding her liable despite not being ordained as such by the decision, both the CA and NLRC violated the doctrine on immutability of judgments.

In *PH Credit Corporation v. Court of Appeals*,[44] we stressed that "respondent's [petitioner's] obligation is based on the judgment rendered by the trial court. The dispositive portion or the *fallo* is its decisive resolution and is thus the subject of execution. x x x. Hence the execution must conform with that which is ordained or decreed in the dispositive portion of the decision."

In *INIMACO v. NLRC*,[45] we also held thus:

> None of the parties in the case before the Labor Arbiter appealed the Decision dated March 10, 1987, hence the same became final and executory. It was, therefore, removed from the jurisdiction of the Labor Arbiter or the NLRC to further alter or amend it. Thus, the proceedings held for the purpose of amending or altering the dispositive portion of the said decision are null and void for lack of jurisdiction. Also, the *Alias* Writ of Execution is null and void because it varied the tenor of the judgment in that it sought to enforce the final judgment against "Antonio Gonzales/Industrial Management Development Corp. (INIMACO) *and/or* Filipinas Carbon and Mining Corp. and Gerardo Sicat," which makes the liability solidary.

In other words, "[o]nce a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the

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[43] *Id.* at 55.

[44] 421 Phil. 821, 833 (2001), citing *Magat v. Judge Pimentel Jr.*, 399 Phil. 728, 735 (2000); *Olac v. CA*, G.R. No. 84256, 2 September 1992, 213 SCRA 321.

[45] 387 Phil. 659, 667 (2000).

entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity."[46]

While labor laws should be construed liberally in favor of labor, we must be able to balance this with the equally important right of petitioner to due process. Because the 1997 Decision of Labor Arbiter Ramos was not appealed, it became final and executory and was therefore removed from his jurisdiction. Modifying the tenor of the judgment via a motion impleading petitioner and filed only in 2002 runs contrary to settled jurisprudence, rendering such action a nullity.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED.** The assailed Decision dated 15 November 2010 and Resolution dated 25 February 2011 of the Court of Appeals in CA-G.R. SP No. 104292 are hereby **REVERSED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 196966. October 23, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL MAONGCO *y* YUMONDA and PHANS BANDALI *y* SIMPAL,** *accused-appellants.*

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[46] *Id.* citing *Schering Employees' Labor Union v. NLRC*, 357 Phil. 238 (1998); *Arcenas v. Court of Appeals*, 360 Phil. 122 (1998); *Philippine Bank of Communications v. Court of Appeals*, 344 Phil. 777 (1997).

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; CONVICTION FOR THE CRIME CANNOT STAND WITHOUT THE ESSENTIAL ELEMENT OF CONSIDERATION/PAYMENT; CASE AT BAR.—** In the case of accused-appellant Maongco, the Court finds that the RTC and the Court of Appeals both erred in convicting him in **Criminal Case No. Q-04-127731** for the **illegal sale of *shabu*** under Article II, Section 5 of Republic Act No. 9165. The evidence on record does not support accused-appellant Maongco's conviction for said crime, especially considering the x x x answers of prosecution witness PO1 Arugay during the latter's cross-examination, practically admitting the lack of consideration/payment of the sachet of *shabu* x x x. Inarguably, consideration/payment is one of the essential elements of illegal sale of dangerous drugs, without which, accused-appellant Maongco's conviction for said crime cannot stand.

2. **ID.; ID.; ILLEGAL DELIVERY OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** As for the illegal delivery of dangerous drugs, it must be proven that (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Worthy of note is that the delivery may be committed even without consideration. It is not disputed that accused-appellant Maongco, who was working as a taxi driver at the time of his arrest, had no authority under the law to deliver any dangerous drug. The existence of the two other elements was established by PO1 Arugay's testimony x x x. There was a prior arrangement between Carpio and accused-appellant Maongco. When PO1 Arugay appeared for his purportedly indisposed cousin, Carpio, and asked for his order of *shabu*, accused-appellant Maongco immediately understood what PO1 Arugay meant. Accused-appellant Maongco took out a sachet of *shabu* from his pocket and handed over possession of said sachet to PO1 Arugay. Based on the charges against accused-appellant Maongco and the evidence presented by the prosecution, accused-appellant Maongco is guilty beyond

reasonable doubt of **illegal delivery of *shabu*** under Article II, Section 5 of Republic Act No. 9165.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; PRESENT IN CASE AT BAR.— For the prosecution of illegal possession of dangerous drugs to prosper, the following essential elements must be proven, namely: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug. Accused-appellant Maongco informed the police officers that the other sachet of *shabu* was in the possession of accused-appellant Bandali. Accused-appellant Bandali herein was in possession of the sachet of *shabu* as he was sitting at Jollibee Pantranco branch and was approached by PO2 Ong. Hence, accused-appellant Bandali was able to immediately produce and surrender the said sachet upon demand by PO2 Ong. Accused-appellant Bandali, admittedly jobless at the time of his arrest, did not have any authority to possess *shabu*. And as to the last element, the rule is settled that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.

4. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; NECESSARILY INCLUDES THE CRIME OF ILLEGAL POSSESSION OF DANGEROUS DRUGS.— Well-settled in jurisprudence that the crime of illegal sale of dangerous drugs necessarily includes the crime of illegal possession of dangerous drugs. The same ruling may also be applied to the other acts penalized under Article II, Section 5 of Republic Act No. 9165 because for the accused to be able to trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug, he must necessarily be in possession of said drugs.

5. ID.; ID.; CHAIN OF CUSTODY RULE; THE FAILURE OF THE POLICE OFFICERS TO MAKE A PHYSICAL INVENTORY, TO PHOTOGRAPH, AND TO MARK THE SEIZED DRUGS AT THE PLACE OF ARREST DO NOT RENDER SAID DRUGS INADMISSIBLE IN EVIDENCE.— The Court disagrees with accused-appellants as the police officers had substantially

complied with the chain of custody rule under Section 21(a) of the Implementing Rules of Republic Act No. 9165. The Court had previously held that in dangerous drugs cases, the failure of the police officers to make a physical inventory, to photograph, and to mark the seized drugs at the place of arrest do not render said drugs inadmissible in evidence or automatically impair the integrity of the chain of custody of the same. The Court had further clarified, in relation to the requirement of marking the drugs "immediately after seizure and confiscation," that the marking may be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of the accused and that what is of utmost importance is the preservation of its integrity and evidentiary value.

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; QUESTIONS AS TO THE CREDIBILITY OF WITNESSES ARE MATTERS BEST LEFT TO THE APPRECIATION OF THE TRIAL COURT.—** The Court finds no fault on the part of both the RTC and the Court of Appeals in giving more weight and credence to the testimonies of the police officers *vis-à-vis* those of the accused-appellants. Questions as to the credibility of witnesses are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal.

7. **ID.; ID.; DENIAL AND FRAME-UP; MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE.—** [A]ccused-appellants' uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers who caught the accused-appellants *in flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which accused-appellants failed to present in this case.

8. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DELIVERY OF DANGEROUS DRUGS; PENALTY.— Under Article II, Section 5 of Republic Act No. 9165, the penalties for the illegal delivery of dangerous drugs, regardless of the quantity thereof, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, accused-appellant Maongco, for his illegal delivery of *shabu* in Criminal Case No. Q-04-127731, is sentenced to life imprisonment and ordered to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

9. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY.— Article II, Section 11 of Republic Act No. 9165 prescribes the penalty, for possession of less than five grams of dangerous drugs, of imprisonment of twelve (12) years and one (1) day to twenty (20) years, plus a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). Applying the Indeterminate Sentence Law, the maximum term shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term as prescribed by the same law. Resultantly, accused-appellant Bandali, for his illegal possession of 4.45 grams of *shabu* in Criminal Case No. Q-04-127732, is sentenced to imprisonment of twelve (12) years and one (1) day, as the minimum term, to twenty (20) years, as the maximum term, and ordered to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated September 6, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03505, which affirmed *in toto* the Decision[2] dated June 11, 2008 of the Regional Trial Court (RTC), Branch 82, Quezon City, in Criminal Case Nos. Q-04-127731-32, finding accused-appellants Michael Y. Maongco (Maongco) and Phans S. Bandali (Bandali) guilty beyond reasonable doubt of violating Article II, Section 5 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

Accused-appellants were separately charged for illegally dispensing, delivering, transporting, distributing, or acting as brokers of dangerous drugs under the following amended Informations:

[Criminal Case No. Q-04-127731]

The undersigned accuses MICHAEL MAONGCO *y* YUMONDA for Violation of Section 5, Article II, R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002), committed as follows:

That on or about the 19th day of June, 2004 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully dispense, deliver, transport, distribute or act as broker in the said transaction, four point fifty (4.50) grams of Methylamphetamine hydrochloride, a dangerous drug.[3]

[Criminal Case No. Q-04-127732]

The undersigned accuses PHANS BANDALI *y* SIMPAL for Violation of Section 5, Article II, R.A. 9165 (Comprehensive Dangerous

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[1] *Rollo*, pp. 2-21; penned by Associate Justice Ruben C. Ayson with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro, concurring.

[2] Records, pp. 173-180; penned by Presiding Judge Severino B. de Castro, Jr.

[3] *Id.* at 108-111.

Drugs Act of 2002), committed as follows:

That on or about the 19th day of June, 2004 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully dispense, deliver, transport, distribute or act as broker in the said transaction, four point forty[-]five (4.45) grams of Methylamphetamine hydrochloride, a dangerous drug.[4]

When arraigned on September 13, 2004, both accused-appellants pleaded not guilty.[5]

During trial, the prosecution presented the testimonies of Police Officer (PO) 1 Dominador Arugay (Arugay)[6] and PO2 Vener Ong (Ong),[7] who arrested accused-appellants. The testimonies of Police Inspector (P/Insp.) Erickson Calabocal (Calabocal),[8] the forensic chemist, and Senior Police Officer (SPO) 1 Adonis Sugui (Sugui),[9] the post investigating officer, were dispensed with after the defense agreed to a stipulation of the substance of the two witnesses' testimonies, but with the qualification that said witnesses had no personal knowledge of the circumstances surrounding accused-appellants' arrest and the source of the plastic sachets of *shabu*.

The object and documentary evidence of the prosecution, all admitted by the RTC,[10] consisted of the Request for Laboratory Examination;[11] an Improvised Envelope containing the plastic sachets of suspected methamphetamine hydrochloride, more popularly known as *shabu*;[12] P/Insp. Calabocal's Chemistry

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[4] *Id.* at 112-115.

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

[6] TSN, February 1, 2006.

[7] TSN, May 3, 2006.

[8] Records, p. 41.

[9] *Id.* at 96.

[10] *Id.* at 121.

[11] *Id.* at 191; Exh. A.

[12] *Id.* at 196; Exh. B and submarkings.

Report No. D-360-04;[13] P/Insp. Calabocal's Certification[14] stating that the contents of the plastic sachets tested positive for methamphetamine hydrochloride; PO1 Arugay's *Sinumpaang Salaysay*;[15] PO2 Ong's *Sinumpaang Salaysay*;[16] and the Referral of the case to the Prosecutor's Office of Quezon City.[17]

The prosecution's evidence presented the following version of the events leading to accused-appellants' arrests.

Based on a tip from a confidential informant, the Station Anti-Illegal Drugs of the Navotas City Police conducted a special operation on June 18, 2004, which resulted in the arrest of a certain Alvin Carpio (Carpio) for illegal possession of dangerous drugs and seizure from Carpio's possession of 15 heat-sealed plastic sachets containing *shabu*. When questioned by the police, Carpio admitted that the *shabu* came from accused-appellant Maongco. Consequently, the police planned an operation to apprehend accused-appellant Maongco and formed a team for this purpose, composed of PO1 Arugay, PO2 Ong, PO2 Geoffrey Huertas (Huertas), and PO1 Jesus del Fierro (Del Fierro).

On June 19, 2004, after coordination with the Philippine Drug Enforcement Agency (PDEA), the police team was briefed about the operation. The police team allowed Carpio to talk to accused-appellant Maongco on the cellphone to arrange for a sale transaction of *shabu*. At around 10:30 in the morning, the police team, accompanied and guided by Carpio, proceeded to the vicinity of Quezon corner Roces Avenues in Quezon City frequented by accused-appellant Maongco. PO1 Arugay, PO2 Ong, and Carpio rode a taxi, while PO1 Del Fierro and PO2 Huertas followed in an owner-type jeep. Carpio spotted

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[13] *Id.* at 192; Exh. C and submarkings.

[14] *Id.* at 193; Exh. D and submarkings.

[15] *Id.* at 12; Exh. E and submarkings.

[16] *Id.* at 195; Exh. G and submarkings.

[17] *Id.* at 11; Exh. F.

accused-appellant Maongco at a waiting shed and pointed out the latter to the police. PO2 Arugay alighted from the taxi and approached accused-appellant Maongco. PO2 Arugay introduced himself to accused-appellant Maongco as Carpio's cousin, and claimed that Carpio was sick and could not be there personally. PO2 Arugay then asked from accused-appellant Maongco for Carpio's order of "*dalawang bulto*." Accused-appellant Maongco drew out from his pocket a sachet of *shabu* and showed it to PO2 Arugay. When PO2 Arugay got hold of the sachet of *shabu*, he immediately revealed that he was a police officer, arrested accused-appellant Maongco, and apprised the latter of his constitutional rights.

When the police team questioned accused-appellant Maongco as to the other "*bulto*" of *shabu* Carpio had ordered, accused-appellant disclosed that the same was in the possession of accused-appellant Bandali, who was then at Jollibee Pantranco branch along Quezon Avenue. The police team, with Carpio and accused-appellant Maongco, went to the said restaurant where accused-appellant Maongco identified accused-appellant Bandali to the police team as the one wearing a blue shirt. PO2 Ong approached accused-appellant Bandali and demanded from the latter the other half of the drugs ordered. Accused-appellant Bandali voluntarily handed over a sachet of *shabu* to PO2 Ong. Thereafter, PO2 Ong apprised accused-appellant Bandali of his constitutional rights and arrested him.

The police team first brought accused-appellants to the East Avenue Medical Center for medical examination to prove that accused-appellants sustained no physical injuries during their apprehension. Afterwards, the police team brought accused-appellants to the police station in Navotas City. At the police station, PO1 Arugay marked the sachet of *shabu* from accused-appellant Maongco with the initials "MMY," while PO2 Ong marked the sachet of *shabu* from accused-appellant Bandali with the initials "PBS." PO1 Arugay and PO2 Ong turned over the two sachets of *shabu* to the custody of PO1 Del Fierro and SPO1 Sugui. The sachets of *shabu* were then inventoried, photographed in the presence of accused-appellants, and submitted for laboratory examination.

P/Insp. Calabocal received the sachets of *shabu* for chemical analysis. P/Insp. Calabocal's examination revealed that the contents of the sachets marked "MMY" and "PBS" weighed 4.50 grams and 4.45 grams, respectively, and both tested positive for methamphetamine hydrochloride.

When the defense's turn to present evidence came, the accused-appellants took the witness stand.[18] Accused-appellants asserted that they did not know each other prior to their arrests and they were illegally arrested, extorted for money, physically beaten, and framed-up by the police.

On June 11, 2008, the RTC promulgated its Decision finding accused-appellants guilty beyond reasonable doubt of illegally selling *shabu*, penalized under Article II, Section 5 of Republic Act No. 9165, to wit:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused **MICHAEL MAONGCO *y* YUMONDA**, accused in Ciminal (sic) Case No. Q-04-127731 and **PHANS BANDALI *y* SIMPAL**, accused in Ciminal (sic) Case No. Q-04-127732, both **guilty** beyond reasonable doubt of violations of Section 5, Article II of R.A. No. 9165. Accordingly, they are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and each to pay a fine in the amount of **Five Hundred Thousand** (₱500,000.00) **Pesos**.[19]

Accused-appellants appealed to the Court of Appeals. In their Brief,[20] accused-appellants imputed the following errors on the part of the RTC:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE *SHABU* ALLEGEDLY SEIZED.

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[18] TSN, December 12, 2007 and June 2, 2008.

[19] Records, p. 180.

[20] CA *rollo*, pp. 41-61.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT[S] DESPITE THE FAILURE TO COMPLY WITH THE "OBJECTIVE TEST" IN BUY-BUST OPERATIONS.

III

THE TRIAL COURT ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY THE POLICE OFFICERS DESPITE THE PATENT IRREGULARITIES IN THE BUY-BUST OPERATION.

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT[S] DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[21]

Plaintiff-appellee countered in its Brief[22] that:

I.

THE COURT *A QUO* PROPERLY ADMITTED THE *SHABU* IN EVIDENCE.

II.

THERE WAS A LEGITIMATE "BUY-BUST" OPERATION IN THE CASE AT BAR WHICH RESULTED IN THE LAWFUL ARREST, PROSECUTION AND CONVICTION OF APPELLANTS.

III.

THE COURT *A QUO* PROPERLY FOUND APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.[23]

In its Decision dated September 6, 2010, the Court of Appeals found no palpable error in the judgment of conviction rendered by the RTC against accused-appellants and rejected accused-

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

[22] *Id.* at 83-124.

[23] *Id.* at 92-93.

appellants' argument that the prosecution failed to establish the factual details constituting the essential elements of an illegal sale of dangerous drugs. According to the appellate court, Article II, Section 5 of Republic Act No. 9165 penalizes not only those who sell dangerous drugs, but also those who "trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug," without being authorized by law. In this case, the prosecution was able to prove with moral certainty that accused-appellants were caught in the act of illegally delivering, giving away to another, or distributing sachets of *shabu*. In the end, the Court of Appeals decreed:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed decision of the Regional Trial Court of Quezon City, Branch 82 dated June 11, 2008 convicting appellants for violation of Section 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**. No costs.[24]

Hence, this appeal.

Since accused-appellants had opted not to file any supplemental briefs, the Court considers the same issues and arguments raised by accused-appellants before the Court of Appeals.

Accused-appellants stress that for a judgment of conviction for the illegal sale of dangerous drugs, the identities of the buyer and seller, the delivery of the drugs, and the payment in consideration thereof, must all be duly proven. However, accused-appellants lament that in their case, the prosecution failed to establish by evidence these essential elements of the alleged sale of *shabu*. Accused-appellants add that the prosecution was also unable to show that the integrity and evidentiary value of the seized *shabu* had been preserved in accordance with Section 21(a) of the Implementing Rules of Republic Act No. 9165. Accused-appellants point out that PO1 Arugay did not mention the time and place of the marking of the sachet of *shabu* purportedly sold to him by accused-appellant Maongco;

[24] *Rollo*, p. 21.

while PO2 Ong admitted that he marked the sachet of *shabu* he received from accused-appellant Bandali only at the police station. Both PO1 Arugay and PO2 Ong merely provided an obscure account of the marking of the sachets of *shabu*, falling short of the statutory requirement that the marking of the seized drugs be made immediately after seizure and confiscation.

The appeal is partly meritorious.

In the case of accused-appellant Maongco, the Court finds that the RTC and the Court of Appeals both erred in convicting him in **Criminal Case No. Q-04-127731** for the **illegal sale of *shabu*** under Article II, Section 5 of Republic Act No. 9165. The evidence on record does not support accused-appellant Maongco's conviction for said crime, especially considering the following answers of prosecution witness PO1 Arugay during the latter's cross-examination, practically admitting the lack of consideration/payment for the sachet of *shabu*:

Q. What did you tell Michael Maongco?
A. I introduced myself as the cousin of Alvin, sir.

Q. After that, you immediately arrested him?
A. Yes, sir. I first asked my order [of] *shabu*.

Q. In your affidavit, you testified that you asked one "*bulto*" of *shabu*?
A. More or less five grams of *shabu*, sir.

Q. Did the accused ask any in exchange of that *shabu*?
A. No, sir.

Q. Immediately, you arrested him already?
A. After I got my order from him, I introduced myself as policeman, sir.

COURT:

Who gave you that one "*bulto*" of *shabu*?

A. I have the money but he did not ask it from me, your Honor.

Q. Was there any arrangement between you and Maongco as to how much this one "*bulto*" cost?
A. Alvin and Maongco were the ones who talked.

x x x x x x x x x

Q. Meaning to say, it was Maongco and Alvin who talked in Quezon Avenue?
A. They talked over the cellphone.

xxx x x x xxx

Q. But you did not hear the conversation?
A. No, sir.[25] (Emphases supplied.)

Inarguably, consideration/payment is one of the essential elements of illegal sale of dangerous drugs, without which, accused-appellant Maongco's conviction for said crime cannot stand.

Nonetheless, accused-appellant Maongco is still not absolved of criminal liability.

A review of the Information in Criminal Case No. Q-04-127731 readily reveals that accused-appellant Maongco was not actually charged with illegal sale of *shabu*. Said Information specifically alleged that accused-appellant Maongco "willfully and unlawfully dispense[d], deliver[ed], transport[ed], distribute[d] or act[ed] as broker" in the transaction involving 4.50 grams of *shabu*. These acts are likewise punishable under Article II, Section 5 of Republic Act No. 9165.

Article II, Section 5 of Republic Act No. 9165 provides:

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.)

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[25] TSN, February 1, 2006, pp. 13-14.

Several of the acts enumerated in the foregoing provision have been explicitly defined under Article I, Section 3 of the same statute, *viz*:

Section 3. *Definitions*. As used in this Act, the following terms shall mean:

(a) *Administer*. – Any act of introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion or other means, or of committing any act of indispensable assistance to a person in administering a dangerous drug to himself/herself unless administered by a duly licensed practitioner for purposes of medication.

x x x x x x x x x

(k) *Deliver*. – Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.

x x x x x x x x x

(m) *Dispense*. – Any act of giving away, selling or distributing medicine or any dangerous drug with or without the use of prescription.

x x x x x x x x x

(ii) *Sell*. – Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.

(jj) *Trading*. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act. (Emphasis supplied.)

As for the illegal delivery of dangerous drugs, it must be proven that (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Worthy of note is that the delivery may be committed even without consideration.

It is not disputed that accused-appellant Maongco, who was working as a taxi driver at the time of his arrest,[26] had no authority under the law to deliver any dangerous drug. The existence of the two other elements was established by PO1 Arugay's testimony that provided the following details:

FISCAL ANTERO:

Q. Why did you arrest this certain Alvin?
A. For violation of R.A. 9165, sir.

Q. What happened when you arrested this *alias* Alvin?
A. We investigated on where the *shabu* he was selling came from.

Q. What was the result of your inquiry as to the source of the *shabu*?
A. We learned that the source came from a certain Michael, sir.

Q. When you found out that the source came from a certain Michael, what did you do, Mr. Witness?
A. We formed a team and we made a Pre-Operation Report, sir.

Q. Aside from mentioning about the source as Michael, what are the other details?
A. No more, sir. On June 19, 2004 at about 10:30 a.m., our group was dispatched in Quezon [Avenue] corner Roces Avenue.

x x x x x x x x x

Q. What happened when you arrived in that area?
A. We went to the place where Michael is always staying and when he arrived he was pointed by Alvin, sir.

Q. What did you do when Alvin pointed to Michael?
A. I pretended to be the cousin of Alvin who was going to get the order.

Q. What happened when you approached this Michael?
A. I asked from him my order of "*dalawang bulto*" and he asked me who am I and I told him that I am the cousin of Alvin and that Alvin cannot come because he was sick, sir.

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[26] TSN, December 12, 2007, pp. 12-14.

Q. What happened after you said that?
A. I asked from him my order and then he took something out from his pocket and he showed it to me. It was a *shabu*, sir.

Q. What happened next?
A. After I got the order we arrested Michael, sir.

x x x x x x x x x

ATTY. BARTOLOME:

Q. What was Maongco doing at that time?
A. He was staying in a waiting shed along Quezon Avenue, sir.

Q. What was he doing there?
A. He was waiting for somebody, sir.

Q. Immediately you approached Maongco?
A. He was pointed by Alvin, sir. I alighted from the taxi.

Q. What was his reaction when you approached him?
A. He was a bit surprise[d], sir.

Q. What did you tell Michael Maongco?
A. I introduced myself as the cousin of Alvin, sir.

Q. After that, you immediately arrested him?
A. Yes, sir. I first asked my order my *shabu*.

Q. In your Affidavit, you testified that you asked one "bulto" of *shabu*?
A. More or less five grams of *shabu*, sir.[27] (Emphases supplied.)

There was a prior arrangement between Carpio and accused-appellant Maongco. When PO1 Arugay appeared for his purportedly indisposed cousin, Carpio, and asked for his order of *shabu*, accused-appellant Maongco immediately understood what PO1 Arugay meant. Accused-appellant Maongco took out a sachet of *shabu* from his pocket and handed over possession of said sachet to PO1 Arugay.

Based on the charges against accused-appellant Maongco and the evidence presented by the prosecution, accused-appellant

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[27] TSN, February 1, 2006, pp. 4-5, 12-13.

Maongco is guilty beyond reasonable doubt of **illegal delivery of *shabu*** under Article II, Section 5 of Republic Act No. 9165.

For the same reasons cited in the preceding paragraphs, the RTC and the Court of Appeals also erred in convicting accused-appellant Bandali for the crime of **illegal sale of *shabu*** in **Criminal Case No. Q-04-127732**.

The Information against accused-appellant Bandali, same as that against accused-appellant Maongco, charged him with "willfully and unlawfully dispens[ing], deliver[ing], transport[ing], distribut[ing] or act[ing] as broker" in the transaction involving 4.45 grams of *shabu*. However, unlike accused-appellant Maongco, accused-appellant Bandali cannot be convicted for illegal delivery of *shabu* under Article II, Section 5 of Republic Act No. 9165, given that the circumstances surrounding the arrest of the latter were radically different from those of the former.

PO2 Ong testified:

Q. How did this Arugay arrest this Michael?
A. I was only a back-up of Arugay, sir.

Q. What did you see, if any?
A. I saw that he recovered one (1) heat-sealed transparent plastic sachet, sir.

Q. He recovered it from whom?
A. From Michael Maongco, sir.

xxx x x x xxx

Q. What happened when this man was arrested by Arugay?
A. We looked for the other "*bulto*" because according to Michael there were two and it was in the possession of Phans, sir.

THE COURT:

Q. Where did you look for him?
A. At Jollibee, Pantranco, your Honor.

xxx x x x xxx

Q. Did you find him in Jollibee?
A. Yes, your Honor, because according to Michael Maongco

he was wearing blue T-shirt.

Q. What did you do when you found him at Jollibee?
A. I went near him and asked him to put out the other *shabu* in his possession, your Honor.

Q. You yourself?
A. My companions were just there, your Honor.

Q. You yourself approached him?
A. Yes, your Honor.

Q. When you demanded the production of what?
A. One (1) *bulto* of *shabu*, your Honor.

PROS. ANTERO:

Q. Why do you know that he was Bandali?
A. Because Michael Maongco was pointing to him that he was Phans Bandali, sir.

Q. Was Michael with you when you went to that Jollibee?
A. Yes, sir.

Q. What happened when you demanded from Bandali this *shabu*?
A. He voluntarily put out the *shabu*, sir.

Q. What happened next, Mr. Witness?
A. I told him of his violation and his rights, sir.[28]

PO2 Ong further confirmed during his cross-examination:

Q. Now, Mr. Witness, you mentioned a while ago that you arrested Phans Bandali inside Jollibee, Pantranco. Is that correct?
A. Yes, sir.

Q. And you did not buy from him a *shabu*, Mr. Witness?
A. No, sir.

Q. You just demanded from him a plastic sachet?
A. Yes, sir.[29] (Emphases supplied.)

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[28] TSN, May 3, 2006, pp. 7-9.

[29] *Id.* at 13.

In accused-appellant Bandali's case, it cannot be said that he knowingly passed on the sachet of *shabu* in his possession to PO2 Ong. PO2 Ong approached accused-appellant Bandali as a police officer, absent any pretense, and demanded that the latter bring out the other sachet of *shabu*. Accused-appellant Bandali's voluntary production of the sachet of *shabu* in his possession was in subservience to PO2 Ong's authority. PO2 Ong then acquired the sachet of *shabu* from accused-appellant Bandali by seizure, not by delivery. Even if there may be doubt as to whether or not accused-appellant Bandali was actually aware at that moment that PO2 Ong was a police officer, the ambiguity would still be resolved in accused-appellant Bandali's favor.

This does not mean though that accused-appellant Bandali goes scot-free. The evidence for the prosecution did establish that accused-appellant Bandali committed **illegal possession of dangerous drugs**, penalized under Article II, Section 11 of Republic Act No. 9165.

For the prosecution of illegal possession of dangerous drugs to prosper, the following essential elements must be proven, namely: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug.[30] Accused-appellant Maongco informed the police officers that the other sachet of *shabu* was in the possession of accused-appellant Bandali. Accused-appellant Bandali herein was in possession of the sachet of *shabu* as he was sitting at Jollibee Pantranco branch and was approached by PO2 Ong. Hence, accused-appellant Bandali was able to immediately produce and surrender the said sachet upon demand by PO2 Ong. Accused-appellant Bandali, admittedly jobless at the time of his arrest,[31] did not have any authority to possess *shabu*. And as to the last element, the

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[30] *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 326.

[31] TSN, June 2, 2008, p. 5.

rule is settled that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.[32]

But can accused-appellant Bandali be convicted for illegal possession of dangerous drugs under Article II, Section 11 of Republic Act No. 9165 when he was charged with illegal dispensation, delivery, transportation, distribution or acting as broker of dangerous drugs under Article II, Section 5 of the same statute? The Court answers in the affirmative.

Rule 120, Section 4 of the Rules of Court governs situations where there is a variance between the crime charged and the crime proved, to wit:

> Sec. 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Well-settled in jurisprudence that the crime of illegal sale of dangerous drugs necessarily includes the crime of illegal possession of dangerous drugs.[33] The same ruling may also be applied to the other acts penalized under Article II, Section 5 of Republic Act No. 9165 because for the accused to be able to trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug, he must necessarily be in possession of said drugs.

At the outset of the trial, both parties had admitted the laboratory results showing that the contents of the two sachets tested positive for *shabu*, although accused-appellants contest the identity and integrity of the sachets and contents actually

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[32] *People v. Unisa, supra* note 30 at 327.

[33] *People v. Posada*, G.R. No. 194445, March 12, 2012, 667 SCRA 790, 812.

tested since the chain of custody of the same was not satisfactorily established in accordance with Republic Act No. 9165 and its implementing rules.

The Court disagrees with accused-appellants as the police officers had substantially complied with the chain of custody rule under Section 21(a) of the Implementing Rules of Republic Act No. 9165. The Court had previously held that in dangerous drugs cases, the failure of the police officers to make a physical inventory, to photograph, and to mark the seized drugs at the place of arrest do not render said drugs inadmissible in evidence or automatically impair the integrity of the chain of custody of the same.[34] The Court had further clarified, in relation to the requirement of marking the drugs "immediately after seizure and confiscation," that the marking may be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of the accused and that what is of utmost importance is the preservation of its integrity and evidentiary value.[35]

The Court finds no fault on the part of both the RTC and the Court of Appeals in giving more weight and credence to the testimonies of the police officers *vis-à-vis* those of the accused-appellants. Questions as to the credibility of witnesses are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal.[36]

Moreover, accused-appellants' uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the *corpus delicti*. The testimonies

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[34] *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 834-835.

[35] *People v. Resurreccion*, G.R. No. 186380, October 12, 2009, 603 SCRA 510, 518-519.

[36] *People v. Go*, 406 Phil. 804, 815 (2001).

of police officers who caught the accused-appellants *in flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence,[37] which accused-appellants failed to present in this case.

Lastly, the Court determines the proper penalties to be imposed upon accused-appellants.

Under Article II, Section 5 of Republic Act No. 9165, the penalties for the illegal delivery of dangerous drugs, regardless of the quantity thereof, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, accused-appellant Maongco, for his illegal delivery of *shabu* in Criminal Case No. Q-04-127731, is sentenced to life imprisonment and ordered to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

Article II, Section 11 of Republic Act No. 9165 prescribes the penalty, for possession of less than five grams of dangerous drugs, of imprisonment of twelve (12) years and one (1) day to twenty (20) years, plus a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). Applying the Indeterminate Sentence Law, the maximum term shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term as prescribed by the same law. Resultantly, accused-appellant Bandali, for his illegal possession of 4.45 grams of *shabu* in Criminal Case No. Q-04-127732, is sentenced to imprisonment of twelve (12) years and one (1) day, as the minimum term, to twenty (20) years, as the maximum term, and ordered to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

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[37] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

WHEREFORE, the appealed Decision is **AFFIRMED with MODIFICATIONS**, to read as follows:

1. In Criminal Case No. Q-04-127731, accused-appellant **MICHAEL YUMONDA MAONGCO** is found **GUILTY** beyond reasonable doubt of illegal delivery of *shabu* penalized under Article II, Section 5 of Republic Act No. 9165, and is sentenced to **LIFE IMPRISONMENT** and ordered to pay a **FINE** of Five Hundred Thousand Pesos (₱500,000.00); and

2. In Criminal Case No. Q-04-127732, accused-appellant **PHANS SIMPAL BANDALI** is found **GUILTY** beyond reasonable doubt of illegal possession of *shabu* with a net weight of 4.45 grams, penalized under Article II, Section 11 of Republic Act No. 9165, and is sentenced to suffer the penalty of **IMPRISONMENT** of twelve (12) years and one (1) day, as the minimum term, to twenty (20) years, as the maximum term, and ordered to pay a **FINE** of Four Hundred Thousand Pesos (₱400,000.00).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198660. October 23, 2013]

TING TING PUA, *petitioner, vs.* **SPOUSES BENITO LO BUN TIONG and CAROLINE SIOK CHING TENG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* LIMITED TO REVIEW OF

QUESTIONS OF LAW; EXCEPTIONS.— The general rule is that this Court in petitions for review on *certiorari* only concerns itself with questions of law, not of fact, the resolution of factual issues being the primary function of lower courts. However, several exceptions have been laid down by jurisprudence to allow the scrutiny of the factual arguments advanced by the contending parties, *viz:* (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 fact are contradicted by the presence of evidence on record**; (8) **the findings of the CA are contrary to those of the trial court**; (9) **the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion**; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. At the very least, therefore, the inconsonance of the findings of the RTC and the CA regarding the existence of the loan sanctions the recalibration of the evidence presented by the parties before the trial court.

2. ID.; EVIDENCE; PRESUMPTIONS; WHERE THE PLAINTIFF-CREDITOR IN A SUIT FOR RECOVERY OF SUM OF MONEY POSSESSES AND SUBMITS IN EVIDENCE AN INSTRUMENT SHOWING THE INDEBTEDNESS, A PRESUMPTION THAT THE CREDIT HAS NOT BEEN SATISFIED ARISES IN HER FAVOR.— [I]n a suit for a recovery of sum of money, as here, the plaintiff-creditor has the burden of proof to show that defendant had not paid her the amount of the contracted loan. However, it has also been long established that where the plaintiff-creditor possesses and submits in evidence an instrument showing the indebtedness, a presumption that the credit has not been satisfied arises in her favor. Thus, the defendant is, in appropriate instances, required to overcome the said presumption and present evidence to prove the fact of payment so that no judgment will be entered against him.

3. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; NEGOTIABLE INSTRUMENTS; CHECKS; A CHECK CONSTITUTES AN EVIDENCE OF INDEBTEDNESS AND IS

A VERITABLE PROOF OF OBLIGATION.— In *Pacheco v. Court of Appeals*, this Court has expressly recognized that a check "constitutes an evidence of indebtedness" and is a veritable "proof of an obligation." Hence, it can be used "in lieu of and for the same purpose as a promissory note." In fact, in the seminal case of *Lozano v. Martinez*, We pointed out that a check functions more than a promissory note since it not only contains an undertaking to pay an amount of money but is an "order addressed to a bank and partakes of a **representation** that the drawer has funds on deposit against which the check is drawn, sufficient to **ensure payment** upon its presentation to the bank." This Court reiterated this rule in the relatively recent *Lim v. Mindanao Wines and Liquour Galleria* stating that "[a] check, the entries of which are in writing, could prove a loan transaction." This very same principle underpins Section 24 of the Negotiable Instruments Law (NIL) x x x.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; REFERS TO THAT EVIDENCE WHICH IS MORE CONVINCING TO THE COURT AS WORTHIER OF BELIEF THAN THAT WHICH IS OFFERED IN OPPOSITION THERETO.— In *Magdiwang Realty Corp. v. Manila Banking Corp.*, We stressed that the quantum of evidence required in civil cases—preponderance of evidence—"is a phrase which, in the last analysis, means probability to truth. It is **evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto**." Based on the evidence submitted by the parties and the legal presumptions arising therefrom, petitioner's evidence outweighs that of respondents. This preponderance of evidence in favor of Pua requires that a judgment ordering respondents to pay their obligation be entered.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SIMPLE LOAN OR *MUTUUM*; COLLECTION OF INTEREST IN LOANS OR FORBEARANCE OF MONEY, WHEN ALLOWED.— Article 1956 of the Civil Code, which refers to monetary interest, specifically mandates that no interest shall be due unless it has been expressly stipulated in writing. Thus, the collection of interest in loans or forbearance of money is allowed only when these two conditions concur: (1) there was an express stipulation for the payment of interest; (2) the agreement for the payment of the interest was reduced in writing.

Absent any of these two conditions, the money debtor cannot be made liable for interest.

6. ID.; FAMILY CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP; LIABLE FOR THE LOAN CONTRACTED BY THE WIFE WHERE THE PROCEEDS THEREOF REDOUNDED TO THE BENEFIT OF THE FAMILY; CASE AT BAR.— Respondent Benito cannot escape the joint and solidary liability to pay the loan on the ground that the obligation arose from checks solely issued by his wife. Without any evidence to the contrary, it is presumed that the proceeds of the loan redounded to the benefit of their family. Hence, the conjugal partnership is liable therefor. The unsupported allegation that respondents were separated in fact, standing alone, does not persuade this Court to solely bind respondent Caroline and exempt Benito. As the head of the family, there is more reason that respondent Benito should answer for the liability incurred by his wife presumably in support of their family.

APPEARANCES OF COUNSEL

Federico N. Alday, Jr. for petitioner.
Lydio J. Cataluña for respondents.

R E S O L U T I O N

VELASCO, JR., *J.*:

Under consideration is the Motion for Reconsideration interposed by petitioner Ting Ting Pua (Pua) of our Resolution dated April 18, 2012 effectively affirming the Decision[1] and Resolution[2] dated March 31, 2011 and September 26, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 93755, which, in turn, reversed the Decision of the Regional Trial Court (RTC) of the City of Manila, Branch 29 in Civil Case No. 97-83027.

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[1] *Rollo*, pp. 47-65. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Ramon A. Cruz.

[2] *Id.* at 67-68.

As culled from the adverted RTC Decision, as adopted for the most part by the CA, the antecedent facts may be summarized as follows:

The controversy arose from a Complaint for a Sum of Money[3] filed by petitioner Pua against respondent-spouses Benito Lo Bun Tiong (Benito) and Caroline Siok Ching Teng (Caroline). In the complaint, Pua prayed that, among other things, respondents, or then defendants, pay Pua the amount of eight million five hundred thousand pesos (PhP 8,500,000), covered by a check. (Exhibit "A", for plaintiff)

During trial, petitioner Pua clarified that the PhP 8,500,000 check was given by respondents to pay the loans they obtained from her under a compounded interest agreement on various dates in 1988.[4] As Pua narrated, her sister, Lilian Balboa (Lilian), vouched for respondents' ability to pay so that when respondents approached her, she immediately acceded and lent money to respondents without requiring any collateral except post-dated checks bearing the borrowed amounts.[5] In all, respondents issued 17[6] checks for a total amount of one million nine hundred seventy-five thousand pesos (PhP 1,975,000). These checks were dishonored upon presentment to the drawee bank.[7]

As a result of the dishonor, petitioner demanded payment. Respondents, however, pleaded for more time because of their financial difficulties.[8] Petitioner Pua obliged and simply reminded the respondents of their indebtedness from time to time.[9]

Sometime in September 1996, when their financial situation turned better, respondents allegedly called and asked petitioner

[3] Records, pp. 1-4, dated April 11, 1997.

[4] TSN, February 5, 1998, pp. 5, 8-9, 11-13.

[5] *Id.* at 16.

[6] Exhibits "C" to "C-16"; TSN, February 5, 1998, pp. 12-14, 19.

[7] Exhibits "E" to "E-11".

[8] TSN, February 5, 1998, p. 20; TSN, October 9, 2002, p. 20; TSN, April 23, 2003, p. 15.

[9] *Id.* at 22; TSN, October 9, 2002, p. 22.

Pua for the computation of their loan obligations.[10] Hence, petitioner handed them a computation dated October 2, 1996[11] which showed that, at the agreed 2% compounded interest rate per month, the amount of the loan payable to petitioner rose to thirteen million two hundred eighteen thousand five hundred forty-four pesos and 20/100 (PhP 13,218,544.20).[12] On receiving the computation, the respondents asked petitioner to reduce their indebtedness to PhP 8,500,000.[13] Wanting to get paid the soonest possible time, petitioner Pua agreed to the lowered amount.[14]

Respondents then delivered to petitioner Asiatrust Check No. BND057750 bearing the reduced amount of PhP 8,500,000 dated March 30, 1997 with the assurance that the check was good.[15] In turn, respondents demanded the return of the 17 previously dishonored checks. Petitioner, however, refused to return the bad checks and advised respondents that she will do so only after the encashment of Asiatrust Check No. BND057750.[16]

Like the 17 checks, however, Check No. BND057750 was also dishonored when it was presented by petitioner to the drawee bank. Hence, as claimed by petitioner, she decided to file a complaint to collect the money owed her by respondents.

For the defense, both respondents Caroline and Benito testified along with Rosa Dela Cruz Tuazon (Tuazon), who was the OIC-Manager of Asiatrust-Binondo Branch in 1997. Respondents categorically denied obtaining a loan from petitioner.[17] Respondent

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[10] TSN, February 5, 1998, p. 22; TSN, March 18, 1998, p. 12.

[11] Exhibit "D"; TSN, March 18, 1998, p. 12.

[12] *Id.*; TSN, October 9, 2002, p. 18.

[13] TSN, April 16, 1998, p. 5.

[14] *Id.* at 6-7.

[15] TSN, June 18, 2003, pp. 4, 7.

[16] TSN, February 5, 1998, p. 25; TSN, March 18, 1998, pp. 12-13.

[17] TSN, August 13, 2003, p. 6.

Caroline, in particular, narrated that, in August 1995, she and petitioner's sister, Lilian, forged a partnership that operated a *mahjong* business. Their agreement was for Lilian to serve as the capitalist while respondent Caroline was to act as the cashier. Caroline also agreed to use her personal checks to pay for the operational expenses including the payment of the winners of the games.[18] As the partners anticipated that Caroline will not always be in town to prepare these checks, she left with Lilian five (5) pre-signed and consecutively numbered checks[19] on the condition that these checks will only be used to cover the costs of the business operations and in no circumstance will the amount of the checks exceed PhP 5,000.[20]

In March 1996, however, respondent Caroline and Lilian had a serious disagreement that resulted in the dissolution of their partnership and the cessation of their business. In the haste of the dissolution and as a result of their bitter separation, respondent Caroline alleged that she forgot about the five (5) pre-signed checks she left with Lilian.[21] It was only when Lilian's husband, Vicente Balboa (Vicente), filed a complaint for sum of money in February 1997 against respondents to recover five million one hundred seventy-five thousand two hundred fifty pesos (PhP 5,175,250), covering three of the five post-dated and pre-signed checks.[22]

Respondent Caroline categorically denied having completed Check No. BND057750 by using a check writer or typewriter as she had no check writer and she had always completed checks in her own handwriting.[23] She insisted that petitioner and her sister completed the check after its delivery.[24]

[18] TSN, July 16, 1998, pp. 5-6.

[19] TSN, July 16, 1998, p. 5; Exhibits "6" to "10".

[20] TSN, July 16, 1998, p. 7.

[21] *Id.* at 9.

[22] See *Spouses Benito Lo Bun Tiong and Caroline Siok Ching Teng v. Vicente Balboa*, G.R. No. 158177, January 28, 2008, 542 SCRA 504.

[23] TSN, July 16, 1998, p. 11; TSN, September 10, 2003, pp. 10, 14.

[24] TSN, September 10, 2003, pp. 9-11.

Furthermore, she could not have gone to see petitioner Pua with her husband as they had been separated in fact for nearly 10 years.[25] As for the 17 checks issued by her in 1988, Caroline alleged that they were not intended for Pua but were issued for the benefit of other persons.[26] Caroline postulated that the complaint is designed to allow Pua's sister, Lilian, to recover her losses in the foreign exchange business she had with Caroline in the 1980s.

Respondent Benito corroborated Caroline's testimony respecting their almost a decade separation.[27] As such, he could not have had accompanied his wife to see petitioner to persuade the latter to lower down any alleged indebtedness.[28] In fact, Benito declared, before the filing of the Complaint, he had never met petitioner Pua, let alone approached her with his wife to borrow money.[29] He claimed that he was impleaded in the case to attach his property and force him to enter into an amicable settlement with petitioner.[30] Benito pointed out that Check No. BND057750 was issued under Asiatrust Account No. 5513-0054-9, which is solely under the name of his wife.[31]

The witness for the respondents, Ms. Tuazon, testified that respondent Caroline opened Asiatrust Account No. 5513-0054-9 in September 1994.[32] She claimed that the average maintaining balance of respondent Caroline was PhP 2,000 and the highest amount issued by Caroline from her account was PhP 435,000.[33]

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[25] TSN, July 16, 1998, p. 12.

[26] TSN, July 15, 1999, p. 11.

[27] TSN, June 22, 2000, pp. 12-14; TSN, February 4, 2002, p. 20.

[28] TSN, August 23, 2000, p. 3.

[29] TSN, June 22, 2000, pp. 5-6; TSN, August 23, 2000, p. 3; TSN, February 4, 2002, pp. 8, 14, 16.

[30] TSN, June 22, 2000, p. 6.

[31] TSN, June 22, 2000, p. 11; TSN, August 23, 2000, pp. 3,5-6; TSN, February 4, 2002, pp. 15-16.

[32] TSN, May 29, 2002, p. 18.

[33] *Id.* at 15.

She maintained that respondent Caroline had always completed her checks with her own handwriting and not with a check writer. On October 15, 1996, Caroline's checking account was closed at the instance of the bank due to 69 instances of check issuance against insufficient balance.[34]

After trial, the RTC issued its Decision dated January 31, 2006 in favor of petitioner. In holding thus, the RTC stated that the possession by petitioner of the checks signed by Caroline, under the Negotiable Instruments Law, raises the presumption that they were issued and delivered for a valuable consideration. On the other hand, the court *a quo* discounted the testimony for the defense completely denying respondents' loan obligation to Pua.[35]

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[34] TSN, May 29, 2002, pp. 20, 24-28, 31.

[35] The trial court held:

> In the present case, the Tiongs dispute Pua's allegation that they contracted several loans with the latter. They try to persuade this Court that the claim holds no water largely because the existence of said loan has not in the first place been established. Anent such assertion, the evidence presented before this Court belie such contention.
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> x x x x x x x x x
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> Thus, in a case of an incomplete but delivered negotiable instrument, **the law creates a disputable presumption of valid and regular delivery in favor of the holder**. Furthermore, **once issued, the law likewise gives the holder the benefit of the presumption that said instrument was issued for a sufficient consideration and that the signatory thereof has been a party thereto for value**. The law therefore dispenses the party in possession of the duty of proving rightful delivery as well the fact that it has been issued for a valuable consideration and participation of the signatory thereof. x x x
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> In the course of the trial, several checks were presented by Pua. Seventeen (17) checks were offered as representing the principal amount of the loan of ₱1,975,000.00. And the check subject of the herein controversy was likewise presented as replacement of the 17 dishonored checks and covering the agreed compounded interest that accrued since the time of borrowing. Caroline, however, tried to discredit said testimony through its concocted mahjong business story.
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> x x x x x x x x x
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> [Caroline's] testimony deserves scant consideration if not, unworthy of belief. x x x Moreover, **defendant Caroline admitted the genuineness**

The trial court, however, refused to order respondents to pay petitioner the amount of PhP 8,500,000 considering that the agreement to pay interest on the loan was not expressly stipulated in writing by the parties. The RTC, instead, ordered respondents to pay the principal amount of the loan as represented by the 17 checks plus legal interest from the date of demand. As rectified,[36] the dispositive portion of RTC's Decision reads:

> Defendant-spouses Benito Lo Bun Tiong and Caroline Siok Ching Teng, are hereby ordered jointly and solidarily:
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> 1. To pay plaintiff ₱1,975,000.00 plus 12% interest per annum from September 30, 1998, until fully paid;
> 2. To pay plaintiff attorney's fees of ₱200,000.00; and
> 3. To pay the costs of the suit.

Aggrieved, respondents went to the CA arguing that the court a *quo* erred in finding that they obtained and are liable for a loan from petitioner. To respondents, petitioner has not sufficiently proved the existence of the loan that they supposedly acquired from her way back in the late 1980s by any written agreement or memorandum.

By Decision of March 31, 2011, as reiterated in a Resolution dated September 26, 2011, the appellate court set aside the RTC Decision holding that Asiatrust Bank Check No.

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and the due execution of the checks (Exhibit C [to] C-16) offered by Pua as those which make up the ₱1,975,000 accumulated loan of Caroline Teng. However, despite such admission she denies that the same were issued in favor of Pua. According to her these were issued in favor of other people and not the herein plaintiff. Such denial does not have a leg to stand on. How could all seventeen (17) checks find their way to Ting Ting Pua's hands if they were not indeed personally handed to her? It is highly unlikely for a busy person like the plaintiff to spend her time appropriating or much less trouble herself in getting checks which might even place her in serious trouble and put her business operations in jeopardy. A likely impossibility is always preferable to an unconvincing possibility. *Rollo*, pp. 77-82. (Emphasis supplied.)

[36] By Order dated April 10, 2007 to reflect the exact date from which to reckon the computation of the interest. Records, pp. 621-622.

BND057550 was an incomplete delivered instrument and that petitioner has failed to prove the existence of respondents' indebtedness to her. Hence, the CA added, petitioner does not have a cause of action against respondents.[37]

Hence, petitioner came to this Court via a Petition for Review on *Certiorari*[38] alleging grievous reversible error on the part of the CA in reversing the findings of the court *a quo*.

As adverted to at the outset, the Court, in a Minute Resolution dated April 18, 2012, resolved to deny the petition.[39]

In this Motion for Reconsideration,[40] petitioner pleads that this Court take a second hard look on the facts and issues of the present case and affirm the RTC's case disposition. Petitioner

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[37] The Court of Appeals held: For one, **Ting Ting has not established defendants-appellants' indebtedness to her. She failed to establish this alleged indebtedness in writing. No proof of any sort, not even a memorandum or a jotting in a notebook that she released money in favor defendants-appellants sometime in 1988 was presented**. Thus, the RTC erred when it failed to consider this fact in giving credence to Ting Ting's testimony.

Moreover, **the seventeen (17) checks, though they may prove to have been issued for valuable considerations, do not sufficiently prove [respondents'] indebtedness to Ting Ting**. While now in her possession, Ting Ting failed to establish for whose accounts they were deposited and subsequently dishonored. If at all, they bolster [respondents'] position that the seventeen (17) checks were issued and delivered to different people and not [petitioner]. Especially so that some of these checks were not even deposited nor dishonored, but remained stale under circumstances that are not attributable to the fault of [respondents].

Ting Ting's handicaps – her having no contract that proves indebtedness; her lack of memorandum, journal, or evidence proving that money was actually released to [respondents] with a needed note on the amount involved – more than sufficiently prove the absence of consideration to support the check. And in so failing to dispense with her burden of proving [respondent'] indebtedness, Ting Ting consequently has no cause of action to pursue here. Necessarily therefore, her Complaint filed on April 18, 1997 must be dismissed. *Rollo*, pp. 63-64 (Emphasis supplied.)

[38] Dated November 17, 2011; *rollo*, pp. 8-42.

[39] *Rollo*, p. 112.

[40] *Id.* at 113-140.

argues, in the main, that the finding of the appellate court that petitioner has not established respondents' indebtedness to her is not supported by the evidence on record and is based solely on respondents' general denial of liability.

Respondents, on the other hand, argued in their Comment on the Motion for Reconsideration dated October 6, 2012 that the CA correctly ruled that Asiatrust Check No. BND057550 is an incomplete instrument which found its way into petitioner's hands and that the petitioner failed to prove respondents' indebtedness to her. Petitioner, so respondents contend, failed to show to whom the 17 1988 checks were delivered, for what consideration or purpose, and under whose account said checks were deposited or negotiated.

Clearly, the issue in the present case is factual in nature as it involves an inquiry into the very existence of the debt supposedly owed by respondents to petitioner.

The general rule is that this Court in petitions for review on *certiorari* only concerns itself with questions of law, not of fact,[41] the resolution of factual issues being the primary function of lower courts.[42] However, several exceptions have been laid down by jurisprudence to allow the scrutiny of the factual arguments advanced by the contending parties, *viz*: (1) the conclusion is grounded on speculations, surmises or conjectures;

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[41] Rules of Court, Rule 45, Sec 1. Filing of Petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition** may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis supplied.)

[42] *Express Investments III Private Ltd. v. Bayan Telecommunications, Inc.*, G.R. Nos. 175418-20, December 5, 2012, 687 SCRA 50; citing *Dela Rosa v. Michaelmar Philippines, Inc.*, G.R. No. 182262, April 13, 2011, 648 SCRA 721, 729 and *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 293-294.

(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 fact are contradicted by the presence of evidence on record**; (8) **the findings of the CA are contrary to those of the trial court**; (9) **the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion**; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[43] At the very least, therefore, the inconsonance of the findings of the RTC and the CA regarding the existence of the loan sanctions the recalibration of the evidence presented by the parties before the trial court.

In the main, petitioner asserts that respondents owed her a sum of money way back in 1988 for which the latter gave her several checks. These checks, however, had all been dishonored and petitioner has not been paid the amount of the loan plus the agreed interest. In 1996, respondents approached her to get the computation of their liability including the 2% compounded interest. After bargaining to lower the amount of their liability, respondents supposedly gave her a postdated check bearing the discounted amount of the money they owed to petitioner. Like the 1988 checks, the drawee bank likewise dishonored this check. To prove her allegations, petitioner submitted the original copies of the 17 checks issued by respondent Caroline in 1988 and the check issued in 1996, Asiatrust Check No. BND057750. In ruling in her favor, the RTC sustained the version of the facts presented by petitioner.

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[43] *Cereno v. CA*, G.R. No. 167366, September 26, 2012, 682 SCRA 18, citing *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, G.R. No. 161539, June 28, 2008, 556 SCRA 194, 199; *Abalos and Sps. Salazar v. Heirs of Vicente Torio*, G.R. No. 175444, December 14, 2011, 662 SCRA 450, 456-457, citing *Spouses Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 10.

Respondents, on the other hand, completely deny the existence of the debt asserting that they had never approached petitioner to borrow money in 1988 or in 1996. They hypothesize, instead, that petitioner Pua is simply acting at the instance of her sister, Lilian, to file a false charge against them using a check left to fund a gambling business previously operated by Lilian and respondent Caroline. While not saying so in express terms, the appellate court considered respondents' denial as worthy of belief.

After another circumspect review of the records of the present case, however, this Court is inclined to depart from the findings of the CA.

Certainly, in a suit for a recovery of sum of money, as here, the plaintiff-creditor has the burden of proof to show that defendant had not paid her the amount of the contracted loan. However, it has also been long established that where the plaintiff-creditor possesses and submits in evidence an instrument showing the indebtedness, a presumption that the credit has not been satisfied arises in her favor. Thus, the defendant is, in appropriate instances, required to overcome the said presumption and present evidence to prove the fact of payment so that no judgment will be entered against him.[44]

In overruling the trial court, however, the CA opined that petitioner "failed to establish [the] alleged indebtedness in writing."[45] Consequently, so the CA held, respondents were under no obligation to prove their defense. Clearly, the CA had discounted the value of the only hard pieces of evidence extant in the present case—the checks issued by respondent Caroline in 1988 and 1996 that were in the possession of, and presented in court by, petitioner.

In *Pacheco v. Court of Appeals*,[46] this Court has expressly recognized that a check "constitutes an evidence of

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[44] Francisco, Ricardo J., *EVIDENCE: RULES OF COURT IN THE PHILIPPINES, RULES 128-134* (3rd ed., 1996), pp. 386-387; citations omitted.

[45] *Rollo*, p. 63.

[46] 377 Phil. 627 (1999).

indebtedness"[47] and is a veritable "proof of an obligation."[48] Hence, it can be used "in lieu of and for the same purpose as a promissory note."[49] In fact, in the seminal case of *Lozano v. Martinez*,[50] We pointed out that a check functions more than a promissory note since it not only contains an undertaking to pay an amount of money but is an "order addressed to a bank and partakes of a **representation** that the drawer has funds on deposit against which the check is drawn, sufficient to **ensure payment** upon its presentation to the bank."[51] This Court reiterated this rule in the relatively recent *Lim v. Mindanao Wines and Liquour Galleria* stating that "[a] check, the entries of which are in writing, could prove a loan transaction."[52] This very same principle underpins Section 24 of the Negotiable Instruments Law (NIL):

> Section 24. *Presumption of consideration.* – Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party for value.

Consequently, the 17 original checks, completed and delivered to petitioner, are sufficient by themselves to prove the existence of the loan obligation of the respondents to petitioner. Note that **respondent Caroline had not denied the genuineness of these checks**.[53] Instead, respondents argue that they were

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[47] *Id.* at 637.

[48] *Id.*

[49] *Id.*

[50] G.R. No. 63419, December 18, 1986, 146 SCRA 323.

[51] *Id.*, emphasis supplied.

[52] G.R. No. 175851, July 4, 2012, 675 SCRA 628, citing *Gaw v. Chua*, 574 Phil. 640, 654 (2008).

[53] TSN, July 15, 1999, pp. 10-11.

> Atty. Abdul:
>
> I am showing to you, Madam Witness, several checks which were previously marked as Exhibit C, C-1, C-2, C-3 and up to Exhibit C-16 inclusive, signed by Caroline Lo, can you please tell the Honorable Court whose checks are those?

given to various other persons and petitioner had simply collected all these 17 checks from them in order to damage respondents' reputation.[54] This account is not only incredible; it runs counter to human experience, as enshrined in Sec. 16 of the NIL which provides that **when an instrument is no longer in the possession of the person who signed it and it is complete in its terms "a valid and intentional delivery by him is presumed until the contrary is proved."**

The appellate court's justification in giving credit to respondents' contention that the respondents had delivered the 17 checks to persons other than petitioner lies on the supposed failure of petitioner "to establish for whose accounts [the checks] were deposited and subsequently dishonored."[55] This is clearly contrary to the evidence on record. It seems that the appellate court overlooked the original copies of the bank return slips offered by petitioner in evidence. These return slips show that the 1988 checks issued by respondent Caroline were dishonored by the drawee bank[s] because they were "drawn against insufficient funds."[56] Further, a close scrutiny of these return slips will reveal that the checks were deposited either in petitioner's account[57]

[Caroline]:

Me sir.

Atty. Abdul:

And the signatures Caroline Lo are your signatures?

[Caroline]:

Yes sir.

Atty. Abdul:

And that you issued these checks in favor of the plaintiffs in payment of your obligation to the said plaintiff?

[Caroline]:

I issued these checks not for [her] but for other persons, for different depositors.

[54] *Id.*

[55] *Rollo*, p. 64.

[56] See Exhibits "E" to "E-11".

[57] Under the name Ting Ting Yulo, as acknowledged by respondents.

or in the account of her brother, Ricardo Yulo—a fact she had previously testified to explaining that petitioner indorsed some checks to her brother to pay for a part of the capital she used in her financing business.[58]

As for the Asiatrust check issued by respondent Caroline in 1996 to substitute the compounded value of the 1988 checks, the appellate court likewise sympathized with respondents' version of the story holding that it is buttressed by respondents' allegations describing the same defense made in the two related cases filed against them by petitioner's brother-in-law, Vicente Balboa. These related cases consisted of a criminal case for violation of BP 22[59] and a civil case for collection of sum of money[60] involving three (3) of the five (5) consecutively numbered checks she allegedly left with Lilian.[61] It should be noted,

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[58] TSN, October 9, 2002, pp. 19-20; TSN, August 13, 2003, pp. 9-10.

[59] These cases were docketed as Criminal Case Nos. 277576 to 78 in the MTC of Manila. On appeal, the RTC docketed the case as Criminal Case Nos. 02-204544-46.

[60] Docketed as Civil Case No. 97-82225 in the RTC of Manila. On appeal, it was docketed as CA-G.R. CV No. 61457. See Exhibit "G".

[61] The CA held:

> Second, defendants-appellants insists that the subject check bearing the amount of Eight Million Five Hundred Thousand Pesos (₱8,500,000.00) was never issued in favor of plaintiff-appellee, but was actually one of the five (5) blank checks which Caroline pre-signed and left with Lilian sometime in January 1996, but because of a squabble between the two, both decided to fold up their mahjong business without Caroline retrieving the five (5) blank checks left in Lilian's possession. Caroline even claimed that the payee "CASH," the amount of "Eight Million Five Hundred Thousand Only," its numerical expression "₱8,500,000.00," and the date "March 30, 1997" were all typewritten insertions of the subject check, and are thus contrary to her usual manner of issuing checks.
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> Third, a separate civil case was filed against defendants-appellants involving three (3) of the five (5) checks referred to by Caroline as those which she pre-signed and left with Lilian on account of their mahjong business.
>
> Fourth, Caroline's allegation that she pre-signed five (5) blank checks and left with Lilian was further bolstered in her Counter-Affidavit she filed relative to a preliminary investigation on a case filed by Vicente Balboa, Lilian's husband. Indicated therein were the Asia Trust Bank blank checks

however, that while respondents were exculpated from their criminal liability,[62] in *Sps. Benito Lo Bun Tiong and Caroline Siok Ching Teng v. Vicente Balboa*,[63] this Court sustained the factual findings of the appellate court in the civil case finding respondents civilly liable to pay the amount of the checks.

It bears to note that the Decision of the appellate court categorically debunked the same defense advanced by respondents in the present case primarily because of Caroline's admission to the contrary. The Decision of the appellate court found without any reversible error by this Court reads, thus:

> The claim of Caroline Siok Ching Teng that the three (3) checks were part of the blank checks she issued and delivered to Lilian Balboa, wife of plaintiff-appellee, and intended solely for the operational expenses of their mahjong business is belied by her admission that she issued three (3) checks (Exhs. "A", "B" "C") because Vicente showed the listing of their account totaling ₱5,175,250.00 (TSN, November 17, 1997, p. 10).[64] x x x

Clearly, respondents' defense that Caroline left blank checks with petitioner's sister who, it is said, is now determined to recoup her past losses and bring financial ruin to respondents by falsifying the same blank checks, had already been thoroughly passed upon and rejected by this Court. It cannot, therefore, be used to support respondents' denial of their liability.

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bearing the numbers BNDO57546, BNDO57547, BNDO57548, BNDO57549, and BNDO57550, the last check being the same check offered in evidence in this case. *Rollo*, pp. 61-62.

[62] The MTC acquitted Caroline of the offenses charged for failure of the prosecution to prove her guilt beyond reasonable doubt. The MTC, however, found Caroline civilly liable in favor of respondent for the amounts covered by these checks. On appeal to the RTC, the civil liability was deleted on the ground that a civil case for collection of money involving the same checks were filed prior to the filing of the criminal case. *See* Respondents' Exhibit "2".

[63] 566 Phil. 492, 501 (2008). The dispositive portion of the Decision reads: "WHEREFORE, the petition is DENIED for lack of merit. The Decision dated November 20, 2002 and Resolution dated April 21, 2003 of the Court of Appeals are AFFIRMED."

[64] CA Decision in CA-G.R. CV No. 61457, pp. 7-8; Exhibit "G".

Respondents' other defenses are equally unconvincing. They assert that petitioner could not have accepted a check worth PhP 8.5 million considering that she should have known that respondent Caroline had issued several checks for PhP 25,000 each in favor of Lilian and all of them had bounced.[65] Needless to state, an act done contrary to law cannot be sustained to defeat a legal obligation; repeated failure to honor obligations covered by several negotiable instruments cannot serve to defeat yet another obligation covered by another instrument.

Indeed, it seems that respondent Caroline had displayed a cavalier attitude towards the value, and the obligation concomitant with the issuance, of a check. As attested to by respondents' very own witness, respondent Caroline has a documented history of issuing insufficiently funded checks for 69 times, at the very least.[66] This fact alone bolsters petitioner's allegation that the checks delivered to her by respondent Caroline were similarly not funded.

In *Magdiwang Realty Corp. v. Manila Banking Corp.*, We stressed that the quantum of evidence required in civil cases—preponderance of evidence—"is a phrase which, in the last analysis, means probability to truth. It is **evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto**."[67] Based on the evidence submitted by the parties and the legal presumptions arising therefrom, petitioner's evidence outweighs that of respondents. This preponderance of evidence in favor of Pua requires that a judgment ordering respondents to pay their obligation be entered.

As aptly held by the court *a quo*, however, respondents cannot be obliged to pay the interest of the loan on the ground that the supposed agreement to pay such interest was not reduced to writing. Article 1956 of the Civil Code, which refers to monetary

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[65] TSN, July 16, 1998, p. 17. Exhibits "6" to "10".

[66] TSN, May 29, 2002, pp. 20, 24-28, 31.

[67] G.R. No. 195592, September 5, 2012, 680 SCRA 251, 265, emphasis supplied.

interest, specifically mandates that no interest shall be due unless it has been expressly stipulated in writing.[68] Thus, the collection of interest in loans or forbearance of money is allowed only when these two conditions concur: (1) there was an express stipulation for the payment of interest; (2) the agreement for the payment of the interest was reduced in writing.[69] Absent any of these two conditions, the money debtor cannot be made liable for interest. Thus, petitioner is entitled only to the principal amount of the loan plus the allowable legal interest from the time of the demand,[70] at the rate of 6% per annum.[71]

Respondent Benito cannot escape the joint and solidary liability to pay the loan on the ground that the obligation arose from checks solely issued by his wife. Without any evidence to the contrary, it is presumed that the proceeds of the loan redounded to the benefit of their family. Hence, the conjugal partnership is liable therefor.[72] The unsupported allegation that respondents were separated in fact, standing alone, does not persuade this Court to solely bind respondent Caroline and exempt Benito. As the head of the family, there is more reason that respondent

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[68] See also *Pan Pacific Service Contractors, Inc. and Ricardo Del Rosario v. Equitable PCI Bank, formerly The Philippine Commercial International Bank,* G.R. No. 169975, March 18, 2010, 616 SCRA 102.

[69] *Prisma Construction and Development Corporation and Rogelio S. Pantaleon v. Arthur Menchavez,* G.R. No. 160545, March 9, 2010, 614 SCRA 590; citing *Tan v. Valdehueza*, 160 Phil. 760, 767 (1975) and *Ching v. Nicdao,* G.R. No. 141181, April 27, 2007, 522 SCRA 316, 361.

[70] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95; *citing* Article 1169 of the Civil Code, which provides: "Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation."

[71] See Circular No. 799 of the *Bangko Sentral ng Pilipinas* which took effect on July 1, 2013.

[72] Article 121, Family Code: The conjugal partnership shall be liable for: x x x (3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited x x x. See also *Carlos v. Abelardo*, G.R. No. 146504, April 9, 2002, 380 SCRA 361.

Benito should answer for the liability incurred by his wife presumably in support of their family.

WHEREFORE, the Motion for Reconsideration is **GRANTED**. The Resolution of this Court dated April 18, 2012 is set aside and a new one entered **REVERSING** and **SETTING ASIDE** the Decision dated March 31, 2011 and the Resolution dated September 26, 2011 of the Court of Appeals in CA-G.R. CV No. 93755. The Decision in Civil Case No. 97-83027 of the Regional Trial Court (RTC) of the City of Manila, Branch 29 is **REINSTATED** with **MODIFICATION**.

Accordingly, respondents Benito Lo Bun Tiong and Caroline Siok Ching Teng are ordered jointly and solidarily to pay petitioner PhP 1,975,000 plus 6% interest per annum from April 18, 1997, until fully paid, and ₱200,000.00 as attorney's fees.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 199210. October 23, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO M. VIDAÑA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION THEREOF, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, IS GENERALLY CONCLUSIVE.— It is jurisprudentially settled that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible,

convincing and consistent with human nature and the normal course of things. Furthermore, it is likewise settled that the factual findings of the trial court, especially when affirmed by the Court of Appeals, are entitled to great weight and respect, if not conclusiveness, since the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offense charged. A careful review of the evidence and testimony brought to light in this case does not lead to a conclusion that the trial court and the Court of Appeals were mistaken in their assessment of the credibility of AAA's testimony. Absent any demonstration by appellant that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses, we are thus inclined to affirm the facts as established by the trial court and affirmed by the Court of Appeals.

2. **ID.; ID.; THE CRYING OF THE VICTIM OF RAPE DURING HER TESTIMONY IS EVIDENCE OF TRUTH OF THE RAPE CHARGES.—** The x x x transcript would show that when AAA testified and, thus, was constrained to recount the torment she suffered at the hands of her own father, she broke down in tears in more than one instance. This can only serve to strengthen her testimony as we have indicated in past jurisprudence that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.

3. **ID.; ID.; IN RAPE CASES, IT IS AGAINST HUMAN NATURE FOR A YOUNG GIRL TO FABRICATE A STORY THAT WOULD EXPOSE HERSELF AS WELL AS HER FAMILY TO A LIFETIME OF SHAME.—** We have previously held that it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her father. That legal dictum finds application in the case at bar since appellant did not allege nor prove any sufficient improper motive on the part of AAA to falsely accuse him of such a serious charge of raping his

own flesh and blood. His allegation that AAA's admission in open court, that she is not close to him and that they do not agree on many things, cannot suffice as a compelling enough reason for her to fabricate such a sordid and scandalous tale of incest.

4. CRIMINAL LAW; RAPE; NOT NEGATED BY THE VICTIM'S FAILURE TO SHOUT OR OFFER TENUOUS RESISTANCE.— With regard to appellant's contention that AAA's lack of resistance to the rape committed against her, as borne out by her own testimony, negates any truth to her accusation, we rule that such an argument deserves scant consideration. It is settled in jurisprudence that the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused since rape is subjective and not everyone responds in the same way to an attack by a sexual fiend.

5. ID.; ID.; FORCE OR INTIMIDATION; NEED NOT BE EMPLOYED WHERE THE OVERPOWERING MORAL INFLUENCE OF THE FATHER WOULD SUFFICE IN AN INCESTUOUS RAPE OF A MINOR.— [I]n incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. In other words, in an incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.— Jurisprudence tells us that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime, thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.

7. ID.; ID.; ALIBI; TO PROSPER AS A DEFENSE, IT IS NECESSARY THAT THE CORROBORATION IS CREDIBLE, THE SAME HAVING BEEN OFFERED PREFERABLY BY DISINTERESTED WITNESSES.— [F]or alibi to prosper, it is necessary that the corroboration is credible, the same having been offered preferably

by disinterested witnesses. Based on this doctrine, the corroborating testimony of appellant's son, EEE, who, undoubtedly, is a person intimately related to him cannot serve to reinforce his alibi.

8. CRIMINAL LAW; QUALIFIED RAPE; COMMITTED IN CASE AT BAR; PENALTY.— In the case at bar, appellant was accused in the information with feloniously having carnal knowledge of his own minor daughter against her will by using his influence as a father. Considering further that the minority of AAA and her relationship to appellant were both alleged in the information and proven in court, the proper designation of appellant's felony should have been qualified rape. As such, the penalty of *reclusion perpetua* without eligibility of parole, in lieu of the death penalty, pursuant to Republic Act No. 9346 must be imposed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from a Decision[1] dated March 18, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04019, entitled *People of the Philippines v. Ricardo M. Vidaña*, which affirmed the Decision[2] dated June 26, 2009 of the Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 33 in Criminal Case No. 2163-G. The trial court convicted appellant Ricardo M. Vidaña of one (1) count of rape in relation to Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

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[1] *Rollo*, pp. 2-9; penned by Associate Justice Samuel H. Gaerlan with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario, concurring.

[2] CA *rollo*, pp. 49-53.

The accusatory portion of the Information[3] dated February 6, 2004 for rape in relation to Republic Act No. 7610 reads as follows:

That on or about the 16th day of September 2003, at x x x, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and intent to have carnal knowledge of [AAA[4]], his own daughter, a minor, 15 years old, and while using his influence as a father, over said minor, did then and there wilfully, unlawfully and feloniously have carnal knowledge of and sexual intercourse with said minor against her will and consent, to her damage and prejudice.

After more than a year of being at large since the issuance on September 1, 2004 of the warrant for his arrest,[5] appellant was finally arrested and subsequently arraigned on January 30, 2006 wherein he pleaded "NOT GUILTY" to the charge of rape.[6]

The prosecution's version of the events that transpired in this case was narrated in the Plaintiff-Appellee's Brief in this manner:

[Appellant] and wife [BBB] were separated in 1998. They have four (4) children namely: [AAA], [CCC], [DDD] and [EEE]. In 1999, [appellant] began living in with a certain Irene Valoria, his common-law wife, who became the aforementioned children's stepmother. They were staying in a one-bedroom house owned by a certain Edgar Magsakay at Sta. Maria, Licab, Nueva Ecija. At night, [appellant] and his common-law wife sleep in the *sala* while the children occupy the bedroom. [AAA] is the eldest of the brood and was 15 years old in the year 2003, having been born on 13 June 1988.

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[3] Records, p. 1.

[4] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. (See *People v. Cabalquinto*, 533 Phil. 703 [2006].)

[5] Records, p. 19.

[6] *Id.* at 31.

Around midnight of 16 September 2003, [appellant] was alone at the *sala* and the children were asleep inside the bedroom. [AAA] suddenly was jolted from her sleep when somebody pulled her out of the bed and brought her to the *sala*. She later recognized the person as her father, herein [appellant], who covered her mouth and told her not to make any noise. At the *sala*, [appellant] forcibly removed [AAA]'s short pants, t-shirt, bra and panty. As she lay naked, [appellant] inserted his penis into [AAA]'s vagina. [AAA]'s ordeal lasted for about five (5) minutes and all the while she felt an immense pain. [Appellant] tried to touch [AAA]'s other private parts but she resisted. During the consummation of [appellant]'s lust upon his daughter, he warned her not to tell anybody or else he will kill her and her siblings.

The next day, [AAA] went to the house of Francisco and Zenny Joaquin. Spouses Joaquin are friends of [appellant], whose house is about 500 meters away. Zenny Joaquin noticed something was bothering [AAA] so she confronted the latter. [AAA] broke down and revealed to Zenny what happened to her at the hands of [appellant]. Taken aback by the trauma suffered by the young lass, Zenny promptly accompanied [AAA] to the police to report the incident.

The examination of the medico-legal officer on [AAA] revealed "*positive healed laceration at 7 o'clock position positive hymenal tag.*"[7] (Citations omitted.)

On the other hand, the defense presented a contrasting narrative which was condensed in the Accused-Appellant's Brief, to wit:

[Appellant] together with his family were living in the house of Edgar Magsakay in Sta. Maria, Licab, Nueva Ecija. He has four children but only three, namely: [EEE], [CCC] and [DDD] were staying with him. His daughter [AAA] was staying with his *kumpare* Francisco Joaquin at Purok 2, Sta. Maria, Licab, Nueva Ecija, since August 15, 2003. He did not have the opportunity to visit her nor was there an occasion that the latter visited them. On September 16, 2003 at 4:00 to 5:00 in the morning, he was at the fields harvesting together with Irene Valoria (his wife and stepmother of his children). They finished at around 5:00 to 6:00 in the evening, then they proceeded home (TSN November 14, 2008, pp. 2-4).

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[7] CA *rollo*, pp. 114-116.

[EEE] corroborated in material points the testimony of his father [appellant]. (TSN, February 13, 2009, pp. 2-5)[8]

Trial on the merits ensued and at the conclusion of which the trial court rendered judgment against appellant by finding him guilty beyond reasonable doubt of violation of Section 5 in relation to Section 31 of Republic Act No. 7610. The dispositive portion of the assailed June 26, 2009 RTC Decision is reproduced here:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime charged, this court sentences him to ***reclusion perpetua*** and to pay [AAA] ₱50,000 in moral damages.[9]

Insisting on his innocence, appellant appealed the guilty verdict to the Court of Appeals but was foiled when the appellate court affirmed the lower court ruling in the now assailed March 18, 2011 Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the Decision dated 26 June 2009 of the Regional Trial Court, Guimba, Nueva Ecija, Branch 33, in Criminal Case No. 2163-G, finding the accused-appellant **RICARDO M. VIDAÑA GUILTY beyond reasonable doubt** is hereby **AFFIRMED *in toto***.[10]

Hence, appellant takes the present appeal and puts forward a single assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5 IN RELATION TO SECTION 31 OF REPUBLIC ACT NO. 7610.[11]

Appellant vehemently denies his eldest child's (AAA's) allegation of rape by asseverating that he could not have raped AAA because, on the date when the alleged rape took place, she was living in Francisco and Zenny Joaquin's house and not

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[8] *Id.* at 75.

[9] *Id.* at 53.

[10] *Rollo*, pp. 8-9.

[11] CA *rollo*, p. 73.

in his residence where the alleged rape was consummated. This assertion was corroborated on material points by appellant's son, EEE. Furthermore, appellant insists that the credibility of AAA is suspect since her narration of the alleged rape incident does not indicate that she resisted appellant's carnal desires.

We find no merit in appellant's contention.

Not unlike most rape cases, appellant hinges his hopes for freedom on undermining the credibility of AAA's testimony. Since AAA is the only witness that can connect appellant to the crime, appellant beseeches this Court to take a closer look at AAA's testimony and, at the end of which, render a judgment of acquittal.

It is jurisprudentially settled that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing and consistent with human nature and the normal course of things.[12] Furthermore, it is likewise settled that the factual findings of the trial court, especially when affirmed by the Court of Appeals, are entitled to great weight and respect, if not conclusiveness, since the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offense charged.[13]

A careful review of the evidence and testimony brought to light in this case does not lead to a conclusion that the trial court and the Court of Appeals were mistaken in their assessment of the credibility of AAA's testimony. Absent any demonstration by appellant that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses, we are thus inclined to affirm the facts as established by the trial court and affirmed by the Court of Appeals.

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[12] *People v. Bustamante*, G.R. No. 189836, June 5, 2013.

[13] *People v. Deligero*, G.R. No. 189280, April 17, 2013.

We are of the opinion that the testimony of AAA regarding her ordeal was delivered in a straightforward and convincing manner that is worthy of belief. The pertinent portions of her testimony are reproduced below:

[PROS.] FLORENDO

Q We are referring to this particular case. During the last setting, you stated that you were raped on September 16, 2003. Is that right Miss Witness?
A Yes Sir.

Q And where were you at that time on September 16, 2003 when your father raped you?
A In our house at x x x, Nueva Ecija, Sir.

Q And what were you doing before your father raped you on September 16, 2003?
A We were sleeping with my siblings, Sir.

Q And where was your father at that time?
A He was also there in our house, Sir.

Q He was sleeping with you?
A No Sir. They were sleeping in the sala.

Q You said "they." You mean your father has companions?
A When my stepmother is present, she was sleeping with my father, Sir, but when she was not there, my father sleeps alone in the sala, Sir.

Q So, about what time of the day on September 16, 2003 that you said you were raped by your father?
A I cannot remember exactly the time, Sir. As far as I can recall, it was almost midnight, Sir.

Q And you said you were sleeping?
A Yes Sir.

Q How were you awakened?
A He pulled me out of the place where we were sleeping, Sir.

Q You were sleeping on a bed?
A Yes Sir.

Q You said you were pulled. Who pulled you from your bed?
A My father, Sir.

[PROS.] FLORENDO

At this point, Your Honor, may we just have it on record that the witness is crying again.

[PROS.] FLORENDO

Q He pulled you to what place?
A He pulled me to the sala where he was sleeping, Sir.

Q I thought your father had a companion in the sala at that time?
A When my stepmother was not there, he was alone in the sala, Sir.

Q When you[r] father pulled you, you did not shout, you did not scream?
A I was not able to shout or scream because he covered my mouth and told me not to make noise, Sir.

Q Was that your first time that your father raped you on September 16, 2003?
A No Sir.

Q So, he pulled you out of the bed, out of the bedroom and took you to the sala?
A Yes Sir.

Q What did he do to you while you were already in the sala?
A He forcibly removed the shorts I was wearing then, Sir.

Q You were only wearing shorts at that time?
A Yes Sir. Shorts and also a dress.

Q What dress was that?
A T-shirt, Sir.

Q Aside from the shots and t-shirt, you were not wearing anything?
A I was wearing shorts, t-shirt, panty and bra, Sir.

Q Did your father succeed in removing your shorts?
A Yes Sir.

Q What else did he do after removing your shorts?
A He also removed my panty and inserted his penis into my vagina with a warning that I should not tell it to anybody because he will kill us all, Sir.

Q What do you mean by "penis"?
A "*Titi*," Sir. (Male sexual organ)

Q His sexual organ was erected or not at that time?
A Erected, Sir.

Q And he inserted it to what part of your body?
A Inside my vagina, Sir.

Q And what did you feel when he inserted his penis inside your vagina?
A It was painful, Sir.

Q And how long was his penis inserted inside your vagina?
A About five (5) minutes, Sir.

Q Aside from that, he did nothing to you? He only inserted his penis?
A Yes Sir.

Q He did not kiss you?
A No Sir.

Q He did not touch your other private parts?
A He was trying to touch my other private parts but I resisted, Sir.

Q And after doing that, what did he do next if there was any?
A Nothing more, Sir.[14]

The quoted transcript would show that when AAA testified and, thus, was constrained to recount the torment she suffered at the hands of her own father, she broke down in tears in more than one instance. This can only serve to strengthen her testimony as we have indicated in past jurisprudence that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.[15] It is also worth noting that appellant's counsel did not even bother to cross-examine AAA after her direct examination by the prosecutor.

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[14] TSN, July 6, 2007, pp. 2-4.

[15] *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 585.

We have previously held that it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her father.[16] That legal dictum finds application in the case at bar since appellant did not allege nor prove any sufficient improper motive on the part of AAA to falsely accuse him of such a serious charge of raping his own flesh and blood. His allegation that AAA's admission in open court, that she is not close to him and that they do not agree on many things,[17] cannot suffice as a compelling enough reason for her to fabricate such a sordid and scandalous tale of incest.

With regard to appellant's contention that AAA's lack of resistance to the rape committed against her, as borne out by her own testimony, negates any truth to her accusation, we rule that such an argument deserves scant consideration. It is settled in jurisprudence that the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused since rape is subjective and not everyone responds in the same way to an attack by a sexual fiend.[18]

Furthermore, we have reiterated that, in incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants.[19] In other words, in an incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.[20]

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[16] *People v. Bustamante*, *supra* note 12.

[17] TSN, July 6, 2007, p. 5.

[18] *People v. Lomaque*, G.R. No. 189297, June 5, 2013.

[19] *People v. Vitero*, G.R. No. 175327, April 3, 2013.

[20] *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 386.

We likewise rule as unmeritorious appellant's assertion that he could not have committed the felony attributed to him because, at the date of the alleged rape, AAA was not residing at the place where the alleged rape occurred. Jurisprudence tells us that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime, thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[21]

Moreover, we have held that for alibi to prosper, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses.[22] Based on this doctrine, the corroborating testimony of appellant's son, EEE, who, undoubtedly, is a person intimately related to him cannot serve to reinforce his alibi.

In view of the foregoing, we therefore affirm the conviction of appellant. However, the trial court erred in impliedly characterizing the offense charged as sexual abuse under Sections 5 and 31 of Republic Act No. 7610.

Under Rule 110, Section 8 of the Rules of Court, it is required that "[t]he complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it." The information clearly charged appellant with rape, a crime punishable under Article 266-A of the Revised Penal Code, the relevant portions of which provide:

Article 266-A. *Rape; When And How Committed*. – Rape is committed –

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

[22] *People v. Basallo*, G.R. No. 182457, January 30, 2013, 689 SCRA 616, 644.

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

a) Through force, threat or intimidation;

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

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

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

The same statute likewise states:

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

x x x x x x x x x

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

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In the case at bar, appellant was accused in the information with feloniously having carnal knowledge of his own minor daughter against her will by using his influence as a father. Considering further that the minority of AAA and her relationship to appellant were both alleged in the information and proven in court, the proper designation of appellant's felony should have been qualified rape. As such, the penalty of *reclusion perpetua* without eligibility of parole, in lieu of the death penalty, pursuant to Republic Act No. 9346[23] must be imposed. Furthermore, in line with jurisprudence, the award of moral damages should be increased to ₱75,000.00 in addition to the

[23] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

award of civil indemnity and exemplary damages in the amounts of ₱75,000.00 and ₱30,000.00, respectively.[24] Likewise, interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[25]

WHEREFORE, premises considered, the Decision dated March 18, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04019, affirming the conviction of appellant Ricardo M. Vidaña in Criminal Case No. 2163-G, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The penalty of *reclusion perpetua* without eligibility of parole is imposed upon appellant Ricardo M. Vidaña;

(2) The moral damages to be paid by appellant Ricardo M. Vidaña is increased from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00);

(3) Appellant Ricardo M. Vidaña is ordered to pay civil indemnity in the amount of Seventy-Five Thousand Pesos (₱75,000.00);

(4) Appellant Ricardo M. Vidaña is ordered to pay exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00); and

(5) Appellant Ricardo M. Vidaña is ordered to pay the private offended party interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

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

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[24] *People v. Amistoso, supra* note 20 at 395.

[25] *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 249.

FIRST DIVISION

[G.R. No. 200053. October 23, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO JOSE *y* LAGUA *alias* "JOJO", JOEY JOSE *y* MATUSALEM, ARNOLD MACAMUS *alias* "KYAM" or "DIKIAM", FORTUNATO MANGAHAS *alias* NATO *y* SANDIQUE, JOEL BULAUITAN *y* MACAMUS and JOHN DOES,** *accused,* **JOEL BULAUITAN *y* MACAMUS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE POSITIVE, CATEGORICAL AND UNWAVERING TESTIMONIES OF THE PROSECUTION WITNESSES, WHEN GIVEN WITHOUT ILL MOTIVE TO TESTIFY AGAINST THE ACCUSED, ARE WORTHY OF FULL FAITH AND CREDIT.— "Issues of sufficiency of evidence are resolved by reference to findings of the trial court that are entitled to the highest respect on appeal in the absence of any clear and overwhelming showing that the trial court neglected, misunderstood or misapplied some facts or circumstances of weight and substance affecting the result of the case." x x x Absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit. x x x The testimonies of prosecution witnesses regarding Bulauitan's identity as among the kidnappers and his participation in the commission of the crime were positive, categorical and unwavering, hence, deserve more weight *vis-á-vis* his feeble defenses of *alibi* and denial. Editha and Eric both had the opportunity to see the faces of Mangahas and Bulauitan when the two accused: entered the gate of the Chuas' residence; approached the Nissan Pick-up while wielding firearms, which were used to either hit or poke the passengers therein; and dragged Editha therefrom to the vehicle used by the kidnappers. Mangahas and Bulauitan did not wear any bonnets or masks, hence, it took little effort to observe and remember

their features. Further, the defense had not ascribed to Editha and Eric any ill motive to testify against Mangahas and Bulauitan.

2. CRIMINAL LAW; CONSPIRACY; TO HOLD AN ACCUSED GUILTY AS A CO-PRINCIPAL BY REASON OF CONSPIRACY, HE MUST BE SHOWN TO HAVE PERFORMED AN OVERT ACT IN PURSUANCE OF THE COMPLICITY.— Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals. Stated otherwise, to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. x x x Bulauitan's attempt to cast doubt upon the courts *a quo's* finding anent his specific participation as a co-conspirator in the commission of the crime of kidnapping for ransom cannot x x x be sustained. Editha and Eric both testified that Bulauitan entered the gate of the Chuas' residence while toting a short firearm. He used the same firearm to poke Eric's stomach and cheek. He also helped Mangahas forcefully drag Editha to the vehicle used by the kidnappers and rode the same. Bulauitan's overt acts indicate no less than his concurrence with Mangahas' design to deprive Editha of her liberty for the purpose of extorting ransom. The existence of conspiracy and Bulauitan's participation therein were evident.

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.*:

Joel Bulauitan *y* Macamus (Bulauitan)[1] files an appeal[2] before this Court to assail the Decision[3] rendered on April 29, 2011 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 03812, the *fallo* of which reads:

> **WHEREFORE**, in view of the foregoing, the assailed Amended Judgment dated February 4, 2009 in Criminal Case No. 9010 of the Regional Trial Court, Branch 03, Carig, Tuguegarao City, Cagayan is hereby **AFFIRMED with MODIFICATION** in that accused-appellant Balauitan and Mangahas are not eligible for parole under the Indeterminate Sentence Law. Furthermore, the award of exemplary damages is hereby increased from [₱]25,000.00 to [₱]100,000.00.
>
> **SO ORDERED.**[4]

The dispositive portion of the Amended Judgment[5] rendered on February 4, 2009 by the Regional Trial Court (RTC) of Carig, Tuguegarao City, Branch 3, on the other hand, states:

> **WHEREFORE**, premises considered, the Court FINDS both accused FORTUNATO MANGAHAS *alias* NATO *y* Sandique and JOEL BULAUITAN *y* Macamus guilty beyond reasonable doubt of the crime of KIDNAPPING for RANSOM and hereby sentences them to suffer imprisonment of *reclusion perpetua* and to pay jointly and severally Editha Tuddao [₱]40,000.00 by way of moral damages and [₱]25,000.00 by way of exemplary damages.
>
> **SO ORDERED.**[6]

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[1] In some parts of the records of the case, the appellant's surname is spelled as "Balauitan."

[2] Please *see* Notice of Appeal; Court of Appeals *rollo*, pp. 156-157.

[3] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Celia C. Librea-Leagogo and Danton Q. Bueser, concurring; *rollo*, pp. 2-22.

[4] *Id.* at 21.

[5] CA *rollo*, pp. 25-36.

[6] *Id.* at 36.

Antecedent Facts

Bulauitan, alongside four other suspects and several unnamed John Does, were charged with kidnapping for ransom in an Information, dated October 10, 2002, *viz*:

That on or about August 12, 2001, in the City of Tuguegarao, [P]rovince of Cagayan and within the jurisdiction of this Honorable Court, the said accused, ALFRED JOSE *Y* LAGUA *ALIAS* JOJO, JOEY JOSE, ARNOLD MACAMUS *ALIAS* KYAM OR DIKIAM, FORTUNATO MANGAHAS *ALIAS* NATO, JOEL BULAUITAN AND JOHN DOES who were not identified, all private person (sic) armed with guns conspiring together and helping one another, without any legal ground or any authority of law and by means of force, violence, threat and intimidation and for the purpose of extorting ransom money from the family of the herein complainant, did then and there willfully, unlawfully and feloniously take, kidnap and carry away [sic] against her will one EDITHA T. CHUA from her residence at No. 29 Gonzaga St., Ugac Norte, Tuguegarao City, Cagayan and loaded her in a Nissan Sentra Super Saloon colored green thereafter transferred her to another vehicle and brought her to the province of Isabela, and upon reaching Barangay Dona Concha, Roxas, Isabela, the vehicle on which they loaded the victim, EDITHA T. CHUA, rammed into a pile of gravel and sand along the road; prompting accused to abandon the vehicle and the victim, thereby completely detaining and depriving said complainant of her liberty from the time she was kidnap (sic) at around 8:00 o'clock in the evening of August 12, 2001 up to the time she was rescued.

That in the commission of the offense[,] the following aggravating circumstances were present, to wit:

1. Demand for ransom[;]
2. Use of motor vehicle;
3. Night time and the offense was committed by a band; [and]
4. That the crime was committed with the aid of armed men[.]

Contrary to law.[7]

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[7] *Rollo*, pp. 3-4.

Only Bulauitan and Fortunato Mangahas (Mangahas) were arraigned while *alias* warrants of arrest were issued against the rest of their co-accused.

The Case for the Prosecution

In the course of the trial, the prosecution offered the testimonies of (a) kidnap victim Editha Chua[8] (Editha), (b) her son-in-law Eric Chua (Eric), and (c) SPO2 Jim Roger Julian (SPO2 Julian) of the Tuguegarao City Police.

Following is the gist of Editha's testimony:[9]

She owns Editha's Supermart in Gonzaga Street, Ugac Norte, Tuguegarao City.

On August 12, 2001, at around 8:00 p.m., she, together with her husband Vicente Chua (Vicente), daughter Elizabeth Chua (Elizabeth) and Eric went home from their store. They rode a Nissan Pick-up driven by Vicente. Editha sat in the front passenger seat. Eric was behind Editha, while Elizabeth was at the left rear passenger seat.

When they arrived home, their maid opened the gate. While the Nissan Pick-up was still in the driveway, a car entered. Two bare-faced armed men alighted therefrom. They were later identified in court by Editha and Eric as Bulauitan and Mangahas.

Mangahas opened the driver's door of the Nissan pick-up and hit Vicente with a long firearm. Bulauitan, on the other hand, approached Eric. Editha and Elizabeth begged Bulauitan and Mangahas not to harm Vicente, who has a heart ailment. However, their pleas were unheeded as Mangahas kept on hitting Vicente until the latter fainted. Mangahas thereafter walked to the other side of the Nissan pick-up, from where he pulled out Editha, who fell to the ground. Mangahas then dragged Editha to a car. Seated in front were a driver and another man whose faces she did not see. While inside the car, Editha was

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[8] Sometimes appears in the records as "Editha Tuddao."

[9] *Rollo*, pp. 5-9; CA *rollo*, pp. 27-30.

blindfolded and masking tape was used to cover her mouth and bind her hands.

After a while, the car stopped and she sensed that she was being transferred to another vehicle, which she later identified as a Mitsubishi Adventure with Plate No. WSX 299. The kidnappers wanted to talk to Vicente to demand money from him, but Editha did not reveal the telephone number in the residence of the Chuas. Editha also heard the kidnappers inform somebody through a cellphone that she was already in their custody.

The vehicle traversed the zigzag terrain in Sta. Maria. Editha was familiar with it as she frequently passed by the same on her way to Manila. They passed by two check points without stopping and she heard gun reports. The kidnappers then conversed among themselves about their vacillation in carrying out their plan. The vehicle then proceeded to a remote area in Roxas, Isabela. Editha felt a needle being injected in her right arm. The kidnappers alighted from the vehicle to remove its plate number, but they heard sirens. They thought that the sirens were from a patrol car chasing them, so they left Editha in the vehicle. The sounds, however, in fact, came from an ambulance.

Sensing that her abductors were no longer there, Editha removed the blindfold and the masking tape in her eyes and hands, opened the vehicle's door and sought help. Policemen from Isabela arrived and brought her to Dumlao Hospital. She was then escorted back to Tuguegarao City. She arrived at around 3:00 a.m. in St. Paul's Hospital where she noticed her husband's stomach looking bloated.

She saw Mangahas in the police station and she identified him as one of the kidnappers. Mangahas apologized to her.

Eric corroborated the statements of Editha.[10] He added that Bulauitan poked his stomach with a short firearm. Eric tried to help Editha when Mangahas was dragging her out of the

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[10] *Id.* at 10-11; CA *rollo*, p. 30.

Nissan Pick-up. Bulauitan then pointed his gun at Eric's cheek. After Editha was taken by the armed men, Eric called Elizabeth's cousin, Jimmy dela Cruz, who later arrived with policemen.

SPO2 Julian stated[11] that he was on duty at around 8:00 p.m. of August 12, 2001 when the station received a report regarding the kidnapping of Editha. He went to the residence of the Chuas along with two other officers. They verified the report and received information that Editha was seen in Roxas, Isabela. They proceeded thereto and found Editha in Dumlao Hospital. They likewise investigated the Mitsubishi Adventure where Editha was boarded by the kidnappers and found that it was owned by the accused Alfred Jose.

The Case for the Defense

The defense, on the other hand, presented as witnesses (a) Bulauitan and his wife, Maria, and (b) Mangahas and his son, Benjamin.

Bulauitan and Mangahas claimed that they were not acquainted with each other prior to their meeting in the premises of the Bureau of Jail Management and Penology in October 2001. They both interposed the defenses of denial and *alibi*.

Bulauitan denied knowing Editha. He alleged that from dusk to dawn of August 12, 2001, he plowed a ricefield in Sampaguita, Solana, Cagayan. He went home between 5:00 p.m. and 6:00 p.m. His house, where he resides with his wife, Maria and three children, is about three kilometers from the national highway. Solana is around one-hour jeepney ride away from Tuguegarao City.[12]

Maria corroborated her husband's testimony.[13] She testified that Bulauitan worked in the farm on August 12, 2001. He ate and took a nap at home during lunch time, then returned to the fields. He went home at around 5:30 p.m. They slept after

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[11] *Id.* at 11-12; CA *rollo*, pp. 30-31.

[12] *Id.* at 12-13; CA *rollo*, pp. 31-32.

[13] *Id.* at 13-14; CA *rollo*, p. 32.

8:00 p.m. She woke her husband up at around midnight to accompany her urinate. The next day, Bulauitan woke up at past 5:00 a.m., ate breakfast, and prepared to go to work.

Mangahas denied his involvement in Editha's kidnapping.[14] He testified that on August 12 to 13, 2001, he worked in his *tilapia* fishpond in General Balao, Solana, Cagayan. He also cut firewood and helped in the household chores. His son, Benjamin, corroborated Mangahas' statements.[15]

The Ruling of the RTC

On February 2, 2009, the RTC rendered a judgment[16] unfavorably considering Bulauitan and Mangahas' defenses of *alibi* and denial. The two were convicted as co-conspirators in the commission of the crime charged. The penalty of *reclusion perpetua* was imposed upon them, and they were *each* ordered to pay Editha ₱40,000.00 as moral damages and ₱25,000.00 as exemplary damages. The RTC ruled that the prosecution had proven beyond reasonable doubt the concurrence of all the elements[17] of kidnapping and illegal detention under Article 267 of the Revised Penal Code. With the use of motor vehicles, Editha was forcibly taken at gunpoint and deprived of her liberty for the purpose of extorting ransom. Further, Editha and Eric categorically and unequivocally identified Bulauitan and Mangahas

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[14] *Id.* at 14-15; CA *rollo*, pp. 32-33.

[15] *Id.* at 15.

[16] CA *rollo*, pp. 13-23.

[17] (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) [if] the person kidnapped or detained is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial"; *id.* at 20, citing *People v. Ejandra*, 473 Phil. 381, 403 (2004).

as among the perpetrators of the crime. No ill motives were ascribed to the prosecution witnesses in having rendered their testimonies.

On February 4, 2009, the RTC amended its judgment but only insofar as declaring as *joint and several* the liabilities of Bulauitan and Mangahas for the payment of moral and exemplary damages in favor of Editha.[18]

Bulauitan filed a Notice of Appeal[19] to assail the judgment of the RTC. He claimed that the prosecution witnesses failed to specifically point out his participation in the kidnapping.[20]

The Ruling of the CA

The CA affirmed Bulauitan and Mangahas' conviction but modified the RTC's judgment by expressly declaring that the two are not eligible for parole. The CA also increased the award of exemplary damages in favor of Editha from ₱25,000.00 to ₱100,000.00.[21]

In dismissing the appeal, the CA took note of Editha's statement during cross-examination that two men entered the gate and one of them was Bulauitan, who held a short firearm.[22] Eric corroborated Editha's testimony.[23] While Mangahas was dragging Editha out of the Nissan Pick up, Bulauitan poked Eric's cheek with a short firearm.

Unperturbed, Bulauitan once again filed a Notice of Appeal[24] to challenge the CA Decision. Bulauitan, through the Public Attorney's Office, thereafter manifested his adoption of the Appellant's Brief filed before the CA, in lieu of submitting a

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[18] *Id.* at 25-36.

[19] *Id.* at 37.

[20] Please *see* appellant's brief, *id.* at 56-57.

[21] *Rollo*, p. 19.

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

[23] *Id.* at 17.

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

supplemental brief before this Court.[25]

Issue

Bulauitan raises the lone issue of whether or not the RTC and the CA erred in finding him guilty beyond reasonable doubt of the crime charged.[26]

In support thereof, Bulauitan assiduously avers that his identity as among the kidnappers of Editha and his direct participation in the commission of the crime were not sufficiently proven.

The Office of the Solicitor General (OSG) seeks the dismissal of the instant appeal. The OSG emphasizes that Editha and Eric positively testified having seen Bulauitan with Mangahas enter the gate of the residence of the Chuas. Bulauitan wielded a short firearm which he used to poke Eric's stomach and cheek. Bulauitan also assisted Mangahas in dragging Editha to the vehicle used by the kidnappers.[27]

This Court's Disquisition

The instant appeal lacks merit but modifications of the assailed CA decision relative to the award of civil indemnity and damages are warranted.

Several oft-repeated doctrines find application in the instant appeal.

First. "Issues of sufficiency of evidence are resolved by reference to findings of the trial court that are entitled to the highest respect on appeal in the absence of any clear and overwhelming showing that the trial court neglected, misunderstood or misapplied some facts or circumstances of weight and substance affecting the result of the case."[28]

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[25] *Id.* at 37-39.

[26] CA *rollo*, p. 51.

[27] Please *see* Appellee's Brief, *id.* at 94-122; Per Manifestation and Compliance (*rollo*, pp. 30-32) filed with this Court, the OSG stated that in lieu of a supplemental brief, it is adopting the arguments it had already raised in the Appellee's Brief filed with the CA.

[28] *People of the Philippines v. Garcia*, 424 Phil. 158, 178 (2002).

Second. It is the most natural reaction for victims of crimes to strive to remember the faces of their assailants and the manner in which the craven acts are committed.[29]

Third. Absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[30]

Fourth. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[31] Stated otherwise, to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity.[32]

In the case at bar, Editha testified:

Q: According to you[,] one of them opened the door of your vehicle[.] [Did you] not try to get out of the vehicle at that time?

A: No, sir, because they entered the gate and I saw one of them holding a long firearm while the other one was holding a short firearm.

Q: Who was holding a long firearm at that time?

A: Mangahas was holding a long firearm while Bulauitan was holding a short firearm.[33]

Eric attested to the veracity of Editha's narration when he stated:

Q: And what did your mother-in-law do when she was being pulled by that man?

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[29] *Id.* at 183.

[30] *People v. Bringas*, G.R. No. 189093, April 23, 2010, 619 SCRA 481, 502-503.

[31] *Id.* at 514.

[32] *People v. Pagalasan,* 452 Phil. 341, 363 (2003).

[33] *Rollo,* pp. 16-17.

A: When this person pulled my mother-in-law out of the vehicle, the person who poked at my stomach helped him and I tried to help my mother-in-law but he poked his firearm at my cheek, sir.

Q: After that[,] what happened to your mother-in-law while she was being pulled?

A: They brought her to their vehicle, sir.

Q: Will you be able to identify the person who hit your father-in-law and went around in front and pulled your mother-in-law?

A: Yes, sir.

Q: If he is in the Court[,] will you be able to identify and point to that person who went around the vehicle and pulled your mother-in-law?

A: The witness is pointing to a person inside the courtroom wearing a yellow T-shirt and gave his name as Fortunato Mangahas when asked by the court.

Q: That person who poked his short firearm at the right side of your body or stomach, will you be able to identify him also?

A: Yes, sir.

Q: If he is in the Court, will you be able to identify and point to him?

A; Witness is pointing to a person wearing yellow T-shirt and gave his name as Joel Bulauitan, accused in this case.[34]

The testimonies of prosecution witnesses regarding Bulauitan's identity as among the kidnappers and his participation in the commission of the crime were positive, categorical and unwavering, hence, deserve more weight *vis-á-vis* his feeble defenses of *alibi* and denial.

Editha and Eric both had the opportunity to see the faces of Mangahas and Bulauitan when the two accused: entered the gate of the Chuas' residence; approached the Nissan Pick-up while wielding firearms, which were used to either hit or poke the passengers therein; and dragged Editha therefrom to the

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[34] *Id.* at 17.

vehicle used by the kidnappers. Mangahas and Bulauitan did not wear any bonnets or masks, hence, it took little effort to observe and remember their features. Further, the defense had not ascribed to Editha and Eric any ill motive to testify against Mangahas and Bulauitan.

Bulauitan's attempt to cast doubt upon the courts *a quo's* finding anent his specific participation as a co-conspirator in the commission of the crime of kidnapping for ransom cannot likewise be sustained. Editha and Eric both testified that Bulauitan entered the gate of the Chuas' residence while toting a short firearm. He used the same firearm to poke Eric's stomach and cheek. He also helped Mangahas forcefully drag Editha to the vehicle used by the kidnappers and rode the same. Bulauitan's overt acts indicate no less than his concurrence with Mangahas' design to deprive Editha of her liberty for the purpose of extorting ransom. The existence of conspiracy and Bulauitan's participation therein were evident.

In the light of the above discussion, this Court thus finds no error committed by the CA and the RTC in rendering judgments of conviction against Mangahas and Bulauitan.

Regarding the award of damages in cases of kidnapping, *People v. Bautista*[35] is instructive, *viz*:

> [P]revailing jurisprudence dictates the following amounts to be imposed: PhP 75,000 as civil indemnity which is awarded if the crime warrants the imposition of death penalty; PhP 75,000 as moral damages because the victim is assumed to have suffered moral injuries, without need of proof; and PhP 30,000 as exemplary damages.
>
> Even though the penalty of death was not imposed, the civil indemnity of PhP 75,000 is still proper because the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.[36] (Citations omitted)

[35] G.R. No. 188601, June 29, 2010, 622 SCRA 524.

[36] *Id.* at 546.

Considering the foregoing, this Court finds it apt to further direct Bulauitan to pay Editha ₱75,000.00 as civil indemnity[37] and an additional ₱35,000.00 as moral damages. The CA's imposition of ₱100,000.00 as exemplary damages is sustained,[38] but Mangahas shall only be solidarily liable with Bulauitan up to the amount of ₱25,000.00 awarded by the RTC. The difference of ₱75,000.00 between the RTC and the CA's awards shall be Bulauitan's sole liability. The additional liabilities for civil indemnity and damages, which this Court imposes solely upon Bulauitan, are in accordance with Section 11,[39] Rule 122 of the Rules of Criminal Procedure.[40] Further, all the monetary

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[37] Section 8 of Republic Act No. 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes) in part provides that "the penalty shall be death penalty where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense." In Bulauitan's case, although *reclusion perpetua* was imposed instead of the death penalty pursuant to the provisions of Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines), the award of civil indemnity in Editha's favor is still warranted on account of this Court's pronouncement in *People v. Bautista* (*supra* note 35).

[38] Please see *People v. Ganih* (G.R. No. 185388, June 16, 2010, 621 SCRA 159, 168) where this Court declared that "an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to exemplary damages within the meaning of Article 2230 of the New Civil Code" and when the commission of the crime of kidnapping was attended by a demand for ransom, an award of ₱100,000.00 in exemplary damages by way of example or correction is in order.

[39] Sec. 11. *Effect of appeal by any of several accused.* – (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

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[40] This Resolution, which awards additional damages to Editha, is unfavorable to Mangahas, Bulauitan's co-accused who no longer appealed the RTC Decision. As to Mangahas, the RTC Decision had already lapsed into finality, hence, the disquisitions herein only bind Bulauitan. This is consistent with settled doctrines that "penal laws are to be construed liberally in favor of the accused" and that "where the law does not distinguish,

awards for damages imposed upon Bulauitan shall be subject to interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.[41]

WHEREFORE, the instant appeal is **DENIED**. The Decision dated April 29, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03812 is **AFFIRMED with MODIFICATIONS.** Accused-appellant Joel Bulauitan *y* Macamus is found **GUILTY** beyond reasonable doubt as a co-conspirator in the crime of kidnapping for ransom and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is hereby ordered to solidarily pay with his co-accused, Fortunato Mangahas *y* Sandique, ₱40,000.00 as moral damages and ₱25,000.00 as exemplary damages to Editha Chua. In addition thereto, Joel Bulauitan *y* Macamus is further directed to pay Editha Chua ₱75,000.00 as civil indemnity, ₱35,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All the monetary awards for damages imposed against Joel Bulauitan *y* Macamus shall earn annual interest at the legal rate of six percent (6%) from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

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neither should we." (*supra* note 28, at 192) Section 11, Rule 122 of the Rules of Criminal Procedure thus applies when both/either the criminal penalties and/or civil liabilities imposed upon an accused-appellant have/has been increased *vis-à-vis* those imposed or awarded by the courts *a quo*. The increased criminal penalties and/or civil liabilities should no longer affect a co-accused who no longer appealed from the judgments rendered by the courts *a quo*. (Please see *People v. Valdez*, G.R. No. 175602, February 13, 2013, 690 SCRA 563; *People v. Tuniaco*, G.R. No. 185710, January 19, 2010, 610 SCRA 350; *People v. Arondain*, 418 Phil. 354 (2001).

[41] Please see *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 600.

FIRST DIVISION

[G.R. No. 202847. October 23, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTERU GAMEZ *y* BALTAZAR,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION THEREOF IS GENERALLY GIVEN DUE DEFERENCE AND RESPECT BY APPELLATE COURTS.—** This Court has consistently adhered to the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. Hence, the corollary principle that absent any showing that the trial court overlooked substantial facts and circumstances that would affect the final disposition of the case, appellate courts are bound to give due deference and respect to its evaluation of the credibility of an eyewitness and his testimony as well as its probative value amidst the rest of the other evidence on record.

2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; IF THE ACCUSED ADMITS KILLING THE VICTIM, BUT PLEADS SELF-DEFENSE, THE BURDEN OF EVIDENCE IS SHIFTED TO HIM TO PROVE SUCH DEFENSE BY CLEAR, SATISFACTORY AND CONVINCING EVIDENCE.—** Self-defense, when invoked, as a justifying circumstance implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. However, if the accused admits killing the victim, but pleads self-defense, the burden of evidence is shifted to him to prove such defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part.

3. ID.; ID.; ID.; REQUISITES.— In order to escape criminal liability, it becomes incumbent upon the accused to prove by clear and convincing evidence the concurrence of the following requisites under the second paragraph of Article 11 of the Revised Penal Code, *viz*: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

4. ID.; ID.; ID.; UNLAWFUL AGGRESSION; THERE CAN BE NO SELF-DEFENSE, WHETHER COMPLETE OR INCOMPLETE, THAT CAN VALIDLY BE INVOKED WITHOUT UNLAWFUL AGGRESSION.— Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can validly be invoked. "There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon." It is present only when the one attacked faces real and immediate threat to one's life. It must be continuous; otherwise, it does not constitute aggression warranting self-defense.

5. ID.; ID.; ID.; ID.; DISTINGUISHED FROM RETALIATION.— When unlawful aggression ceases, the defender no longer has any justification to kill or wound the original aggressor. The assailant is no longer acting in self-defense but in retaliation against the original aggressor. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him; while in self-defense the aggression still existed when the aggressor was injured by the accused.

6. ID.; PARRICIDE; ELEMENTS.— Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused. Here, it is an undisputed fact that Apolinario was the accused-appellant's father.

7. ID.; ID.; PENALTY.— Under Article 246 of the Revised Penal Code, the crime of parricide is punishable by *reclusion perpetua* to death. It must be noted that the declaration of the RTC in its Judgment dated May 9, 2006 on the presence of a mitigating circumstance is not supported by any allegation or evidence on record. Nonetheless, in view of Republic Act (R.A.) No. 9346 prohibiting the imposition of death penalty, the courts *a quo* correctly sentenced the accused-appellant to *reclusion perpetua.* It must be emphasized, however, that the accused-appellant shall not be eligible for parole pursuant to Section 3 of R.A. No. 9346 which states that "[p]ersons convicted of offenses **punished with *reclusion perpetua***, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, **shall not be eligible for parole** under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; MANDATORY UPON PROOF OF THE FACT OF DEATH OF THE VICTIM AND THE CULPABILITY OF THE ACCUSED FOR SUCH DEATH.— The award of ₱50,000.00 as civil indemnity to the heirs of Apolinario is proper and in line with current jurisprudence. Civil indemnity is mandatory upon proof of the fact of death of the victim and the culpability of the accused for such death.

9. ID.; ID.; MORAL DAMAGES; AWARDED EVEN IN THE ABSENCE OF ANY ALLEGATION AND PROOF OF THE HEIRS' EMOTIONAL SUFFERING.— The award of ₱50,000.00 as moral damages is likewise correct. Even in the absence of any allegation and proof of the heirs' emotional suffering, it has been recognized that the loss of a loved one to a violent death brings emotional pain and anguish.

10. ID.; ID.; EXEMPLARY DAMAGES; GRANTED IN CASE AT BAR CONSIDERING THAT THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP IS PRESENT IN THE CRIME OF PARRICIDE.— The Court finds that an award of exemplary damages in the amount of ₱30,000.00 is in order considering that the qualifying circumstance of relationship is present in the crime of parricide.

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.*:

For review[1] is the Decision[2] dated May 25, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00671 which affirmed the Judgment[3] dated May 9, 2006 of the Regional Trial Court (RTC) of Burauen, Leyte, Branch 15, convicting and sentencing accused-appellant Antero Gamez *y* Baltazar (accused-appellant) to *reclusion perpetua* for the crime of parricide.

The Facts

Accused-appellant was accused of killing his own father, Apolinario Gamez (Apolinario) through an Information articulating the following criminal charges, *viz*:

> That on or about the 21st day of August, 2004, in the Municipality of Burauen, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault, hack and wound one **APOLINARIO GAMEZ *y* AMORILLO**, his father, with the use of a long bladed weapon (sundang) and sickle (sarad) which the accused provided himself for the purpose, thereby hitting and inflicting upon Apolinario Gamez *y* Amorillo multiple hacking and incised wounds on the different parts of his body which were the direct and approximate cause of his death.
>
> CONTRARY TO LAW.[4]

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[1] Pursuant to *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

[2] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Ramon Paul L. Hernando and Victoria Isabel A. Paredes, concurring; CA *rollo*, pp. 73-81.

[3] Issued by Executive Judge Yolanda U. Dagandan; *id.* at 10-17.

[4] *Id.* at 10.

When arraigned, he entered a "Not Guilty" plea. He thereafter desired to amend his plea to "Guilty" during the pre-trial conference held on September 26, 2005 but the RTC denied the said plea bargaining. In view however of the accused-appellant's invocation of self-defense, an inverted trial scheme ensued.[5]

Through the testimonies of the accused-appellant himself, Dr. Irene Astilla Dacut, his attending physician, and eyewitness Bienvenido Buhalog, the defense narrated the events that culminated into the encounter that claimed Apolinario's life.[6]

The accused-appellant and 69-year old Apolinario had a less than ideal father and son relationship with the former claiming that the latter did not treat him well when he was a child. Their relationship got more strained when Apolinario meddled with the accused-appellant's personal relationship with his wife. Apolinario apparently told the accused-appellant that his wife was being unfaithful. The unsolicited information irked the accused-appellant.

On August 21, 2004, the accused-appellant had a drinking spree in his house at *Barangay* Gamay, Burauen, Leyte, with his two brothers, Nicolas and Cornelio from 12 noon until 3:00 p.m. As he was about to go out of the kitchen door, the accused-appellant saw Apolinario standing at the doorway with a long *bolo*. Apolinario appeared to be drunk.

To prevent any commotion, Nicolas held Apolinario but he was able to free himself from his son's grip. The accused-appellant then spoke to Apolinario: "*I think that you are looking for me and I believe it is since last night*." An argument ensued between them. In order not to prolong the spat, the accused-appellant and his brothers took their father to his *nipa* hut about 500 meters away. But before the accused-appellant could leave, he got into another argument with Apolinario.

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[5] *Id.* at 74.

[6] As culled from accused-appellant's Brief filed before the CA, *id.* at 27-30; and from the narration of facts in the RTC Judgment dated May 9, 2006, *id.* at 12-13 and CA Decision dated May 25, 2011, *id.* at 74-75.

The accused-appellant then set out to the place where he gathered *tuba* while his brothers went back to his house. After gathering *tuba* and tethering his carabao, the accused-appellant proceeded home. He met Apolinario along a pathway. With no one to pacify them, they decided to resume their quarrel.

The accused-appellant first remarked: "*Father, what are the words that you uttered*?" to which Apolinario responded, "*It is better if one of us will perish*." Apolinario then instantaneously hacked the accused-appellant with a long *bolo* hitting him twice on the head for which he sustained a 5-centimeter long and scalp-deep incised wound with fracture of the underlying bone and another 5-cm long incised wound on the frontal right portion of his head.

The accused-appellant fell to his knees as Apolinario delivered another blow which the former was able to parry by raising his left arm. The accused-appellant was wounded on the left 3rd interdigital space posterior to his palm.

The accused-appellant then held Apolinario's hands, grabbed the *bolo* and used the same to hack the latter several times, the count of which escaped the accused-appellant's consciousness as he was already dizzy. The accused-appellant thereafter left the scene and went home. His brother brought him to the hospital upon seeing that his head was teeming with blood. He was hospitalized for six (6) days before he was taken to the municipal hall by the police officers.

The rebuttal evidence for the prosecution, on the other hand, principally consisted of the testimony of Maura Anadia (Maura), Apolinario's daughter and the accused-appellant's sister. According to Maura, at around 4:30 p.m. of August 21, 2004, she was with her father at their house located at *Barangay* Gamay, Burauen, Leyte when his elder brother, the accused-appellant, arrived. He was carrying a long *bolo* and a scythe was tucked on his waist.

He approached her and said: "*Will you join the killing spree today including your child that you are carrying?*" before turning to Apolinario with this query: "*What are the*

stories that you were talking?"

Frightened, Maura ran away and hid at a grassy portion near the house. She then saw her father flee but the accused-appellant gave him a chase. Apolinario was able to run for about 20 m before the accused-appellant was able to catch up.

The accused-appellant then hacked the unarmed Apolinario on the right side of his head using the *bolo*. Apolinario fell down and the accused-appellant finished him off by slashing his neck with the scythe. Maura thereafter left to report the incident to the police.

The autopsy conducted on Apolinario's cadaver by Dr. Leonita Azores, MD,[7] showed that he sustained two (2) fatal wounds one of which almost decapitated his head while the other hit the parietal aspect thereof exposing the skin and connective tissue. Apolinario also obtained two (2) incised wounds on his neck and left forearm and two (2) lacerations on his fingers. He perished at the crime scene.[8]

Ruling of the RTC

In its Judgment[9] dated May 9, 2006, the RTC found that both the prosecution and the defense deliberately withheld vital details of the incident. The prosecution did not reveal that the initial unlawful aggression was committed by Apolinario who, based on medical records, hacked the accused-appellant in the parietal area of his head. The defense, on the other hand, concealed that accused-appellant pursued the victim after the latter fled. These findings completed the sequence of the incident and revealed that the accused-appellant's claim of self-defense is unmeritorious.

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[7] His testimony was dispensed with on account of the admission by the defense of the authenticity and due execution of the medical certificate he issued for the victim, Apolinario Gamez; *id.* at 11.

[8] As culled from the appellee's Brief filed before the CA, *id.* at 54-65; and from the narration of facts in the RTC Judgment dated May 9, 2006, *id.* at 12-13 and CA Decision dated May 25, 2011, *id.* at 76.

[9] *Id.* at 10-17.

The RTC held that when accused-appellant hacked and killed Apolinario, the unlawful aggression which the latter initially perpetrated has already ceased because he has already ran away for 20 m. Hence, accused-appellant's act was not self-defense but rather one of retaliation which, in turn, props up the conclusion that he intentionally killed his father. The decretal portion of the RTC decision thus reads:

> **WHEREFORE**, premises considered[,] this Court finds the accused **ANTERO GAMEZ *y* Baltazar GUILTY BEYOND REASONABLE DOUBT** of the crime of Parricide penalized under Art. 246 of the Revised Penal Code and considering the presence of one (1) mitigating circumstance without any aggravating to offset it, hereby sentences him to suffer imprisonment of ***RECLUSION PERPETUA***; to pay the Heirs of Apolinario Gamez Php50,000.00 as civil indemnity for his death and to pay the costs of this suit.
>
> The accused who underwent preventive imprisonment since August 21, 2004 shall be credited with the full time during which he was deprived of his liberty if he agreed voluntarily and in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise[,] he will be [e]ntitled to only four-fifths (4/5) thereof.[10]

Ruling of the CA

The CA adopted the RTC's findings and similarly concluded that the accused-appellant put up retaliation and not self-defense because the aggression proffered by the victim has already ended when the accused-appellant attacked him. From the time Apolinario ran away and was disarmed by the accused-appellant, the aggression originally heaved by the former has ceased. Hence, when the accused-appellant chased and hacked Apolinario several times, self-defense can no longer be invoked. The CA affirmed the conviction and sentence rendered by the RTC as well as the award of civil indemnity but an additional award of moral damages was granted for Apolinario's heirs. The CA Decision[11] dated May 25, 2011 disposed thus:

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

[11] *Id.* at 73-81.

WHEREFORE, in view of the foregoing premises, the assailed May 9, 2006 Decision of the Regional Trial Court of Burauen, Leyte, Branch 15, in CRIM. CASE NO. Bn-05-03-4125, is hereby **AFFIRMED *with modification*.** Aside from the civil indemnity already awarded, the accused is also hereby directed to pay the heirs of Apolinario Gamez the amount of Php50,000.00 as moral damages in accordance with the recent jurisprudence.

No pronouncement as to cost.

SO ORDERED.[12]

The accused-appellant manifested before the Court that in the present review, he is adopting the arguments contained in his Brief filed before the CA whereby he argued that his guilt for the crime of parricide was not proved beyond reasonable doubt and that the trial court erred in ruling that he failed to prove self-defense.

The Court's Ruling

The Court affirms the accused-appellant's conviction.

The arguments proffered by the accused-appellant essentially attack the evaluation by the trial court of the testimony of the prosecution's principal witness, Maura, and its ruling that the same satisfactorily repudiate his claim of self-defense.

This Court has consistently adhered to the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. Hence, the corollary principle that absent any showing that the trial court overlooked substantial facts and circumstances that would affect the final disposition of the case, appellate courts are bound to give due deference and respect to its evaluation of the credibility of an eyewitness and his testimony as well as its probative value amidst the rest of the other evidence on record.[13]

[12] *Id.* at 80-81.

[13] *People of the Philippines v. Ronald Credo aka "Ontog," Randy Credo and Rolando Credo y Buenaventura*, G.R. No. 197360, July 3, 2013.

We see no compelling reason to depart from the foregoing tenets especially in view of the accused-appellant's failure to identify significant details, which if considered, will alter the outcome of the trial court's judgment and the affirmation accorded it by the CA. At any rate, an examination of the records at hand shows that the factual basis of accused-appellant's plea of self-defense cannot relieve him from criminal liability.

Self-defense, when invoked, as a justifying circumstance implies the admission by the accused that he committed the criminal act.[14] Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. However, if the accused admits killing the victim, but pleads self-defense, the burden of evidence is shifted to him to prove such defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part.[15]

In order to escape criminal liability, it becomes incumbent upon the accused to prove by clear and convincing evidence the concurrence of the following requisites under the second paragraph of Article 11 of the Revised Penal Code, *viz*: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[16]

Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can validly be invoked.[17] "There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There

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[14] *People v. Maningding*, G.R. No. 195665 , September 14, 2011, 657 SCRA 804, 813.

[15] *Simon A. Flores v. People of the Philippines*, G.R. No. 181354, February 27, 2013.

[16] *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 379.

[17] *People v. Paycana, Jr.*, 574 Phil. 780, 787 (2008).

must be actual physical force or actual use of a weapon."[18] It is present only when the one attacked faces real and immediate threat to one's life. It must be continuous; otherwise, it does not constitute aggression warranting self-defense.[19]

Here, the accused-appellant, miserably failed to discharge his burden of proving that unlawful aggression justifying self-defense was present when he killed Apolinario.

The aggression initially staged by Apolinario was not of the continuous kind as it was no longer present when the accused-appellant injured Apolinario. As testified by the accused-appellant himself, he was able to grab the *bolo* from Apolinario. From that point on, the aggression initially staged by Apolinario ceased to exist and the perceived threat to the accused-appellant's life was no longer attendant.

Hence, the accused-appellant was no longer acting in self-defense, when he, despite having already disarmed Apolinario, ran after the latter for about 20 m and then stabbed him. The accused-appellant's claim of self-defense is further negated by the fatal incision on Apolinario's neck that almost decapitated his head, a physical evidence which corroborates Maura's testimony that after stabbing Apolinario with the *bolo*, the accused-appellant pulled out the scythe on his waist and used the same to slash Apolinario's neck. The use of a weapon different from that seized from the victim and the nature of the injury inflicted show the accused-appellant's determined resolve to kill Apolinario.

When unlawful aggression ceases, the defender no longer has any justification to kill or wound the original aggressor. The assailant is no longer acting in self-defense but in retaliation against the original aggressor. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked

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[18] *People v. Comillo, Jr.*, G.R. No. 186538, November 25, 2009, 605 SCRA 756, 772.

[19] *Simon A. Flores v. People of the Philippines*, *supra* note 15.

him; while in self-defense the aggression still existed when the aggressor was injured by the accused.[20]

The CA was thus correct in upholding the findings and conclusions of the RTC, thus:

> [A]lthough, it is supported by the medical report, that the [accused-appellant] was indeed initially attacked by the victim, the act of the [accused-appellant] of going after the victim, who was already **running away** from the [accused-appellant] after the latter has gained possession of the weapon, is anathema to the self-defense theory invoked by the [accused appellant].
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> x x x x x x x x x
>
> In the instant case, the trial court gave credence to the testimony of the prosecution witness that the victim tried to run away from the [accused-appellant] but the [accused-appellant] ran after him. When the [accused-appellant] was able to overtake the victim, the latter was hacked on the right side of his head. To finish him off, the [accused-appellant] slashed the victim's neck with the use of a scythe until the victim (his own father) died. Thus, *assuming arguendo* that the father was indeed the first aggressor, the aggression ceased the moment the [accused-appellant] disarmed him and the victim tried to run away from the [accused-appellant]. When the [accused-appellant] then continued to chase his 69 year-old father and hacked several times the already disarmed victim, self-defense can no longer be invoked.[21]

In fine, there is no justifiable cause exempting the accused-appellant from criminal liability and the courts *a quo* were correct in convicting him for parricide.

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused.[22] Here, it is an undisputed fact that Apolinario was the accused-appellant's father.

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[20] *Id.*

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

[22] *People v. Paycana, Jr.*, *supra* note 17, at 789.

Under Article 246 of the Revised Penal Code, the crime of parricide is punishable by *reclusion perpetua* to death. It must be noted that the declaration of the RTC in its Judgment dated May 9, 2006 on the presence of a mitigating circumstance is not supported by any allegation or evidence on record. Nonetheless, in view of Republic Act (R.A.) No. 9346[23] prohibiting the imposition of death penalty, the courts *a quo* correctly sentenced the accused-appellant to *reclusion perpetua*.[24]

It must be emphasized, however, that the accused-appellant shall not be eligible for parole pursuant to Section 3 of R.A. No. 9346 which states that "[p]ersons convicted of offenses **punished with *reclusion perpetua***, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, **shall not be eligible for parole** under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."[25]

The award of ₱50,000.00 as civil indemnity to the heirs of Apolinario is proper and in line with current jurisprudence.[26] Civil indemnity is mandatory upon proof of the fact of death of the victim and the culpability of the accused for such death.[27] The award of ₱50,000.00[28] as moral damages is likewise correct. Even in the absence of any allegation and proof of the heirs' emotional suffering, it has been recognized that the loss of a

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[23] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[24] See *People v. Tibon,* G.R. No. 188320, June 29, 2010, 622 SCRA 510, 521.

[25] See *People v. Dejillo,* G.R. No. 185005, December 10, 2012, 687 SCRA 537, 556, citing *People v. Tadah*, G.R. No. 186226, February 1, 2012, 664 SCRA 744, 747.

[26] *People v. Sales*, G.R. No. 177218, October 03, 2011, 658 SCRA 367, 381.

[27] *People v. Dela Cruz*, G.R. No. 187683, February 11, 2010, 612 SCRA 364, 374.

[28] *Supra* note 26.

loved one to a violent death brings emotional pain and anguish.[29]

The Court finds that an award of exemplary damages in the amount of ₱30,000.00[30] is in order considering that the qualifying circumstance of relationship is present in the crime of parricide.[31]

Lastly, in conformity with current policy, we impose on all the monetary awards for damages an interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.[32]

WHEREFORE, premises considered, the Decision dated May 25, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 00671 finding the accused-appellant, Antero Gamez *y* Baltazar, guilty beyond reasonable doubt of the crime of Parricide, is hereby **AFFIRMED WITH MODIFICATIONS**. Antero Gamez *y* Baltazar is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay the heirs of the victim, Apolinario Gamez, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.

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

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[29] *Supra* note 24, at 522.

[30] *Supra* note 26.

[31] *Supra* note 24, at 523.

[32] *Supra* note 26.

SECOND DIVISION

[G.R. No. 202932. October 23, 2013]

EDILBERTO U. VENTURA, JR., *petitioner, vs.* **SPOUSES PAULINO and EVANGELINE ABUDA,** *respondents.*

SYLLABUS

CIVIL LAW; FAMILY CODE; PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE; IN UNIONS BETWEEN A MAN AND A WOMAN WHO ARE INCAPACITATED TO MARRY EACH OTHER, A PROPERTY CAN BE CONSIDERED COMMON PROPERTY IF IT WAS ACQUIRED DURING THE COHABITATION AND THERE IS EVIDENCE THAT IT WAS ACQUIRED THROUGH THE PARTIES' ACTUAL JOINT CONTRIBUTION OF MONEY, PROPERTY, OR INDUSTRY.— Edilberto admitted that in unions between a man and a woman who are incapacitated to marry each other, the ownership over the properties acquired during the subsistence of that relationship shall be based on the actual contribution of the parties. x x x This is a reiteration of Article 148 of the Family Code, which the CA applied in the assailed decision x x x. Applying the foregoing provision, the Vitas and Delpan properties can be considered common property if: (1) these were acquired during the cohabitation of Esteban and Socorro; and (2) there is evidence that the properties were acquired through the parties' actual joint contribution of money, property, or industry. x x x The title itself shows that the Vitas property is owned by Esteban alone. The phrase "married to Socorro Torres" is merely descriptive of his civil status, and does not show that Socorro co-owned the property. The evidence on record also shows that Esteban acquired ownership over the Vitas property prior to his marriage to Socorro, even if the certificate of title was issued after the celebration of the marriage. Registration under the Torrens title system merely confirms, and does not vest title. x x x Both the RTC-Manila and the CA found that the Delpan property was acquired prior to the marriage of Esteban and Socorro. Furthermore, even if payment of the purchase price of the Delpan property was made by Evangeline, such payment was made on behalf of her father.

> x x x Thus, it is clear that Evangeline paid on behalf of her father, and the parties intended that the Delpan property would be owned by and registered under the name of Esteban.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Asteria B. Felicen and *Manuel Ano* for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on *certiorari* seeks to annul the Decision[1] dated 9 March 2012 of the Court of Appeals (CA) in CA-G.R. CV. No. 92330 and the Resolution[2] dated 3 August 2012 denying the motion for reconsideration. The Decision and Resolution dismissed the Appeal dated 23 October 2009 and affirmed with modification the Decision[3] dated 24 November 2008 of the Regional Trial Court of Manila, Branch 32 (RTC-Manila).

The Facts

The RTC-Manila and the CA found the facts to be as follows:

Socorro Torres (Socorro) and Esteban Abletes (Esteban) were married on 9 June 1980. Although Socorro and Esteban never had common children, both of them had children from prior marriages: Esteban had a daughter named Evangeline Abuda (Evangeline), and Socorro had a son, who was the father of Edilberto U. Ventura, Jr. (Edilberto), the petitioner in this case.

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[1] *Rollo*, pp. 69-81. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Isaias P. Dicdican and Amy C. Lazaro-Javier, concurring.

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

[3] *Id.* at 36-48. Penned by Presiding Judge Thelma Bunyi-Medina.

Evidence shows that Socorro had a prior subsisting marriage to Crispin Roxas (Crispin) when she married Esteban. Socorro married Crispin on 18 April 1952. This marriage was not annulled, and Crispin was alive at the time of Socorro's marriage to Esteban.

Esteban's prior marriage, on the other hand, was dissolved by virtue of his wife's death in 1960.

According to Edilberto, sometime in 1968, Esteban purchased a portion of a lot situated at 2492 State Alley, Bonifacio Street, Vitas, Tondo, Manila (Vitas property). The remaining portion was thereafter purchased by Evangeline on her father's behalf sometime in 1970.[4] The Vitas property was covered by Transfer Certificate of Title No. 141782, dated 11 December 1980, issued to "Esteban Abletes, of legal age, Filipino, married to Socorro Torres."[5]

Edilberto also claimed that starting 1978, Evangeline and Esteban operated small business establishments located at 903 and 905 Delpan Street, Tondo, Manila (Delpan property).[6]

On 6 September 1997, Esteban sold the Vitas and Delpan properties to Evangeline and her husband, Paulino Abuda (Paulino).[7] According to Edilberto:

> [w]hen Esteban was diagnosed with colon cancer sometime in 1993, he decided to sell the Delpan and Vitas properties to Evangeline. Evangeline continued paying the amortizations on the two (2) properties situated in Delpan Street. The amortizations, together with the amount of Two Hundred Thousand Pesos (Php 200,000.00), which Esteban requested as advance payment, were considered part of the purchase price of the Delpan properties. Evangeline likewise gave her father Fifty Thousand Pesos (Php 50,000.00) for the purchase of the Vitas properties and [she] shouldered his medical expenses.[8]

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[4] *Id.* at 11.

[5] *Id.* at 15.

[6] *Id.* at 11.

[7] *Id.* at 10.

[8] *Id.* at 12.

Esteban passed away on 11 September 1997, while Socorro passed away on 31 July 1999.

Sometime in 2000, Leonora Urquila (Leonora), the mother of Edilberto, discovered the sale. Thus, Edilberto, represented by Leonora, filed a Petition for Annulment of Deeds of Sale before the RTC-Manila. Edilberto alleged that the sale of the properties was fraudulent because Esteban's signature on the deeds of sale was forged. Respondents, on the other hand, argued that because of Socorro's prior marriage to Crispin, her subsequent marriage to Esteban was null and void. Thus, neither Socorro nor her heirs can claim any right or interest over the properties purchased by Esteban and respondents.[9]

The Ruling of the RTC-Manila

The RTC-Manila dismissed the petition for lack of merit.

The RTC-Manila ruled that the marriage between Socorro and Esteban was void from the beginning.[10] Article 83 of the Civil Code, which was the governing law at the time Esteban and Socorro were married, provides:

> Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person shall be illegal and void from its performance unless:
>
> 1. The first marriage was annulled or dissolved; or
> 2. The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void.

During trial, Edilberto offered the testimony of Socorro's daughter-in-law Conchita Ventura (Conchita). In her first affidavit,

[9] *Id.* at 42.

[10] *Id.* at 44.

Conchita claimed that Crispin, who was a seaman, had been missing and unheard from for 35 years. However, Conchita recanted her earlier testimony and executed an Affidavit of Retraction.[11]

The RTC-Manila ruled that the lack of a judicial decree of nullity does not affect the status of the union. It applied our ruling in *Niñal v. Badayog*:[12]

> Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage. x x x
>
> Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which [the] fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts.[13]

According to the RTC-Manila, the Vitas and Delpan properties are not conjugal, and are governed by Articles 144 and 485 of the Civil Code, to wit:

> Art. 144. When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership.
>
> Art. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.
>
> The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

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[11] *Id.* at 45.

[12] 384 Phil. 661 (2000).

[13] *Rollo*, p. 44, citing *Niñal v. Badayog*, 384 Phil. 661 (2000).

The RTC-Manila then determined the respective shares of Socorro and Esteban in the properties. It found that:

> [w]ith respect to the property located at 2492 State Alley, Bonifacio St. Vitas, Tondo, Manila covered by TCT No. 141782, formerly Marcos Road, Magsaysay Village, Tondo, Manila, [Evangeline] declared that part of it was first acquired by [her] father Esteban Abletes sometime in 1968 when he purchased the right of Ampiano Caballegan. Then, in 1970, she x x x bought the right to one-half of the remaining property occupied by Ampiano Caballegan. However, during the survey of the National Housing Authority, she allowed the whole lot [to be] registered in her father's name. As proof thereof, she presented Exhibits "8" to "11" x x x. [These documents prove that] that she has been an occupant of the said property in Vitas, Tondo even before her father and Socorro Torres got married in June, 1980.[14]

> Anent the parcels of land and improvements thereon 903 and 905 Del Pan Street, Tondo, Manila, x x x Evangeline professed that in 1978, before [her] father met Socorro Torres and before the construction of the BLISS Project thereat, [her] father [already had] a bodega of canvas (lona) and a sewing machine to sew the canvas being sold at 903 Del Pan Street, Tondo Manila. In 1978, she was also operating Vangie's Canvas Store at 905 Del Pan [Street], Tondo, Manila, which was evidenced by Certificate of Registration of Business Name issued in her favor on 09 November 1998 x x x. When the BLISS project was constructed in 1980, [the property] became known as Unit[s] D-9 and D-10. At first, [her] father [paid] for the amortizations [for] these two (2) parcels of land but when he got sick [with] colon cancer in 1993, he asked [respondents] to continue paying for the amortizations x x x. [Evangeline] paid a total of ₱195,259.52 for Unit D-9 as shown by the 37 pieces of receipts x x x and the aggregate amount of ₱188,596.09 for Unit D-10, [as evidenced by] 36 receipts x x x.[15]

The RTC-Manila concluded that Socorro did not contribute any funds for the acquisition of the properties. Hence, she cannot be considered a co-owner, and her heirs cannot claim any rights over the Vitas and Delpan properties.[16]

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[14] *Id.* at 47.

[15] *Id.* at 47-48.

[16] *Id.* at 48.

Aggrieved, Edilberto filed an appeal before the CA.

The Ruling of the CA

In its Decision[17] dated 9 March 2012, the CA sustained the decision of the RTC-Manila. The dispositive portion of the CA Decision reads:

> Wherefore, the Appeal is hereby denied and the challenged Decision of the court *a quo* stands.
>
> SO ORDERED.[18]

The CA ruled, however, that the RTC-Manila should have applied Article 148 of the Family Code, and not Articles 144 and 485 of the Civil Code. Article 148 of the Family Code states that in unions between a man and a woman who are incapacitated to marry each other:

> x x x only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.
>
> If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.
>
> The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

The CA applied our ruling in *Saguid v. Court of Appeals*,[19] and held that the foregoing provision applies "even if the

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[17] *Id.* at 69-81.

[18] *Id.* at 81.

[19] *Id.* at 77, citing *Saguid v. Court of Appeals*, 451 Phil. 825 (2003).

cohabitation or the acquisition of the property occurred before the [effectivity] of the Family Code."[20] The CA found that Edilberto failed to prove that Socorro contributed to the purchase of the Vitas and Delpan properties. Edilberto was unable to provide any documentation evidencing Socorro's alleged contribution.[21]

On 2 April 2012, Edilberto filed a Motion for Reconsideration,[22] which was denied by the CA in its Resolution dated 3 August 2012.[23]

Hence, this petition.

The Ruling of this Court

We deny the petition.

Edilberto admitted that in unions between a man and a woman who are incapacitated to marry each other, the ownership over the properties acquired during the subsistence of that relationship shall be based on the actual contribution of the parties. He even quoted our ruling in *Borromeo v. Descallar*[24] in his petition:

> It is necessary for each of the partners to prove his or her actual contribution to the acquisition of property in order to be able to lay claim to any portion of it. Presumptions of co-ownership and equal contribution do not apply.[25]

This is a reiteration of Article 148 of the Family Code, which the CA applied in the assailed decision:

> Art. 148. In cases of cohabitation [wherein the parties are incapacitated to marry each other], only the properties acquired by both of the parties through their actual joint contribution of money,

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[20] *Id.* at 77.

[21] *Id.* at 78.

[22] *Id.* at 82-87.

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

[24] G.R. No. 159310, 24 February 2009, 580 SCRA 175.

[25] *Rollo*, p. 15, citing *Borromeo v. Descallar, supra*.

property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

Applying the foregoing provision, the Vitas and Delpan properties can be considered common property if: (1) these were acquired during the cohabitation of Esteban and Socorro; and (2) there is evidence that the properties were acquired through the parties' actual joint contribution of money, property, or industry.

Edilberto argues that the certificate of title covering the Vitas property shows that the parcel of land is co-owned by Esteban and Socorro because: (1) the Transfer Certificate of Title was issued on 11 December 1980, or several months after the parties were married; and (2) title to the land was issued to "Esteban Abletes, of legal age, married to Socorro Torres."[26]

We disagree. The title itself shows that the Vitas property is owned by Esteban alone. The phrase "married to Socorro Torres" is merely descriptive of his civil status, and does not show that Socorro co-owned the property.[27] The evidence on record also shows that Esteban acquired ownership over the Vitas property prior to his marriage to Socorro, even if the certificate of title was issued after the celebration of the marriage. Registration under the Torrens title system merely confirms,

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[26] *Id.*

[27] *Go-Bangayan v. Bangayan*, G.R. No. 201061, 3 July 2013, citing *Acre v. Yuttikki*, 560 Phil. 495 (2007).

and does not vest title. This was admitted by Edilberto on page 9 of his petition wherein he quotes an excerpt of our ruling in *Borromeo*:

> [R]egistration is not a mode of acquiring ownership. It is only a means of confirming the fact of its existence with notice to the world at large. Certificates of title are not a source of right. The mere possession of a title does not make one the true owner of the property. Thus, the mere fact that respondent has the titles of the disputed properties in her name does not necessarily, conclusively and absolutely make her the owner. The rule on indefeasibility of title likewise does not apply to respondent. A certificate of title implies that the title is quiet, and that it is perfect, absolute and indefeasible. However, there are well-defined exceptions to this rule, as when the transferee is not a holder in good faith and did not acquire the subject properties for a valuable consideration.

Edilberto claims that Esteban's actual contribution to the purchase of the Delpan property was not sufficiently proven since Evangeline shouldered some of the amortizations.[28] Thus, the law presumes that Esteban and Socorro jointly contributed to the acquisition of the Delpan property.

We cannot sustain Edilberto's claim. Both the RTC-Manila and the CA found that the Delpan property was acquired prior to the marriage of Esteban and Socorro.[29] Furthermore, even if payment of the purchase price of the Delpan property was made by Evangeline, such payment was made on behalf of her father. Article 1238 of the Civil Code provides:

> Art. 1238. Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it.

Thus, it is clear that Evangeline paid on behalf of her father, and the parties intended that the Delpan property would be owned by and registered under the name of Esteban.

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[28] *Rollo*, p. 16.

[29] *Id.* at 79.

During trial, the Abuda spouses presented receipts evidencing payments of the amortizations for the Delpan property. On the other hand, Edilberto failed to show any evidence showing Socorro's alleged monetary contributions. As correctly pointed out by the CA:

> [s]ettled is the rule that in civil cases x x x the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue. x x x. Here it is Appellant who is duty bound to prove the allegations in the complaint which undoubtedly, he miserably failed to do so.[30]

WHEREFORE, the petition is **DENIED**. The Decision dated 9 March 2012 of the Court of Appeals in CA-G.R. CV No. 92330 is **AFFIRMED**.

SO ORDERED.

Velasco, Jr.,[*] *Brion, Reyes,*[**] and *Perlas-Bernabe, JJ.*, concur.

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[30] *Id.* at 80.

[*] Designated Acting Member per Special Order No. 1567 dated 11 October 2013.

[**] Designated Acting Member per Special Order No. 1564 dated 11 October 2013.

THIRD DIVISION

[G.R. No. 203786. October 23, 2013]

AQUILES RIOSA, *petitioner, vs.* **TABACO LA SUERTE CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FACTUAL FINDINGS OF THE COURT OF APPEALS, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE CONCLUSIVE ON THE PARTIES AND ARE NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTION.—** As a rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts and is not to review or calibrate the evidence on record. When supported by substantial evidence, the findings of fact by the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions. An acceptable exception is where there is a conflict between the factual determination of the trial court and that of the appellate court. In such a case, it becomes imperative to digress from this general rule and revisit the factual circumstances surrounding the controversy.

2. **CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE; ELEMENTS.—** The elements of a contract of sale are: a] consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b] determinate subject matter; and c] price certain in money or its equivalent.

3. **ID.; ID.; ID.; PERFECTED AT THE MOMENT THERE IS A MEETING OF THE MINDS ON THE THING WHICH IS THE OBJECT OF THE CONTRACT AND ON THE PRICE.—** In this case, there was no clear and convincing evidence that Aquiles definitely sold the subject property to La Suerte, nor was there evidence that La Suerte authorized its chief executive officer, Sia Ko Pio, to negotiate and conclude a purchase of the property. Aquiles' narration in open court is clear that he did not intend to transfer ownership of his property. x x x The x x x testimony negates any intention on the part of Aquiles

to sell the property in exchange for the amounts borrowed. Evidently, it was a series of transactions between Aquiles and Sia Ko Pio, but not between the parties. The transactions were between Aquiles, as borrower, and Sia Ko Pio, as lender. It was not a sale between Aquiles, as vendor, and La Suerte, as vendee. There was no agreement between the parties. As the first element was wanting, Aquiles correctly argued that there was no contract of sale. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of the minds on the thing which is the object of the contract and on the price.

4. **ID.; ID.; ID.; THE EXISTENCE OF A SIGNED DOCUMENT PURPORTING TO BE A CONTRACT OF SALE DOES NOT PRECLUDE A FINDING THAT THE CONTRACT IS INVALID WHEN THE EVIDENCE SHOWS THAT THERE WAS NO MEETING OF THE MINDS BETWEEN THE SELLER AND BUYER.—** The fact that the alleged deed of sale indubitably bore Aquiles' signature deserves no evidentiary value there being no consent from him to part with his property. Had he known that the document presented to him was an instrument of sale, he would not have affixed his signature on the document. It has been held that the existence of a signed document purporting to be a contract of sale does not preclude a finding that the contract is invalid when the evidence shows that there was no meeting of the minds between the seller and buyer.

5. **REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIAL DOCUMENTS; AN ERROR IN THE NOTARIAL INSCRIPTION DOES NOT GENERALLY INVALIDATE A SALE BUT THE DOCUMENT WOULD BE TAKEN OUT OF THE REALM OF PUBLIC DOCUMENTS.—** [A] notarial document is evidence of the facts in the clear unequivocal manner therein expressed and has in its favor the presumption of regularity. While it is true that an error in the notarial inscription does not generally invalidate a sale, if indeed it took place, the same error can only mean that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. The document would be taken out of the realm of public documents whose genuineness and due execution need not be proved.

6. LEGAL ETHICS; NOTARIES PUBLIC; NOTARIES PUBLIC *EX OFFICIO*; MAY PERFORM ANY ACT WITHIN THE COMPETENCY OF A REGULAR NOTARY PUBLIC PROVIDED THAT CERTIFICATION BE MADE IN THE NOTARIZED DOCUMENTS ATTESTING TO THE LACK OF ANY LAWYER OR NOTARY PUBLIC IN SUCH MUNICIPALITY OR CIRCUIT.— An even more substantial irregularity raised by Aquiles pertains to the capacity of the notary public, Judge Base, to notarize the deed of sale. Judge Base, who acted as *ex-officio* notary public, is not allowed under the law to notarize documents not connected with the exercise of his official duties. The case of *Tigno v. Aquino* is enlightening: "There are possible grounds for leniency in connection with this matter, as Supreme Court Circular No. I-90 permits notaries public *ex officio* to perform any act within the competency of a regular notary public provided that certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. Indeed, it is only when there are no lawyers or notaries public that the exception applies." x x x In this case, no such certification was attached to the alleged notarized document. Also, the Court takes note of Aquiles' averment that there were several lawyers commissioned as notary public in Tabaco City. With Judge Base not being authorized to notarize a deed of conveyance, the notarized document cannot be considered a valid registrable document in favor of La Suerte.

7. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIAL DOCUMENTS; AN IRREGULAR NOTARIZATION REDUCES THE EVIDENTIARY VALUE OF A DOCUMENT TO THAT OF A PRIVATE DOCUMENT.— Although it is true that the absence of notarization of the deed of sale would not invalidate the transaction evidenced therein, yet an irregular notarization reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence.

APPEARANCES OF COUNSEL

Brotamonte Law Office for petitioner.
Coderis Law Offices 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 1997 Rules of Civil Procedure assailing the May 30, 2012 Decision[1] of the Court of Appeals *(CA)*, and its September 20, 2012 Resolution,[2] in CA-G.R. CV No. 96459, reversing the September 30, 2010 Decision[3] of the Regional Trial Court, Branch 15, Tabaco City, Albay *(RTC)*, which granted the complaint for annulment/declaration of nullity of the deed of absolute sale and transfer certificate of title, reconveyance and damages.

The Facts

On February 26, 2002, petitioner Aquiles Riosa *(Aquiles)* filed his Complaint for Annulment/Declaration of Nullity of Deed of Absolute Sale and Transfer Certificate of Title, Reconveyance and Damages against respondent Tabaco La Suerte Corporation *(La Suerte)* before the RTC.

In his complaint, Aquiles alleged that he was the owner and in actual possession of a 52-square meter commercial lot situated in *Barangay* Quinale, Tabaco City, Albay; that he acquired the said property through a deed of cession and quitclaim executed by his parents, Pablo Riosa, Sr. and Sabiniana Biron; that he declared the property in his name and had been religiously paying the realty tax on the said property; that thereafter, his daughter, Annie Lyn Riosa Zampelis, renovated the commercial building on the lot and introduced improvements costing no less than ₱300,000.00; that subsequently, on three (3) occasions, he obtained loans from Sia Ko Pio in the total amount of ₱50,000.00; that as a security for the payment of loans, Sia Ko Pio requested from him a photocopy of the deed of cession and quitclaim;

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[1] *Rollo*, pp. 35-55. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Franchito N. Diamante and Ramon A. Cruz, concurring.

[2] Annex "C" of Petition, *id.* at 71-72.

[3] *Id.* at 78-94.

that Sia Ko Pio presented to him a document purportedly a receipt for the ₱50,000.00 loan with an undertaking to pay the total amount of ₱52,000.00 including the ₱2,000.00 attorney's fees; that without reading the document, he affixed his signature thereon; and that in September 2001, to his surprise, he received a letter from La Suerte informing him that the subject lot was already registered in its name.

Aquiles claimed that by means of fraud, misrepresentation and deceit employed by Sia Ko Pio, he was made to sign the document which he thought was a receipt and undertaking to pay the loan, only to find out later that it was a document of sale. Aquiles averred that he did not appear before the notary public to acknowledge the sale, and that the notary public, a municipal judge, was not authorized to notarize a deed of conveyance. He further claimed that he could not have sold the commercial building on the lot as he had no transmissible right over it, as it was not included in the deed of cession and quitclaim. He, thus, prayed for the nullification of the deed of sale and certificate of title in the name of La Suerte and the reconveyance of the subject property to him.[4]

In its Answer, La Suerte averred that it was the actual and lawful owner of the commercial property, after purchasing it from Aquiles on December 7, 1990; that it allowed Aquiles to remain in possession of the property to avoid the ire of his father from whom he had acquired the property *inter vivos*, subject to his obligation to vacate the premises anytime upon demand; that on February 13, 1991, the Register of Deeds of Albay issued Transfer Certificate of Title *(TCT)* No. T-80054 covering the subject property in its name; that Aquiles necessarily undertook the cost of repairs and did not pay rent for using the premises; that Aquiles transacted with it, through Sia Ko Pio, now deceased, who was then its Chief Executive Officer; that his opinion that only the land was sold was absurd because the sale of the principal included its accessories, not to mention that he did not make any reservation at the time the deed was executed; that it repeatedly asked Aquiles to vacate the premises

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

but to no avail; that, instead, he tried to renovate the building in 2001 which prompted it to lodge a complaint with the Office of the Mayor on the ground that the renovation work was without a building permit; and that Aquiles' complaint was barred by prescription, laches, estoppel and indefeasibility of La Suerte's title.[5]

During the trial, Aquiles and his daughter, Anita Riosa Cabanele, testified to prove his causes of action. To defend its rightful claim, La Suerte presented the testimony of Juan Pielago Sia *(Juan)*, the son of Sia Ko Pio and a member of the board. Aquiles also presented his wife, Erlinda, as rebuttal witness.

On September 30, 2010, the RTC ruled in favor of Aquiles, disposing as follows:

> Wherefore, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant.
>
> 1. Ordering the annulment of sale of the subject lot purportedly executed by plaintiff Aquiles Riosa in favor of defendant corporation;
> 2. Annulling the Transfer Certificate of Title No. 80054 in the name of defendant corporation;
> 3. Ordering defendant corporation to pay plaintiff the amount of Twenty Thousand Pesos (₱20,000.00) as Attorney's fees;
> 4. Ordering defendant to pay plaintiff the amount of Twenty Thousand (₱20,000.00) as exemplary damages; and
> 5. Ordering defendant to pay plaintiff the amount of Twenty Thousand Pesos (₱20,000.00) as Attorney's fees.
>
> SO ORDERED.[6]

The RTC gave credence to the testimony of Aquiles that he was made to sign an instrument of sale without his knowledge because he trusted Sia Ko Pio and he was of the belief that what he had signed was merely an instrument of indebtedness.

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

[6] *Id.* at 94.

It cited, as legal basis, Article 1330 of the Civil Code which provides that a contract where the consent is given thru violence, intimidation, undue influence or fraud is voidable. Inasmuch as the property was acquired thru fraud, the person who obtained it by force of law was considered a trustee of an implied trust for the benefit of the person from whom the property came. Thus, according to the RTC, La Suerte was bound to reconvey to Aquiles the subject property.

With its motion for reconsideration denied, La Suerte appealed to the CA. In its May 30, 2012 Decision, the CA *reversed* the RTC decision and upheld the validity of the subject deed of sale in favor of La Suerte. It declared La Suerte as the lawful owner of the subject lot and improvements thereon, subject to the right of reimbursement for the renovation expenses. The CA held that tax declarations or realty tax payments by Aquiles were not conclusive evidence of ownership, citing *Spouses Camara v. Spouses Malabao*,[7] where it was ruled that a party's declaration of real property and his payment of realty taxes could not defeat a certificate of title which was an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appeared thereon. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. The September 30, 2010 Decision of the Regional Trial Court of Tabaco City, Albay, Branch 15, is **REVERSED and SET ASIDE** and a new one is rendered:

1. **DISMISSING** the complaint for annulment of deed of sale and transfer certificate of title, **without prejudice to the right of plaintiff-appellee's daughter to a reimbursement for the renovation works she made on the structure/building on the lot**; and

2. **GRANTING** defendant-appellant's counterclaim although in the **reduced** amount of ₱100,000.00.

SO ORDERED.[8]

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[7] 455 Phil. 385 (2003).

[8] *Rollo*, p. 54.

Aquiles filed his Motion for Reconsideration[9] of the CA decision, but the same was denied by the CA in its September 20, 2012 Resolution.

Hence, Aquiles filed the present petition before this Court raising the following

ISSUES

1. Whether or not the Honorable Court of Appeals committed serious error in reversing the decision of the Trial Court disregarding the conclusion and findings of the Trial court;

2. Whether the Honorable Court of Appeals committed serious error of law in holding that the personal loan of petitioner obtained and granted by Sia Ko Pio is a consideration of sale of the property in favor of the respondent corporation La Suerte Corporation;

3. Whether the Honorable Court of Appeals erred in finding that there was a valid and perfected contract of sale of real property between petitioner and respondent corporation La Suerte Corporation;

4. Whether the Honorable Court of Appeals committed serious error of law and applicable jurisprudence in resolving petitioner's actual physical possession of the property in question; and

5. Whether the Honorable Court of Appeals committed serious error of law by awarding damages to the respondent.[10]

The primordial issue to be resolved is whether there was a perfected and valid contract of sale for the subject property between Aquiles and La Suerte, through its Chief Executive Officer, Sia Ko Pio.

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[9] Annex "B" of Petition, *id.* at 56-69.

[10] *Id.* at 19-20.

Aquiles argues that there was no perfected contract to sell because (1) there was no transaction between La Suerte and Aquiles for the sale of the property in question; (2) there was no board resolution authorizing Sia Ko Pio to purchase the property; (3) there was no evidence that the money received by Aquiles from Sia Ko Pio came from La Suerte; and (4) he did not appear before the notary public for notarization of the instrument of sale. Moreover, there was a discrepancy in the date appearing in the deed of sale and the date in the acknowledgment and the notarial reference.

La Suerte, in its Comment,[11] argued that Aquiles' petition should be dismissed because it raised only questions of fact as only pure question of law is allowed in a petition for *certiorari* under Rule 45. It counters that the notarized deed of sale was the very evidence of the agreement between them. According to it, said deed of sale was binding and enforceable between them, albeit there was a discrepancy in the dates, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effect between the parties. La Suerte adds that the absence of a board resolution for the purchase of the property has no controlling consequence as La Suerte had ratified the act of Sia Ko Pio.

The Court's Ruling

Notably, the issues raised in the petition are factual in nature. Essentially, Aquiles asks the Court to review the factual determination of the CA. As a rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts and is not to review or calibrate the evidence on record.[12] When supported by substantial evidence, the findings of fact by the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions.[13]

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[11] Dated February 12, 2013. *rollo*, pp. 126-138.

[12] Section 1, Rule 45 of the 1997 Rules of Civil Procedure.

[13] *David v. Misamis Occidental II Electric Cooperative, Inc.*, G.R. No. 194785, July 11, 2012, 676 SCRA 367, 373.

An acceptable exception is where there is a conflict between the factual determination of the trial court and that of the appellate court. In such a case, it becomes imperative to digress from this general rule and revisit the factual circumstances surrounding the controversy.[14]

In this case, although the RTC and the CA were one in ruling that the prescriptive period of reconveyance did not run against Aquiles because he remained in possession of the subject property, they differred in their findings of fact and conclusions on the question of whether there was a perfected and valid contract of sale.

The RTC annulled the sale of the subject properties on the ground of fraud as Aquiles was made to sign an instrument which he believed to be a receipt of indebtedness. On the contrary, the CA ruled that the contract of sale was valid. The CA wrote:

> Nevertheless, We rule that the subject deed of sale is valid. We are not convinced of [Aquiles'] bare assertion that the said document was executed through fraud, misrepresentation or deceit, and that his wife's signature thereon was forged. The rule is that for an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud. It must be stressed that mere allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner, injure him, must be specifically alleged and proved.[15]

After an assiduous assessment of the evidentiary records, the Court holds otherwise.

The Court agrees with the finding of the RTC that there was no perfected contract of sale. It is a hornbook doctrine that the findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong

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[14] *Ogawa v. Menigishi*, G.R. No. 193089, July 9, 2012, 676 SCRA 14, 19, citing *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

[15] *Rollo*, p. 47.

and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying.[16]

The elements of a contract of sale are: a] consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b] determinate subject matter; and c] price certain in money or its equivalent.[17]

In this case, there was no clear and convincing evidence that Aquiles definitely sold the subject property to La Suerte, nor was there evidence that La Suerte authorized its chief executive officer, Sia Ko Pio, to negotiate and conclude a purchase of the property. Aquiles' narration in open court is clear that he did not intend to transfer ownership of his property. The pertinent parts of his testimony read:

Q – How much is your debt [to] the father of Jhony known as Pia Wo?

ATTY. GONZAGA:
The question refers to Sia Ko Pio?

ATTY. BROTAMONTE:
Pia Wa.

A – At first I borrowed ₱3,000.00.

Q – Thereafter is there any additional amount?
A – Then, he give me ₱10,000.00.

Q – Thereafter, is there any additional amount?
A– After the money was exhausted, I borrowed ₱10,000.00.

Q – After that ₱10,000.00, did you borrow another loan?
A – The next amount I borrowed from him is ₱20,000.00.

Q – Now did you sign any document showing receipt of that amount you received from Pia Wa?

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[16] *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742, 750, citing *Arangote v. Maglunob*, G.R. No. 178906, February 18, 2009, 579 SCRA 620, 632.

[17] *David v. Misamis Occidental II Electric Cooperative, Inc.*, *supra* note 13, at 375, citing *Reyes v. Turapan*, G.R. No. 188064, June 01, 2011, 650 SCRA 283, 297, citing *Nabus v. Joaquin & Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 348-353.

A – The last time that I borrowed from him **he wants to buy the property but I told him that I will not sell it.**

ATTY. BROTAMONTE:
Q – What happened when you did not like to sell the property?
A – **He did not say anything but he made me sign a paper evidencing my debt from him.**

Q – Were you able to read the papers you signed if there is wording or statement?
A – **I did not read it anymore because I trust him.**

Q – What happened thereafter?
A – After several years we come to know that our property is already in their name.[18] [Emphases supplied]

The foregoing testimony negates any intention on the part of Aquiles to sell the property in exchange for the amounts borrowed. Evidently, it was a series of transactions between Aquiles and Sia Ko Pio, but not between the parties. The transactions were between Aquiles, as borrower, and Sia Ko Pio, as lender. It was not a sale between Aquiles, as vendor, and La Suerte, as vendee. There was no agreement between the parties. As the first element was wanting, Aquiles correctly argued that there was no contract of sale. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds on the thing which is the object of the contract and on the price.

Aquiles acknowledged that he signed the receipt for the total loan amount of ₱50,000.00 plus ₱2,000.00 as attorney's fees. There is, however, no proof that it came from La Suerte as the consideration of the sale. Accordingly, there is no basis for a holding that the personal loan of Aquiles from Sia Ko Pio was the consideration for the sale of his property in favor of La Suerte.

As to La Suerte's contention that a deed of absolute sale was purportedly executed by Aquiles in its favor, it failed to adduce convincing evidence to effectively rebut his consistent claim that he was not aware that what he had signed was already

[18] TSN, pp. 11-13, January 25, 2006.

an instrument of sale, considering his trust and confidence on Sia Ko Pio who was his long-time friend and former employer.

The fact that the alleged deed of sale indubitably bore Aquiles' signature deserves no evidentiary value there being no consent from him to part with his property. Had he known that the document presented to him was an instrument of sale, he would not have affixed his signature on the document. It has been held that the existence of a signed document purporting to be a contract of sale does not preclude a finding that the contract is invalid when the evidence shows that there was no meeting of the minds between the seller and buyer.[19]

Indeed, if Aquiles sold the property in favor of La Suerte, he would not have religiously and continuously **paid the real property taxes**. Also of note is the fact that his **daughter spent ₱300,000.00 for the renovation** of improvements. More important, **La Suerte did not earlier ask him to transfer the possession thereof** to the company. These uncontroverted attendant circumstances bolster Aquiles' positive testimony that he did not sell the property.

And for said reasons, the CA should not have favorably considered the validity of the deed of absolute sale absent any written authority from La Suerte's board of directors for Sia Ko Pio to negotiate and purchase Aquiles property on its behalf and to use its money to pay the purchase price. The Court notes that when Sia Ko Pio's son, Juan was presented as an officer of La Suerte, he admitted that he could not find in the records of the corporation any board resolution authorizing his father to purchase the disputed property.[20] In *Spouses Firme v. Bukal Enterprises and Development Corporation*,[21] it was written:

> It is the board of directors or trustees which exercises almost all the corporate powers in a corporation. Thus, the Corporation Code provides:

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[19] *Spouses Firme v. Bukal Enterprises and Development Corporation*, 460 Phil. 321, 344 (2003), citing *Santos v. Heirs of Mariano,* 398 Phil. 174 (2000).

[20] *Rollo,* p. 86.

[21] 460 Phil. 321 (2003).

SEC. 23. The board of directors or trustees. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stock, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified. x x x

SEC. 36. Corporate powers and capacity. — Every corporation incorporated under this Code has the power and capacity:

x x x x x x x x x

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of a lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by the law and the Constitution.

x x x x x x x x x

Under these provisions, **the power to purchase real property is vested in the board of directors or trustees.** While a corporation may appoint agents to negotiate for the purchase of real property needed by the corporation, the final say will have to be with the board, whose approval will finalize the transaction. A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws. As held in *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.:*

Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. **Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held**

not binding on the corporation.[22] [Emphases supplied]

In the case at bench, Sia Ko Pio, although an officer of La Suerte, had no authority from its Board of Directors to enter into a contract of sale of Aquiles' property. It is, thus, clear that the loan obtained by Aquiles from Sia Ko Pio was a personal loan from the latter, not a transaction between Aquiles and La Suerte. There was no evidence to show that Sia Ko Pio was clothed with authority to use his personal fund for the benefit of La Suerte. Evidently, La Suerte was never in the picture.

The CA also failed to consider the glaring material discrepancies on the dates appearing in the purported deed of absolute sale notarized by Judge Arsenio Base, Municipal Court Presiding Judge of Tabaco City (Judge Base).

An examination of the alleged contract of sale shows three (3) dates:

1. In witness whereof, I have hereunto affixed my signature this **8th day of December 1999** in Tabaco, Albay, Philippines;
2. Before me, this **7th day of December, 1990** in Tabaco, Albay; and
3. Doc. No. 587;
   Page No. 12;
   Book No. 4;
   Series of **1990**.

The document was dated 1999, but the date in the acknowledgment and notarial reference was an earlier date, 1990. The *ex-officio* notary public, Judge Base, was not presented to explain the apparent material discrepancy of the dates appearing on the questioned document. This only confirms the claim of Aquiles that he signed the receipt representing his loan at the bodega of Sia Ko Pio sometime in 1990, and not at the office of Judge Base in 1999.

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[22] *Id.* at 344-346.

La Suerte insists that the discrepancy on the dates was a mere clerical error that did not invalidate the deed of sale. It is worthy to stress that a notarial document is evidence of the facts in the clear unequivocal manner therein expressed and has in its favor the presumption of regularity. While it is true that an error in the notarial inscription does not generally invalidate a sale, if indeed it took place, the same error can only mean that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. The document would be taken out of the realm of public documents whose genuineness and due execution need not be proved.[23]

An even more substantial irregularity raised by Aquiles pertains to the capacity of the notary public, Judge Base, to notarize the deed of sale. Judge Base, who acted as *ex-officio* notary public, is not allowed under the law to notarize documents not connected with the exercise of his official duties. The case of *Tigno v. Aquino*[24] is enlightening:

> There are possible grounds for leniency in connection with this matter, as Supreme Court Circular No. I-90 permits notaries public *ex officio* to perform any act within the competency of a regular notary public provided that certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. Indeed, it is only when there are no lawyers or notaries public that the exception applies. The facts of this case do not warrant a relaxed attitude towards Judge Cariño's improper notarial activity. There was no such certification in the Deed of Sale. Even if one was produced, we would be hard put to accept the veracity of its contents, considering that Alaminos, Pangasinan, now a city, was even then not an isolated backwater town and had its fair share of practicing lawyers.[25]

In this case, no such certification was attached to the alleged notarized document. Also, the Court takes note of Aquiles' averment that there were several lawyers commissioned as notary public in Tabaco City. With Judge Base not being authorized to

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[23] *Abadiano v. Spouses Martir*, G.R. No. 156310, July 31, 2008, 560 SCRA 676, 692-693.

[24] 486 Phil. 254 (2004).

[25] *Id.* at 266.

notarize a deed of conveyance, the notarized document cannot be considered a valid registrable document in favor of La Suerte.

Moreover, Aquiles' wife, Erlinda, who appeared to have affixed her signature as a witness to the purported document of sale, categorically stated that she never signed such an instrument and never appeared before a notary public.

Although it is true that the absence of notarization of the deed of sale would not invalidate the transaction evidenced therein,[26] yet an irregular notarization reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence.[27]

It should be noted that the deed of sale was offered in evidence as authentic by La Suerte, hence, the burden was upon it to prove its authenticity and due execution. La Suerte unfortunately failed to discharge this burden. Accordingly, the preponderance of evidence is in favor of Aquiles.

In fine, considering the irregularities or defects in the execution and notarization of the deed of sale, the Court finds Itself unable to stamp its seal of approval on it. The RTC was correct in ordering its annulment.

WHEREFORE, the petition is **GRANTED.** The May 30, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 96459 is **REVERSED** and **SET ASIDE**. The September 30, 2010 Decision of the Regional Trial Court, Branch 15, Tabaco City, Albay, is **REINSTATED**.

This disposition is without prejudice to any valid claim of the heirs of Sia Ko Pio against Aquiles.

SO ORDERED.

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

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[26] *Id.* at 268.

[27] *Camcam v. Court of Appeals*, G.R. No. 142977, September 30, 2008, 567 SCRA 151, 160, citing Rules of Court, Rule 132, Section 20, *Vide Soriano v. Atty. Basco*, 507 Phil. 410 (2005).

EN BANC

[G.R. No. 209185. October 25, 2013]

MARC DOUGLAS IV C. CAGAS, *petitioner, vs.* **COMMISSION ON ELECTIONS, represented by its CHAIRMAN, and ATTY. SIXTO BRILLANTES, JR., and the PROVINCIAL ELECTION OFFICER OF DAVAO DEL SUR, represented by ATTY. MA. FEBES BARLAAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENTS; LOCAL GOVERNMENT UNITS; PROVINCES; THE CONDUCT OF A PLEBISCITE IS NECESSARY FOR THE CREATION THEREOF.— The conduct of a plebiscite is necessary for the creation of a province. x x x Section 10, Article X of the Constitution emphasizes the direct exercise by the people of their sovereignty. After the legislative branch's enactment of a law to create, divide, merge or alter the boundaries of a local government unit or units, the people in the local government unit or units directly affected vote in a plebiscite to register their approval or disapproval of the change. The Constitution does not specify a date as to when plebiscites should be held. x x x Section 10 of R.A. No. 7160 furnishes the general rule as to when a plebiscite may be held x x x.

2. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; ACCORDED ALL THE NECESSARY AND INCIDENTAL POWERS TO ACHIEVE THE OBJECTIVE OF HOLDING FREE, ORDERLY, HONEST, PEACEFUL AND CREDIBLE ELECTIONS.— The Constitution x x x grants the COMELEC the power to "[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." The COMELEC has "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections." The text and intent of Section 2(1) of Article IX(C) is to give COMELEC "all the *necessary* and

incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections."

3. ID.; ELECTION LAWS; BATAS PAMBANSA BLG. 881 (THE OMNIBUS ELECTION CODE); POSTPONEMENT OF ELECTION; THE LOGISTIC AND FINANCIAL IMPOSSIBILITY OF HOLDING A PLEBISCITE SO CLOSE TO THE NATIONAL AND LOCAL ELECTIONS IS UNFORESEEN AND UNEXPECTED, A CAUSE ANALOGOUS TO *FORCE MAJEURE* AND ADMINISTRATIVE MISHAPS.— Sections 5 and 6 of Batas Pambansa Blg. 881 (B.P. Blg. 881) the Omnibus Election Code, provide the COMELEC the power to set elections to another date. x x x The tight time frame in the enactment, signing into law, and effectivity of R.A. No. 10360 on 5 February 2013, coupled with the subsequent conduct of the National and Local Elections on 13 May 2013 as mandated by the Constitution, rendered impossible the holding of a plebiscite for the creation of the province of Davao Occidental on or before 6 April 2013 as scheduled in R.A. No. 10360. We also take judicial notice of the COMELEC's burden in the accreditation and registration of candidates for the Party-List Elections. The logistic and financial impossibility of holding a plebiscite so close to the National and Local Elections is unforeseen and unexpected, a cause analogous to *force majeure* and administrative mishaps covered in Section 5 of B.P. Blg. 881. The COMELEC is justified, and did not act with grave abuse of discretion, in postponing the holding of the plebiscite for the creation of the province of Davao Occidental to 28 October 2013 to synchronize it with the *Barangay* Elections.

4. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; HAS THE RESIDUAL POWER TO CONDUCT A PLEBISCITE EVEN BEYOND THE DEADLINE PRESCRIBED BY LAW.— It is x x x not novel for this Court to uphold the COMELEC's broad power or authority to fix other dates for a plebiscite, as in special elections, to enable the people to exercise their right of suffrage. The COMELEC thus has residual power to conduct a plebiscite even beyond the deadline prescribed by law. The date 28 October 2013 is reasonably close to 6 April 2013, and there is no reason why the plebiscite should not proceed as scheduled by the COMELEC.

5. ID.; ELECTION LAWS; IN ELECTION LAW; THE RIGHT OF SUFFRAGE SHOULD PREVAIL OVER MERE SCHEDULING MISHAPS IN HOLDING ELECTIONS OR PLEBISCITES.— In election law, the right of suffrage should prevail over mere scheduling mishaps in holding elections or plebiscites. Indeed, Cagas' insistence that only Congress can cure the alleged legal infirmity in the date of holding the plebiscite for the creation of the Province of Davao Occidental fails in light of the absence of abuse of discretion of the COMELEC. Finally, this Court finds it unacceptable to utilize more of our taxpayers' time and money by preventing the COMELEC from holding the plebiscite as now scheduled.

APPEARANCES OF COUNSEL

Benjamin B. Wong for petitioner.
Solicitor General for respondents.

R E S O L U T I O N

CARPIO, *J.*:

This Resolution resolves the Petition for Prohibition,[1] filed by Marc Douglas IV C. Cagas (Cagas), in his capacity as taxpayer, to prohibit the Commission on Elections (COMELEC) from conducting a plebiscite for the creation of the province of Davao Occidental simultaneously with the 28 October 2013 *Barangay* Elections within the whole province of Davao del Sur, except in Davao City.

Cagas, while he was representative of the first legislative district of Davao del Sur, filed with Hon. Franklin Bautista, then representative of the second legislative district of the same province, House Bill No. 4451 (H.B. No. 4451), a bill creating the province of Davao Occidental. H.B. No. 4451 was signed into law as Republic Act No. 10360 (R.A. No. 10360), the Charter of the Province of Davao Occidental.

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[1] Under Rule 65, Section 2 of the Rules of Court.

Sections 2 and 7 of R.A. No. 10360 provide for the composition of the new provinces of Davao Occidental and Davao del Sur:

> Sec. 2. *Province of Davao Occidental.* – There is hereby created a new province from the present Province of Davao del Sur to be known as the Province of Davao Occidental, consisting of the municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos and Sarangani. The territorial jurisdiction of the Province of Davao Occidental shall be within the present metes and bounds of all the municipalities that comprise the Province of Davao Occidental.
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> x x x x x x x x x
>
> Sec. 7. *Legislative District.* – The Province of Davao Occidental shall have its own legislative district to commence in the next national and local elections after the effectivity of this Charter. Henceforth, the municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos and Sarangani shall comprise the Lone Legislative District of the Province of Davao Occidental while the City of Digos and the municipalities of Malalag, Sulop, Kiblawan, Padada, Hagonoy, Sta. Cruz, Matanao, Bansalan and Magsaysay shall comprise the Lone Legislative District of the Province of Davao del Sur.
>
> x x x x x x x x x

Section 46 of R.A. No. 10360 provides for the date of the holding of a plebiscite.

> Sec. 46. *Plebiscite.* – The Province of Davao Occidental shall be created, as provided for in this Charter, upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) within sixty (60) days from the date of the effectivity of this Charter.
>
> The amount necessary for the conduct of the plebiscite shall be borne by the COMELEC.

R.A. No. 10360 was passed by the House of Representatives on 28 November 2012, and by the Senate on 5 December 2012. President Benigno S. Aquino III approved R.A. No. 10360 on

14 January 2013.[2] R.A. No. 10360 was published in the Philippine Star and the Manila Bulletin only on 21 January 2013. Considering

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[2] The history of H.B. No. 4451 is provided in http://www.congress.gov.ph/legis/search/hist_show.php?congress=15&save=1&journal=&switch=0&bill_no=HB04451 (accessed 23 October 2013) as follows:

NO. HB04451 REPUBLIC ACT NO. RA10360

FULL TITLE: AN ACT CREATING THE PROVINCE OF DAVAO OCCIDENTAL

SHORT TITLE: Creating The Province Of Davao Occidental

BY CONGRESSMAN/WOMAN CAGAS, MARC DOUGLAS IV CHAN

DATE FILED ON 2011-03-23

CO-AUTHORS:

BAUTISTA, FRANKLIN PERALTA

REFERRAL ON 2011-03-23 TO THE COMMITTEE ON RULES

SIGNIFICANCE: LOCAL

DATE READ: 2011-03-23

COMMITTEE REPORT NO. 00827 submitted on 2011-03-23

SUBMITTED BY: LOCAL GOVERNMENT

RECOMMENDATIONS: approval

SUBSTITUTED BILLS: HB03644

DATE INCLUDED IN OB: 2011-03-23

BILL APPROVED ON SECOND READING: 2011-03-23

DATE DISTRIBUTED: 2011-05-09

REMARKS : On March 23, 2011, the Body approved to consider the Explanatory Note of the bill as the sponsorship remarks on the measure; terminated the period of sponsorship and debate; terminated the period of amendments and approved the same on Second Reading.

DATE APPROVED BY THE HOUSE ON THIRD READING: 2011-05-16

HOUSE VOTES: YEAS: 219 NAYS: 0 ABSTAIN: 0

DATE TRANSMITTED TO THE SENATE: 2011-05-24

DATE RECEIVED BY THE SENATE: 2011-05-24

DATE PASSED BY THE SENATE: 2012-10-08

PASSED WITH AMENDMENTS(Y/N)?: Y

DATE REQUESTED TO FORM A CONFERENCE COMMITTEE(CC): 2012-10-17

CC REQUESTED BY: HOUSE

DATE AGREED TO FORM A CC: 2012-11-12

that R.A. No. 10360 shall take effect 15 days after its publication in at least two newspapers of general and local circulation,[3] COMELEC, therefore, only had until 6 April 2013 to conduct the plebiscite.[4]

As early as 27 November 2012, prior to the effectivity of R.A. No. 10360, the COMELEC suspended the conduct of all plebiscites as a matter of policy and in view of the preparations for the 13 May 2013 National and Local Elections.[5] On 9 July 2013, the COMELEC extended the policy on suspension of the holding of plebiscites by resolving to defer action on the holding of all plebiscites until after the 28 October 2013 *Barangay* Elections.[6] During a meeting held on 31 July 2013, the COMELEC decided to hold the plebiscite for the creation of Davao Occidental simultaneously with the 28 October 2013 *Barangay* Elections to save on expenses.[7] The COMELEC, in Minute Resolution No. 13-0926, approved the conduct of the Concept of Execution for the conduct of the plebiscite on

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REMARKS :
DATE HOUSE AGREED ON CONCOM REPORT: 2012-11-28
DATE SENATE AGREED ON CONCOM REPORT: 2012-12-05
DATE TRANSMITTED TO THE PRESIDENT: 2012-12-21
DATE ACTED UPON BY THE PRESIDENT: 2013-01-14
PRESIDENTIAL ACTION:(A)PPROVED/(V)ETOED/(L)APSED: A
REPUBLIC ACT NO.: RA10360
ORIGIN: HOUSE
REPUBLIC ACT TITLE: AN ACT CREATING THE PROVINCE OF DAVAO OCCIDENTAL

[3] Section 54 of R.A. No. 10360 provides:

Effectivity. – This Act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of general and local circulation.

[4] Fifteen days from 21 January 2013, the date of publication, is 5 February 2013. Sixty days from 5 February 2013, the date of effectivity, is 6 April 2013.

[5] *Rollo*, p. 53.

[6] *Id.* at 54.

[7] *Id.*

6 August 2013.[8] On 14 August 2013, Bartolome J. Sinocruz, Jr., the Deputy Executive Director for Operations of the COMELEC, issued a memorandum furnishing a copy of Minute Resolution No. 13-0926 to Atty. Remlane M. Tambuang, Regional Election Director of Region XI; Atty. Ma. Febes M. Barlaan, Provincial Election Supervisor of Davao del Sur; and to all election officers of Davao del Sur. On 6 September 2013, the COMELEC promulgated Resolution Nos. 9771[9] and 9772.[10] Resolution No. 9771 provided for the following calendar of activities:

DATE/PERIOD	**ACTIVITIES**	**PROHIBITED ACTS**
SEPT. 09, 2013 (MON)	Last day to constitute the Plebiscite Board of Canvassers	
SEPT. 28, 2013 (SAT) – NOV. 12, 2013 (TUE) (30 DAYS BEFORE THE DATE OF PLEBISCITE AND 15 DAYS THEREAFTER	PLEBISCITE PERIOD	Bearing, carrying or transporting firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, or even if licensed to possess or carry the same, unless authorized in writing by

[8] *Id.* at 57.

[9] Calendar of Activities and Periods of Prohibited Acts in Connection With the Plebiscite for the Creation of Davao Occidental out of the Province of Davao del Sur Consisting of the Municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos, and Sarangani, Pursuant to Republic Act No. 10360 Dated July 23, 2012 and the Adoption of Pertinent Resolutions in Connection Therewith. http://www.comelec.gov.ph/?r=Plebiscites/res9771 (accessed 23 October 2013).

[10] Rules and Regulations Governing the Conduct of the October 28, 2013 Plebiscite to Ratify the Creation of the Province of Davao Occidental out of Davao del Sur Pursuant to Republic Act No. 10360 Dated 23 July 2012. http://www.comelec.gov.ph/?r=Plebiscites/res9772 (accessed 23 October2013).

		the Commission (Sec. 261 (p) (q) OEC, as amended by Sec. 32, RA 7166);
		Suspension of local elective officials (Sec. 261 (x), OEC);
		Transfer of officers and employees in the civil service (Sec. 261 (h), OEC);
		Alteration of territory of a precinct or establishment of a new precinct (Sec. 5, R.A. 8189);
		Organizing or maintaining reaction/strike forces or similar forces (Sec. 261, (u), OEC);
		Illegal release of prisoners (Sec. 261 (n), OEC);
		Use of security personnel or bodyguards by candidates, whether or not such bodyguards are regular members or officers of the Philippine National Police or Armed Forces of the Philippines or other law enforcement agency (Sec. 261 (t), OEC, as amended by Sec. 33, RA 7166);
		Release, disbursement or expenditures of public funds (Sec. 261 (v), OEC); Construction of public works, delivery of materials for public works and issuance of treasury warrants or similar devices for a future undertaking chargeable

		against public funds (Sec. 261, (w) OEC).
SEPTEMBER 28, 2013 (SAT) to OCTOBER 26, 2013 (SAT)	INFORMATION CAMPAIGN PERIOD	Making any donation or gift in cash or in kind, *etc*. (Sec. 104, OEC);Use of armored/ land/ water/ air craft. (Sec. 261(r), OEC); Appointing or using special policemen, special/ confidential agents or the like. (Sec. 261 (m), OEC);
SEPTEMBER 28, 2013 (SAT) to OCTOBER 28, 2013 (MON)		Issuance of appointments, promotions, creation of new positions, or giving of salary increases.
OCTOBER 27, 2013 (SUN)	EVE OF PLEBISCITE DAY	Campaigning (Sec. 3, OEC);
		Giving, accepting free transportation, foods, drinks, and things of value (Sec. 89, OEC);
		Selling, furnishing, offering, buying, serving or taking intoxicating liquor (Sec. 261 (dd), (1), OEC).
		(NOTE: Acts mentioned in the three (3) preceding paragraphs are prohibited until election day.)

OCTOBER 28, 2013 (MON)	PLEBISCITE DAY Casting of votes-(from 7:00 a.m. to 3:00 p.m. simultaneous with the voting for the *Barangay* and SK Elections) Counting of votes shall be after the counting of votes for *Barangay* and SK Elections) Convening of the City Plebiscite Board of Canvassers – (6:00 p.m.)	Vote-buying and vote selling (Sec. 261 (a), OEC); Voting more than once or in substitution of another (Sec. 261 (z) (2) and (3), OEC); Campaigning (Sec. 3, OEC); Soliciting votes or undertaking any propaganda for or against any candidate or any political party within the polling place or within thirty (30) meters thereof (Sec. 261 (cc) (6), OEC); Selling, furnishing, offering, buying, serving or taking intoxicating liquor, *etc.* (Sec. 261 (dd) (1), OEC); Opening of booths or stalls for the sale, *etc*., of wares, merchandise or refreshments, within thirty (30) meters radius from the polling place. (Sec. 261 (dd) (2) OEC); Giving and/or accepting free transportation, food, drinks and things of value (Sec. 89, OEC); Holding of fairs, cockfights, boxing, horse races or similar sports. (Sec. 261 (dd) (3), OEC).

Resolution No. 9772, on the other hand, provided that copies of R.A. No. 10360 be posted[11] and that information campaigns be conducted prior to the plebiscite.[12]

On 9 October 2013, Cagas filed the present petition for prohibition. Cagas cites three causes of action:

1. COMELEC is without authority or legal basis to AMEND or MODIFY Section 46 of Republic Act No. 10360 by mere MINUTE RESOLUTION because it is only CONGRESS who can validly amend, repel [sic] or modify existing laws, thus COMELEC [sic] act in suspending the holding of a plebiscite is unconstitutional;[13]

2. COMELEC is without authority or legal basis to hold a plebiscite this coming October 28, 2013 for the creation of the Province of Davao Occidental because Section 46 of Republic Act [No.] 10360 has already lapsed;[14] and

3. Petitioner has no other adequate remedy to prevent the COMELEC from holding the Plebiscite on October 28, 2013 for the creation of

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[11] SEC. 3. *Posting of Republic Act No. 10360*. - At least ten (10) days prior to the day of the plebiscite, the Election Officers (EOs) of the whole Province of Davao del Sur, except Davao City, shall cause the posting of [a] copy of Republic Act No. 10360 in the bulletin boards of their respective City/Municipal Halls.

[12] SEC. 4. *Information campaign*. - An objective information campaign shall be conducted in the whole of Davao del Sur, except Davao City, to commence on September 28, 2013 to October 26, 2013. During this period, civic, professional, religious, business, youth and any other similar organizations may hold symposia, public rallies or meetings to enlighten the voters of Davao del Sur on the plebiscite issues, and to campaign for or against the ratification of Republic Act No. 10360. Constructive discussions and debates shall be encouraged and the voters assured of the freedom to voice their opinion regarding the issues, advantages or disadvantages thereof.

The EOs in the Province of Davao del Sur, under the supervision of the Provincial Election Supervisor of Davao del Sur and the Regional Election Director of Region XI, in coordination with the local government officials, mass media, NGOs and religious groups shall convene *barangay* assemblies or "*pulong-pulongs*" for such constructive discussions and debates.

[13] *Rollo*, p. 10.

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

the Province of Davao Occidental except through the issuance of Temporary Restraining Order and Preliminary Injunction because COMELEC had already commenced the preparation for holding of the Plebiscite for the creation of the Province of [Davao] Occidental synchronizing it with that of the *Barangay* and SK elections this coming October 28, 2013.[15]

On 17 October 2013, we issued a Resolution requiring respondents COMELEC, represented by its Chairperson, Hon. Sixto Brillantes, Jr., and the Provincial Election Officer of Davao del Sur, represented by Atty. Ma. Febes Barlaan, to file their comment to Cagas' petition not later than 21 October 2013.

The respondents, through the Office of the Solicitor General (OSG), filed their comment on 21 October 2013. The OSG raises the following arguments:

1. The 1987 Constitution does not fix the period to hold a plebiscite for the creation of a local government unit;

2. There was logistical and financial impossibility for the COMELEC to hold a plebiscite at a mere two months' notice;

3. Legislative intent is for R.A. No. 10360 to be implemented;

4. Public interest demands that the plebiscite be conducted; and

5. The COMELEC did not abuse its discretion in issuing the questioned Resolutions.[16]

In this Resolution, we simplify the issues raised by the parties, thus: Did the COMELEC act without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it resolved to hold the plebiscite for the creation of the Province of Davao Occidental on 28 October 2013, simultaneous with the *Barangay* Elections?

We answer in the negative.

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[15] *Id.* at 17.

[16] Comment, p. 4.

The COMELEC's power to administer elections includes the power to conduct a plebiscite beyond the schedule prescribed by law.

The conduct of a plebiscite is necessary for the creation of a province. Sections 10 and 11 of Article X of the Constitution provide that:

> Sec. 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.
>
> Sec. 11. The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executive and legislative assemblies. The jurisdiction of the metropolitan authority that will thereby be created shall be limited to basic services requiring coordination.

Section 10, Article X of the Constitution emphasizes the direct exercise by the people of their sovereignty. After the legislative branch's enactment of a law to create, divide, merge or alter the boundaries of a local government unit or units, the people in the local government unit or units directly affected vote in a plebiscite to register their approval or disapproval of the change.[17]

The Constitution does not specify a date as to when plebiscites should be held. This is in contrast with its provisions for the election of members of the legislature in Section 8, Article VI[18] and of the President and Vice-President in Section 4, Article VII.[19]

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[17] See *Miranda v. Hon. Aguirre*, 373 Phil. 386 (1999).

[18] Section 8, Article VI of the Constitution reads: "Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May."

[19] The third paragraph of Section 4, Article VII of the Constitution reads: "Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May."

The Constitution recognizes that the power to fix the date of elections is legislative in nature, which is shown by the exceptions in previously mentioned Constitutional provisions, as well as in the election of local government officials.[20]

Section 10 of R.A. No. 7160 furnishes the general rule as to when a plebiscite may be held:

> Sec. 10. *Plebiscite Requirement.* – No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixed another date.

Section 46 of R.A. No. 10360, however, specifically provides that the plebiscite for the creation of the province of Davao Occidental be held within 60 days from the effectivity of R.A. No. 10360, or until 6 April 2013.[21] Cagas claims that R.A. No. 10360 "did not confer express or implied power to COMELEC to exercise discretion when the plebiscite for the creation of the Province of Davao Occidental will be held. On the contrary, said law provides a specific period when the COMELEC should conduct a plebiscite."[22] Cagas views the period "60 days from the effectivity" in R.A. No. 10360 as absolute and mandatory; thus, COMELEC has no legal basis to hold a plebiscite on 28 October 2013.

The Constitution, however, grants the COMELEC the power to "[e]nforce and administer all laws and regulations relative

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[20]Section 3, Article X of the Constitution reads in part: "The Congress shall enact a local government code which shall provide for the x x x election x x x of local officials x x x." In turn, Section 42 of R.A. No. 7160, or the Local Government Code of 1991, reads: "*Date of Election.* – Unless otherwise provided by law, the elections for local officials shall be held every three (3) years on the second Monday of May."

[21]*Supra* note 4.

[22]*Rollo*, p. 12.

to the conduct of an election, plebiscite, initiative, referendum and recall."[23] The COMELEC has "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections."[24] The text and intent of Section 2(1) of Article IX(C) is to give COMELEC "all the *necessary* and *incidental* powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections."[25]

Sections 5 and 6 of Batas Pambansa Blg. 881 (B.P. Blg. 881) the Omnibus Election Code, provide the COMELEC the power to set elections to another date.

Sec. 5. *Postponement of election.* - When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision, the Commission, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect.

Sec. 6. *Failure of election.*- If, on account of *force majeure*, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted

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[23] 1987 CONSTITUTION, Art. IX-C, Sec. 2(1).

[24] B.P. Blg. 881, Sec. 52.

[25] *Pangandaman v. COMELEC*, 377 Phil. 297, 312 (1999).

in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

The tight time frame in the enactment, signing into law, and effectivity of R.A. No. 10360 on 5 February 2013, coupled with the subsequent conduct of the National and Local Elections on 13 May 2013 as mandated by the Constitution, rendered impossible the holding of a plebiscite for the creation of the province of Davao Occidental on or before 6 April 2013 as scheduled in R.A. No. 10360. We also take judicial notice of the COMELEC's burden in the accreditation and registration of candidates for the Party-List Elections.[26] The logistic and financial impossibility of holding a plebiscite so close to the National and Local Elections is unforeseen and unexpected, a cause analogous to *force majeure* and administrative mishaps covered in Section 5 of B.P. Blg. 881. The COMELEC is justified, and did not act with grave abuse of discretion, in postponing the holding of the plebiscite for the creation of the province of Davao Occidental to 28 October 2013 to synchronize it with the *Barangay* Elections.

The OSG illustrated the COMELEC's predicament in this manner:

> To be sure, at the time R.A. No. 10360 was approved, the COMELEC had to deliver and accomplish the following, among many others, for the May 2013 National and Local Elections:
>
> 1. Preparation of the Project of Precincts indicating the total number of established precincts and the number of registered voters per precincts [sic] in a city or municipality.
>
> 2. Constitution of the Board of Election Inspectors including the precincts where they will be assigned and the *barangay* where the precinct is located.
>
> 3. Inspection, verification and sealing of the Book of Voters containing the approved voter registration records of registered voters

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[26] See the consolidated cases under *Atong Paglaum, Inc. v. COMELEC*, G.R. No. 203766, 2 April 2013, 694 SCRA 477.

in the particular precinct which must be inspected, verified, and sealed.

4. Finalization and printing of the computerized voters list for use on election day.

5. The preparation, bidding, printing and distribution of the voters' information.

6. Configuration, testing, and demonstration of the PCOS machines and their distribution to the different precincts.

To comply with the 60-day period to conduct the plebiscite then, as insisted, petitioner would have the COMELEC hold off all of its above tasks. If COMELEC abandoned any of its tasks or did not strictly follow the timetable for the accomplishment of these tasks then it could have put in serious jeopardy the conduct of the May 2013 National and Local Elections. The COMELEC had to focus all its attention and concentrate all its manpower and other resources on its preparation for the May 2013 National and Local Elections, and to ensure that it would not be derailed, it had to defer the conduct of all plebiscites including that of R.A. No. 10360.

Parenthetically, for the COMELEC to hold the plebiscite for the ratification of R.A. No. 10360 within the fixed period, it would have to reconfigure for said purpose some of the PCOS machines that were already configured for the May 2013 National and Local Elections; or in the alternative, conduct the plebiscite manually.

However, conducting the plebiscite manually would require another set of ballots and other election paraphernalia. Besides, another set of election materials would also require additional logistics for printing, checking, packing, and deployment thereof. Lest it be forgotten, that all of these things should undergo public bidding.

Since the plebiscite would be a separate undertaking, the COMELEC would have to appoint separate sets of board[s] of election inspectors, tellers, and other personnel to canvass the result of the plebiscite – all of which would have entailed further cost for the COMELEC whose budget had already been overly stretched to cover the May 2013 National and Local Elections.

More importantly, it bears stressing that the COMELEC was not given a special budget to defray the cost of the plebiscite. In fact, the COMELEC had to take ₱11 million from its savings and from the *Barangay* Elections budget to finance the plebiscite to ratify R.A. No. 10360 on October 28, 2013.

The COMELEC's questioned Resolution then directing the holding of the plebiscite for the ratification of R.A. No. 10360 simultaneously with the *Barangay* Elections was not an abuse of its discretion, as alleged, but simply an exercise of prudence, because as the COMELEC itself noted, doing so "will entail less expense than holding it separately." [p. 9, Resolution No. 13-0926, Annex B, Petition.]

The determination of the feasibility of holding a plebiscite on a given date is within the competence and discretion of the COMELEC. Petitioner cannot therefore simply insist that the COMELEC should have complied with the period specified in the law when doing so would be virtually impossible under the circumstances.[27]

This Court has rejected a too literal interpretation of election laws in favor of holding free, orderly, honest, peaceful and credible elections.

In *Pangandaman v. COMELEC*,[28] Lining Pangandaman (Pangandaman) filed a petition for *certiorari* and prohibition with prayer for temporary restraining order and preliminary injunction to challenge the Omnibus Order of the COMELEC *En Banc*. The COMELEC *En Banc* ordered the conduct of special elections in certain municipalities in Lanao del Sur on 18 and 25 July 1998, or more than 30 days after the failure of elections on 11 May 1998. Like Cagas, Pangandaman insisted on a strict compliance with the schedule of the holding of special elections. Pangandaman asserted that COMELEC's authority to call a special election was limited by the 30-day period and that Congress had the power to call a special election after the 30th day. We admonished Pangandaman against a too literal interpretation of the law, and protected COMELEC's powers against the straitjacketing by procedural rules.

It is a basic precept in statutory construction that a statute should be interpreted in harmony with the Constitution and that the spirit, rather than the letter of the law determines its construction; for that reason, a statute must be read according to its spirit and intent. Thus, a too literal interpretation of the law that would lead to absurdity prompted this Court to —

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[27] Comment, pp. 7-9.

[28] *Supra* note 25.

> x x x [a]dmonish against a too-literal reading of the law as this is apt to constrict rather than fulfill its purpose and defeat the intention of its authors. That intention is usually found not in 'the letter that killeth but in the spirit that vivifieth' x x x

Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." There can hardly be any doubt that the text and intent of this constitutional provision is to give COMELEC all the *necessary* and *incidental* powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.

Pursuant to this intent, this Court has been liberal in defining the parameters of the COMELEC's powers in conducting elections. As stated in the old but nevertheless still very much applicable case of *Sumulong v. COMELEC*:

> Politics is a practical matter, and political questions must be dealt with realistically — not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions x x x. There are no ready made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of laws relative to the conduct of election x x x we must not by any excessive zeal take away from the Commission on Elections that initiative which by constitutional and legal mandates properly belongs to it.

More pointedly, this Court recently stated in *Tupay Loong v. COMELEC, et al.*, that "[O]ur elections are not conducted under laboratory conditions. In running for public offices, candidates do not follow the rules of Emily Post. *Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable.* We cannot, however, engage in a swivel chair criticism of these actions often taken under very difficult circumstances."

The purpose of the governing statutes on the conduct of elections —

> x x x [i]s to protect the integrity of elections to suppress all evils that may violate its purity and defeat the will of the voters. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, *the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created* — to promote free, orderly, and honest elections. *The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with.*

Guided by the above-quoted pronouncement, the legal compass from which the COMELEC should take its bearings in acting upon election controversies is the principle that "*clean elections control the appropriateness of the remedy*."

In fixing the date for special elections the COMELEC should see to it that: 1.] it should not be later than thirty (30) days after the cessation of the cause of the postponement or suspension of the election or the failure to elect; and, 2.] it should be reasonably close to the date of the election not held, suspended or which resulted in the failure to elect. The first involves a question of fact. The second *must be determined in the light of the peculiar circumstances of a case*. Thus, the holding of elections within the next few months from the cessation of the cause of the postponement, suspension or failure to elect may still be considered "reasonably close to the date of the election not held."

In this case, the COMELEC can hardly be faulted for tardiness. The dates set for the special elections were actually the *nearest* dates from the time total/partial failure of elections was determined, which date fell on July 14, 1998, the date of promulgation of the challenged Omnibus Order. Needless to state, July 18 and 25, the dates chosen by the COMELEC for the holding of special elections *were only a few days away from the time a total/partial failure of elections was declared and, thus, these were "dates reasonably close" thereto*, given the prevailing facts herein. Furthermore, it bears stressing that in the exercise of the plenitude of its powers to protect the integrity of elections, the COMELEC should not and must not be straitjacketed

by procedural rules in the exercise of its discretion to resolve election disputes.[29]

In *Sambarani v. COMELEC,*[30] petitioners were candidates for *punong barangay* in different *barangays* in Lanao del Sur. There was a failure of elections in the 15 July 2002 Synchronized *Barangay* and *Sangguniang Kabataan* (SK) Elections, and special elections were set on 13 August 2002 in the affected *barangays*. No special elections were held on 13 August 2002, so petitioners asked the COMELEC to declare a failure of elections in their *barangays* and to hold another special election. The COMELEC, however, directed the Department of Interior and Local Government to appoint the *Barangay* Captains, *Barangay Kagawads*, SK Chairmen, and SK *Kagawads* in the affected barangays. The COMELEC stated that it is no longer in a position to call for another special election since Section 6 of the Omnibus Election Code provides that "special elections shall be held on a date reasonably close to the date of the election not held, but not later than thirty days after cessation of the cause of such postponement."

We directed the COMELEC to conduct special elections and stated that the deadline cannot defeat the right of suffrage of the people.

The prohibition on conducting special elections after thirty days from the cessation of the cause of the failure of elections is not absolute. It is directory, not mandatory, and the COMELEC possesses residual power to conduct special elections even beyond the deadline prescribed by law. The deadline in Section 6 cannot defeat the right of suffrage of the people as guaranteed by the Constitution. The COMELEC erroneously perceived that the deadline in Section 6 is absolute. The COMELEC has broad power or authority to fix other dates for special elections to enable the people to exercise their right of suffrage. The COMELEC may fix other dates for the conduct of special elections when the same cannot be reasonably held within the period prescribed by law.[31]

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[29] *Id.* at 312-314. Citations omitted. Italics in the original.

[30] 481 Phil. 661 (2004).

[31] *Id.* at 671-672.

It is thus not novel for this Court to uphold the COMELEC's broad power or authority to fix other dates for a plebiscite, as in special elections, to enable the people to exercise their right of suffrage. The COMELEC thus has residual power to conduct a plebiscite even beyond the deadline prescribed by law. The date 28 October 2013 is reasonably close to 6 April 2013, and there is no reason why the plebiscite should not proceed as scheduled by the COMELEC. The OSG points out that public interest demands that the plebiscite be conducted.

> At this point, there is nothing more for the COMELEC to do except to hold the plebiscite as scheduled on October 18, [sic] 2013. In fact, the COMELEC already scheduled the shipment and deployment of the election paraphernalia to all the precincts in Davao del Sur, except Davao City.
>
> The COMELEC had put so much work and effort in its preparation for the conduct of the plebiscite. A substantial amount of funds have also been defrayed for the following election undertakings:
>
> 1. Bidding for election paraphernalia;
> 2. Cleansing of voters' registration list;
> 3. Preparation, bidding, printing and distribution of the voters' information;
> 4. Preparation and completion of the projects of precincts;
> 5. Printing of ballots;
> 6. Constitution of the Board of Election Inspectors;
> 7. Training and assignment of personnel; [and]
> 8. Information dissemination / campaign.
>
> To demand now that the COMELEC desist from holding the plebiscite would be an utter waste of time, effort and resources, not to mention its detriment to public interest given that public funds are involved.[32]

In election law, the right of suffrage should prevail over mere scheduling mishaps in holding elections or plebiscites. Indeed,

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[32] Comment, pp. 11-12.

Cagas' insistence that only Congress can cure the alleged legal infirmity in the date of holding the plebiscite for the creation of the Province of Davao Occidental fails in light of the absence of abuse of discretion of the COMELEC. Finally, this Court finds it unacceptable to utilize more of our taxpayers' time and money by preventing the COMELEC from holding the plebiscite as now scheduled.

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

SO ORDERED.

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

Del Castillo and *Perez, JJ.,* on official leave.

SECOND DIVISION

[A.C. No. 9385. November 11, 2013]

MARIANO AGADAN, EDEN MOLLEJON, ARSENIO IGME, JOSE NUMBAR, CECILIA LANGAWAN, PABLO PALMA, JOSELITO CLAVERIA, MIGUEL FLORES, and ALBERT GAYDOWEN, *complainants, vs.* **ATTY. RICHARD BALTAZAR KILAAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; RULES OF NOTARIAL PRACTICE; THE NOTARY PUBLIC IS PERSONALLY ACCOUNTABLE FOR THE ACCURACY OF ALL ENTRIES IN HIS NOTARIAL REGISTER AND HIS FAILURE TO MAKE THE PROPER ENTRY IN HIS NOTARIAL REGISTER

CONCERNING HIS NOTARIAL ACTS IS A GROUND FOR REVOCATION OF HIS NOTARIAL COMMISSION.— It is settled that it is the notary public who is personally accountable for the accuracy of the entries in his Notarial Register. The Court is not persuaded by respondent's explanation that he is burdened with cases thus he was constrained to delegate the recording of his notarial acts in his Notarial Register to his secretary. In fact, this argument has already been rebuffed by this Court in *Lingan v. Attys. Calubaquib and Baliga, viz*: x x x. From the language of the subsection, it is abundantly clear that the notary public is personally accountable for all entries in his notarial register. Respondents cannot be relieved of responsibility for the violation of the aforesaid sections by passing the buck to their secretaries, a reprehensible practice which to this day persists despite our open condemnation. Respondents, especially Calubaquib, a self-proclaimed "prominent legal practitioner," should have known better than to give us such a simple-minded excuse. x x x. Indeed, Rule VI, Sections 1 and 2 of the 2004 Rules of Notarial Practice require a notary public to keep and maintain a Notarial Register wherein he will record his every notarial act. His failure to make the proper entry or entries in his notarial register concerning his notarial acts is a ground for revocation of his notarial commission. As mentioned, respondent failed to make the proper entries in his Notarial Register; as such, his notarial commission may be properly revoked.

2. ID.; ID.; ID.; COMMISSION OF FALSEHOOD IN THE PLEADINGS CONSTITUTES A VIOLATION OF THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY PUNISHABLE BY SUSPENSION FROM THE PRACTICE OF LAW.— Aside from violating the Notarial Law, respondent also violated his Lawyer's Oath and the Code of Professional Responsibility by committing falsehood in the pleadings he submitted before the IBP. His claim that Adasing was abroad hence could not corroborate the explanation made by Batingwed was proved to be untruthful when complainants submitted the Affidavit of Adasing insisting that he never left the country. Canon 10, Rule 10.01 of the Code of Professional Responsibility expressly provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." In the same vein, Canon 1, Rule 1.01 mandates that "[a] lawyer

shall not engage in unlawful, dishonest, immoral or deceitful conduct." Respondent failed to observe these Rules and hence must be sanctioned. Under the circumstances, we find Atty. Kilaan's suspension from the practice of law for three (3) months and the revocation and disqualification of his notarial commission for a period of one (1) year appropriate.

APPEARANCES OF COUNSEL

James S. Valeros for complainants.
Jessie T. Amangyen for respondent.

R E S O L U T I O N

DEL CASTILLO, *J.*:

On September 12, 2005, complainants Mariano Agadan, Eden Mollejon, Arsenio Igme, Jose Numbar, Cecilia Langawan, Pablo Palma, Joselito Claveria, Miguel Flores and Albert Gaydowen filed before the Integrated Bar of the Philippines – Baguio Benguet Chapter (IBP-Baguio-Benguet Chapter) a Complaint[1] against respondent Atty. Richard Baltazar Kilaan (Atty. Kilaan) for falsification of documents, dishonesty and deceit. They alleged that Atty. Kilaan intercalated certain entries in the application for issuance of Certificate of Public Convenience (CPC) to operate public utility jeepney filed before the Land Transportation Franchising and Regulatory Board – Cordillera Administrative Region (LTFRB-CAR) and docketed as Case No. 2003-CAR-688 by substituting the name of the applicant from Gary Adasing (Adasing)[2] to that of Joseph Batingwed (Batingwed);[3] that Atty. Kilaan submitted false and/or insufficient documentary requirements in support of Batingwed's application for CPC; that Atty. Kilaan prepared a Decision based on the

[1] *Rollo*, pp. 3-8.

[2] Also referred as Odasing and Agasing in some parts of the records.

[3] Atty. Kilaan also allegedly used Adasing's case folder, assessment slip, verification page and intercalated the number of units applied from one unit to five units.

Resolution of the LTFRB Central Office which dismissed the Opposition filed by the complainants; and that the said Decision granted the application of Batingwed which was adopted by the LTFRB-CAR.

On February 27, 2006, the IBP-Baguio-Benguet Chapter formally endorsed the Complaint to the IBP Commission on Bar Discipline (CBD) for appropriate action.[4] Acting on the Complaint, the IBP-CBD directed Atty. Kilaan to submit his Answer.[5]

In his Answer[6] dated April 8, 2006, Atty. Kilaan denied violating the Lawyer's Oath and the Code of Professional Responsibility. He disclaimed any participation in the preparation of the Decision with respect to the application of Batingwed for CPC. He explained that it is the Regional Director of the Department of Transportation and Communication (DOTC)-CAR who approves the application and who drafts the Decision after the LTFRB-CAR signifies its favorable recommendation. He denied exercising any influence over the DOTC-CAR or the LTFRB. He claimed that Batingwed had decided to abandon his application hence he no longer submitted the necessary requirements therefor. He also disavowed any knowledge that Batingwed's application had been forwarded to the LTFRB Central Office for approval. Atty. Kilaan claimed that he knew about the favorable Decision only when Batingwed showed him the same. He narrated that considering the incomplete documents, the LTFRB mistakenly approved Batingwed's application. Thus, when it discovered its error, the LTFRB immediately revoked the grant of CPC to Batingwed.

He denied intercalating the entries in the application for CPC of Batingwed. He averred that once an application has been filed, the application and all accompanying records remain with the LTFRB and could no longer be retrieved by the applicant or his counsel; as such, it is highly improbable for him to intercalate

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[4] *Rollo*, p. 1.

[5] *Id*. at 33.

[6] *Id*. at 40-46.

the entries therein. Atty. Kilaan further explained that it was Adasing who paid the filing fee in behalf of Batingwed but the cashier erroneously indicated Adasing instead of Batingwed as payor. Atty. Kilaan lamented that Adasing who is not in the Philippines could not corroborate his explanation. Finally, Atty. Kilaan noted that complainants filed the instant suit in retaliation for the dismissal of their Opposition to the application for CPCs which he filed on behalf of his other clients.

The case was set for mandatory conference[7] after which the parties submitted their respective Position Papers.[8] In their Position Paper, complainants further alleged that the Verification in Batingwed's application for CPC was notarized by Atty. Kilaan as "Doc. No. 253, Page No. 51, Book No. VIII, Series of 2003." However, upon verification of Atty. Kilaan's Notarial Registry submitted to the Regional Trial Court Clerk of Court in Baguio City, the said notarial entry actually refers to a Deed of Sale and not the Verification of Batingwed's application. Also, complainants belied Atty. Kilaan's allegation that Adasing is presently abroad by presenting the Affidavit of Adasing claiming that he never left the country.

In his Report and Recommendation, the Investigating Commissioner[9] found complainants to have miserably failed to prove that Atty. Kilaan intercalated the entries in the application for CPC of Batingwed. Their allegation was based on mere suspicion devoid of any credible proof, *viz*:

> At the onset, it is very difficult to prove that it was respondent himself who was responsible for any intercalation, particularly the substitution of Joseph Batingwed's application folder in lieu of Gary Odasing's. Indeed, that is a grave charge, and based on the evidence presented by complainants, all that they can muster is a suspicion that cannot be confirmed. Of course, this has to be pointed out – anyone who had access to the case folder could have possibly been responsible for whatever intercalation that may have occurred. That

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[7] *Id*. at 106.

[8] *Id*. at 115-133; 163-175.

[9] Commissioner Jose Roderick F. Fernando.

being said, this Office is not prepared to make that leap into conjecture and conclude that it was respondent's doing.

Besides, the Certification of the Receiving Clerk of the DOTC-CAR dated 18 October 2006 – which notably was submitted by complainants – stated that the application of Gary Odasing was continued by Joseph Batingwed. Complainants have not alleged that the same constitutes a violation of the rules and procedures of LTFRB. Thus, it may be presumed to have been done in the regular course of business.[10]

However, the Investigating Commissioner did not totally absolve Atty. Kilaan as he found him liable for violating the Notarial Law considering that the Verification of Batingwed's application which he notarized and denominated as "Doc. No. 253, Page No. 51, Book No. VIII, Series of 2003" was actually recorded as a Deed of Sale in his Notarial Register. In addition, the Investigating Commissioner noted that Atty. Kilaan lied under oath when he alleged that Adasing was abroad as this was squarely belied by Adasing in his Affidavit. The Investigating Commissioner held thus:

Respondent must be punished for making it appear that he notarized a document – the Verification – when in truth and in fact, the entry in his Notarial Registry shows a different document. Thus, it is but proper to suspend respondent's privilege of being commissioned as a Notary Public.

Not only that. Despite knowing that the Verification was not properly notarized, respondent, as counsel for the applicant, proceeded to file the defectively verified Petition with the LTFRB-Baguio City. Clearly, there was falsehood committed by him, as there can be no other conclusion except that respondent antedated the Verification.

x x x x x x x x x

Lastly, this cannot end without this being said. Respondent made matters worse by alleging in his Answer to the instant administrative complaint that Gary Odasing was abroad – which seemingly was drawn up more out of convenience than for truth. Now, that allegation

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[10] Report and Recommendation, p. 5.

had been completely rebuffed and found to be untrue by the execution of an Affidavit by Gary Odasing himself. x x x It is therefore an affront to this Office that respondent would attempt to defend himself by pleading allegations, which were seemingly made deliberately, and which were later found to be untrue. Clearly, respondent tried, albeit vainly, to deceive even this Office.[11]

The Investigating Commissioner recommended, *viz*:

WHEREFORE, it is the recommendation of the undersigned that respondent's notarial commission, if still existing, be REVOKED immediately and that he be further PROHIBITED from being commissioned as a notary public for TWO (2) YEARS.

Moreover, it is likewise recommended that respondent be SUSPENDED from the practice of law for a period of TWO (2) MONTHS.[12]

In its September 19, 2007 Resolution No. XVIII-2007-82, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner with modification that Atty. Kilaan's Notarial Commission be revoked and that he be disqualified from being appointed as Notary Public for two years, thereby deleting the penalty of suspension from the practice of law. Respondent moved for reconsideration but it was denied by the IBP Board of Governors in its Resolution No. XX-2012-41 dated January 15, 2012.

After a careful review of the records, we find that Atty. Kilaan committed the following infractions: 1) violation of the Notarial Law; 2) violation of the Lawyer's Oath; and 3) violation of the Code of Professional Responsibility.

In his Motion for Reconsideration filed before the IBP Board of Governors, Atty. Kilaan passed on the blame to his secretary for the inaccuracies in the entries in his Notarial Register. He asserted that being a private practitioner, he is burdened with cases thus he delegated to his secretary the job of recording the documents which he notarized in his Notarial Register. He

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[11] Report and Recommendation, pp. 8-10.

[12] *Id.* at 10.

argued that the revocation of his notarial commission and disqualification for two years is too harsh a penalty considering that he is a first-time offender; he prayed for leniency considering that his family depended on his income for their collective needs.

It is settled that it is the notary public who is personally accountable for the accuracy of the entries in his Notarial Register. The Court is not persuaded by respondent's explanation that he is burdened with cases thus he was constrained to delegate the recording of his notarial acts in his Notarial Register to his secretary. In fact, this argument has already been rebuffed by this Court in *Lingan v. Attys. Calubaquib and Baliga*,[13] *viz*:

> Sections 245 and 246 of the Notarial Law provided:
>
> SEC. 245. Notarial Register. – Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary; and he shall supply a certified copy of such record, or any part thereof, to any person applying for it and paying the legal fees [therefore]. (emphasis supplied)
>
> x x x x x x x x x
>
> SEC. 246. Matters to be entered therein. – The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as notary in connection therewith, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.
>
> x x x x x x x x x
>
> In this connection, Section 249(b) stated:

[13] 524 Phil. 60, 68-70 (2006). Citations omitted.

> SEC. 249. Grounds for revocation of commission. – The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:
>
> x x x x x x x x x
>
> (b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.
>
> x x x x x x x x x

From the language of the subsection, it is abundantly clear that the notary public is personally accountable for all entries in his notarial register. Respondents cannot be relieved of responsibility for the violation of the aforesaid sections by passing the buck to their secretaries, a reprehensible practice which to this day persists despite our open condemnation. Respondents, especially Calubaquib, a self-proclaimed "prominent legal practitioner," should have known better than to give us such a simple-minded excuse.

We likewise remind respondents that notarization is not an empty, meaningless or routinary act but one invested with substantive public interest, such that only those who are qualified or authorized to do so may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from inflicting themselves upon the public, the courts and the administrative offices in general.

Notarization by a notary public converts a private document into a public one and makes it admissible in evidence without further proof of its authenticity. Notaries public must therefore observe utmost care with respect to the basic requirements of their duties.

In *Gemina v. Atty. Madamba*,[14] we have also ruled that –

> x x x The inaccuracies in his Notarial Register entries and his failure to enter the documents that he admittedly notarized constitute dereliction of duty as a notary public. He cannot escape liability by putting the blame on his secretary. The lawyer himself, not merely his secretary, should be held accountable for these misdeeds.

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[14] A.C. No. 6689, August 24, 2011, 656 SCRA 34, 41-43. Citations omitted.

A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgement and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. The notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless or routinary act. A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.

Canon 1 of the Code of Professional Responsibility requires every lawyer to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes. The Notarial Law and the 2004 Rules on Notarial Practice, moreover, require a duly commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or any act which may serve as cause for the revocation of his commission or the imposition of administrative sanctions.

Under the 2004 Rules on Notarial Practice, the respondent's failure to make the proper entry or entries in his Notarial Register of his notarial acts, his failure to require the presence of a principal at the time of the notarial acts, and his failure to identify a principal on the basis of personal knowledge by competent evidence are grounds for the revocation of a lawyer's commission as a notary public.

Indeed, Rule VI, Sections 1 and 2 of the 2004 Rules of Notarial Practice require a notary public to keep and maintain a Notarial Register wherein he will record his every notarial act. His failure to make the proper entry or entries in his notarial register concerning his notarial acts is a ground for revocation of his notarial commission.[15] As mentioned, respondent failed to make the proper entries in his Notarial Register; as such, his notarial commission may be properly revoked.

Aside from violating the Notarial Law, respondent also violated his Lawyer's Oath and the Code of Professional Responsibility

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[15] See Section 11(b)(2), Rule XI, 2004 Rules of Notarial Practice.

by committing falsehood in the pleadings he submitted before the IBP. His claim that Adasing was abroad hence could not corroborate the explanation made by Batingwed was proved to be untruthful when complainants submitted the Affidavit of Adasing insisting that he never left the country. Canon 10, Rule 10.01 of the Code of Professional Responsibility expressly provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." In the same vein, Canon 1, Rule 1.01 mandates that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Respondent failed to observe these Rules and hence must be sanctioned.

Under the circumstances, we find Atty. Kilaan's suspension from the practice of law for three (3) months and the revocation and disqualification of his notarial commission for a period of one (1) year appropriate.

IN VIEW WHEREOF, the notarial commission of Atty. Richard Baltazar Kilaan, if still existing, is hereby **REVOKED**, and he is **DISQUALIFIED** from being commissioned as notary public for a period of one (1) year. He is also **SUSPENDED** from the practice of law for three (3) months effective immediately, with a **WARNING** that the repetition of a similar violation will be dealt with more severely. He is **DIRECTED** to report the date of his receipt of this Resolution to enable this Court to determine when his suspension shall take effect.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. 11-9-167-RTC. November 11, 2013]

RE: UNAUTHORIZED TRAVEL ABROAD OF JUDGE CLETO R. VILLACORTA III, REGIONAL TRIAL COURT, BRANCH 6, BAGUIO CITY

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; OCA CIRCULAR NO. 49-2003 (GUIDELINES ON REQUESTS FOR TRAVEL ABROAD AND EXTENSION FOR TRAVEL/STAY ABROAD); A REQUEST FOR AN EXTENSION OF THE PERIOD TO TRAVEL/STAY ABROAD MUST BE RECEIVED BY THE OFFICE OF THE COURT ADMINISTRATOR (OCA) TEN WORKING DAYS BEFORE THE EXPIRATION OF THE ORIGINAL TRAVEL AUTHORITY; FAILURE TO DO SO WOULD MAKE THE ABSENCES BEYOND THE ORIGINAL PERIOD UNAUTHORIZED.— OCA Circular No. 49-2003 (Guidelines on Requests for Travel Abroad and Extensions for Travel/Stay Abroad) requires that a request must be made for an extension of the period to travel/stay abroad, and that the request be received by the OCA ten (10) working days before the expiration of the original travel authority. Failure to do so would make the absences beyond the original period unauthorized. It should be noted that Judge Villacorta was in a position to file an application for leave to cover his extended stay abroad from 3-6 June 2011. In his letter dated 15 June 2011, he stated that he had to rush on 28 April 2011 to book a flight to Canada, as well as the return flight, for which the only available seat was for 5 June 2011. Thus, even before he left on 1 May 2011, he was already aware that he would not be able to report for work on 3 June 2011 because of the schedule of his return flight.

2. JUDICIAL ETHICS; JUDGES; UNAUTHORIZED ABSENCES OF THOSE RESPONSIBLE FOR THE ADMINISTRATION OF JUSTICE, ESPECIALLY ON THE PART OF THE MAGISTRATE, ARE INIMICAL TO PUBLIC SERVICE.— Section 50 of Civil Service Commission Memorandum Circular No. 41, series of 1998, states that an official or an employee

> who is absent without approved leave shall not be entitled to receive the salary corresponding to the period of the unauthorized leave of absence. Considering that the absences of Judge Villacorta during his extended travel from 4-15 February and 3-6 June 2011 were already considered unauthorized, the **OFFICE OF THE COURT ADMINISTRATOR IS DIRECTED** to deduct the salaries corresponding to the judge's unauthorized absences, if they have not yet been deducted. We take this opportunity to emphasize that unauthorized absences of those responsible for the administration of justice, especially on the part of a magistrate, are inimical to public service. Judge Villacorta is reminded that reasonable rules were laid down in order to facilitate the efficient functioning of the courts. Observance thereof cannot be expected of other court personnel if judges themselves cannot be relied on to take the lead.

R E S O L U T I O N

SERENO, *C.J.*:

On 1 December 2010, Judge Cleto R. Villacorta III (Judge Villacorta) was granted authority to travel to Canada for the period covering 20 December 2010 to 3 February 2011.[1] He was expected to report for work on 4 February 2011 but, as certified by Atty. Mylene May G. Adube-Cabuag (Atty. Adube-Cabuag), Clerk of Court, Regional Trial Court, Branch 6, Baguio City, Judge Villacorta reported back for work only on 16 February 2011.[2]

Judge Villacorta was asked to explain in writing his failure to secure an extension of his authority to travel abroad in violation of Office of the Court Administrator (OCA) Circular No. 49-2003.[3] In a letter[4] dated 31 March 2011, Judge Villacorta explained that he was unable to return to the country at the expiration of his travel authority because he had to attend to

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[1] *Rollo*, p. 4.

[2] *Id*.

[3] *Id*. at 1.

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

a few family-related matters: a) he had to accompany his son in Canada for the latter's medical check-up; b) the planned transfer by his family to an apartment in Canada was delayed because the original lessee of the unit was still occupying the same; c) he had to wait for the issuance of his re-entry permit; and d) he had to wait for packages from his sister which he would bring home to their mother in the Philippines.

On 29 April 2011, Judge Villacorta was granted another authority to travel to Canada for the period covering 1 May to 2 June 2011 to attend the wake and funeral of his sister.[5]

Meanwhile, in a Memorandum dated 12 May 2011, Deputy Court Administrator (DCA) Raul B. Villanueva and the OCA Office of Administrative Services (OCA-OAS) Chief Caridad A. Pabello recommended that the judge's absence during his extended travel from 4-15 February 2011 be considered unauthorized, which recommendation was approved by the then OCA Officer-in-Charge.[6] Also, his letter-explanation dated 31 March 2011 was referred to the OCA Legal Office for appropriate action.

Judge Villacorta failed to report for work on 3 June 2011 following his second travel to Canada. Based on a Certification issued by Atty. Adube-Cabuag, Judge Villacorta reported back for work only on 7 June 2011.[7] When asked to explain, Judge Villacorta replied in a letter[8] dated 15 June 2011 that no other return flight was available other than on 5 June 2011.

Judge Villacorta sent another letter[9] dated 11 August 2011 requesting for the consolidation of the two incidents for the Court's action. He also stated that he meant to resign effective 31 October 2011 to settle abroad and wished to be advised on the implications of his extended travels on his intended resignation.

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[5] *Id.* at 8.

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

[7] *Id.* at 10.

[8] *Id.* at 9.

[9] *Id.* at p. 26.

In a Memorandum[10] dated 19 September 2011, DCA Villanueva and the OCA-OAS Chief Pabello recommended that the judge's absence during his extended travel from 3-6 June 2011 be considered unauthorized. In the same memorandum, his letters dated 15 June and 11 August 2011 were referred to the OCA Legal Office for appropriate action.

In a report to the Court dated 3 May 2012, the OCA recommended that Judge Villacorta be given a stern warning for his failure to observe the rules relative to travel abroad.[11]

OCA Circular No. 49-2003 (Guidelines on Requests for Travel Abroad and Extensions for Travel/Stay Abroad) requires that a request must be made for an extension of the period to travel/ stay abroad, and that the request be received by the OCA ten (10) working days before the expiration of the original travel authority. Failure to do so would make the absences beyond the original period unauthorized.

It should be noted that Judge Villacorta was in a position to file an application for leave to cover his extended stay abroad from 3-6 June 2011. In his letter dated 15 June 2011, he stated that he had to rush on 28 April 2011 to book a flight to Canada, as well as the return flight, for which the only available seat was for 5 June 2011.[12] Thus, even before he left on 1 May 2011, he was already aware that he would not be able to report for work on 3 June 2011 because of the schedule of his return flight.

Section 50 of Civil Service Commission Memorandum Circular No. 41, series of 1998, states that an official or an employee who is absent without approved leave shall not be entitled to receive the salary corresponding to the period of the unauthorized leave of absence. Considering that the absences of Judge Villacorta during his extended travel from 4-15 February and

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

[11] *Id*. at pp. 27-29, Administrative Matter for Agenda dated 3 May 2012.

[12] *Id*. at p. 9.

3-6 June 2011 were already considered unauthorized, the **OFFICE OF THE COURT ADMINISTRATOR IS DIRECTED** to deduct the salaries corresponding to the judge's unauthorized absences, if they have not yet been deducted.

We take this opportunity to emphasize that unauthorized absences of those responsible for the administration of justice, especially on the part of a magistrate, are inimical to public service. Judge Villacorta is reminded that reasonable rules were laid down in order to facilitate the efficient functioning of the courts. Observance thereof cannot be expected of other court personnel if judges themselves cannot be relied on to take the lead.

IN VIEW OF THE FOREGOING, WE ISSUE A STERN WARNING to Judge Cleto R. Villacorta III, Regional Trial Court, Branch 6, Baguio City, that further failure to observe reasonable rules and guidelines for applying for a leave of absence shall be dealt with more severely.

THE OFFICE OF THE COURT ADMINISTRATOR IS ALSO DIRECTED to expedite the study and establishment of rules and procedure for the electronic filing of applications for leave in the judiciary. These rules shall facilitate the usual process, as well as sufficiently provide the mechanism for contingencies during which an official or employee is unable to personally file the applications for leave of absence.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 171428. November 11, 2013]

ALEJANDRO V. TANKEH, *petitioner, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES, STERLING SHIPPING LINES, INC., RUPERTO V. TANKEH, VICENTE ARENAS, and ASSET PRIVATIZATION TRUST,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; DISTINGUISHED FROM PETITION FOR *CERTIORARI*.—** In *Tagle v. Equitable PCI Bank*, this Court made the distinction between a Rule 45 Petition for Review on *Certiorari* and a Rule 65 Petition for *Certiorari*: *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light: When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed x x x. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*. x x x Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact a mistake of judgment, appeal is the remedy.

2. **ID.; ID.; ID. ALLEGATIONS THAT THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION DO NOT *IPSO FACTO* RENDER THE INTENDED REMEDY THAT OF *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; IN THE INTEREST OF SUBSTANTIAL JUSTICE, THE SUPREME COURT MAY EXERCISE ITS DISCRETION TO TREAT A RULE 65 PETITION FOR *CERTIORARI* AS A RULE 45 PETITION FOR REVIEW ON *CERTIORARI*, IF THE PETITION IS FILED WITHIN THE REGLEMENTARY PERIOD FOR FILING A PETITION FOR REVIEW, WHEN ERRORS OF JUDGMENT ARE AVERRED, AND WHEN THERE IS**

SUFFICIENT REASON TO JUSTIFY THE RELAXATION OF THE RULES.— In this case, what petitioner seeks to rectify may be construed as errors of judgment of the Court of Appeals. These errors pertain to the petitioner's allegation that the appellate court failed to uphold the findings of facts of the lower court. He does not impute any error with respect to the Court of Appeals' exercise of jurisdiction. As such, this Petition is simply a continuation of the appellate process where a case is elevated from the trial court of origin, to the Court of Appeals, and to this Court via Rule 45. Contrary to respondents' arguments, the allegations of petitioner that the Court of Appeals "committed grave abuse of discretion" did not *ipso facto* render the intended remedy that of *certiorari* under Rule 65 of the Rules of Court. In any case, even if the Petition is one for the special civil action of *certiorari*, this Court has the discretion to treat a Rule 65 Petition for *Certiorari* as a Rule 45 Petition for Review on *Certiorari*. This is allowed if (1) the Petition is filed within the reglementary period for filing a Petition for review; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules. When this Court exercises this discretion, there is no need to comply with the requirements provided for in Rule 65. In this case, petitioner filed his Petition within the reglementary period of filing a Petition for Review. His Petition assigns errors of judgment and appreciation of facts and law on the part of the Court of Appeals. Thus, even if the Petition was designated as one that sought the remedy of *certiorari*, this Court may exercise its discretion to treat it as a Petition for Review in the interest of substantial justice.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FRAUD; DEFINED; FRAUD AS A GROUND FOR RENDERING A CONTRACT VOIDABLE (*DOLO CAUSANTE*) OR AS BASIS FOR AN AWARD OF DAMAGES (*DOLO INCIDENTE*), DISTINGUISHED.— Fraud is defined in Article 1338 of the Civil Code as: x x x fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. The distinction between fraud as a ground for rendering a contract voidable or as basis for an award of damages is provided in Article 1344: In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties. Incidental

fraud only obliges the person employing it to pay damages. (1270) There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract voidable. In *Geraldez v. Court of Appeals*, this Court held that: This fraud or *dolo* which is present or employed at the time of birth or perfection of a contract may either be *dolo causante* or *dolo incidente*. The first, or causal fraud referred to in Article 1338, are those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into the contract. *Dolo incidente*, or incidental fraud which is referred to in Article 1344, are those which are not serious in character and without which the other party would still have entered into the contract. *Dolo causante* determines or is the essential cause of the consent, while *dolo incidente* refers only to some particular or accident of the obligation. The effects of *dolo causante* are the nullity of the contract and the indemnification of damages, and *dolo incidente* also obliges the person employing it to pay damages.

4. ID.; ID.; ID.; IN *DOLO CAUSANTE* OR CAUSAL FRAUD, THE FRAUD OR DECEPTION MUST BE SO MATERIAL THAT HAD IT NOT BEEN PRESENT, THE DEFRAUDED PARTY WOULD NOT HAVE ENTERED INTO THE CONTRACT, WHILE IN INCIDENTAL FRAUD, THE FRAUD IS NOT SERIOUS ENOUGH SO AS TO RENDER THE ORIGINAL CONTRACT VOIDABLE.— Under Article 1344, the fraud must be serious to annul or avoid a contract and render it voidable. This fraud or deception must be so material that had it not been present, the defrauded party would not have entered into the contract. x x x. [A]rticle 1344 also provides that if fraud is incidental, it follows that this type of fraud is *not serious enough so as to render the original contract voidable*. x x x. To summarize, if there is fraud in the performance of the contract, then this fraud will give rise to damages. If the fraud did not compel the imputing party to give his or her consent, it may not serve as the basis to annul the contract, which exhibits *dolo causante*. However, the party alleging the existence of fraud may prove the existence of *dolo incidente*. This may make the party against whom fraud is alleged liable for damages.

5. ID.; ID.; ID.; ANNULMENT OF CONTRACT ON THE BASIS OF *DOLO CAUSANTE*, REQUISITES; EXPOUNDED; IN ORDER

TO CONSTITUTE FRAUD THAT PROVIDES BASIS TO ANNUL CONTRACTS, THE FRAUD MUST BE IN OBTAINING THE CONSENT OF THE PARTY, AND THIS FRAUD MUST BE PROVEN BY CLEAR AND CONVINCING EVIDENCE BY THE PARTY ALLEGING IT, FOR MERE PREPONDERANCE OF EVIDENCE WILL NOT SUFFICE.— The Civil Code, however, does not mandate the quantum of evidence required to prove actionable fraud, either for purposes of annulling a contract (*dolo causante*) or rendering a party liable for damages (*dolo incidente)*. The *definition* of fraud is different from the *quantum of evidence* needed to prove the existence of fraud. Article 1338 provides the legal definition of fraud. Articles 1339 to 1343 constitute the behavior and actions that, when in conformity with the legal provision, may constitute fraud. Jurisprudence has shown that in order to constitute fraud that provides basis to annul contracts, it must fulfill two conditions. First, the fraud must be *dolo causante* or it must be fraud in obtaining the consent of the party. Second, this fraud must be proven by clear and convincing evidence. x x x. In *Viloria*, this Court cited *Sierra v. Court of Appeals* stating that mere preponderance of evidence will not suffice in proving fraud. x x x Thus, to annul a contract on the basis of *dolo causante*, the following must happen: First, the deceit must be serious or sufficient to impress and lead an ordinarily prudent person to error. If the allegedly fraudulent actions do not deceive a prudent person, given the circumstances, the deceit here cannot be considered sufficient basis to nullify the contract. In order for the deceit to be considered serious, it is necessary and essential to obtain the consent of the party imputing fraud. To determine whether a person may be sufficiently deceived, the personal conditions and other factual circumstances need to be considered. Second, the standard of proof required is clear and convincing evidence. This standard of proof is derived from American common law. It is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence (for civil cases). The degree of believability is higher than that of an ordinary civil case. Civil cases only require a preponderance of evidence to meet the required burden of proof. However, when fraud is alleged in an ordinary civil case involving contractual relations, an entirely different standard of proof needs to be satisfied. The imputation of fraud in a civil case requires the presentation of clear and

convincing evidence. Mere allegations will not suffice to sustain the existence of fraud. The burden of evidence rests on the part of the plaintiff or the party alleging fraud. The quantum of evidence is such that fraud *must* be clearly and convincingly shown.

6. ID.; ID.; ID.; THE DETERMINATION OF THE EXISTENCE OF FRAUD REQUIRES A REVIEW OF THE CASE FACTS AND THE EVIDENCE ON RECORD, AND THE COURT IS NOT A TRIER OF FACTS; WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, THE FACTUAL FINDINGS OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND ARE NOT REVIEWABLE BY THE COURT EXCEPT WHEN THE FINDINGS OF FACT OF THE TRIAL COURT AND THE COURT OF APPEALS ARE CONFLICTING.— Neither law nor jurisprudence distinguishes whether it is *dolo incidente* or *dolo causante* that must be proven by clear and convincing evidence. It stands to reason that both *dolo incidente* and *dolo causante* must be proven by clear and convincing evidence. The only question is whether this fraud, when proven, may be the basis for making a contract voidable (*dolo causante*), or for awarding damages (*dolo incidente*), or both. Hence, there is a need to examine all the circumstances thoroughly and to assess the personal circumstances of the party alleging fraud. This may require a review of the case facts and the evidence on record. In general, this Court is not a trier of facts. It makes its rulings based on applicable law and on standing jurisprudence. The findings of the Court of Appeals are generally binding on this Court provided that these are supported by the evidence on record. In the recent case of *Medina v. Court of Appeals*, this Court held that: It is axiomatic that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. **When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:** x x x (5) **When the findings of fact are conflicting;** x x x. The trial court and the Court of Appeals had appreciated the facts of this case differently.

7. REMEDIAL LAW; PLEADINGS AND PRACTICES; AMENDED AND SUPPLEMENTAL PLEADINGS; ALTHOUGH THERE IS LACK OF A CATEGORICAL ALLEGATION IN THE PLEADINGS, THE COURTS MAY STILL BE ALLOWED TO ASCERTAIN FRAUD WHERE THE ISSUE OF COMMISSION THEREOF HAD BEEN TRIED WITH THE IMPLIED CONSENT OF THE ADVERSE PARTY.— The Court of Appeals was not correct in saying that petitioner could only raise fraud as a ground to annul his participation in the contract as against respondent Rupert V. Tankeh, since the petitioner did not make any categorical allegation that respondents Development Bank of the Philippines, Sterling Shipping Lines, Inc., and Asset Privatization Trust had acted fraudulently. Admittedly, it was only in the Petition before this Court that the petitioner had made the allegation of a "well-orchestrated fraud" by the respondents. However, Rule 10, Section 5 of the Rules of Civil Procedure provides that: In this case, the commission of fraud was an issue that had been tried with the *implied* consent of the respondents, particularly Sterling Shipping Lines, Inc., Asset Privatization Trust, Development Bank of the Philippines, and Arenas. Hence, although there is a lack of a categorical allegation in the pleading, the courts may still be allowed to ascertain fraud.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FRAUD; NO *DOLO CAUSANTE* OR FRAUD USED TO OBTAIN THE PARTY'S CONSENT TO THE CONTRACT WHERE THE LATTER HAD THE OPPORTUNITY TO BECOME AWARE OF THE FACTS THAT ATTENDED THE SIGNING THEREOF.— An assessment of the allegations in the pleadings and the findings of fact of both the trial court and appellate court based on the evidence on record led to the conclusion that there had been no *dolo causante* committed against the petitioner by Ruperto V. Tankeh. The petitioner had given his consent to become a shareholder of the company without contributing a single peso to pay for the shares of stock given to him by Ruperto V. Tankeh. This fact was admitted by both petitioner and respondent in their respective pleadings submitted to the lower court. In his Amended Complaint, the petitioner admitted that "he had never invested any amount in said corporation and that he had never been an actual member of said corporation. All the money supposedly invested by him

were put up by defendant Ruperto V. Tankeh." This fact alone should have already alerted petitioner to the gravity of the obligation that he would be undertaking as a member of the board of directors and the attendant circumstances that this undertaking would entail. It also does not add any evidentiary weight to strengthen petitioner's claim of fraud. If anything, it only strengthens the position that petitioner's consent was not obtained through insidious words or deceitful machinations. Article 1340 of the Civil Code recognizes the reality of some exaggerations in trade which negates fraud. It reads: Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. Given the standing and stature of the petitioner, he was in a position to ascertain more information about the contract. x x x. The required standard of proof – clear and convincing evidence – was not met. There was no *dolo causante* or fraud used to obtain the petitioner's consent to enter into the contract. Petitioner had the opportunity to become aware of the facts that attended the signing of the promissory note. He even admitted that he has a lawyer-son who the petitioner had hoped would assist him in the administration of Sterling Shipping Lines, Inc. The totality of the facts on record belies petitioner's claim that fraud was used to obtain his consent to the contract given his personal circumstances and the applicable law.

9. ID.; ID.; ID.; ID.; INCIDENTAL FRAUD, DEFINED; UNJUST EXCLUSION OF THE PETITIONER FROM PARTICIPATING IN THE MANAGEMENT OF THE AFFAIRS OF THE CORPORATION CONSTITUTES FRAUD INCIDENTAL TO THE PERFORMANCE OF THE OBLIGATION.— [I]n refusing to allow petitioner to participate in the management of the business, respondent Ruperto V. Tankeh was liable for the commission of *incidental* fraud. In *Geraldez*, this Court defined incidental fraud as "those which are not serious in character and without which the other party would still have entered into the contract." Although there was no fraud that had been undertaken to obtain petitioner's consent, there was fraud in the *performance* of the contract. The records showed that petitioner had been unjustly excluded from participating in the management of the affairs of the corporation. This exclusion from the management in the affairs of Sterling Shipping Lines, Inc. constituted fraud incidental to the performance of the

obligation. x x x. [R]espondent Ruperto V. Tankeh's bare assertion that petitioner had access to the records cannot discredit the fact that the petitioner had been effectively deprived of the opportunity to actually engage in the operations of Sterling Shipping Lines, Inc. Petitioner had a reasonable expectation that the same level of engagement would be present for the duration of their working relationship. This would include an undertaking in good faith by respondent Ruperto V. Tankeh to be transparent with his brother that he would not automatically be made part of the company's administration.

10. ID.; CIVIL PROCEDURE; CAUSE OF ACTION; IN ALL INSTANCES WHERE A COMMON CAUSE OF ACTION IS ALLEGED AGAINST SEVERAL DEFENDANTS, SOME OF WHOM ANSWER AND THE OTHERS DO NOT, THE LATTER OR THOSE IN DEFAULT ACQUIRE A VESTED RIGHT NOT ONLY TO OWN THE DEFENSE INTERPOSED IN THE ANSWER OF THEIR CO-DEFENDANT/S NOT IN DEFAULT BUT ALSO TO EXPECT A RESULT OF THE LITIGATION TOTALLY COMMON WITH THEM IN KIND AND IN AMOUNT WHETHER FAVORABLE OR UNFAVORABLE.— [T]his Court finds there is nothing to support the assertion that Sterling Shipping Lines, Inc. and Arenas committed incidental fraud and must be held liable. Sterling Shipping Lines, Inc. acted through its board of directors, and the liability of respondent Tankeh cannot be imposed on Sterling Shipping Lines, Inc. The shipping line has a separate and distinct personality from its officers, and petitioner's assertion that the corporation conspired with the respondent Ruperto V. Tankeh to defraud him is not supported by the evidence and the records of the case. As for Arenas, in *Lim Tanhu v. Remolete*, this Court held that: [In] all instances where a common cause of action is alleged against several defendants, some of whom answer and the others do not, the latter or those in default acquire a vested right not only to own the defense interposed in the answer of their co-defendant or co-defendants not in default but also to expect a result of the litigation totally common with them in kind and in amount whether favorable or unfavorable. The substantive unity of the plaintiffs' cause against all the defendants is carried through to its adjective phase as ineluctably demanded by the homogeneity and indivisibility of justice itself. As such, despite Arenas' failure to submit his Answer to the Complaint or his

declaration of default, his liability or lack thereof is concomitant with the liability attributed to his co-defendants or co-respondents. However, unlike respondent Ruperto V. Tankeh's liability, there is no action or series of actions that may be attributed to Arenas that may lead to an inference that he was liable for incidental fraud. In so far as the required evidence for both Sterling Shipping Lines, Inc. and Arenas is concerned, there is no basis to justify the claim of incidental fraud.

11. CIVIL LAW; DAMAGES; PERSON EMPLOYING INCIDENTAL FRAUD IS LIABLE TO PAY DAMAGES; WHEN A RIGHT IS EXERCISED IN A MANNER NOT CONFORMABLE WITH THE NORMS ENSHRINED IN ARTICLE 19 OF THE CIVIL CODE, AND THE EXERCISE THEREOF CAUSES DAMAGE TO ANOTHER, A LEGAL WRONG IS COMMITTED AND THE WRONGDOER IS HELD RESPONSIBLE.— [R]espondent Ruperto V. Tankeh is liable to his older brother, petitioner Alejandro, for damages. The obligation to pay damages to petitioner is based on several provisions of the Civil Code. Article 1157 enumerates the sources of obligations. x x x This enumeration does not preclude the possibility that a single action may serve as the source of several obligations to pay damages in accordance with the Civil Code. Thus, the liability of respondent Ruperto V. Tankeh is based on the law, under Article 1344, which provides that the commission of incidental fraud obliges the person employing it to pay damages. In addition to this obligation as the result of the contract between petitioner and respondents, there was also a patent abuse of right on the part of respondent Tankeh. This abuse of right is included in Articles 19 and 21 of the Civil Code x x x. Respondent Ruperto V. Tankeh abused his right to pursue undertakings in the interest of his business operations. This is because of his failure to at least act in good faith and be transparent with petitioner regarding Sterling Shipping Lines, Inc.'s daily operations. In *National Power Corporation v. Heirs of Macabangkit Sangkay*, this Court held that: When a right is exercised in a manner not conformable with the norms enshrined in Article 19 and like provisions on human relations in the *Civil Code*, and the exercise results to [sic] the damage of [sic] another, a legal wrong is committed and the wrongdoer is held responsible.

12. ID.; ID.; MORAL DAMAGES; CONDITIONS FOR THE AWARD THEREOF, PRESENT.— In *Francisco v. Ferrer*, this

Court ruled that moral damages may be awarded on the following bases: x x x. An award of moral damages would require certain conditions to be met, to wit: (1) *first*, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) *second*, there must be culpable act or omission factually established; (3) *third*, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) *fourth*, the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. In this case, the four elements cited in *Francisco* are present. First, petitioner suffered an injury due to the mental duress of being bound to such an onerous debt to Development Bank of the Philippines and Asset Privatization Trust. Second, the wrongful acts of undue exclusion done by respondent Ruperto V. Tankeh clearly fulfilled the same requirement. Third, the proximate cause of his injury was the failure of respondent Ruperto V. Tankeh to comply with his obligation to allow petitioner to either participate in the business or to fulfill his fiduciary responsibilities with candor and good faith. Finally, Article 2219 of the Civil Code provides that moral damages may be awarded in case of acts and actions referred to in Article 21, which, as stated, had been found to be attributed to respondent Ruperto V. Tankeh.

13. ID.; ID.; EXEMPLARY DAMAGES; TO JUSTIFY AN AWARD THEREOF, THE 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; EXEMPLARY DAMAGES IN THE AMOUNT OF ₱200,000.00, IMPOSED.— In addition to moral damages, this Court may also impose the payment of exemplary damages. Exemplary damages are discussed in Article 2229 of the Civil Code x x x: Exemplary damages are further discussed in Articles 2233 and 2234, particularly regarding the pre-requisites of ascertaining moral damages and the fact that it is discretionary upon this Court to award them or not x x x. The purpose of exemplary damages is to serve as a deterrent to future and subsequent parties from the commission of a similar offense. x x x. To justify an award for exemplary damages, the 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. In this case, this Court finds that respondent Ruperto V. Tankeh acted in a fraudulent manner through the finding of *dolo incidente* due to his failure to act in a manner consistent with propriety, good morals, and prudence. Since exemplary damages ensure that future litigants or parties are enjoined from acting in a similarly malevolent manner, it is incumbent upon this Court to impose the damages in such a way that will serve as a categorical warning and will show that wanton actions will be dealt with in a similar manner. This Court finds that the amount of two hundred thousand pesos (₱200,000.00) is sufficient for this purpose.

APPEARANCES OF COUNSEL

Alan Leynes for petitioner.
Juan G. Ranola, Jr. for APT/PMO.
DBP Office of the Legal Counsel for DBP.
Arthur D. Lim Law Offices for R.V. Tankeh.

D E C I S I O N

LEONEN, *J.*:

This is a Petition for Review on *Certiorari*, praying that the assailed October 25, 2005 Decision and the February 9, 2006 Resolution of the Court of Appeals[1] be reversed, and that the January 4, 1996 Decision of the Regional Trial Court of Manila, Branch 32 be affirmed. Petitioner prays that this Court grant his claims for moral damages and attorney's fees, as proven by the evidence.

Respondent Ruperto V. Tankeh is the president of Sterling Shipping Lines, Inc. It was incorporated on April 23, 1979 to operate ocean-going vessels engaged primarily in foreign trade.[2] Ruperto V. Tankeh applied for a $3.5 million loan from public respondent Development Bank of the Philippines for the partial

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[1] C.A. G.R. CV No. 52643.

[2] *Rollo*, p. 206.

financing of an ocean-going vessel named the M/V Golden Lilac. To authorize the loan, Development Bank of the Philippines required that the following conditions be met:

1) A first mortgage must be obtained over the vessel, which by then had been renamed the M/V Sterling Ace;

2) Ruperto V. Tankeh, petitioner Dr. Alejandro V. Tankeh, Jose Marie Vargas, as well as respondents Sterling Shipping Lines, Inc. and Vicente Arenas should become liable jointly and severally for the amount of the loan;

3) The future earnings of the mortgaged vessel, including proceeds of Charter and Shipping Contracts, should be assigned to Development Bank of the Philippines; and

4) Development Bank of the Philippines should be assigned no less than 67% of the total subscribed and outstanding voting shares of the company. The percentage of shares assigned should be maintained at all times, and the assignment was to subsist as long as the assignee, Development Bank of the Philippines, deemed it necessary during the existence of the loan.[3]

According to petitioner Dr. Alejandro V. Tankeh, Ruperto V. Tankeh approached him sometime in 1980.[4] Ruperto informed petitioner that he was operating a new shipping line business. Petitioner claimed that respondent, who is also petitioner's younger brother, had told him that petitioner would be given one thousand (1,000) shares to be a director of the business. The shares were worth ₱1,000,000.00.[5]

On May 12, 1981, petitioner signed the Assignment of Shares of Stock with Voting Rights.[6] Petitioner then signed the May 12, 1981 promissory note in December 1981. He was the last

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[3] *Id*. at 14.

[4] *Id*. at 14.

[5] *Id*. at 205.

[6] *Id*. at 206.

to sign this note as far as the other signatories were concerned.[7] The loan was approved by respondent Development Bank of the Philippines on March 18, 1981. The vessel was acquired on September 29, 1981 for $5.3 million.[8] On December 3, 1981, respondent corporation Sterling Shipping Lines, Inc. through respondent Ruperto V. Tankeh executed a Deed of Assignment in favor of Development Bank of the Philippines. The deed stated that the assignor, Sterling Shipping Lines, Inc.:

> x x x does hereby transfer and assign in favor of the ASSIGNEE (DBP), its successors and assigns, future earnings of the mortgaged M/V "Sterling Ace," including proceeds of charter and shipping contracts, it being understood that this assignment shall continue to subsist for as long as the ASSIGNOR'S obligation with the herein ASSIGNEE remains unpaid.[9]

On June 16, 1983, petitioner wrote a letter to respondent Ruperto V. Tankeh saying that he was severing all ties and terminating his involvement with Sterling Shipping Lines, Inc.[10] He required that its board of directors pass a resolution releasing him from all liabilities, particularly the loan contract with Development Bank of the Philippines. In addition, petitioner asked that the private respondents notify Development Bank of the Philippines that he had severed his ties with Sterling Shipping Lines, Inc.[11]

The accounts of respondent Sterling Shipping Lines, Inc. in the Development Bank of the Philippines were transferred to public respondent Asset Privatization Trust on June 30, 1986.[12]

Presently, respondent Asset Privatization Trust is known as the Privatization and Management Office. Asset Privatization

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[7] *Id*. at 206.

[8] *Id*. at 207.

[9] *Id*. at 124.

[10] *Id*. at 207.

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

[12] *Id*. at 45.

Trust was a government agency created through Presidential Proclamation No. 50, issued in 1986. Through Administrative Order No. 14, issued by former President Corazon Aquino dated February 3, 1987, assets including loans in favor of Development Bank of the Philippines were ordered to be transferred to the national government. In turn, the management and facilitation of these assets were delegated to Asset Privatization Trust, pursuant to Presidential Proclamation No. 50. In 1999, Republic Act No. 8758 was signed into law, and it provided that the corporate term of Asset Privatization Trust would end on December 31, 2000. The same law empowered the President of the Philippines to determine which office would facilitate the management of assets held by Asset Privatization Trust. Thus, on December 6, 2000, former President Joseph E. Estrada signed Executive Order No. 323, creating the Privatization Management Office. Its present function is to identify disposable assets, monitor the progress of privatization activities, and approve the sale or divestment of assets with respect to price and buyer.[13]

On January 29, 1987, the M/V Sterling Ace was sold in Singapore for $350,000.00 by Development Bank of the Philippines' legal counsel Atty. Prospero N. Nograles. When petitioner came to know of the sale, he wrote respondent Development Bank of the Philippines to express that the final price was inadequate, and therefore, the transaction was irregular. At this time, petitioner was still bound as a debtor because of the promissory note dated May 12, 1981, which petitioner signed in December of 1981. The promissory note subsisted despite Sterling Shipping Lines, Inc.'s assignment of all future earnings of the mortgaged M/V Sterling Ace to Development Bank of the Philippines. The loan also continued to bind petitioner despite Sterling Shipping Lines, Inc.'s cash equity contribution of ₱13,663,200.00 which was used to cover part of the acquisition cost of the vessel, pre-operating expenses, and initial working capital.[14]

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[13] <http://www.pmo.gov.ph/about.htm>, (last visited August 15, 2013).

[14] *Rollo,* pp. 105-106.

Petitioner filed several Complaints[15] against respondents, praying that the promissory note be declared null and void and that he be absolved from any liability from the mortgage of the vessel and the note in question.

In the Complaints, petitioner alleged that respondent Ruperto V. Tankeh, together with Vicente L. Arenas, Jr. and Jose Maria Vargas, had exercised deceit and fraud in causing petitioner to bind himself jointly and severally to pay respondent Development Bank of the Philippines the amount of the mortgage loan.[16] Although he had been made a stockholder and director of the respondent corporation Sterling Shipping Lines, Inc., petitioner alleged that he had never invested any amount in the corporation and that he had never been an actual member of the board of directors.[17] He alleged that all the money he had supposedly invested was provided by respondent Ruperto V. Tankeh.[18] He claimed that he only attended one meeting of the board. In that meeting, he was introduced to two directors representing Development Bank of the Philippines, namely, Mr. Jesus Macalinag and Mr. Gil Corpus. Other than that, he had never been notified of another meeting of the board of directors.

Petitioner further claimed that he had been excluded deliberately from participating in the affairs of the corporation and had never been compensated by Sterling Shipping Lines, Inc. as a director and stockholder.[19] According to petitioner, when Sterling Shipping Lines, Inc. was organized, respondent Ruperto V. Tankeh had promised him that he would become part of the administration staff and oversee company operations.

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[15] Complaint dated July 22, 1987, *Rollo*, pp. 63-69; Amended Complaint dated September 14, 1987, *Rollo*, pp. 76-82; Second Amended Complaint dated October 30, 1987, *Rollo*, pp. 84-91; Amended Complaint dated April 16, 1991, *Rollo*, pp. 102-109.

[16] *Id*. at 85.

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

[18] *Id*. at 65.

[19] *Id*. at 124.

Respondent Ruperto V. Tankeh had also promised petitioner that the latter's son would be given a position in the company.[20] However, after being designated as vice president, petitioner had not been made an officer and had been alienated from taking part in the respondent corporation.[21]

Petitioner also alleged that respondent Development Bank of the Philippines had been inexcusably negligent in the performance of its duties.[22] He alleged that Development Bank of the Philippines must have been fully aware of Sterling Shipping Lines, Inc.'s financial situation. Petitioner claimed that Sterling Shipping Lines, Inc. was controlled by the Development Bank of the Philippines because 67% of voting shares had been assigned to the latter.[23] Furthermore, the mortgage contracts had mandated that Sterling Shipping Lines, Inc. "shall furnish the DBP with copies of the minutes of each meeting of the Board of Directors within one week after the meeting. [Sterling Shipping Lines Inc.] shall likewise furnish DBP its annual audited financial statements and other information or data that may be needed by DBP as its accomondations [sic] with DBP are outstanding."[24] Petitioner further alleged that the Development Bank of the Philippines had allowed "highly questionable acts"[25] to take place, including the gross undervaluing of the M/V Sterling Aces.[26] Petitioner alleged that one day after Development Bank of the Philippines' Atty. Nograles sold the vessel, the ship was re-sold by its buyer for double the amount that the ship had been bought.[27]

As for respondent Vicente L. Arenas, Jr., petitioner alleged that since Arenas had been the treasurer of Sterling Shipping Lines, Inc.

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[20] *Id*. at 125.

[21] *Id*. at 207.

[22] *Id*. at 90.

[23] *Id*. at 89.

[24] *Id*. at 89.

[25] *Id*. at 89.

[26] *Id*. at 89.

[27] *Id*. at 89.

and later on had served as its vice president, he was also responsible for the financial situation of Sterling Shipping Lines, Inc.

Lastly, in the Amended Complaint dated April 16, 1991, petitioner impleaded respondent Asset Privatization Trust for being the agent and assignee of the M/V Sterling Ace.

In their Answers[28] to the Complaints, respondents raised the following defenses against petitioner: Respondent Development Bank of the Philippines categorically denied receiving any amount from Sterling Shipping Lines, Inc.'s future earnings and from the proceeds of the shipping contracts. It maintained that equity contributions could not be deducted from the outstanding loan obligation that stood at ₱245.86 million as of December 31, 1986. Development Bank of the Philippines also maintained that it is immaterial to the case whether the petitioner is a "real stockholder" or merely a "pseudo-stockholder" of the corporation.[29] By affixing his signature to the loan agreement, he was liable for the obligation. According to Development Bank of the Philippines, he was *in pari delicto* and could not be discharged from his obligation. Furthermore, petitioner had no cause of action against Development Bank of the Philippines since this was a case between family members, and earnest efforts toward compromise should have been complied with in accordance with Article 222 of the Civil Code of the Philippines.[30]

Respondent Ruperto V. Tankeh stated that petitioner had voluntarily signed the promissory note in favor of Development Bank of the Philippines and with full knowledge of the consequences. Respondent Tankeh also alleged that he did not employ any fraud or deceit to secure petitioner's involvement in the company, and petitioner had been fully aware of company operations. Also, all that petitioner had to do to avoid liability had been to sell his shareholdings in the company.[31]

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[28] *Id*. at 70-75, 92-98, 99-101, 111-118.

[29] *Id*. at 73-74.

[30] *Id*. at 70-75.

[31] *Id*. at 99-101.

Respondent Asset Privatization Trust raised that petitioner had no cause of action against them since Asset Privatization Trust had been mandated under Proclamation No. 50 to take title to and provisionally manage and dispose the assets identified for privatization or deposition within the shortest possible period. Development Bank of the Philippines had transferred and conveyed all its rights, titles, and interests in favor of the national government in accordance with Administrative Order No. 14. In line with that, Asset Privatization Trust was constituted as trustee of the assets transferred to the national government to effect privatization of these assets, including respondent Sterling Shipping Lines, Inc.[32] Respondent Asset Privatization Trust also filed a compulsory counterclaim against petitioner and its co-respondents Sterling Shipping Lines, Inc., Ruperto V. Tankeh, and Vicente L. Arenas, Jr. for the amount of ₱264,386,713.84.

Respondent Arenas did not file an Answer to any of the Complaints of petitioner but filed a Motion to Dismiss that the Regional Trial Court denied. Respondent Asset Privatization Trust filed a Cross Claim against Arenas. In his Answer[33] to Asset Privatization Trust's Cross Claim, Arenas claimed that he had been released from any further obligation to Development Bank of the Philippines and its successor Asset Privatization Trust because an extension had been granted by the Development Bank of the Philippines to the debtors of Sterling Shipping Lines, Inc. and/or Ruperto V. Tankeh, which had been secured without Arenas' consent.

The trial proceeded with the petitioner serving as a sole witness for his case. In a January 4, 1996 Decision,[34] the Regional Trial Court ruled:

> Here, we find –
>
> 1. Plaintiff being promised by his younger brother, Ruperto V. Tankeh, 1,000 shares with par value of ₱1 Million with all

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

[33] *Id*. at 121-122.

[34] *Id*. at 123-197.

the perks and privileges of being stockholder and director of SSLI, a new international shipping line;

2. That plaintiff will be part of the administration and operation of the business, so with his son who is with the law firm Romulo Ozaeta Law Offices;

3. But this was merely the come-on or appetizer for the Real McCoy or the primordial end of congregating the incorporators proposed - - that he sign the promissory note (Exhibit "C"), the mortgage contract (Exhibit "A"), and deed of assignment so SSLI could get the US $3.5 M loan from DBP to partially finance the importation of vessel M.V. "Golden Lilac" renamed M.V. "Sterling ACE";

4. True it is, plaintiff was made a stockholder and director and Vice-President in 1979 but he was never notified of any meeting of the Board except only once, and only to be introduced to the two (2) directors representing no less than 67% of the total subscribed and outstanding voting shares of the company. Thereafter, he was excluded from any board meeting, shorn of his powers and duties as director or Vice-President, and was altogether deliberately demeaned as an outsider.

5. What kind of a company is SSLI who treated one of their incorporators, one of their Directors and their paper Vice-President in 1979 by preventing him access to corporate books, to corporate earnings, or losses, and to any compensation or remuneration whatsoever? Whose President and Treasurer did not submit the required SEC yearly report? Who did not remit to DBP the proceeds on charter mortgage contracts on M/V Sterling Ace?

6. The M/V Sterling Ace was already in the Davao Port when it was then diverted to Singapore to be disposed on negotiated sale, and not by public bidding contrary to COA Circular No. 86-264 and without COA's approval. Sterling Ace was seaworthy but was sold as scrap in Singapore. No foreclosure with public bidding was made in contravention of the Promissory Note to recover any deficiency should DBP seeks [sic] to recover it on the outstanding mortgage loan. Moreover the sale was done after the account and asset (nay, now only a liability) were transferred to APT. No

approval of SSLI Board of Directors to the negotiated sale was given.

7. Plaintiff's letter to his brother President, Ruperto V. Tankeh, dated June 15, 1983 (Exhibit "D") his letter thru his lawyer to DBP (Exhibit "J") and another letter to it (Exhibit "K") show no estoppel on his part as he consistently and continuously assailed the several injurious acts of defendants while assailing the Promissory Note itself x x x (Citations omitted) applying the maxim: Rencintiatio non praesumitur. By this Dr. Tankeh never waived the right to question the Promissory Note contract terms. He did not ratify, by concurring acts, express or tacit, after the reasons had surfaced entitling him to render the contract voidable, defendants' acts in implementing or not the conditions of the mortgage, the promissory note, the deed of assignment, the lack of audit and accounting, and the negotiated sale of MV Sterling Ace. He did not ratify defendants [sic] defective acts (Art. 1396, New Civil Code (NCC).

The foregoing and the following essays, supported by evidence, the fraud committed by plaintiff's brother before the several documents were signed (SEC documents, Promissory Note, Mortgage (MC) Contract, assignment (DA), namely:

1. Ruperto V. Tankeh approaches his brother Alejandro to tell the latter of his new shipping business. The project was good business proposal [sic].

2. Ruperto tells Alejandro he's giving him shares worth 1 Million and he's going to be a Director.

3. He tells his brother that he will be part of the company's Administration and Operations and his eldest son will be in it, too.

4. Ruperto tells his brother they need a ship, they need to buy one for the business, and they therefore need a loan, and they could secure a loan from DBP with the vessel brought to have a first mortgage with DBP but anyway the other two directors and comptroller will be from DBP with a 67% SSLI shares voting rights.

Without these insidious, devastating and alluring words, without the machinations used by defendant Ruperto V. Tankeh upon the

doctor, without the inducement and promise of ownership of shares and the exercise of administrative and operating functions, and the partial financing by one of the best financial institutions, the DBP, plaintiff would not have agreed to join his brother; and the safeguarding of the Bank's interest by its nominated two (2) directors in the Board added to his agreeing to the new shipping business. His consent was vitiated by the fraud before the several contracts were consummated.

This alone convenes [sic] this Court to annul the Promissory Note as it relates to plaintiff himself.

Plaintiff also pleads annulment on ground of equity. Article 19, NCC, provides him the way as it requires every person, in the exercise of his rights and performance of his duties, to act with justice, give everyone his due, and observe honesty and good faith (*Velayo vs. Shell Co. of the Phils.*, G.R. L-7817, October 31, 1956). Not to release him from the clutch of the Promissory Note when he was never made a part of the operation of the SSLI, when he was not notified of the Board Meetings, when the corporation nary remitted earnings of M/V Sterling Ace from charter or shipping contracts to DBP, when the SSLI did not comply with the deed of assignment and mortgage contract, and when the vessel was sold in Singapore (he, learning of the sale only from the newspapers) in contravention of the Promissory Note, and which he questioned, will be an injustice, inequitable, and even iniquitous to plaintiff. SSLI and the private defendants did not observe honesty and good faith to one of their incorporators and directors. As to DBP, the Court cannot put demerits on what plaintiff's memorandum has pointed out:

> While defendant DBP did not exercise the caution and prudence in the discharge of their functions to protect its interest as expected of them and worst, allowed the perpetuation of the illegal acts committed in contrast to the virtues they publicly profess, namely: "*palabra de honor, delicadeza, katapatan, kaayusan, pagkamasinop at kagalingan*" Where is the vision banking they have for our country?

Had DBP listened to a cry in the wilderness – that of the voice of the doctor – the doctor would not have allowed the officers and board members to defraud DBP and he would demand of them to hew and align themselves to the deed of assignment.

Prescinding from the above, plaintiff's consent to be with SSLI was vitiated by fraud. The fact that defendant Ruperto Tankeh has

not questioned his liability to DBP or that Jose Maria Vargas has been declared in default do not detract from the fact that there was attendant fraud and that there was continuing fraud insofar as plaintiff is concerned. ***Ipinaglaban lang ni Doctor ang karapatan niya. Kung wala siyang sense of righteous indignation and fairness, tatahimik na lang siya, sira naman ang pinangangalagaan niyang pangalan, honor and family prestige [sic] (Emphasis provided)***.[35]

x x x x x x x x x

All of the defendants' counterclaims and cross-claims x x x including plaintiff's and the other defendants' prayer for damages are not, for the moment, sourced and proven by substantial evidence, and must perforce be denied and dismissed.

WHEREFORE, this Court, finding and declaring the Promissory Note (Exhibit "C") and the Mortgage Contract (Exhibit "A") null and void insofar as plaintiff DR. ALEJANDRO V. TANKEH is concerned, hereby ANNULS and VOIDS those documents as to plaintiff, and it is hereby further ordered that he be released from any obligation or liability arising therefrom.

All the defendants' counterclaims and cross-claims and plaintiff's and defendants' prayer for damages are hereby denied and dismissed, without prejudice.

SO ORDERED.[36]

Respondents Ruperto V. Tankeh, Asset Privatization Trust, and Arenas immediately filed their respective Notices of Appeal with the Regional Trial Court. The petitioner filed a Motion for Reconsideration with regard to the denial of his prayer for damages. After this Motion had been denied, he then filed his own Notice of Appeal.

In a Decision[37] promulgated on October 25, 2005, the Third Division of the Court of Appeals reversed the trial court's findings. The Court of Appeals held that petitioner had no cause of action against public respondent Asset Privatization Trust.

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[35] *Id*. at 192-195.

[36] *Id*. at 195-196.

[37] *Id*. at 39-60.

This was based on the Court of Appeals' assessment of the case records and its findings that Asset Privatization Trust did not commit any act violative of the right of petitioner or constituting a breach of Asset Privatization Trust's obligations to petitioner. The Court of Appeals found that petitioner's claim for damages against Asset Privatization Trust was based merely on his own self-serving allegations.[38]

As to the finding of fraud, the Court of Appeals held that:

x x x x x x x x x

> In all the complaints from the original through the first, second and third amendments, the plaintiff imputes fraud only to defendant Ruperto, to wit:
>
> 4. That on May 12, 1981, due to the **deceit and fraud** exercised by Ruperto V. Tankeh, plaintiff, together with Vicente L. Arenas, Jr. and Jose Maria Vargas signed a promissory note in favor of the defendant, DBP, wherein plaintiff bound himself to jointly and severally pay the DBP the amount of the mortgage loan. This document insofar as plaintiff is concerned is a simulated document considering that plaintiff was never a real stockholder of Sterling Shipping Lines, Inc. (Emphasis provided)

More allegations of deceit were added in the Second Amended Complaint, but they are also attributed against Ruperto:

> 6. That THE DECEIT OF DEFENDANT RUPERTO V. TANKEH IS SHOWN BY THE FACT THAT when the Sterling Shipping Lines, Inc. was organized in 1980, Ruperto V. Tankeh promised plaintiff that he would be a part of the administration staff so that he could oversee the operation of the company. He was also promised that his son, a lawyer, would be given a position in the company. None of these promsies [sic] was complied with. In fact he was not even allowed to find out the data about the income and expenses of the company.
>
> 7. THAT THE DECEIT OF RUPERTO V. TANKEH IS ALSO SHOWN BY THE FACT THAT PLAINTIFF WAS INVITED TO ATTEND THE BOARD MEETING OF THE STERLING SHIPPING LINES INC. ONLY ONCE, WHICH WAS FOR THE SOLE PURPOSE

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[38] *Id*. at 49-51.

OF INTRODUCING HIM TO THE TWO DIRECTORS OF THE DBP IN THE BOARD OF THE STERLING SHIPPING LINES, INC., NAMELY, MR. JESUS MACALINAG AND MR. GIL CORPUS. THEREAFTER HE WAS NEVER INVITED AGAIN. PLAINTIFF WAS NEVER COMPENSATED BY THE STERLING SHIPPING LINES, INC. FOR HIS BEING A SO-CALLED DIRECTOR AND STOCKHOLDER.

x x x x x x x x x

8-A THAT A WEEK AFTER SENDING THE ABOVE LETTER PLAINTIFF MADE EARNEST EFFORTS TOWARDS A COMPROMISE BETWEEN HIM AND HIS BROTHER RUPERTO V. TANKEH, WHICH EFFORTS WERE SPURNED BY RUPERTO V. TANKEH, AND ALSO AFTER THE NEWS OF THE SALE OF THE 'STERLING ACE' WAS PUBLISHED AT THE NEWSPAPER, PLAINTIFF TRIED ALL EFFORTS TO CONTACT RUPERTO V. TANKEH FOR THE PURPOSE OF ARRIVING AT SOME COMPROMISE, BUT DEFENDANT RUPERTO V. TANKEH AVOIDED ALL CONTACTS WITH THE PLAINTIFF UNTIL HE WAS FORCED TO SEEK LEGAL ASSISTANCE FROM HIS LAWYER.

In the absence of any allegations of fraud and/or deceit against the other defendants, namely, the DBP, Vicente Arenas, Sterling Shipping Lines, Inc., and the Asset Privatization Trust, the plaintiff's evidence thereon should only be against Ruperto, since a plaintiff is bound to prove only the allegations of his complaint. In any case, no evidence of fraud or deceit was ever presented against defendants DBP, Arenas, SSLI and APT.

As to the evidence against Ruperto, the same consists only of the testimony of the plaintiff. None of his documentary evidence would prove that Ruperto was guilty of fraud or deceit in causing him to sign the subject promissory note.[39]

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Analyzing closely the foregoing statements, we find no evidence of fraud or deceit. The mention of a new shipping lines business and the promise of a free 1,000-share and directorship in the corporation do not amount to insidious words or machinations. In any case, the shipping business was indeed established, with the plaintiff himself as one of the incorporators and stockholders with a share of ₱4,000,

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

worth P~~4,~~000,000.00 of which 1,000,000.00 was reportedly paid up. As such, he signed the Articles of Incorporation and the corporation's By-Laws which were registered with the Securities and Exchange Commission in April 1979. It was not until May 12, 1981 that he signed the questioned promissory note. From his own declaration at the witness stand, the plaintiff signed the promissory note voluntarily. No pressure, force or intimidation was made to bear upon him. In fact, according to him, only a messenger brought the paper to him for signature. The promised shares of stock were given and recorded in the plaintiff's name. He was made a director and Vice-President of SSLI. Apparently, only the promise that his son would be given a position in the company remained unfulfilled. However, the same should have been threshed out between the plaintiff and his brother, defendant Ruperto, and its non-fulfillment did not amount to fraud or deceit, but was only an unfulfilled promise.

It should be pointed out that the plaintiff is a doctor of medicine and a seasoned businessman. It cannot be said that he did not understand the import of the documents he signed. Certainly he knew what he was signing. He should have known that being an officer of SSLI, his signing of the promissory note together with the other officers of the corporation was expected, as the other officers also did. It cannot therefore be said that the promissory note was simulated. The same is a contract validly entered into, which the parties are obliged to comply with.[40] (Citations omitted)

The Court of Appeals ruled that in the absence of any competent proof, Ruperto V. Tankeh did not commit any fraud. Petitioner Alejandro V. Tankeh was unable to prove by a preponderance of evidence that fraud or deceit had been employed by Ruperto to make him sign the promissory note. The Court of Appeals reasoned that:

Fraud is never presumed but must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's evidence and not upon the weakness of the opponent's defense. The plaintiff clearly failed to discharge such burden.[41] (Citations omitted)

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[40] *Id*. at 56-57.

[41] *Id*. at 58.

With that, the Court of Appeals reversed and set aside the judgment and ordered that plaintiff's Complaint be dismissed. Petitioner filed a Motion for Reconsideration dated October 25, 2005 that was denied in a Resolution[42] promulgated on February 9, 2006.

Hence, this Petition was filed.

In this Petition, Alejandro V. Tankeh stated that the Court of Appeals seriously erred and gravely abused its discretion in acting and deciding as if the evidence stated in the Decision of the Regional Trial Court did not exist. He averred that the ruling of lack of cause of action had no leg to stand on, and the Court of Appeals had unreasonably, whimsically, and capriciously ignored the ample evidence on record proving the fraud and deceit perpetrated on the petitioner by the respondent. He stated that the appellate court failed to appreciate the findings of fact of the lower court, which are generally binding on appellate courts. He also maintained that he is entitled to damages and attorney's fees due to the deceit and machinations committed by the respondent.

In his Memorandum, respondent Ruperto V. Tankeh averred that petitioner had chosen the wrong remedy. He ought to have filed a special civil action of *certiorari* and not a Petition for Review. Petitioner raised questions of fact, and not questions of law, and this required the review or evaluation of evidence. However, this is not the function of this Court, as it is not a trier of facts. He also contended that petitioner had voluntarily entered into the loan agreement and the position with Sterling Shipping Lines, Inc. and that he did not fraudulently induce the petitioner to enter into the contract.

Respondents Development Bank of the Philippines and Asset Privatization Trust also contended that petitioner's mode of appeal had been wrong, and he had actually sought a special civil action of *certiorari*. This alone merited its dismissal.

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[42] *Id*. at 61.

The main issue in this case is whether the Court of Appeals erred in finding that respondent Rupert V. Tankeh did not commit fraud against the petitioner.

The Petition is partly granted.

Before disposing of the main issue in this case, this Court needs to address a procedural issue raised by respondents. Collectively, respondents argue that the Petition is actually one of *certiorari* under Rule 65 of the Rules of Court[43] and not a Petition for Review on *Certiorari* under Rule 45.[44] Thus, petitioner's failure to show that there was neither appeal nor any other plain, speedy or adequate remedy merited the dismissal of the Complaint.

Contrary to respondent's imputation, the remedy contemplated by petitioner is clearly that of a Rule 45 Petition for Review. In *Tagle v. Equitable PCI Bank*,[45] this Court made the distinction between a Rule 45 Petition for Review on *Certiorari* and a Rule 65 Petition for *Certiorari*:

Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v.*

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[43] RULES OF COURT, Rule 65, Sec. 1:

Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[44] RULES OF COURT, Rule 45, Sec. 1:

Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[45] G.R. No. 172299, April 22, 2008, 552 SCRA 424, 440-441.

NLRC, we explained the simple reason for the rule in this light: When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed x x x. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*.

x x x x x x x x x

Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact a mistake of judgment, appeal is the remedy.

In this case, what petitioner seeks to rectify may be construed as errors of judgment of the Court of Appeals. These errors pertain to the petitioner's allegation that the appellate court failed to uphold the findings of facts of the lower court. He does not impute any error with respect to the Court of Appeals' exercise of jurisdiction. As such, this Petition is simply a continuation of the appellate process where a case is elevated from the trial court of origin, to the Court of Appeals, and to this Court via Rule 45.

Contrary to respondents' arguments, the allegations of petitioner that the Court of Appeals "committed grave abuse of discretion"[46] did not *ipso facto* render the intended remedy that of *certiorari* under Rule 65 of the Rules of Court.[47]

In any case, even if the Petition is one for the special civil action of *certiorari*, this Court has the discretion to treat a

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[46] *Rollo*, p. 18.

[47] RULES OF COURT, Rule 65, Section 1:

Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Rule 65 Petition for *Certiorari* as a Rule 45 Petition for Review on *Certiorari*. This is allowed if (1) the Petition is filed within the reglementary period for filing a Petition for review; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.[48] When this Court exercises this discretion, there is no need to comply with the requirements provided for in Rule 65.

In this case, petitioner filed his Petition within the reglementary period of filing a Petition for Review.[49] His Petition assigns errors of judgment and appreciation of facts and law on the part of the Court of Appeals. Thus, even if the Petition was designated as one that sought the remedy of *certiorari*, this Court may exercise its discretion to treat it as a Petition for Review in the interest of substantial justice.

We now proceed to the substantive issue, that of petitioner's imputation of fraud on the part of respondents. We are required by the circumstances of this case to review our doctrines of fraud that are alleged to be present in contractual relations.

Types of Fraud in Contracts

Fraud is defined in Article 1338 of the Civil Code as:

> x x x fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

This is followed by the articles which provide legal examples and illustrations of fraud.

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[48] *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, August 11, 2010, 628 SCRA 154, 168 citing *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

[49] The petitioner received the denial of his Motion for Reconsideration on February 15, 2006. Petitioner had until March 2, 2006 within which to file the Petition. Petitioner filed a Motion for Extension of Time to File Petition for a period of thirty (30) days, which was granted by the Court. Petitioner had until April 2, 2006 to file his Petition. The Court received the Petition on March 20, 2006.

Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)

Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)

Art. 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (n)

Art. 1342. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual. (n)

Art. 1343. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

The distinction between fraud as a ground for rendering a contract voidable or as basis for an award of damages is provided in Article 1344:

In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages. (1270)

There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract voidable.

In *Geraldez v. Court of Appeals*,[50] this Court held that:

This fraud or *dolo* which is present or employed at the time of birth or perfection of a contract may either be *dolo causante* or *dolo incidente*. The first, or causal fraud referred to in Article 1338, are those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into the contract. *Dolo incidente*, or incidental fraud which is referred to in Article 1344, are those which are not serious

[50] G.R. No. 108253, February 23, 1994, 230 SCRA 320.

in character and without which the other party would still have entered into the contract. *Dolo causante* determines or is the essential cause of the consent, while *dolo incidente* refers only to some particular or accident of the obligation. The effects of *dolo causante* are the nullity of the contract and the indemnification of damages, and *dolo incidente* also obliges the person employing it to pay damages.[51]

In *Solidbank Corporation v. Mindanao Ferroalloy Corporation, et al.*,[52] this Court elaborated on the distinction between *dolo causante* and *dolo incidente*:

> Fraud refers to all kinds of deception — whether through insidious machination, manipulation, concealment or misrepresentation — that would lead an ordinarily prudent person into error after taking the circumstances into account. In contracts, a fraud known as *dolo causante* or causal fraud is basically a deception used by one party prior to or simultaneous with the contract, in order to secure the consent of the other. Needless to say, the deceit employed must be serious. In contradistinction, only some particular or accident of the obligation is referred to by incidental fraud or *dolo incidente*, or that which is not serious in character and without which the other party would have entered into the contract anyway.[53]

Under Article 1344, the fraud must be serious to annul or avoid a contract and render it voidable. This fraud or deception must be so material that had it not been present, the defrauded party would not have entered into the contract. In the recent case of *Spouses Carmen S. Tongson and Jose C. Tongson, et al., v. Emergency Pawnshop Bula, Inc.*,[54] this Court provided some examples of what constituted *dolo causante* or causal fraud:

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[51] *Id*. at 336 *citing* A.M. TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 509 (Vol. IV, 1986) and JURADO, *COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS*, 438 (1987 Ed.).

[52] 502 Phil. 651, 669 (2005).

[53] *Id*. at 669.

[54] G.R. No. 167874, January 15, 2010, 610 SCRA 150.

Some of the instances where this Court found the existence of causal fraud include: (1) when the seller, who had no intention to part with her property, was "tricked into believing" that what she signed were papers pertinent to her application for the reconstitution of her burned certificate of title, not a deed of sale; (2) when the signature of the authorized corporate officer was forged; or (3) when the seller was seriously ill, and died a week after signing the deed of sale raising doubts on whether the seller could have read, or fully understood, the contents of the documents he signed or of the consequences of his act.[55] (Citations omitted)

However, Article 1344 also provides that if fraud is incidental, it follows that this type of fraud is *not serious enough so as to render the original contract voidable*.

A classic example of *dolo incidente* is *Woodhouse v. Halili*.[56] In this case, the plaintiff Charles Woodhouse entered into a written agreement with the defendant Fortunato Halili to organize a partnership for the bottling and distribution of soft drinks. However, the partnership did not come into fruition, and the plaintiff filed a Complaint in order to execute the partnership. The defendant filed a Counterclaim, alleging that the plaintiff had defrauded him because the latter was not actually the owner of the franchise of a soft drink bottling operation. Thus, defendant sought the nullification of the contract to enter into the partnership. This Court concluded that:

x x x from all the foregoing x x x plaintiff did actually represent to defendant that he was the holder of the exclusive franchise. The defendant was made to believe, and he actually believed, that plaintiff had the exclusive franchise. x x x The record abounds with circumstances indicative that the fact that the principal consideration, the main cause that induced defendant to enter into the partnership agreement with plaintiff, was the ability of plaintiff to get the exclusive franchise to bottle and distribute for the defendant or for the partnership. x x x The defendant was, therefore, led to the belief that plaintiff had the exclusive franchise, but that the same was to be secured for or transferred to the partnership. The plaintiff no longer had the exclusive franchise, or the option thereto, at the time the

[55] *Id.* at 160.

[56] 93 Phil. 526 (1953).

contract was perfected. But while he had already lost his option thereto (when the contract was entered into), the principal obligation that he assumed or undertook was to secure said franchise for the partnership, as the bottler and distributor for the Mission Dry Corporation. We declare, therefore, that if he was guilty of a false representation, this was not the *causal* consideration, or the principal inducement, that led plaintiff to enter into the partnership agreement.

But, on the other hand, this supposed ownership of an exclusive franchise was actually the consideration or price plaintiff gave in exchange for the share of 30 percent granted him in the net profits of the partnership business. Defendant agreed to give plaintiff 30 per cent share in the net profits because he was transferring his exclusive franchise to the partnership. x x x.

Plaintiff had never been a bottler or a chemist; he never had experience in the production or distribution of beverages. As a matter of fact, when the bottling plant being built, all that he suggested was about the toilet facilities for the laborers.

We conclude from the above that while the representation that plaintiff had the exclusive franchise did not vitiate defendant's consent to the contract, it was used by plaintiff to get from defendant a share of 30 per cent of the net profits; in other words, by pretending that he had the exclusive franchise and promising to transfer it to defendant, he obtained the consent of the latter to give him (plaintiff) a big slice in the net profits. This is the *dolo incidente* defined in article 1270 of the Spanish Civil Code, because it was used to get the other party's consent to a big share in the profits, an incidental matter in the agreement.[57]

Thus, this Court held that the original agreement may not be declared null and void. This Court also said that the plaintiff had been entitled to damages because of the refusal of the defendant to enter into the partnership. However, the plaintiff was also held liable for damages to the defendant for the misrepresentation that the former had the exclusive franchise to soft drink bottling operations.

To summarize, if there is fraud in the performance of the contract, then this fraud will give rise to damages. If the fraud

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[57] *Id.* at 536-538.

did not compel the imputing party to give his or her consent, it may not serve as the basis to annul the contract, which exhibits *dolo causante*. However, the party alleging the existence of fraud may prove the existence of *dolo incidente.* This may make the party against whom fraud is alleged liable for damages.

Quantum of Evidence to Prove the Existence of Fraud and the Liability of the Parties

The Civil Code, however, does not mandate the quantum of evidence required to prove actionable fraud, either for purposes of annulling a contract (*dolo causante*) or rendering a party liable for damages (*dolo incidente)*. The *definition* of fraud is different from the *quantum of evidence* needed to prove the existence of fraud. Article 1338 provides the legal definition of fraud. Articles 1339 to 1343 constitute the behavior and actions that, when in conformity with the legal provision, may constitute fraud.

Jurisprudence has shown that in order to constitute fraud that provides basis to annul contracts, it must fulfill two conditions. First, the fraud must be *dolo causante* or it must be fraud in obtaining the consent of the party. Second, this fraud must be proven by clear and convincing evidence. In *Viloria v. Continental Airlines*,[58] this Court held that:

> Under Article 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In order that fraud may vitiate consent, it must be the causal (*dolo causante*), not merely the incidental (*dolo incidente*), inducement to the making of the contract. In *Samson v. Court of Appeals,* causal fraud was defined as "a deception employed by one party prior to or simultaneous to the contract in order to secure the consent of the other."
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> Also, fraud must be serious and its existence must be established by clear and convincing evidence. (Citations omitted)[59]

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[58] G.R. No. 188288, January 16, 2012, 663 SCRA 57.

[59] *Id.* at 81.

In *Viloria*, this Court cited *Sierra v. Court of Appeals*[60] stating that mere preponderance of evidence will not suffice in proving fraud.

> Fraud must also be discounted, for according to the Civil Code:
>
> Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which without them, he would not have agreed to.
>
> Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.
>
> To quote Tolentino again, the "misrepresentation constituting the fraud must be established by full, clear, and convincing evidence, and not merely by a preponderance thereof. The deceit must be serious. The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error; that which cannot deceive a prudent person cannot be a ground for nullity. The circumstances of each case should be considered, taking into account the personal conditions of the victim."[61]

Thus, to annul a contract on the basis of *dolo causante*, the following must happen: First, the deceit must be serious or sufficient to impress and lead an ordinarily prudent person to error. If the allegedly fraudulent actions do not deceive a prudent person, given the circumstances, the deceit here cannot be considered sufficient basis to nullify the contract. In order for the deceit to be considered serious, it is necessary and essential to obtain the consent of the party imputing fraud. To determine whether a person may be sufficiently deceived, the personal conditions and other factual circumstances need to be considered.

Second, the standard of proof required is clear and convincing evidence. This standard of proof is derived from American common law. It is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence

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[60] G.R. No. 90270, July 24, 1992, 211 SCRA 785.

[61] *Id.* at 793 *citing* A.M. TOLENTINO, *COMMENTARIES ON THE CIVIL CODE* 508, 514 (Vol. IV, 1991).

(for civil cases). The degree of believability is higher than that of an ordinary civil case. Civil cases only require a preponderance of evidence to meet the required burden of proof. However, when fraud is alleged in an ordinary civil case involving contractual relations, an entirely different standard of proof needs to be satisfied. The imputation of fraud in a civil case requires the presentation of clear and convincing evidence. Mere allegations will not suffice to sustain the existence of fraud. The burden of evidence rests on the part of the plaintiff or the party alleging fraud. The quantum of evidence is such that fraud *must* be clearly and convincingly shown.

The Determination of the Existence of Fraud in the Present Case

We now determine the application of these doctrines regarding fraud to ascertain the liability, if any, of the respondents.

Neither law nor jurisprudence distinguishes whether it is *dolo incidente* or *dolo causante* that must be proven by clear and convincing evidence. It stands to reason that both *dolo incidente* and *dolo causante* must be proven by clear and convincing evidence. The only question is whether this fraud, when proven, may be the basis for making a contract voidable (*dolo causante*), or for awarding damages (*dolo incidente*), or both.

Hence, there is a need to examine all the circumstances thoroughly and to assess the personal circumstances of the party alleging fraud. This may require a review of the case facts and the evidence on record.

In general, this Court is not a trier of facts. It makes its rulings based on applicable law and on standing jurisprudence. The findings of the Court of Appeals are generally binding on this Court provided that these are supported by the evidence on record. In the recent case of *Medina v. Court of Appeals*,[62] this Court held that:

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[62] G.R. No. 137582, August 29, 2012, 679 SCRA 191.

It is axiomatic that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. **When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:** (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) **When the findings of fact are conflicting;** (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Emphasis provided)[63]

The trial court and the Court of Appeals had appreciated the facts of this case differently.

The Court of Appeals was not correct in saying that petitioner could only raise fraud as a ground to annul his participation in the contract as against respondent Rupert V. Tankeh, since the petitioner did not make any categorical allegation that respondents Development Bank of the Philippines, Sterling Shipping Lines, Inc., and Asset Privatization Trust had acted fraudulently. Admittedly, it was only in the Petition before this Court that the petitioner had made the allegation of a "well-orchestrated fraud"[64] by

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[63] *Id. citing Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

[64] *Rollo,* p. 15.

the respondents. However, Rule 10, Section 5 of the Rules of Civil Procedure provides that:

Amendment to conform to or authorize presentation of evidence. — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (5a)

In this case, the commission of fraud was an issue that had been tried with the *implied* consent of the respondents, particularly Sterling Shipping Lines, Inc., Asset Privatization Trust, Development Bank of the Philippines, and Arenas. Hence, although there is a lack of a categorical allegation in the pleading, the courts may still be allowed to ascertain fraud.

The records will show why and how the petitioner agreed to enter into the contract with respondent Ruperto V. Tankeh:

ATTY. VELAYO:

How did you get involved in the business of the Sterling Shipping Lines, Incorporated" [sic]

DR. TANKEH: Sometime in the year 1980, I was approached by Ruperto Tankeh mentioning to me that he is operating a new shipping lines business and he is giving me free one thousand shares (1,000) to be a director of this new business which is worth one million pesos (1,000,000.00.),

ATTY. VELAYO:

Are you related to Ruperto V. Tankeh?

DR. TANKEH: Yes, sir. He is my younger brother.

ATTY. VELAYO:

Did you accept the offer?

DR. TANKEH: I accepted the offer based on his promise to me that I will be made a part of the administration staff so that I can oversee the operation of the business plus my son, the eldest one who is already a graduate lawyer with a couple of years of experience in the law firm of Romulo Ozaeta Law Offices (TSN, April 28, 1988, pp. 10-11.).[65]

The Second Amended Complaint of petitioner is substantially reproduced below to ascertain the claim:

x x x x x x x x x

2. That on May 12, 1981, due to the deceit and fraud exercised by Ruperto V. Tankeh, plaintiff, together with Vicente L. Arenas, Jr. and Jose Maria Vargas, signed a promissory note in favor of the defendant DBP, wherein plaintiff bound himself to jointly and severally pay the DBP the amount of the mortgage loan. This document insofar as plaintiff is concerned is a simulated document considering that plaintiff was never a real stockholder of the Sterling Shipping Lines, Inc.

3. That although plaintiff's name appears in the records of Sterling Shipping Lines, Inc. as one of its incorporators, the truth is that he had never invested any amount in said corporation and that he had never been an actual member of said corporation. All the money supposedly invested by him were put by defendant Ruperto V. Tankeh. Thus, all the shares of stock under his name in fact belongs to Ruperto V. Tankeh. Plaintiff was invited to attend the board meeting of the Sterling Shipping Lines, Inc. only once, which was for the sole purpose of introducing him to the two directors of the DBP, namely, Mr. Jesus Macalinag and Mr. Gil Corpus. Thereafter he was never invited again. Plaintiff was never compensated by the Sterling Shipping Lines, Inc. for his being a so-called director and stockholder. It is clear therefore that the DBP knew all along that plaintiff was not a true stockholder of the company.

4. That THE DECEIT OF DEFENDANT RUPERTO V. TANKEH IS SHOWN BY THE FACT THAT when the Sterling Shipping Lines, Inc. was organized in 1980, Ruperto V. Tankeh promised plaintiff that he would be a part of the administration staff so that he could oversee the operation of the company. He was also promised that his son, a

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[65] *Rollo,* pp. 205-206.

lawyer, would be given a position in the company. None of these promises was complied with. In fact, he was not even allowed to find out the data about the income and expenses of the company.

5. THAT THE DECEIT OF RUPERTO V. TANKEH IS ALSO SHOWN BY THE FACT THAT PLAINTIFF WAS INVITED TO ATTEND THE BOARD MEETING OF THE STERLING SHIPPING LINES, INC. ONLY ONCE, WHICH WAS FOR THE SOLE PUPOSE (SIC) OF INTRODUCING HIM TO THE TWO DIRECTORS OF THE DBP IN THE BOARD OF THE STERLING SHIPPING LINES, INC., NAMELY, MR. JESUS MACALINAG AND MR. GIL CORPUS. THEREAFTER HE WAS NEVER INVITED AGAIN. PLAINTIFF WAS NEVER COMPENSATED BY THE STERLING SHIPPING LINES, INC. FOR HIS BEING A SO-CALLED DIRECTOR AND STOCKHOLDER.

6. That in 1983, upon realizing that he was only being made a tool to realize the purposes of Ruperto V. Tankeh, plaintiff officially informed the company by means of a letter dated June 15, 1983 addressed to the company that he has severed his connection with the company, and demanded among others, that the company board of directors pass a resolution releasing him from any liabilities especially with reference to the loan mortgage contract with the DBP and to notify the DBP of his severance from the Sterling Shipping Lines, Inc.

8-A. THAT A WEEK AFTER SENDING THE ABOVE LETTER, PLAINTIFF MADE EARNEST EFFORTS TOWARDS A COMPROMISE BETWEEN HIM AND HIS BROTHER RUPERTO V. TANKEH, WHICH EFFORTS WERE SPURNED BY RUPERTO V. TANKEH, AND ALSO AFTER THE NEWS OF THE SALE OF THE "STERLING ACE" WAS PUBLISHED AT THE NEWSPAPER [sic], PLAINTIFF TRIED ALL EFFORTS TO CONTACT RUPERTO V. TANKEH FOR THE PURPOSE OF ARRIVING AT SOME COMPROMISE, BUT DEFENDANT RUPERTO V. TANKEH AVOIDED ALL CONTACTS [sic] WITH THE PLAINTIFF UNTIL HE WAS FORCED TO SEEK LEGAL ASSISTANCE FROM HIS LAWYER.[66]

In his Answer, respondent Ruperto V. Tankeh stated that:

COMES NOW defendant RUPERTO V. TANKEH, through the undersigned counsel, and to the Honorable Court, most respectfully alleges:

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[66] *Id*. at 85-87.

x x x x x x x x x

3. That paragraph 4 is admitted that herein answering defendant together with the plaintiff signed the promissory note in favor of DBP but specifically denied that the same was done through deceit and fraud of herein answering defendant the truth being that plaintiff signed said promissory note voluntarily and with full knowledge of the consequences thereof; it is further denied that said document is a simulated document as plaintiff was never a real stockholder of the company, the truth being those alleged in the special and affirmative defenses;

4. That paragraphs 5,6,7,8 and 8-A are specifically denied specially the imputation of deceit and fraud against herein answering defendant, the truth being those alleged in the special and affirmative defenses;

x x x x x x x x x

SPECIAL AND AFFIRMATIVE DEFENSES x x x

8. The complaint states no cause of action as against herein answering defendant;

9. The Sterling Shipping Lines, Inc. was a legitimate company organized in accordance with the laws of the Republic of the Philippines with the plaintiff as one of the incorporators;

10. Plaintiff as one of the incorporators and directors of the board was fully aware of the by-laws of the company and if he attended the board meeting only once as alleged, the reason thereof was known only to him;

11. The Sterling Shipping Lines, Inc. being a corporation acting through its board of directors, herein answering defendant could not have promised plaintiff that he would be a part of the administration staff;

12. As member of the board, plaintiff had all the access to the data and records of the company; further, as alleged in the complaint, plaintiff has a son who is a lawyer who could have advised him;

13. Assuming plaintiff wrote a letter to the company to sever his connection with the company, he should have been aware that all he had to do was sell all his holdings in the company;

> 14. Herein answering defendant came to know only of plaintiff's alleged predicament when he received the summons and copy of the complaint; x x x.[67]

An assessment of the allegations in the pleadings and the findings of fact of both the trial court and appellate court based on the evidence on record led to the conclusion that there had been no *dolo causante* committed against the petitioner by Ruperto V. Tankeh.

The petitioner had given his consent to become a shareholder of the company without contributing a single peso to pay for the shares of stock given to him by Ruperto V. Tankeh. This fact was admitted by both petitioner and respondent in their respective pleadings submitted to the lower court.

In his Amended Complaint,[68] the petitioner admitted that "he had never invested any amount in said corporation and that he had never been an actual member of said corporation. All the money supposedly invested by him were put up by defendant Ruperto V. Tankeh."[69] This fact alone should have already alerted petitioner to the gravity of the obligation that he would be undertaking as a member of the board of directors and the attendant circumstances that this undertaking would entail. It also does not add any evidentiary weight to strengthen petitioner's claim of fraud. If anything, it only strengthens the position that petitioner's consent was not obtained through insidious words or deceitful machinations.

Article 1340 of the Civil Code recognizes the reality of some exaggerations in trade which negates fraud. It reads:

> Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent.

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[67] *Id*. at 99-100.

[68] *Id*. at 76.

[69] *Id*. at 78.

Given the standing and stature of the petitioner, he was in a position to ascertain more information about the contract.

Songco v. Sellner[70] serves as one of the key guidelines in ascertaining whether a party is guilty of fraud in obtaining the consent of the party claiming that fraud existed. The plaintiff Lamberto Songco sought to recover earnings from a promissory note that defendant George Sellner had made out to him for payment of Songco's sugar cane production. Sellner claimed that he had refused to pay because Songco had promised that the crop would yield 3,000 piculs of sugar, when in fact, only 2,017 piculs of sugar had been produced. This Court held that Sellner would still be liable to pay the promissory note, as follows:

> Notwithstanding the fact that Songco's statement as to the probable output of his crop was disingenuous and uncandid, we nevertheless think that Sellner was bound and that he must pay the price stipulated. The representation in question can only be considered matter of opinion as the cane was still standing in the field, and the quantity of the sugar it would produce could not be known with certainty until it should be harvested and milled. Undoubtedly Songco had better experience and better information on which to form an opinion on this question than Sellner. Nevertheless the latter could judge with his own eyes as to the character of the cane, and it is shown that he measured the fields and ascertained that they contained 96 1/2 hectares.
>
> x x x x x x x x x
>
> The law allows considerable latitude to seller's statements, or dealer's talk; and experience teaches that it is exceedingly risky to accept it at its face value. The refusal of the seller to warrant his estimate should have admonished the purchaser that that estimate was put forth as a mere opinion; and we will not now hold the seller to a liability equal to that which would have been created by a warranty, if one had been given.
>
> x x x x x x x x x
>
> It is not every false representation relating to the subject matter of a contract which will render it void. It must be as to matters of

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[70] 37 Phil. 254 (1917).

fact substantially affecting the buyer's interest, not as to matters of opinion, judgment, probability, or expectation. (*Long vs. Woodman*, 58 Me., 52; *Hazard vs. Irwin*, 18 Pick. [Mass.], 95; *Gordon vs. Parmelee*, 2 Allen [Mass.], 212; *Williamson vs. McFadden*, 23 Fla., 143, 11 Am. St. Rep., 345.) When the purchaser undertakes to make an investigation of his own, and the seller does nothing to prevent this investigation from being as full as he chooses to make it, the purchaser cannot afterwards allege that the seller made misrepresentations. (*National Cash Register Co. vs. Townsend*, 137 N. C., 652, 70 L. R. A., 349; *Williamson vs. Holt*, 147 N. C., 515.)

We are aware that where one party to a contract, having special or expert knowledge, takes advantage of the ignorance of another to impose upon him, the false representation may afford ground for relief, though otherwise the injured party would be bound. But we do not think that the fact that Songco was an experienced farmer, while Sellner was, as he claims, a mere novice in the business, brings this case within that exception.[71]

The following facts show that petitioner was fully aware of the magnitude of his undertaking:

First, petitioner was fully aware of the financial reverses that Sterling Shipping Lines, Inc. had been undergoing, and he took great pains to release himself from the obligation.

Second, his background as a doctor, as a bank organizer, and as a businessman with experience in the textile business and real estate should have apprised him of the irregularity in the contract that he would be undertaking. This meant that at the time petitioner gave his consent to become a part of the corporation, he had been fully aware of the circumstances and the risks of his participation. Intent is determined by the acts.

Finally, the records showed that petitioner had been fully aware of the effect of his signing the promissory note. The bare assertion that he was not privy to the records cannot counteract the fact that petitioner himself had admitted that after he had severed ties with his brother, he had written a letter seeking to reach an amicable settlement with respondent Rupert V. Tankeh. Petitioner's actions defied his claim of a

[71] *Id.* at 257-259.

complete lack of awareness regarding the circumstances and the contract he had been entering.

The required standard of proof – clear and convincing evidence – was not met. There was no *dolo causante* or fraud used to obtain the petitioner's consent to enter into the contract. Petitioner had the opportunity to become aware of the facts that attended the signing of the promissory note. He even admitted that he has a lawyer-son who the petitioner had hoped would assist him in the administration of Sterling Shipping Lines, Inc. The totality of the facts on record belies petitioner's claim that fraud was used to obtain his consent to the contract given his personal circumstances and the applicable law.

However, in refusing to allow petitioner to participate in the management of the business, respondent Ruperto V. Tankeh was liable for the commission of *incidental* fraud. In *Geraldez*, this Court defined incidental fraud as "those which are not serious in character and without which the other party would still have entered into the contract."[72]

Although there was no fraud that had been undertaken to obtain petitioner's consent, there was fraud in the *performance* of the contract. The records showed that petitioner had been unjustly excluded from participating in the management of the affairs of the corporation. This exclusion from the management in the affairs of Sterling Shipping Lines, Inc. constituted fraud incidental to the performance of the obligation.

This can be concluded from the following circumstances.

First, respondent raised in his Answer that petitioner "could not have promised plaintiff that he would be a part of the administration staff"[73] since petitioner had been fully aware that, as a corporation, Sterling Shipping Lines, Inc. acted through its board of directors. Respondent admitted that petitioner had been "an incorporator and member of the board of directors"[74]

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[72] *Geraldez v. Court of Appeals*, supra note 50, at 336.

[73] *Rollo*, p. 100.

[74] *Id*.

and that petitioner "was fully aware of the by-laws of the company."[75] It was incumbent upon respondent to act in good faith and to ensure that petitioner would not be excluded from the affairs of Sterling Shipping Lines, Inc. After all, respondent asserted that petitioner had entered into the contract voluntarily and with full consent.

Second, respondent claimed that if petitioner was intent on severing his connection with the company, all that petitioner had to do was to sell all his holdings in the company. Clearly, the respondent did not consider the fact that the sale of the shares of stock alone did not free petitioner from his liability to Development Bank of the Philippines or Asset Privatization Trust, since the latter had signed the promissory and had still been liable for the loan. A sale of petitioners' shares of stock would not have negated the petitioner's responsibility to pay for the loan.

Third, respondent Ruperto V. Tankeh did not rebuff petitioner's claim that the latter only received news about the sale of the vessel M/V Sterling Ace through the media and not as one of the board members or directors of Sterling Shipping Lines, Inc.

All in all, respondent Ruperto V. Tankeh's bare assertion that petitioner had access to the records cannot discredit the fact that the petitioner had been effectively deprived of the opportunity to actually engage in the operations of Sterling Shipping Lines, Inc. Petitioner had a reasonable expectation that the same level of engagement would be present for the duration of their working relationship. This would include an undertaking in good faith by respondent Ruperto V. Tankeh to be transparent with his brother that he would not automatically be made part of the company's administration.

However, this Court finds there is nothing to support the assertion that Sterling Shipping Lines, Inc. and Arenas committed incidental fraud and must be held liable. Sterling Shipping Lines, Inc. acted through its board of directors, and the liability of respondent Tankeh cannot be imposed on Sterling Shipping Lines,

[75] *Id.*

Inc. The shipping line has a separate and distinct personality from its officers, and petitioner's assertion that the corporation conspired with the respondent Ruperto V. Tankeh to defraud him is not supported by the evidence and the records of the case.

As for Arenas, in *Lim Tanhu v. Remolete*,[76] this Court held that:

> [In] all instances where a common cause of action is alleged against several defendants, some of whom answer and the others do not, the latter or those in default acquire a vested right not only to own the defense interposed in the answer of their co-defendant or co-defendants not in default but also to expect a result of the litigation totally common with them in kind and in amount whether favorable or unfavorable. The substantive unity of the plaintiffs' cause against all the defendants is carried through to its adjective phase as ineluctably demanded by the homogeneity and indivisibility of justice itself.[77]

As such, despite Arenas' failure to submit his Answer to the Complaint or his declaration of default, his liability or lack thereof is concomitant with the liability attributed to his co-defendants or co-respondents. However, unlike respondent Ruperto V. Tankeh's liability, there is no action or series of actions that may be attributed to Arenas that may lead to an inference that he was liable for incidental fraud. In so far as the required evidence for both Sterling Shipping Lines, Inc. and Arenas is concerned, there is no basis to justify the claim of incidental fraud.

In addition, respondents Development Bank of the Philippines and Asset Privatization Trust or Privatization and Management Office cannot be held liable for fraud. Incidental fraud cannot be attributed to the execution of their actions, which were undertaken pursuant to their mandated functions under the law. "Absent convincing evidence to the contrary, the presumption

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[76] G.R. No. L-40098, August 29, 1975, 66 SCRA 425.

[77] *Id*. at 458.

of regularity in the performance of official functions has to be upheld."[78]

The Obligation to Pay Damages

As such, respondent Ruperto V. Tankeh is liable to his older brother, petitioner Alejandro, for damages. The obligation to pay damages to petitioner is based on several provisions of the Civil Code.

Article 1157 enumerates the sources of obligations.

Article 1157. Obligations arise from:

(1) Law;

(2) Contracts;

(3) Quasi-contracts;

(4) Acts or omissions punished by law; and

(5) Quasi-delicts. (1089a)

This enumeration does not preclude the possibility that a single action may serve as the source of several obligations to pay damages in accordance with the Civil Code. Thus, the liability of respondent Ruperto V. Tankeh is based on the law, under Article 1344, which provides that the commission of incidental fraud obliges the person employing it to pay damages.

In addition to this obligation as the result of the contract between petitioner and respondents, there was also a patent abuse of right on the part of respondent Tankeh. This abuse of right is included in Articles 19 and 21 of the Civil Code which provide that:

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 21. Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

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[78] *People v. Lapura,* 325 Phil. 346, 352 (1996).

Respondent Ruperto V. Tankeh abused his right to pursue undertakings in the interest of his business operations. This is because of his failure to at least act in good faith and be transparent with petitioner regarding Sterling Shipping Lines, Inc.'s daily operations.

In *National Power Corporation v. Heirs of Macabangkit Sangkay*,[79] this Court held that:

> When a right is exercised in a manner not conformable with the norms enshrined in Article 19 and like provisions on human relations in the *Civil Code*, and the exercise results to [sic] the damage of [sic] another, a legal wrong is committed and the wrongdoer is held responsible.[80]

The damage, loss, and injury done to petitioner are shown by the following circumstances.

First, petitioner was informed by Development Bank of the Philippines that it would still pursue his liability for the payment of the promissory note. This would not have happened if petitioner had allowed himself to be fully apprised of Sterling Shipping Lines, Inc.'s financial straits and if he felt that he could still participate in the company's operations. There is no evidence that respondent Ruperto V. Tankeh showed an earnest effort to at least allow the possibility of making petitioner part of the administration a reality. The respondent was the brother of the petitioner and was also the primary party that compelled petitioner Alejandro Tankeh to be solidarily bound to the promissory note. Ruperto V. Tankeh should have done his best to ensure that he had exerted the diligence to comply with the obligations attendant to the participation of petitioner.

Second, respondent Ruperto V. Tankeh's refusal to enter into an agreement or settlement with petitioner after the latter's discovery of the sale of the M/V Sterling Ace was an action that constituted bad faith. Due to Ruperto's refusal, his brother,

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[79] G.R. No. 165828, August 24, 2011, 656 SCRA 60.

[80] *Id.* at 83 citing *Cebu Country Club, Inc. v. Elizagaque*, G.R. No. 160273, January 18, 2008, 542 SCRA 65, 74-75.

petitioner Alejandro, became solidarily liable for an obligation that the latter could have avoided if he had been given an opportunity to participate in the operations of Sterling Shipping Lines, Inc. The simple sale of all of petitioner's shares would not have solved petitioner's problems, as it would not have negated his liability under the terms of the promissory note.

Finally, petitioner is still bound to the creditors of Sterling Shipping Lines, Inc., namely, public respondents Development Bank of the Philippines and Asset Privatization Trust. This is an additional financial burden for petitioner. Nothing in the records suggested the possibility that Development Bank of the Philippines or Asset Privatization Trust through the Privatization Management Office will not pursue or is precluded from pursuing its claim against the petitioner. Although petitioner Alejandro voluntarily signed the promissory note and became a stockholder and board member, respondent should have treated him with fairness, transparency, and consideration to minimize the risk of incurring grave financial reverses.

In *Francisco v. Ferrer*,[81] this Court ruled that moral damages may be awarded on the following bases:

> To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.
>
> Under the provisions of this law, in *culpa contractual* or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation and, exceptionally, when the act of breach of contract itself is constitutive of tort resulting in physical injuries.
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> Moral damages may be awarded in breaches of contracts where the defendant acted fraudulently or in bad 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.

[81] 405 Phil. 741 (2001).

x x x x x x x x x

The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or will ill motive. Mere allegations of besmirched reputation, embarrassment and sleepless nights are insufficient to warrant an award for moral damages. It must be shown that the proximate cause thereof was the unlawful act or omission of the [private respondent] petitioners.

An award of moral damages would require certain conditions to be met, to wit: (1) *first*, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) *second*, there must be culpable act or omission factually established; (3) *third*, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) *fourth*, the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. (Citations omitted)[82]

In this case, the four elements cited in *Francisco* are present. First, petitioner suffered an injury due to the mental duress of being bound to such an onerous debt to Development Bank of the Philippines and Asset Privatization Trust. Second, the wrongful acts of undue exclusion done by respondent Ruperto V. Tankeh clearly fulfilled the same requirement. Third, the proximate cause of his injury was the failure of respondent Ruperto V. Tankeh to comply with his obligation to allow petitioner to either participate in the business or to fulfill his fiduciary responsibilities with candor and good faith. Finally, Article 2219[83] of the Civil Code

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[82] *Id*. at 748-750.

[83] CIVIL CODE, Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries; (3) Seduction, abduction, rape, or other lascivious acts; (4) Adultery or concubinage; (5) Illegal or arbitrary detention or arrest; (6) Illegal search; (7) Libel, slander or any other form of defamation; (8) Malicious prosecution; (9) Acts mentioned in Article 309; (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

provides that moral damages may be awarded in case of acts and actions referred to in Article 21, which, as stated, had been found to be attributed to respondent Ruperto V. Tankeh.

In the Appellant's Brief,[84] petitioner asked the Court of Appeals to demand from respondents, except from respondent Asset Privatization Trust, the amount of five million pesos (₱5,000,000.00). This Court finds that the amount of five hundred thousand pesos (₱500,000.00) is a sufficient amount of moral damages.

In addition to moral damages, this Court may also impose the payment of exemplary damages. Exemplary damages are discussed in Article 2229 of the Civil Code, as follows:

ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction of the public good, in addition to moral, temperate, liquidated or compensatory damages.

Exemplary damages are further discussed in Articles 2233 and 2234, particularly regarding the pre-requisites of ascertaining moral damages and the fact that it is discretionary upon this Court to award them or not:

ART. 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.

ART. 2234. While the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded
x x x

The purpose of exemplary damages is to serve as a deterrent to future and subsequent parties from the commission of a similar offense. The case of *People v. Rante*[85] citing *People v. Dalisay*[86] held that:

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[84] *Rollo*, p. 214.

[85] G.R. No. 184809, March 29, 2010, 617 SCRA 115.

[86] G.R. No. 188106, November 25, 2009, 605 SCRA 807.

Also known as 'punitive' or 'vindictive' damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[87]

To justify an award for exemplary damages, the 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.[88] In this case, this Court finds that respondent Ruperto V. Tankeh acted in a fraudulent manner through the finding of *dolo incidente* due to his failure to act in a manner consistent with propriety, good morals, and prudence.

Since exemplary damages ensure that future litigants or parties are enjoined from acting in a similarly malevolent manner, it is incumbent upon this Court to impose the damages in such a way that will serve as a categorical warning and will show that wanton actions will be dealt with in a similar manner. This Court finds that the amount of two hundred thousand pesos (₱200,000.00) is sufficient for this purpose.

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[87] *Id.* at 126-127.

[88] *Cervantes v. Court of Appeals*, G.R. No. 125138, March 2, 1999, 304 SCRA 25, 33 *citing* J. C. SANGCO, *PHILIPPINE LAW ON TORTS AND DAMAGES*, 1034 (Vol. II, 1993).

In sum, this Court must act in the best interests of all future litigants by establishing and applying clearly defined standards and guidelines to ascertain the existence of fraud.

WHEREFORE, this **Petition is PARTIALLY GRANTED.** The Decision of the Court of Appeals as to the assailed Decision in so far as the finding of fraud is **SUSTAINED** with the **MODIFICATION** that respondent **RUPERTO V. TANKEH** be ordered to pay moral damages in the amount of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)** and the amount of **TWO HUNDRED THOUSAND PESOS (₱200,000.00)** by way of exemplary damages.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172222. November 11, 2013]

VICTOR AFRICA, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN and BARBARA ANNE C. MIGALLOS,** *respondents*.

[G.R. No. 174493. November 11, 2013]

EASTERN TELECOMMUNICATIONS PHILS., INC. [ETPI]-PCGG, *petitioners, vs.* **VICTOR V. AFRICA,** *respondent.*

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[*] Designated Member per raffle dated February 4, 2013.

[G.R. No. 184636. November 11, 2013]

VICTOR AFRICA, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN and EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); THE PCGG'S VOTE USING THE SEQUESTERED SHARES OF THE EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. (ETPI), DURING THE AUGUST 7, 1991 STOCKHOLDER'S MEETING TO ELECT A NEW BOARD OF DIRECTORS, DECLARED VALID.— [W]hether or not the PCGG's vote using sequestered shares validly elected a PCGG-dominated Board should by now be academic considering that such board had been performing its functions for the past 22 years from 1991 to this date with neither the Sandiganbayan nor this Court enjoining it from doing so or ordering the holding of a new election. Besides the second tier of the two-tiered test assumes a situation where the registered shareholders had been dissipating company assets and the PCGG wanted to step in, vote the sequestered shares, and seize control of its board of directors to save those assets. Apparently, this was the situation obtaining at ETPI before 1991. The BAN group was then in control but the PCGG held a stockholders' meeting that year, sanctioned by this Court, and voted the sequestered shares to elect a new Board of Directors. x x x The Sandiganbayan said 15 years later in its Resolution of May 15, 2006 that no such dissipation threatened the company assets in 1991. Evidently, however, it overlooked the fact that when the BAN group was still in control of the company, this Court had occasion to admonish the Sandiganbayan for prohibiting the PCGG from calling a stockholders' meeting to elect a new Board of Directors. This Court was adamant that the Sandiganbayan was unduly preventing the PCGG from taking steps to conserve ETPI's assets. The clear implication of that admonition is that the PCGG was justified in seeking a change in the management of the company. Thus, when the stockholders' meeting took place on August 7, 1991, it was

simply assumed that the PCGG could vote the sequestered shares it held. It in fact did so and elected a new Board of Directors. Since neither the Sandiganbayan nor this Court enjoined that Board from assuming control, it cannot now be said that the PCGG had cast an invalid vote, rendering void all the Board's actions in the last 22 years.

2. ID.; ID.; THE PCGG'S VOTE USING THE SEQUESTERED SHARES OF THE ETPI DURING THE MARCH 17, 1997 STOCKHOLDERS' MEETING TO APPROVE THE INCREASE IN THE AUTHORIZED CAPITAL STOCK OF THE ETPI, DECLARED VALID.— How about the ETPI stockholders' meeting held in 1997 to approve the proposed increase in its authorized capital? The Sandiganbayan held that since the company assets were not in danger of dissipation in that year, the PCGG should not have voted the sequestered shares to approve the increase in its authorized capital stock. The Sandiganbayan would, therefore, invalidate the PCGG's vote during that stockholders' meeting. But again the Sandiganbayan apparently misses the point. The two- tiered test contemplates a situation where the registered stockholders were in control and had been dissipating company assets and the PCGG wanted to vote the sequestered shares to save the company. This was not the situation in ETPI in 1997. It was the PCGG elected board that remained in control during that year and it apparently had done well in the preceding years guarding company assets. Indeed, the Sandiganbayan found that there was no danger that those assets were being dissipated at that point of time. So why penalize the PCGG by restoring to the BAN group the right to vote those sequestered shares in that 1997 shareholders' meeting? Besides the 1997 shareholders' meeting had a limited purpose: to approve the increase in ETPI's authorized capital stock in order to comply with the requirements of Executive Order 109 and R.A. 7925. There is no allegation that such increase was irregular or had prejudiced the company's interest.

3. COMMERCIAL LAW; CORPORATION; SHARES OF STOCK; THE REGISTRATION OF THE TRANSFER OF SHARES OF STOCK FIVE YEARS AFTER THE SALE WILL NOT MAKE THE TRANSFER IRREGULAR; RESOLUTION OF THE SANDIGANBAYAN ALLOWING THE REGISTRATION IN THE BOOKS OF EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. (ETPI) OF THE TRANSFER OF THE

SHARES OF STOCK OF AEROCOM INVESTORS AND MANAGERS, INC. TO A.G.N. PHILIPPINES, INC., AFFIRMED.— But, as this Court found x x x the PCGG voted the sequestered shares during the 1991 stockholders' meeting, having assumed that this could be implied from the order of this Court which allowed it to hold that meeting in order to elect a new Board of Directors. And, since neither the Sandiganbayan nor this Court enjoined that Board from performing its functions, no legal impediment prevented it in 2001 from waiving ETPI's right of first refusal when Aerocom gave notice of its intent to sell its shares to AGNP. For the same reason, the Sandiganbayan committed no error in allowing the subsequent registration of the sale in the book of the corporation in 2006 following some delays. The fact that the corporate secretary asked for leave to register the transfer five years after the sale did not make the transfer irregular. This Court held in *Lee E. Won v. Wack Wack Golf & Country Club, Inc.*, that since the law does not prescribe a period for such kind of registration, the action to enforce the right to have it done does not begin to toll until a demand for it had been made and was refused. This did not happen in this case.

4. REMEDIAL LAW; COURTS; SANDIGANBAYAN; HAS AUTHORITY TO ORDER THE HOLDING OF STOCKHOLDERS' MEETING AT ETPI TO ELECT A NEW BOARD OF DIRECTORS.— [T]he Sandiganbayan has the authority to order the holding of a stockholders' meeting at ETPI. The PCGG had sequestered the substance of that company's shares of stock. And, since Section 2 of Executive Order 14 dated May 7, 1986 vests in the Sandiganbayan exclusive jurisdiction over all cases regarding "the Funds, Moneys, Assets and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees" including "all incidents arising from, incidental to, or related to, such cases," it follows that the Sandiganbayan can issue the requested order. Besides, with the PCGG in effective control of ETPI, it is expected to obey the Sandiganbayan's orders as it has always done.

5. ID.; ID.; ID.; THE SANDIGANBAYAN SHOULD SET AN IRREVOCABLE DEADLINE FOR THE PCGG TO COMPLETE THE PRESENTATION OF ITS EVIDENCE IN THE

FOREFEITURE CASE INVOLVING SEQUESTERED ETPI SHARES OF STOCK.— Ultimately, the issue in case such a stockholders' meeting is called would still be whether or not the PCGG can vote the sequestered shares as it did in 1991. It brought an action before the Sandiganbayan on July 22, 1987 to have those shares forfeited allegedly for having been unlawfully obtained during martial law in connivance with the late President Marcos. There may be *prima facie* evidence to warrant their sequestration initially but the Sandiganbayan cannot let the case continue to drag on after the passage of 26 years. Any further delay is simply inexcusable. It is probably among the most delayed cases in Philippine history, a black mark in the record of its judiciary. The Sandiganbayan should, therefore, set an irrevocable deadline for the PCGG to complete the presentation of its evidence, using judicial affidavits in lieu of direct testimonies, to prove its allegations after which that court should provisionally determine whether there is sufficient evidence to allow the sequestration to continue for all or some of the shares, without prejudice to the taking of further proceedings to conclude the action. The Sandiganbayan may afterwards order the holding of a stockholders' meeting to elect a new Board of Directors, where the sequestered shares may be voted based on that court's provisional findings.

APPEARANCES OF COUNSEL

Arthur D. Lim for ETPI-PCGG in G.R. No. 174493.
Liam S. Pagdanganan for Eastern Telecommunications.

D E C I S I O N

ABAD, *J.*:

These consolidated petitions stem from Civil Case 0009, an action that the government filed with the Sandiganbayan for reversion, forfeiture, and accounting of ill-gotten wealth involving the sequestered shares of stock of Eastern Telecommunications Philippines, Inc.

The Antecedents

In 1972, Eastern Extension Australasia and China Telegraph

Company, Ltd. (Eastern Extension), a subsidiary of foreign-owned Cable & Wireless, Ltd., got instructions from the Marcos government to reorganize its telecommunications business in the Philippines into a 60/40 corporation in favor of Filipinos. This prompted Eastern Extension to negotiate with Philippine Overseas Telecoms Corporation, a company controlled by Manuel Nieto, Jr. and represented by Atty. Jose Africa, for the formation of Eastern Telecommunications Philippines, Inc. (ETPI), 60% of the capital stock of which went to the group consisting of Roberto Benedicto, Atty. Africa, and Nieto (at times referred to as the BAN group) while 40% remained with Cable & Wireless. The latter company took charge of operations pursuant to a management contract with ETPI.

In the aftermath, ETPI generated substantial dividends for the BAN group. Eventually, the latter spread its shares to three corporations: a) Aerocom Investors, b) Universal Molasses, and c) Polygon Investors and Managers. With their combined holdings, the BAN group managed to fill up key management positions and issue shares to relatives and associates.

On March 14, 1986, following the fall of the Marcos government, the Presidential Commission on Good Government (PCGG) sequestered the ETPI shares of the BAN group and their corporations, relatives, and associates upon a *prima facie* finding that these belonged to favored Marcos cronies. On July 22, 1987, PCGG filed with the Sandiganbayan Civil Case 009 to recover these shares.

The suit gave rise to various incidents. In one, petitioner Victor Africa (Africa), who took the cudgels for his fellow registered stockholders, filed a motion with the Sandiganbayan for the holding of ETPI's 1992 annual stockholders' meeting to settle the conflict between two sets of ETPI Board of Directors: one elected on August 7, 1991 in which the PCGG voted the sequestered shares and the other on a subsequent date where the registered stockholders elected a second board. Apparently, however, the PCGG Board acquired control of ETPI's operations.

On November 13, 1992 the Sandiganbayan granted Africa's motion and ordered the holding of a stockholders' meeting to

elect a new Board of Directors, at which meeting the PCGG was to vote only (a) the Benedicto shares (12.8% of total) that were voluntarily ceded to the Government; (b) the shares seized from Malacañang (3.1%), and (c) the shares that Nieto admitted as belonging to President Marcos (8.0%). On November 26, 1992, however, upon the PCGG's petition in G.R. 107789 this Court temporarily enjoined that stockholders' meeting.

Meantime, because of the need to comply with Executive Order 109[1] and Republic Act (R.A.) 7925,[2] on December 13, 1996 the PCGG, acting on referral from this Court, granted its petition to hold a special stockholders' meeting to increase ETPI's authorized capital stock. PCGG voted the sequestered shares of stock[3] in the meeting held on March 17, 1997 to approve the increase in ETPI's authorized capital stock. Africa contested the validity of PCGG's vote in that stockholders' meeting before this Court in G.R. 147214.

G.R. 172222

Four years later on January 8, 2001 Aerocom Investors and Managers, Inc. (Aerocom) served notice on ETPI of its intent to sell its Class "B" shares to A.G.N. Philippines, Inc. (AGNP) as to enable ETPI to decide whether to exercise its option of first refusal. On January 25, 2001 the ETPI Board decided to

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[1] Otherwise known as "*Policy to Improve the Provision of Local Exchange Carrier Service*."

[2] Otherwise known as "*An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services*."

[3] Sandiganbayan interpreted the Court's ruling in *Presidential Commission on Good Government v. Securities and Exchange Commission* (G.R. 82188) as an implied assent to PCGG's right to vote sequestered shares. In that case, the Court lifted the injunction which restrained the PCGG from calling and holding stockholders' meetings and voting the sequestered shares for the purpose of amending the articles of by-laws of ETPI or to effect substantial changes in policy, programs or practices for being too broad when the issue pertained only to the calling and holding of stockholders' meetings and voting the sequestered shares to delete the right of first refusal clause in ETPI's articles.

waive the option. Upon notice to the shareholders, the Africa-led group wrote ETPI a letter, reserving the exercise of their own options until after a validly constituted ETPI Board could waive the company's option.[4] This notwithstanding, Aerocom transferred its shares to AGNP on April 5, 2001 for US$20 million.[5]

Eventually, on April 30, 2003 this Court held in G.R. 107789 and G.R. 147214[6] that, to be able to vote sequestered shares and elect the ETPI Board or amend its Articles of Incorporation to increase its authorized capital stock, the PCGG needed to satisfy the two-tiered test that the Court applied in *PCGG v. Securities and Exchange Commission*,[7] namely, that (1) there is *prima facie* evidence that the shares are ill-gotten and (2) there is an imminent danger of dissipation. With this ruling, the Court referred the various incidents pending before it to the Sandiganbayan for the latter to determine after hearing whether the PCGG met the test. The dispositive portion of the Court's Resolution reads:[8]

> WHEREFORE, this Court Resolved to REFER the petitions at bar to the Sandiganbayan for reception of evidence to determine whether there is a *prima facie* evidence showing that the sequestered shares in question are ill-gotten and there is an imminent danger of dissipation to entitle the PCGG to vote them in a stockholders meeting to elect the ETPI Board of Directors and to amend the ETPI Articles of Incorporation for the sole purpose of increasing the authorized capital stock of ETPI.
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> The Sandiganbayan shall render a decision thereon within sixty (60) days from receipt of this Resolution and in conformity herewith. x x x.[9]

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[4] *Rollo* (G.R. 172222), p. 201.

[5] *Id*. at 59.

[6] *Republic of the Philippines v. Sandiganbayan*, 450 Phil. 98 (2003).

[7] 246 Phil. 407 (1988).

[8] *Supra* note 6.

[9] *Id*. at 147-148.

Meantime, Aerocom's transfer of its shares to AGNP in the Stock and Transfer Book (STB) was delayed by the need to secure the Bureau of Internal Revenue Certificate Authorizing Registration and Tax Clearance which was issued only on September 27, 2005 more than four years after the sale. To complete the transfer, the ETPI's corporate secretary filed with the Sandiganbayan a motion dated October 10, 2005, for the issuance of new stock certificates and the recording of entries in its STB. On February 1, 2006 the Sandiganbayan granted the motion[10] upon a finding that there had been "due compliance with the requirements of the ETPI's Articles of Incorporation."[11]

But petitioner Africa filed a motion for reconsideration alleging that the Sandiganbayan should first determine, before allowing the transfer in its book, whether the PCGG validly voted the sequestered shares that elected the ETPI's board. He reasoned that if the votes were invalid, the board's waiver of its right of first refusal would be void. The Sandiganbayan denied the motion on February 27, 2006.

G.R. 174493

On May 15, 2006, the Sandiganbayan ruled after hearing that the PCGG's votes during the ETPI stockholders' meetings were invalid for failure to satisfy the two-tiered test. It found that, while the sequestered shares were *prima facie* ill-gotten, the PCGG failed to prove that ETPI's assets were in such imminent danger of dissipation as to warrant PCGG's intervention in the August 7, 1991 and March 17, 1997 stockholders' meetings. The Sandiganbayan said:

> Apparently, the question of dissipation should be viewed within the parameters of two time frames, *i.e.*, at the time the sequestered shares were voted on August 7, 1991, and again on March 17, 1997 when the capital stock of ETPI was increased from ₱250 Million to

[10] Penned by Justice Efren N. De La Cruz with the concurrence of Justices Godofredo L. Legaspi and Norberto Y. Geraldez, *rollo* (G.R. 172222), pp. 37-44.

[11] *Id.* at 43.

₱2.6 Billion. Hence, the more important question here is whether at the time when the PCGG voted the sequestered ETPI Class A shares on August 7, 1991 and on March 17, 1997, there was evidence that the BAN-controlled Board of Directors were dissipating ETPI's assets.[12]

After the Sandiganbayan denied ETPI's motion for partial reconsideration on August 28, 2006, the PCGG-dominated Board of Directors[13] filed a petition for *certiorari* before this Court in G.R. 174493, claiming that the two-tiered test did not apply to ETPI. They alleged that, while the company was in no imminent danger of dissipation, this became possible only because the PCGG had ousted the BAN group from control. Prior to this, that group allowed management acts that prejudiced ETPI's interests. The PCGG acted as conservator and saved ETPI from dissipation.

The PCGG directors claimed that the Sandiganbayan's finding of December 13, 1996 is proof that the second tier had been satisfied. They said:

> However, the propriety and legality of allowing the PCGG to cause the holding of a stockholders' meeting of the ETPI for the purpose of electing a new Board of Directors or effecting changes in the policy, program and practices of said corporation (except for the specified purpose of amending the right of first refusal clause in ETPI's Articles of Incorporation and By-Laws) and impliedly to vote the sequestered shares of stocks has been upheld by the Supreme Court in the case of "*PCGG vs. SEC; PCGG vs. Sandiganbayan, et al.,*" G.R. No. 82188, promulgated June 30, 1988. x x x Thus the Supreme Court <u>*en banc*</u> held in said G.R. No. 82188 that:
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> "But while we find that Sandiganbayan to have acted properly in enjoining the PCGG from holding the stockholders' meeting for the special purpose of amending the 'right of first refusal' clause in ETPI's Articles of Incorporation and By-Laws. We find the general injunction

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[12] *Rollo* (G.R. 174493), p. 80.

[13] Petitioners were initially designated as "Non-PCGG Respondents, *etc.*" In their Manifestation and Motion with Sincere Apology dated October 19, 2006, they moved for the correction to "Eastern Telecommunications Phils., Inc. [ETPI]-PCGG."

imposed by it on the PCGG to desist and refrain from calling a stockholders' meeting for the purpose of electing a new Board of Directors or effecting substantial changes in the policy, program or practice of the corporation to be too broad as to taint said order with grave abuse of discretion. Said order completely ties the hands of PCGG, rendering it virtually helpless in the exercise of its power of conserving and preserving the assets of the corporation. Indeed, of what use is the PCGG if it cannot even do this?"[14]

On November 22, 2006, this Court ordered the consolidation of G.R. 174493 with G.R. 172222.

G.R. 184636

Prodded by the Sandiganbayan's May 15, 2006 Resolution that invalidated the PCGG directors' votes during the 1991 and 1997 stockholders' meetings,[15] on November 28, 2006 Africa filed a petition in G.R. 184636 to allow him to hold a stockholders' meeting to elect a new ETPI Board of Directors. On December 5, 2006 the Court referred Africa's petition to the Sandiganbayan for "appropriate action considering that these cases had already been decided and judgment had become final."[16]

On December 7, 2007 the Sandiganbayan denied Africa's petition,[17] stating that the holding of a stockholders' meeting was not within its powers to decide. Assuming it had the power, the Sandiganbayan said that Africa had no authority to call the meeting since he did not hold at least 20% of the corporation's outstanding capital stock, a requirement of ETPI's by-laws. With the denial of his motion for reconsideration on July 29, 2008, Africa filed a petition on October 13, 2008 before this Court in G.R. 184636 questioning the Sandiganbayan's actions. On November 11, 2008 the Court consolidated the case with G.R. 174493 and G.R. 172222, now subject of the present Decision.

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[14] *Rollo* (G.R. 174493), pp. 144-145.

[15] Sandiganbayan Resolution dated May 15, 2006.

[16] *Rollo* (G.R. 184636), pp. 7-8.

[17] Penned by Justice Efren N. De La Cruz with the concurrence of Justices Francisco H. Villaruz, Jr. and Norberto Y. Geraldez, *id*. at 22-44.

The Issues

These consolidated cases present the following issues:

1. In G.R. 174493, whether or not the two-tiered test regarding PCGG's right to vote the sequestered shares as established in *Cojuangco v. Calpo*[18] could be made to apply to the ETPI stockholders' meetings in 1991 and 1997;

2. In G.R. 172222, whether or not the Sandiganbayan acted with grave abuse of discretion in allowing the transfer of Aerocom's shares to AGNP in its book and in issuing new stock certificates to the latter; and

3. In G.R. 184636, whether or not the Sandiganbayan has jurisdiction to order the holding of a stockholders' meeting at the call of petitioner Africa.

The Court's Ruling

G.R. 174493

To recall, the Court ordered the Sandiganbayan[19] on April 30, 2003 to determine whether there is *prima facie* evidence that the sequestered shares in ETPI were ill-gotten and the company assets were in imminent danger of dissipation as to entitle the PCGG to vote the sequestered shares and elect the ETPI Board of Directors in 1991 and 1997.

Evidently, whether or not the PCGG's vote using sequestered shares validly elected a PCGG-dominated Board should by now be academic considering that such board had been performing its functions for the past 22 years from 1991 to this date with neither the Sandiganbayan nor this Court enjoining it from doing so or ordering the holding of a new election.

Besides the second tier of the two-tiered test assumes a situation where the registered shareholders had been dissipating company assets and the PCGG wanted to step in, vote the sequestered shares, and seize control of its board of directors

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[18] G.R. No. 115352, June 10, 1997.

[19] In G.R. Nos. 107789 and 147214.

to save those assets. Apparently, this was the situation obtaining at ETPI before 1991. The BAN group was then in control but the PCGG held a stockholders' meeting that year, sanctioned by this Court, and voted the sequestered shares to elect a new Board of Directors. Were the company's assets in danger of dissipation in 1991 as to warrant the PCGG's actions?

The Sandiganbayan said 15 years later in its Resolution of May 15, 2006 that no such dissipation threatened the company assets in 1991. Evidently, however, it overlooked the fact that when the BAN group was still in control of the company, this Court had occasion to admonish the Sandiganbayan for prohibiting the PCGG from calling a stockholders' meeting to elect a new Board of Directors. This Court was adamant that the Sandiganbayan was unduly preventing the PCGG from taking steps to conserve ETPI's assets.[20]

The clear implication of that admonition is that the PCGG was justified in seeking a change in the management of the company. Thus, when the stockholders' meeting took place on August 7, 1991, it was simply assumed that the PCGG could vote the sequestered shares it held. It in fact did so and elected a new Board of Directors. Since neither the Sandiganbayan nor this Court enjoined that Board from assuming control, it cannot now be said that the PCGG had cast an invalid vote, rendering void all the Board's actions in the last 22 years.

How about the ETPI stockholders' meeting held in 1997 to approve the proposed increase in its authorized capital? The Sandiganbayan held that since the company assets were not in danger of dissipation in that year, the PCGG should not have voted the sequestered shares to approve the increase in its authorized capital stock. The Sandiganbayan would, therefore, invalidate the PCGG's vote during that stockholders' meeting.

But again the Sandiganbayan apparently misses the point. The two- tiered test contemplates a situation where the registered stockholders were in control and had been dissipating company assets and the PCGG wanted to vote the sequestered shares

[20] *Supra* note 7.

to save the company. This was not the situation in ETPI in 1997. It was the PCGG elected board that remained in control during that year and it apparently had done well in the preceding years guarding company assets. Indeed, the Sandiganbayan found that there was no danger that those assets were being dissipated at that point of time. So why penalize the PCGG by restoring to the BAN group the right to vote those sequestered shares in that 1997 shareholders' meeting?

Besides the 1997 shareholders' meeting had a limited purpose: to approve the increase in ETPI's authorized capital stock in order to comply with the requirements of Executive Order 109 and R.A. 7925. There is no allegation that such increase was irregular or had prejudiced the company's interest.

This is not to say that the PCGG should henceforth be allowed to vote the sequestered shares at every shareholder's meeting. The Court will deal with that issue further down below.

G.R. 172222

Africa also assails the Sandiganbayan's action in allowing the registration in the book of ETPI of Aerocom's sale of its shares to AGNP, given that he had challenged before this Court the validity of the ETPI Board of Directors' waiver of its option of first refusal in relation to that sale. Africa claims that the Sandiganbayan should have first resolved the question of the legitimacy of the ETPI Board of Directors that the PCGG put into office in 1991 by voting the sequestered shares.

But, as this Court found above, the PCGG voted the sequestered shares during the 1991 stockholders' meeting, having assumed that this could be implied from the order of this Court which allowed it to hold that meeting in order to elect a new Board of Directors. And, since neither the Sandiganbayan nor this Court enjoined that Board from performing its functions, no legal impediment prevented it in 2001 from waiving ETPI's right of first refusal when Aerocom gave notice of its intent to sell its shares to AGNP. For the same reason, the Sandiganbayan committed no error in allowing the subsequent registration of the sale in the book of the corporation in 2006 following some delays.

The fact that the corporate secretary asked for leave to register the transfer five years after the sale did not make the transfer irregular. This Court held in *Lee E. Won v. Wack Wack Golf & Country Club, Inc.*,[21] that since the law does not prescribe a period for such kind of registration, the action to enforce the right to have it done does not begin to toll until a demand for it had been made and was refused. This did not happen in this case.

G.R. 184636

After the Sandiganbayan rejected his motion to be allowed to call a stockholders' meeting to elect a new Board of Directors at ETPI, Africa came to this Court seeking a reversal of the Sandiganbayan's adverse order. The Sandiganbayan based its denial on two grounds: a) it has no authority to call a stockholders' meeting since ETPI's articles of incorporation has given that authority to its Board of Directors; and b) Africa has no right to call for such meeting since he does not hold at least 20% of the shares of stock of the corporation.

In fact, however, the Sandiganbayan has the authority to order the holding of a stockholders' meeting at ETPI. The PCGG had sequestered the substance of that company's shares of stock. And, since Section 2 of Executive Order 14 dated May 7, 1986 vests in the Sandiganbayan exclusive jurisdiction over all cases regarding "the Funds, Moneys, Assets and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees" including "all incidents arising from, incidental to, or related to, such cases," it follows that the Sandiganbayan can issue the requested order. Besides, with the PCGG in effective control of ETPI, it is expected to obey the Sandiganbayan's orders as it has always done.

Ultimately, the issue in case such a stockholders' meeting is called would still be whether or not the PCGG can vote the sequestered shares as it did in 1991. It brought an action before

[21] 104 Phil. 466 (1958).

the Sandiganbayan on July 22, 1987 to have those shares forfeited allegedly for having been unlawfully obtained during martial law in connivance with the late President Marcos. There may be *prima facie* evidence to warrant their sequestration initially but the Sandiganbayan cannot let the case continue to drag on after the passage of 26 years. Any further delay is simply inexcusable. It is probably among the most delayed cases in Philippine history, a black mark in the record of its judiciary.

The Sandiganbayan should, therefore, set an irrevocable deadline for the PCGG to complete the presentation of its evidence, using judicial affidavits in lieu of direct testimonies, to prove its allegations after which that court should provisionally determine whether there is sufficient evidence to allow the sequestration to continue for all or some of the shares, without prejudice to the taking of further proceedings to conclude the action. The Sandiganbayan may afterwards order the holding of a stockholders' meeting to elect a new Board of Directors, where the sequestered shares may be voted based on that court's provisional findings.

WHEREFORE, the Court **DENIES** the petition in G.R. 172222 for lack of merit and **AFFIRMS** the Resolution of the Sandiganbayan dated February 1 and 27, 2006 that allowed the registration in the books of Eastern Telecommunications Philippines, Inc. (ETPI) of the transfer of the shares of stock of Aerocom Investors and Managers, Inc. to A.G.N. Philippines, Inc.

In G.R. 174493, the Court **GRANTS** the petition of the PCGG-dominated Board of Directors-ETPI and **SETS ASIDE** a) the Sandiganbayan's Resolution dated May 15, 2006 that invalidated the PCGG's vote using sequestered shares of ETPI at its August 7, 1991 and March 17, 1997 stockholders' meetings; and b) Resolution dated August 28, 2006 denying ETPI's motion for reconsideration of such resolution.

Finally, in G.R. 184636, the Court **SETS ASIDE** the Sandiganbayan's Resolution dated December 7, 2007 denying petitioner Victor Africa's petition for the holding of a stockholders' meeting to elect a new ETPI Board of Directors

and Resolution dated July 29, 2008 denying his motion for reconsideration.

The Court **DIRECTS** the Sandiganbayan to immediately set an irrevocable deadline for the PCGG to complete the presentation of its evidence in the forfeiture case involving sequestered ETPI shares of stock and, thereafter, to provisionally determine whether there is sufficient evidence to allow the sequestration to continue for all or some of the shares, without prejudice to the taking of further proceedings to conclude the action. The Sandiganbayan shall then order the holding of a stockholders' meeting at ETPI to elect a new Board of Directors, where the sequestered shares may be voted based on that court's provisional findings.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181276. November 11, 2013]

THE COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **VISAYAS GEOTHERMAL POWER COMPANY, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX REFUND OR TAX CREDIT; SECTION 112 OF THE NIRC, AND NOT SECTION 229 THEREOF, APPLIES TO ALL CASES INVOLVING AN APPLICATION FOR THE ISSUANCE OF A TAX CREDIT CERTIFICATE OR REFUND OF UNUTILIZED INPUT VAT.— VGPCI is also mistaken to argue that Section 229 is the more relevant provision of law. A simple

reading of Section 229 reveals that it only pertains to taxes erroneously or illegally collected x x x. The applicable provision of the NIRC is undoubtedly Section 112, which deals specifically with creditable input tax x x x. The Court, in earlier cases, had the opportunity to decide which provision of the NIRC was applicable to claims for refund or tax credit for creditable input VAT. In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon. Inc.),* it was held that Section 229 of the NIRC, which provides for a two-year period, reckoned from the date of payment of the tax or penalty, for the filing of a claim of refund or tax credit, is only pertinent to the recovery of taxes erroneously or illegally assessed or collected; and that the relevant provision of the NIRC for claiming a refund or a tax credit for the unutilized creditable input VAT is Section 112(A) x x x. This ruling was later reiterated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc*., where this Court upheld the ruling in *Mirant* that the appropriate provision for determining the prescriptive period for claiming a refund or a tax credit for unutilized input VAT is Section 112(A), and not Section 229, of the NIRC. The recent pronouncement of the Court *En Banc* should put an end to any question as to whether Section 229 may apply to claims for refund of unutilized input VAT. In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*, this Court categorically stated that the "input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper." As such, it is now clear and indisputable that it is Section 112, and not 229, of the Tax Code which is applicable to all cases involving an application for the issuance of a tax credit certificate or refund of unutilized input VAT.

2. ID.; ID.; ID.; THE COMMISSIONER OF INTERNAL REVENUE (CIR) HAS 120 DAYS FROM THE DATE OF THE SUBMISSION OF THE COMPLETE DOCUMENTS IN SUPPORT OF THE APPLICATION FOR TAX REFUND OR TAX CREDIT TO ACT ON THE SAID APPLICATION; THE FAILURE OF THE TAXPAYER TO WAIT FOR THE DECISION OF THE CIR OR THE LAPSE OF THE 120-DAY PERIOD RENDERS THE FILING OF THE JUDICIAL CLAIM WITH THE COURT OF TAX APPEALS PREMATURE.— The Court in *Aichi* further

made a significant pronouncement on the importance of the 120-day period granted to the CIR to act on applications for tax refunds or tax credits under Section 112(D): Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. **In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.** In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature. x x x. **[A]pplying the two-year period to judicial claims would render nugatory Section 112(D) 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) 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.**

3. ID.; COURT OF TAX APPEALS; THE COURT OF TAX APPEALS CAN ONLY VALIDLY ACQUIRE JURISDICTION OVER CLAIMS FOR REFUND AFTER THE COMMISSIONER OF INTERNAL REVENUE (CIR) HAS RENDERED ITS DECISION, OR, SHOULD IT FAIL TO ACT, AFTER THE LAPSE OF THE PERIOD OF ACTION PROVIDED IN THE TAX CODE, IN WHICH CASE THE INACTION OF THE CIR IS CONSIDERED A DENIAL.— [I]t is imperative that the Court take a look at the jurisdiction of the CTA as a guide in the resolution of this case. Section 7 of R.A. No. 1125, as amended by R.A. No. 9282, states that: Sec. 7. Jurisdiction. - The CTA shall exercise: a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided: x x x. **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of

internal revenue taxes, fees or other charges, penalties in relations 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 provides a specific period of action, in which case the inaction shall be deemed a denial.** It cannot be stressed enough that the jurisdiction of the CTA over the decisions or inaction of the CIR is only appellate in nature. Thus, it necessarily requires the prior filing of an administrative case before the CIR. The CTA can only validly acquire jurisdiction over a case after the CIR has rendered its decision or, should the CIR fail to act, after the lapse of the period of action provided in the Tax Code, in which case the inaction of the CIR is considered a denial.

4. ID.; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX REFUND OR TAX CREDIT; THE 120+30 DAY PERIOD IN SECTION 112(D) OF THE NIRC IS MANDATORY AND JURISDICTIONAL AND MUST BE APPLIED FROM THE EFFECTIVITY OF THE 1997 TAX CODE; JUDICIAL CLAIMS FILED FROM THE ISSUANCE OF BIR RULING NO. DA489-03 ON DECEMBER 10, 2003 UNTIL THE PROMULGATION OF AICHI CASE (G.R. NO. 184823) ON OCTOBER 6, 2010, NEED NOT FOLLOW THE 120+30 DAY PERIOD; DURING THE SAID PERIOD THE COURT OF APPEALS MAY TAKE COGNIZANCE OF THE JUDICIAL CLAIMS EVEN BEFORE THE LAPSE OF THE 120-DAY PERIOD GIVEN TO THE BUREAU OF INTERNAL REVENUE TO DECIDE ON THE ADMINISTRATIVE CASE.— The application of the 30-day period from receipt of the decision of the CIR or from the lapse of the 120-day period (the "120+30 day period") given to the taxpayer within which to file a petition for review with the CTA, as provided for in Section 112(D) of the Tax Code, was further explained in *San Roque*, which affirmed the *Aichi* doctrine and explicitly ruled that "the 120-day waiting period is mandatory and jurisdictional." However, the court also took into account the issuance by the BIR of Ruling No. DA-489-03 dated December 10, 2003 which allowed for the filing of a judicial claim without waiting for the end of the 120-day period granted to the CIR to decide on the application for refund: BIR Ruling No. DA-489-03 does provide 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." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed. x x x Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional. Therefore, although the 120+30 day period in Section 112(D) is mandatory and jurisdictional and must be applied from the effectivity of the 1997 Tax Code on January 1, 1998, an exception shall be made for judicial claims filed from the issuance of BIR Ruling No. DA 489-03 on December 10, 2003 until the promulgation of *Aichi* on October 6, 2010. During the said period, a judicial claim for refund may be filed with the CTA even before the lapse of the 120-day period given to the BIR to decide on the administrative case.

5. ID.; ID.; ID.; ID.; THE COURT OF TAX APPEALS CANNOT TAKE COGNIZANCE OF THE JUDICIAL CLAIM FILED ON SEPTEMBER 30, 2003 FOR BEING PREMATURE DUE TO NON-COMPLIANCE WITH THE REQUISITE 120-DAY PERIOD, WHILE JUDICIAL CLAIM FILED ON DECEMBER 19, 2003, AFTER THE ISSUANCE OF BIR RULING DA-489-03, CAN BE CONSIDERED BY THE COURT OF TAX APPEALS DESPITE ITS FILING ONLY ONE DAY AFTER THE APPLICATION FOR REFUND WAS FIRST LODGED WITH THE BUREAU OF INTERNAL REVENUE.— Applying the x x x rules to the case at bench, the judicial claim filed on September 30, 2003 (CTA Case No. 6790) was prematurely filed and cannot be taken cognizance of because respondent failed to wait for the requisite 120 days after the filing of its claim for refund with the BIR before elevating the case to the CTA. However, the judicial claim filed on December 19, 2003 (CTA Case No. 6838), which was made after the issuance of BIR Ruling DA-489-03, can be considered by the CTA despite its hasty filing only one day after the application for refund was first lodged with the BIR.

LEONEN, *J.*, *dissenting opinion:*

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; REFUND OR TAX CREDIT OF INPUT TAXES; THE COURT OF TAX APPEALS CANNOT ACQUIRE JURISDICTION WITHOUT WAITING FOR THE LAPSE OF THE 120-DAY PERIOD OR THE DENIAL BY THE COMMISSIONER OF INTERNAL REVENUE WITHIN THAT PERIOD.— Consistent with [his] dissent in *Commissioner of Internal Revenue v. San Roque Power Corporation* and its consolidated cases. [The dissenter is] of the view that the Court of Tax Appeals (CTA) cannot acquire jurisdiction without waiting for the lapse of the 120-day period or the denial by the Commissioner of Internal Revenue within that period. The 120+30-day periods are mandatory and jurisdictional. Section 112(D) of the National Internal Revenue Code (NIRC) was always clear.

2. ID.; ID.; ID.; NO RIGHTS ARE VESTED BY A WRONG CONSTRUCTION OF THE LAW BY ADMINISTRATIVE OFFICIALS, AND SUCH DOES NOT PUT THE GOVERNMENT IN ESTOPPEL TO CORRECT THE MISTAKE.— As the discussed in the dissent in *San Roque*, there can be no reliance in good faith by taxpayers on administrative interpretations of the law, which clearly contravene its text. No rights are vested by a wrong construction of the law by administrative officials, and such does not put the government in estoppel to correct the mistake. To reiterate: BIR Ruling DA-489-03 x x x constitutes a clear disregard of the express and categorical provision of Section 112(D) of the NIRC. Thus, the Commissioner's erroneous application of the law is not binding and conclusive upon this Court in any way.

3. ID.; ID.; ID.; THE COSTS OF ERRONEOUS RELIANCE ON OPINIONS OF THE COMMISSIONER OF INTERNAL REVENUE THAT CONTRAVENE THE TEXT OF THE LAW ARE BETTER INTERNALIZED BY PRIVATE PARTIES RATHER THAN THE PUBLIC IN GENERAL.— [T]he allowances we have given to the clearly erroneous reliance by lawyers of taxpayers on opinions of the Commissioner of Internal Revenue that contravene the text of the law cause damage to the

government and its ability to do social justice. The costs of error are better internalized by private parties rather than the public in general. After all, as observed in my dissent in *CIR v. San Roque*, government had no agency in the choice of premature filing by the private parties.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador & Associates for respondent.

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 November 20, 2007 Decision[1] and the January 9, 2008 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in C.T.A. EB No. 282 (C.T.A. Case Nos. 6790 and 6838) entitled "*Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*"

THE FACTS

Respondent Visayas Geothermal Power Company, Inc. (*VGPCI*), a corporation authorized by the Department of Energy to own and operate a power plant facility in Malibog, Leyte, is engaged in the business of generation and sale of electricity. In the course of its business operations, VGPCI incurred input value added tax of ₱20,213,044.50 on its domestic purchase of goods and services and importation of goods used in its business

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[1] *Rollo*, pp. 67-85; Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta (with concurring and dissenting opinion) and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez.

[2] *Id.* at 86-92.

for the third and fourth quarter of 2001 and for the entire year of 2002.[3] Due to the enactment of Republic Act *(R.A.)* No. 9136,[4] which became effective on June 26, 2001, VGPCI's sales of generated power became zero-rated and were no longer subject to VAT at 10%.[5]

On June 26, 2003, VGPCI filed before the Bureau of Internal Revenue (*BIR*) Revenue District No. 89 of Ormoc City a claim for refund of unutilized input VAT payment in the amount of ₱1,142,666.32 for the third quarter of 2001. On December 18, 2003, another claim was filed in the amount of ₱19,070,378.18 for the last quarter of 2001 and the four quarters of 2002. For failure of the BIR to act upon said claims, VGPCI filed separate petitions for review before the CTA on September 30, 2003 and December 19, 2003, praying for a refund on the issuance of a tax credit certificate in the amount of ₱1,142,666.32 covering the period from July to September 2001 and ₱19,070,378.18 for the period from October 2001 to December 2002, CTA Case Nos. 6790 and 6838, respectively.[6]

In its Decision[7] dated January 18, 2007, the First Division of the CTA partially granted the consolidated petitions for review and ordered petitioner Commissioner of Internal Revenue (*CIR*) to refund or to issue a tax credit certificate to VGPCI in the amount of ₱16,355,749.74 representing unutilized input VAT incurred from September 1, 2001 to December 31, 2002.[8]

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

[4] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes, otherwise known as "The Electric Power Industry Reform Act of 2001."

[5] *Rollo*, p. 232.

[6] *Id.* at 70-71.

[7] *Id.* at 231-245; Penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta (with Dissenting Opinion) and Associate Justice Caesar A. Casanova.

[8] *Id.* at 240.

Aggrieved, the CIR elevated the case to the CTA *En Banc* alleging that the First Division erred in ruling in favor of VGPCI because: (1) VGPCI did not submit evidence of its compliance with the VAT registration requirements; (2) its purchases of goods and services were not undertaken in the course of its trade or business and were not duly substantiated by VAT invoices or receipts; (3) it failed to file an application for a VAT tax credit or refund before the Revenue District Office of the city or municipality where the principal place of business was located; (4) it did not file its administrative claim for refund prior to the filing of its petition before the CTA; and (5) it was unable to prove that its claimed input VAT payments were directly attributable to its zero-rated sales.[9]

On November 20, 2007, the CTA *En Banc* promulgated its Decision dismissing the petition and affirming the decision of the CTA First Division, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is hereby DISMISSED for lack of merit. The assailed Decision dated January 18, 2007 and the Resolution dated May 17, 2007 are AFFIRMED.
>
> SO ORDERED.[10]

The tax court ruled that: (1) the law does not require the submission by a taxpayer of its VAT registration documents in order to be able to claim for a refund of unutilized input VAT; (2) VGCPI was able to show, by submitting its VAT invoices and official receipts, that its purchases of goods and services were incurred in the course of its trade and business; (3) VGCPI sufficiently proved that its claimed input VAT was directly attributable to its zero-rated sales or sales of power generation services to PNOC-EDC; and (4) the petition was timely filed before the CTA because the taxpayer was not bound by the 120-day audit period but by the two-year prescriptive period. As explained by the tax court, when the two-year period is about to lapse, the taxpayer may, without awaiting the verdict of the CIR, file its claim for refund before the CTA.

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

[10] *Id*. at 79.

The CIR subsequently filed its Motion for Reconsideration but the same was denied by the CTA *En Banc* in its Resolution dated January 9, 2008.[11]

Hence, this petition.

THE ISSUES

The CIR raises only one ground for the allowance of the petition:

The Court of Tax Appeals erred in assuming jurisdiction and giving due course to VGPCI's petition despite the latter's failure to file an application for refund in due course before the BIR and observe the proper prescriptive period provided by law before filing an appeal before the CTA.[12]

The pivotal question in this case then is whether VGPCI failed to observe the proper prescriptive period required by law for the filing of an appeal before the CTA because it filed its petition before the end of the 120-day period granted to the CIR to decide its claim for refund under Section 112(D) of the National Internal Revenue Code (*NIRC*).

THE COURT'S RULING

The CIR insists that VGPCI should have waited for the decision of the CIR or the lapse of the 120-day period from the date of submission of complete documents in support of the application for refund as provided in Section 112(D) of the NIRC.[13] The filing by VGPCI of its petition for review before the CTA almost immediately after filing its administrative claim for refund is premature.

On the other hand, VGPCI, in its Memorandum[14] defends the decision of the CTA *En Banc* and puts forth the following arguments: (1) Section 112(D) of the NIRC is not a limitation

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[11] *Id*. at 86.

[12] *Id.* at 53.

[13] *Id*. at 260-261.

[14] *Id*. at 178-230.

imposed on the taxpayer; rather, it is a mandate addressed to the CIR, requiring it to decide claims for refund within 120 days from submission by the taxpayer of complete documents in support thereof;[15] (2) Section 229 of the NIRC is the more specific provision with respect to the prescriptive period for the filing of an appeal because it expressly requires that no suit in court can be maintained for the recovery of taxes after two years from the date of payment of the taxes, while Section 112(D) deals only with VAT and the periods within which the CIR shall grant a refund or a tax credit and does not discuss the period within which a taxpayer can go to court;[16] (3) pursuant to the cases of *Gibbs v. Collector of Internal Revenue*[17] and *College of Oral & Dental Surgery v. Court of Tax Appeals*,[18] when the two-year prescriptive period is about to expire, the taxpayer need not wait for the decision of the BIR before filing a petition for review with the CTA because the filing of a judicial claim beyond the two-year period bars the recovery of the tax paid, and (4) the CIR has not been denied due process in evaluating VGPCI's claim for refund because the filing of the judicial claim does not preclude the CIR from continuing the processing of VGPCI administrative claim. The latter insists that it is imperative and jurisdictional that both the administrative and the judicial claims for refund be filed within the two-year prescriptive period, regardless of the length of time during which the administrative claim has been pending with the CIR. It concludes that had it waited for the end of the 120-day period, it would have lost its right to file a petition for review with the CTA.[19]

The petition is partly meritorious.

Section 229 is not applicable

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[15] *Id.* at 207-208.

[16] *Id.* at 209.

[17] 107 Phil. 232 (1960).

[18] 102 Phil. 912 (1958).

[19] *Rollo,* pp. 210-212.

VGPCI's reliance on *Gibbs* and *College of Oral & Dental Surgery* is misplaced. Of note is the fact that at the time of the promulgation by this Court of the said cases, there was no provision yet in the NIRC in force (Commonwealth Act No. 466,[20] as amended) similar to Section 112. Therefore, the said cases hold no sway over the case at bench.

VGPCI is also mistaken to argue that Section 229 is the more relevant provision of law. A simple reading of Section 229 reveals that it only pertains to taxes erroneously or illegally collected:

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. [Emphases supplied]

The applicable provision of the NIRC is undoubtedly Section 112, which deals specifically with creditable input tax:

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**

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[20] An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines (June 15, 1939).

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.

x x x x x x 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 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. [Emphases supplied]

The Court, in earlier cases, had the opportunity to decide which provision of the NIRC was applicable to claims for refund or tax credit for creditable input VAT. In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*,[21] it was held that Section 229 of the NIRC, which provides for a two-year period, reckoned from the date of payment of the tax or penalty, for the filing of a claim of refund or tax credit, is only pertinent to the recovery of taxes erroneously or illegally assessed or collected; and that the relevant provision of the

[21] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

NIRC for claiming a refund or a tax credit for the unutilized creditable input VAT is Section 112(A):

> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:
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> Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes
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> x x x x x x x x x
>
> Considering the foregoing discussion, it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.[22]

This ruling was later reiterated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[23] where this Court upheld the ruling in *Mirant* that the appropriate provision for determining the prescriptive period for claiming a refund or a tax credit for unutilized input VAT is Section 112(A), and not Section 229, of the NIRC.[24]

Finally, the recent pronouncement of the Court *En Banc* should put an end to any question as to whether Section 229 may apply to claims for refund of unutilized input VAT. In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[25] this Court categorically stated that the

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[22] *Id.* at 172-173 and 175.

[23] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[24] *Id.* at 437.

[25] G.R. No. 187485, February 12, 2013.

"input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper."[26]

As such, it is now clear and indisputable that it is Section 112, and not 229, of the Tax Code which is applicable to all cases involving an application for the issuance of a tax credit certificate or refund of unutilized input VAT.

Judicial claim was prematurely filed; 120+30 day period is mandatory and jurisdictional

The Court in *Aichi* further made a significant pronouncement on the importance of the 120-day period granted to the CIR to act on applications for tax refunds or tax credits under Section 112(D):

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. **In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.**

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively

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[26] *Id*.

zero-rated may, within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.

In fact, **applying the two-year period to judicial claims would render nugatory Section 112(D) 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) 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.**[27] [Emphases supplied]

Moreover, it is imperative that the Court take a look at the jurisdiction of the CTA as a guide in the resolution of this case. Section 7 of R.A. No. 1125,[28] as amended by R.A. No. 9282,[29] states that:

Sec. 7. Jurisdiction. - The CTA shall exercise:

a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

1. **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue

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[27] *Id*. at 443-444.

[28] An Act Creating the Court of Tax Appeals (June 16, 1954).

[29] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for other Purposes (March 30, 2004).

taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 provides a specific period of action, in which case the inaction shall be deemed a denial**; (emphases supplied)

x x x x

It cannot be stressed enough that the jurisdiction of the CTA over the decisions or inaction of the CIR is only appellate in nature. Thus, it necessarily requires the prior filing of an administrative case before the CIR. The CTA can only validly acquire jurisdiction over a case after the CIR has rendered its decision or, should the CIR fail to act, after the lapse of the period of action provided in the Tax Code, in which case the inaction of the CIR is considered a denial.

The application of the 30-day period from receipt of the decision of the CIR or from the lapse of the 120-day period (the "120+30 day period") given to the taxpayer within which to file a petition for review with the CTA, as provided for in Section 112(D) of the Tax Code, was further explained in *San Roque*,[30] which affirmed the *Aichi* doctrine and explicitly ruled that "the 120-day waiting period is mandatory and jurisdictional."

However, the court also took into account the issuance by the BIR of Ruling No. DA-489-03 dated December 10, 2003 which allowed for the filing of a judicial claim without waiting for the end of the 120-day period granted to the CIR to decide on the application for refund:

BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-

[30] G.R. No. 187485, February 12, 2013.

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.**" Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

x x x x x x x x x

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[31]

Therefore, although the 120+30 day period in Section 112(D) is mandatory and jurisdictional and must be applied from the effectivity of the 1997 Tax Code on January 1, 1998, an exception shall be made for judicial claims filed from the issuance of BIR Ruling No. DA 489-03 on December 10, 2003 until the promulgation of *Aichi* on October 6, 2010. During the said period, a judicial claim for refund may be filed with the CTA even before the lapse of the 120-day period given to the BIR to decide on the administrative case.

In sum, based on the foregoing discussion, the rules for the filing of a claim for refund or tax credit of unutilized input credit VAT are as follows:

1. The taxpayer has two (2) years after the close of the taxable quarter when the relevant sales were made within which to file an administrative claim before the CIR for a refund of the creditable input tax or the issuance of a tax credit certificate, regardless of when the input VAT was paid, according to Section 112(A) of the NIRC and *Mirant*.

2. The CIR is given 120 days, from the date of the submission of the complete documents in support of the application for tax refund or tax credit, to act on the said application.

[31] *Id.*

3. If the CIR fully or partially denies the application or fails to act on the same within the required 120-day period, the taxpayer is allowed to appeal the decision or inaction of the CIR to the CTA. For this reason, the taxpayer has 30 days from his receipt of the decision of the CIR or from the lapse of the 120-day period, within which to file a petition for review with the CTA. In no case shall a petition for review be filed with the CTA before the expiration of the 120-day period. The judicial claim need not be filed within the two-year prescriptive period referred to in Section 112(A), which only pertains to administrative claims.

4. The two-year period referred to in Section 229 of the NLRC does not apply to appeals filed before the CTA, in relation to claims for refund or issuance of tax credits made pursuant to Section 112. Consequently, an appeal may be maintained with the CTA for so long as it observes the abovementioned period for filing the appeal.

5. Following *San Roque*, the 120+30 day period is mandatory and jurisdictional from January 1, 1998 (the effectivity of the 1997 Tax Code). However, from December 10, 2003 (the date BIR Ruling No. DA 489-03 was issued) until October 6, 2010 (the promulgation of *Aichi*), judicial claims need not follow the 120+30 day period. Thereafter, *Aichi* shall be the controlling rule for all claims filed with the CTA and the 120+30 day period must be observed.

Applying the abovementioned rules to the case at bench, the judicial claim filed on September 30, 2003 (CTA Case No. 6790) was prematurely filed and cannot be taken cognizance of because respondent failed to wait for the requisite 120 days after the filing of its claim for refund with the BIR before elevating the case to the CTA. However, the judicial claim filed on December 19, 2003 (CTA Case No. 6838), which was made after the issuance of BIR Ruling DA-489-03, can be considered by the CTA despite its hasty filing only one day after the application for refund was first lodged with the BIR.

WHEREFORE, the petition is partly **GRANTED**. The November 20, 2007 Decision and the January 9, 2008 Resolution of the Court of Tax Appeals *En Banc* are hereby **REVERSED** and **SET ASIDE** and the claim for refund with respect to CTA Case No. 6790 is DENIED. However, the claim pertaining to CTA Case No. 6838 is remanded to the CTA for the proper determination of the refundable amount due respondent.

SO ORDERED.

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

Leonen, J., see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

I dissent with respect to the claim pertaining to CTA Case No. 6838.[1] Consistent with my dissent in *Commissioner of Internal Revenue v. San Roque Power Corporation*[2] and its consolidated cases, I am of the view that the Court of Tax Appeals (CTA) cannot acquire jurisdiction without waiting for the lapse of the 120-day period or the denial by the Commissioner of Internal Revenue within that period. The 120+30-day periods are mandatory and jurisdictional.[3] Section 112(D) of the National Internal Revenue Code (NIRC)[4] was always clear.

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[1] Claim for refund or issuance of tax credit certificate in the amount of ₱19,070,378.18 covering the period of October 2001 to December 2002.

[2] G.R. No. 187485, February 12, 2013, 690 SCRA 336. 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 were denied with finality on October 8, 2013.

[3] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422 *as cited in Commissioner of Internal Revenue v. San Roque*, G.R. No. 187485, February 12, 2013, 690 SCRA 336.

[4] **(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

Similar to the main opinion in *San Roque*, the *ponencia* allows for an exception for judicial claims filed between December 10, 2003 and October 6, 2010, relying on Section 246 of the National Internal Revenue Code.[5] The period provided corresponds with the issuance of BIR Ruling No. DA 489-03, which allows the filing of a judicial claim without waiting for the lapse of the 120-day period and the promulgation of the case of *Aichi*,[6] which categorically ruled on the mandatory and jurisdictional nature of the waiting period. In *San Roque*, this Court said that:

> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30-day periods are mandatory and jurisdictional.[7]

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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.

[5] **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.

[6] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, *supra*.

[7] *Commissioner of Internal Revenue v. San Roque Power Corporation, supra* at 404.

This continues to allow private parties to rely on an erroneous interpretation of the text despite the clear language of the law.

As I have discussed in my dissent in *San Roque*, there can be no reliance in good faith by taxpayers on administrative interpretations of the law, which clearly contravene its text. No rights are vested by a wrong construction of the law by administrative officials, and such does not put the government in estoppel to correct the mistake.[8] To reiterate:

> BIR Ruling DA-489-03 x x x constitutes a clear disregard of the express and categorical provision of Section 112(D) of the NIRC. Thus, the Commissioner's erroneous application of the law is not binding and conclusive upon this Court in any way.[9]

Lastly, I underscore that the allowances we have given to the clearly erroneous reliance by lawyers of taxpayers on opinions of the Commissioner of Internal Revenue that contravene the text of the law cause damage to the government and its ability to do social justice. The costs of error are better internalized by private parties rather than the public in general. After all, as observed in my dissent in *CIR v. San Roque*, government had no agency in the choice of premature filing by the private parties.

In view of the discussion above, I vote to grant the Petition and to nullify the order of the Court of Tax Appeals to refund or to issue a tax credit to respondent in CTA Case No. 6838.

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[8] *Philippine Bank of Communications v. CIR, CTA and CA*, 361 Phil. 916 (1999).

[9] *Commissioner of Internal Revenue v. San Roque Power Corporation, supra* at 465, Leonen, *J.*, Separate Opinion.

THIRD DIVISION

[G.R. No. 181416. November 11, 2013]

MEDICAL PLAZA MAKATI CONDOMINIUM CORPORATION, *petitioner, vs.* **ROBERT H. CULLEN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS NOT AFFECTED BY THE PLEAS OR THE THEORIES SET UP BY THE DEFENDANT IN AN ANSWER OR A MOTION TO DISMISS; OTHERWISE, JURISDICTION WOULD BECOME DEPENDENT ALMOST ENTIRELY UPON THE WHIMS OF THE DEFENDANT.—** It is a settled rule that jurisdiction over the subject matter is determined by the allegations in the complaint. It is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant. Also illuminating is the Court's pronouncement in *Go v. Distinction Properties Development and Construction, Inc.*: Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. **The averments in the complaint** and **the character of the relief sought** are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

2. **COMMERCIAL LAW; CORPORATIONS; INTRACORPORATE CONTROVERSY; RELATIONSHIP TEST AND NATURE OF THE CONTROVERSY TEST, DISTINGUISHED.—** In determining whether a dispute constitutes an intra-corporate

controversy, the Court uses two tests, namely, the *relationship test* and the *nature of the controversy test*. An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. Thus, under the *relationship test*, the existence of any of the above intra-corporate relations makes the case intra-corporate. Under the *nature of the controversy test*, "the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation." In other words, jurisdiction should be determined by considering both the relationship of the parties as well as the nature of the question involved. Applying the two tests, we find and so hold that the case involves intra-corporate controversy. It obviously arose from the intra-corporate relations between the parties, and the questions involved pertain to their rights and obligations under the Corporation Code and matters relating to the regulation of the corporation.

3. ID.; ID.; ID.; DISPUTE AS TO THE VALIDITY OF THE ASSESSMENT IS PURELY AN INTRACORPORATE MATTER WHICH IS WITHIN THE EXCLUSIVE JURISDICTION OF THE REGIONAL TRIAL COURT SITTING AS A SPECIAL COMMERCIAL COURT.— Petitioner is a condominium corporation duly organized and existing under Philippine laws, charged with the management of the Medical Plaza Makati. Respondent, on the other hand, is the registered owner of Unit No. 1201 and is thus a stockholder/member of the condominium corporation. Clearly, there is an intra-corporate relationship between the corporation and a stockholder/member. The nature of the action is determined by the body rather than the title of the complaint. Though denominated as an action for damages, an examination of the allegations made by respondent in his complaint shows that the case principally dwells on the propriety of the assessment made by petitioner against respondent as well as the validity of petitioner's act in preventing respondent

from participating in the election of the corporation's Board of Directors. Respondent contested the alleged unpaid dues and assessments demanded by petitioner. The nature of an action involving any dispute as to the validity of the assessment of association dues has been settled by the Court in *Chateau de Baie Condominium Corporation v. Moreno.* In that case, respondents therein filed a complaint for intra-corporate dispute against the petitioner therein to question how it calculated the dues assessed against them, and to ask an accounting of association dues. x x x [T]he Court held that the dispute as to the validity of the assessments is purely an intra-corporate matter between petitioner and respondent and is thus within the exclusive jurisdiction of the RTC sitting as a special commercial court. More so in this case as respondent repeatedly questioned his characterization as a delinquent member and, consequently, petitioner's decision to bar him from exercising his rights to vote and be voted for. These issues are clearly corporate and the demand for damages is just incidental. Being corporate in nature, the issues should be threshed out before the RTC sitting as a special commercial court. The issues on damages can still be resolved in the same special commercial court just like a regular RTC which is still competent to tackle civil law issues incidental to intra-corporate disputes filed before it.

4. ID.; SECURITIES REGULATION CODE (RA NO. 8799); CASES ENUMERATED UNDER SECTION 5 OF PRESIDENTIAL DECREE NO. 902-1, WHICH WERE PREVIOUSLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION, SHOULD NOW BE FILED WITH THE REGIONAL TRIAL COURT DESIGNATED BY THE SUPREME COURT AS SPECIAL COMMERCIAL COURT, NOT WITH THE REGULAR COURT.— Presidential Decree No. 902-A enumerates the cases over which the Securities and Exchange Commission (SEC) exercises exclusive jurisdiction: x x x b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity; and c) Controversies in the election or appointment of directors, trustees, officers, or managers of such corporations,

partnerships, or associations. To be sure, this action partakes of the nature of an intra-corporate controversy, the jurisdiction over which pertains to the SEC. Pursuant to Section 5.2 of Republic Act No. 8799, otherwise known as the *Securities Regulation Code*, the jurisdiction of the SEC over all cases enumerated under Section 5 of Presidential Decree No. 902-A has been transferred to RTCs designated by this Court as Special Commercial Courts. While the CA may be correct that the RTC has jurisdiction, the case should have been filed not with the regular court but with the branch of the RTC designated as a special commercial court. Considering that the RTC of Makati City, Branch 58 was not designated as a special commercial court, it was not vested with jurisdiction over cases previously cognizable by the SEC. The CA, therefore, gravely erred in remanding the case to the RTC for further proceedings.

5. ID.; CORPORATIONS; INTRACORPORATE CONTROVERSY; THE POWER OF THE HOUSING AND LAND USE REGULATORY BOARD (HLURB) TO HEAR AND DECIDE INTER-ASSOCIATIONS AND/OR INTRA-ASSOCIATION CONTROVERSIES OR CONFLICTS CONCERNING HOMEOWNERS' ASSOCIATIONS DOES NOT COVER CONTROVERSY BETWEEN A CONDOMINIUM UNIT OWNER AND A CONDOMINIUM CORPORATION.—Indeed, Republic Act (RA) No. 9904, or the *Magna Carta for Homeowners and Homeowners' Associations,* approved on January 7, 2010 and became effective on July 10, 2010, empowers the HLURB to hear and decide inter-association and/or intra-association controversies or conflicts concerning homeowners' associations. However, we cannot apply the same in the present case as it involves a controversy between a condominium unit owner and a condominium corporation. While the term association as defined in the law covers homeowners' associations of other residential real property which is broad enough to cover a condominium corporation, it does not seem to be the legislative intent. A thorough review of the deliberations of the bicameral conference committee would show that the lawmakers did not intend to extend the coverage of the law to such kind of association.

6. ID.; ID.; ID.; CONDOMINIUM ACT (RA 4726) GOVERNS THE RIGHTS AND OBLIGATIONS OF THE CONDOMINIUM UNIT OWNERS AND THE CONDOMINIUM CORPORATION, NOT

THE HLURB; INTRA-CORPORATE DISPUTE BETWEEN PETITIONER AND RESPONDENT IS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT SITTING AS A SPECIAL COMMERCIAL COURT.— To be sure, RA 4726 or the Condominium Act was enacted to specifically govern a condominium. Said law sanctions the creation of the condominium corporation which is especially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units. The rights and obligations of the condominium unit owners and the condominium corporation are set forth in the above Act. Clearly, condominium corporations are not covered by the amendment. Thus, the intra-corporate dispute between petitioner and respondent is still within the jurisdiction of the RTC sitting as a special commercial court and not the HLURB. The doctrine laid down by the Court in *Chateau de Baie Condominium Corporation v. Moreno* which in turn cited *Wack Wack Condominium Corporation, et al. v. CA* is still a good law.

APPEARANCES OF COUNSEL

Mendoza Navarro-Mendoza & Partners Law Offices for petitioner.

M.M. Lazaro & Associates 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 assailing the Court of Appeals (CA) Decision[1] dated July 10, 2007 and Resolution[2] dated January 25, 2008 in CA-G.R. CV No. 86614. The assailed decision reversed and

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Vicente S. E. Veloso and Marlene Gonzales-Sison, concurring; *rollo*, pp. 79-85.

[2] *Id.* at 76-78.

set aside the September 9, 2005 Order[3] of the Regional Trial Court (RTC) of Makati, Branch 58 in Civil Case No. 03-1018; while the assailed resolution denied the separate motions for reconsideration filed by petitioner Medical Plaza Makati Condominium Corporation (MPMCC) and Meridien Land Holding, Inc. (MLHI).

The factual and procedural antecedents are as follows:

Respondent Robert H. Cullen purchased from MLHI condominium Unit No. 1201 of the Medical Plaza Makati covered by Condominium Certificate of Title No. 45808 of the Register of Deeds of Makati. Said title was later cancelled and Condominium Certificate of Title No. 64218 was issued in the name of respondent.

On September 19, 2002, petitioner, through its corporate secretary, Dr. Jose Giovanni E. Dimayuga, demanded from respondent payment for alleged unpaid association dues and assessments amounting to ₱145,567.42. Respondent disputed this demand claiming that he had been religiously paying his dues shown by the fact that he was previously elected president and director of petitioner.[4] Petitioner, on the other hand, claimed that respondent's obligation was a carry-over of that of MLHI.[5] Consequently, respondent was prevented from exercising his right to vote and be voted for during the 2002 election of petitioner's Board of Directors.[6] Respondent thus clarified from MLHI the veracity of petitioner's claim, but MLHI allegedly claimed that the same had already been settled.[7] This prompted respondent to demand from petitioner an explanation why he was considered a delinquent payer despite the settlement of the obligation. Petitioner failed to make such explanation. Hence,

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[3] Penned by Presiding Judge Eugene C. Paras; *id*. at 86-88.

[4] *Rollo*, p. 80.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 81.

the Complaint for Damages[8] filed by respondent against petitioner and MLHI, the pertinent portions of which read:

x x x x x x x x x

6. Thereafter, plaintiff occupied the said condominium unit no. 1201 and religiously paid all the corresponding monthly contributions/ association dues and other assessments imposed on the same. For the years 2000 and 2001, plaintiff served as President and Director of the Medical Plaza Makati Condominium Corporation;

7. Nonetheless, on September 19, 2002, plaintiff was shocked/ surprised to [receive] a letter from the incumbent Corporate Secretary of the defendant Medical Plaza Makati, demanding payment of alleged unpaid association dues and assessments arising from plaintiff's condominium unit no. 1201. The said letter further stressed that plaintiff is considered a delinquent member of the defendant Medical Plaza Makati. x x x;

8. As a consequence, plaintiff was not allowed to file his certificate of candidacy as director. Being considered a delinquent, plaintiff was also barred from exercising his right to vote in the election of new members of the Board of Directors x x x;

9. x x x Again, prior to the said election date, x x x counsel for the defendant [MPMCC] sent a demand letter to plaintiff, anent the said delinquency, explaining that the said unpaid amount is a carry-over from the obligation of defendant Meridien. x x x;

10. Verification with the defendant [MPMCC] resulted to the issuance of a certification stating that Condominium Unit 1201 has an outstanding unpaid obligation in the total amount of ₱145,567.42 as of November 30, 2002, which again, was attributed by defendant [MPMCC] to defendant Meridien. x x x;

11. Due to the seriousness of the matter, and the feeling that defendant Meridien made false representations considering that it fully warranted to plaintiff that condominium unit 1201 is free and clear from all liens and encumbrances, the matter was referred to counsel, who accordingly sent a letter to defendant Meridien, to demand for the payment of said unpaid association dues and other assessments imposed on the condominium unit and being claimed by defendant [MPMCC]. x x x;

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[8] *Id*. at 89-96.

12. x x x defendant Meridien claimed however, that the obligation does not exist considering that the matter was already settled and paid by defendant Meridien to defendant [MPMCC]. x x x;

13. Plaintiff thus caused to be sent a letter to defendant [MPMCC] x x x. The said letter x x x sought an explanation on the fact that, as per the letter of defendant Meridien, the delinquency of unit 1201 was already fully paid and settled, contrary to the claim of defendant [MPMCC]. x x x;

14. Despite receipt of said letter on April 24, 2003, and to date however, no explanation was given by defendant [MPMCC], to the damage and prejudice of plaintiff who is again obviously being barred from voting/participating in the election of members of the board of directors for the year 2003;

15. Clearly, defendant [MPMCC] acted maliciously by insisting that plaintiff is a delinquent member when in fact, defendant Meridien had already paid the said delinquency, if any. The branding of plaintiff as delinquent member was willfully and deceitfully employed so as to prevent plaintiff from exercising his right to vote or be voted as director of the condominium corporation;

16. Defendant [MPMCC]'s ominous silence when confronted with claim of payment made by defendant Meridien is tantamount to admission that indeed, plaintiff is not really a delinquent member;

17. Accordingly, as a direct and proximate result of the said acts of defendant [MPMCC], plaintiff experienced/suffered from mental anguish, moral shock, and serious anxiety. Plaintiff, being a doctor of medicine and respected in the community further suffered from social humiliation and besmirched reputation thereby warranting the grant of moral damages in the amount of ₱500,000.00 and for which defendant [MPMCC] should be held liable;

18. By way of example or correction for the public good, and as a stern warning to all similarly situated, defendant [MPMCC] should be ordered to pay plaintiff exemplary damages in the amount of ₱200,000.00;

[19]. As a consequence, and so as to protect his rights and interests, plaintiff was constrained to hire the services of counsel, for an acceptance fee of ₱100,000.00 plus ₱2,500.00 per every court hearing attended by counsel;

[20]. In the event that the claim of defendant [MPMCC] turned out to be true, however, the herein defendant Meridien should be held liable instead, by ordering the same to pay the said delinquency of condominium unit 1201 in the amount of ₱145,567.42 as of November 30, 2002 as well as the above damages, considering that the non-payment thereof would be the proximate cause of the damages suffered by plaintiff;[9]

Petitioner and MLHI filed their separate motions to dismiss the complaint on the ground of lack of jurisdiction.[10] MLHI claims that it is the Housing and Land Use Regulatory Board (HLURB) which is vested with the exclusive jurisdiction to hear and decide the case. Petitioner, on the other hand, raises the following specific grounds for the dismissal of the complaint: (1) estoppel as respondent himself approved the assessment when he was the president; (2) lack of jurisdiction as the case involves an intra-corporate controversy; (3) prematurity for failure of respondent to exhaust all intra-corporate remedies; and (4) the case is already moot and academic, the obligation having been settled between petitioner and MLHI.[11]

On September 9, 2005, the RTC rendered a Decision granting petitioner's and MLHI's motions to dismiss and, consequently, dismissing respondent's complaint.

The trial court agreed with MLHI that the action for specific performance filed by respondent clearly falls within the exclusive jurisdiction of the HLURB.[12] As to petitioner, the court held that the complaint states no cause of action, considering that respondent's obligation had already been settled by MLHI. It, likewise, ruled that the issues raised are intra-corporate between the corporation and member.[13]

On appeal, the CA reversed and set aside the trial court's decision and remanded the case to the RTC for further

[9] *Id*. at 91-94.

[10] *Id*. at 86.

[11] *Id*. at 97.

[12] *Id*. at 87.

[13] *Id*.

proceedings. Contrary to the RTC conclusion, the CA held that the controversy is an ordinary civil action for damages which falls within the jurisdiction of regular courts.[14] It explained that the case hinged on petitioner's refusal to confirm MLHI's claim that the subject obligation had already been settled as early as 1998 causing damage to respondent.[15] Petitioner's and MLHI's motions for reconsideration had also been denied.[16]

Aggrieved, petitioner comes before the Court based on the following grounds:

I.

THE COURT *A QUO* HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, OR HAS DECIDED IT IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT WHEN IT DECLARED THE INSTANT CASE AN ORDINARY ACTION FOR DAMAGES INSTEAD OF AN INTRA-CORPORATE CONTROVERSY COGNIZABLE BY A SPECIAL COMMERCIAL COURT.

II

THE COURT *A QUO* HAS DECIDED THE INSTANT CASE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT WHEN IT TOOK COGNIZANCE OF THE APPEAL WHILE RAISING ONLY PURE QUESTIONS OF LAW.[17]

The petition is meritorious.

It is a settled rule that jurisdiction over the subject matter is determined by the allegations in the complaint. It is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant.[18]

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[14] *Id*. at 83.

[15] *Id*. at 84.

[16] *Id*. at 76-78.

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

[18] *Eristingcol v. Court of Appeals*, G.R. No. 167702, March 20,

Also illuminating is the Court's pronouncement in *Go v. Distinction Properties Development and Construction, Inc.*:[19]

> Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. **The averments in the complaint** and **the character of the relief sought** are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. x x x[20]

Based on the allegations made by respondent in his complaint, does the controversy involve intra-corporate issues as would fall within the jurisdiction of the RTC sitting as a special commercial court or an ordinary action for damages within the jurisdiction of regular courts?

In determining whether a dispute constitutes an intra-corporate controversy, the Court uses two tests, namely, the *relationship test* and the *nature of the controversy test*.[21]

An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among

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2009,582 SCRA 139, 156, citing *Sta. Clara Homeowners' Association v. Sps. Gaston*, 425 Phil. 221 (2002).

[19] G.R. No. 194024, April 25, 2012, 671 SCRA 461.

[20] *Go v. Distinction Properties Development and Construction, Inc.*, *supra*, at 471-472. (Emphasis and underscoring in the original.)

[21] *Reyes v. Regional Trial Court of Makati, Br. 142*, G.R. No. 165744, August 11, 2008, 561 SCRA 593, 609-610.

the stockholders, partners or associates themselves.[22] Thus, under the *relationship test*, the existence of any of the above intra-corporate relations makes the case intra-corporate.[23]

Under the *nature of the controversy test*, "the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation."[24] In other words, jurisdiction should be determined by considering both the relationship of the parties as well as the nature of the question involved.[25]

Applying the two tests, we find and so hold that the case involves intra-corporate controversy. It obviously arose from the intra-corporate relations between the parties, and the questions involved pertain to their rights and obligations under the Corporation Code and matters relating to the regulation of the corporation.[26]

Admittedly, petitioner is a condominium corporation duly organized and existing under Philippine laws, charged with the management of the Medical Plaza Makati. Respondent, on the other hand, is the registered owner of Unit No. 1201 and is thus a stockholder/member of the condominium corporation. Clearly, there is an intra-corporate relationship between the corporation and a stockholder/member.

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[22] *Go v. Distinction Properties Development and Construction, Inc.*, *supra* note 19, at 479-480; *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*, G.R. No. 187872, November 17, 2010, 635 SCRA 380, 391.

[23] *Reyes v. Regional Trial Court of Makati, Br. 142*, *supra* note 21, at 610.

[24] *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*, *supra* note 22, at 391; *Reyes v. Regional Trial Court of Makati, Br. 142*, *supra* note 21, at 611.

[25] *Reyes v. Regional Trial Court of Makati, Br. 142*, *supra* note 21, at 611.

[26] *Aguirre II v. FQB+7, Inc.*, G.R. No. 170770, January 9, 2013, 688 SCRA 242, 261.

The nature of the action is determined by the body rather than the title of the complaint. Though denominated as an action for damages, an examination of the allegations made by respondent in his complaint shows that the case principally dwells on the propriety of the assessment made by petitioner against respondent as well as the validity of petitioner's act in preventing respondent from participating in the election of the corporation's Board of Directors. Respondent contested the alleged unpaid dues and assessments demanded by petitioner.

The issue is not novel. The nature of an action involving any dispute as to the validity of the assessment of association dues has been settled by the Court in *Chateau de Baie Condominium Corporation v. Moreno.*[27] In that case, respondents therein filed a complaint for intra-corporate dispute against the petitioner therein to question how it calculated the dues assessed against them, and to ask an accounting of association dues. Petitioner, however, moved for the dismissal of the case on the ground of lack of jurisdiction alleging that since the complaint was against the owner/developer of a condominium whose condominium project was registered with and licensed by the HLURB, the latter has the exclusive jurisdiction. In sustaining the denial of the motion to dismiss, the Court held that the dispute as to the validity of the assessments is purely an intra-corporate matter between petitioner and respondent and is thus within the exclusive jurisdiction of the RTC sitting as a special commercial court. More so in this case as respondent repeatedly questioned his characterization as a delinquent member and, consequently, petitioner's decision to bar him from exercising his rights to vote and be voted for. These issues are clearly corporate and the demand for damages is just incidental. Being corporate in nature, the issues should be threshed out before the RTC sitting as a special commercial court. The issues on damages can still be resolved in the same special commercial court just like a regular RTC which is still competent to tackle civil law issues incidental to intra-corporate disputes filed before it.[28]

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[27] G.R. No. 186271, February 23, 2011, 644 SCRA 288, 297.

[28] *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation, supra* note 22, at 398.

Moreover, Presidential Decree No. 902-A enumerates the cases over which the Securities and Exchange Commission (SEC) exercises exclusive jurisdiction:

xxx x x x xxx

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity; and

c) Controversies in the election or appointment of directors, trustees, officers, or managers of such corporations, partnerships, or associations.[29]

To be sure, this action partakes of the nature of an intra-corporate controversy, the jurisdiction over which pertains to the SEC. Pursuant to Section 5.2 of Republic Act No. 8799, otherwise known as the *Securities Regulation Code*, the jurisdiction of the SEC over all cases enumerated under Section 5 of Presidential Decree No. 902-A has been transferred to RTCs designated by this Court as Special Commercial Courts.[30] While the CA may be correct that the RTC has jurisdiction, the case should have been filed not with the regular court but with the branch of the RTC designated as a special commercial court. Considering that the RTC of Makati City, Branch 58 was not designated as a special commercial court, it was not vested with jurisdiction over cases previously cognizable by the SEC.[31] The CA, therefore, gravely erred in remanding the case to the RTC for further proceedings.

Indeed, Republic Act (RA) No. 9904, or the *Magna Carta for Homeowners and Homeowners' Associations*, approved on January 7, 2010 and became effective on July 10, 2010,

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[29] *Reyes v. Regional Trial Court of Makati, Br. 142*, *supra* note 21, at 604-605.

[30] *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*, *supra* note 22, at 396.

[31] *Calleja v. Panday*, 518 Phil. 801, 813 (2006).

empowers the HLURB to hear and decide inter-association and/or intra-association controversies or conflicts concerning homeowners' associations. However, we cannot apply the same in the present case as it involves a controversy between a condominium unit owner and a condominium corporation. While the term association as defined in the law covers homeowners' associations of other residential real property which is broad enough to cover a condominium corporation, it does not seem to be the legislative intent. A thorough review of the deliberations of the bicameral conference committee would show that the lawmakers did not intend to extend the coverage of the law to such kind of association. We quote hereunder the pertinent portion of the Bicameral Conference Committee's deliberation, to wit:

THE CHAIRMAN (SEN. ZUBIRI). Let's go back, Mr. Chair, very quickly on homeowners.

THE ACTING CHAIRMAN (REP. ZIALCITA). *Ang sa akin lang*, I think our views are similar, Your Honor, Senator Zubiri, the entry of the condominium units might just complicate the whole matters. So we'd like to put it on record that we're very much concerned about the plight of the Condominium Unit Homeowners' Association. But this could very well be addressed on a separate bill that I'm willing to co-sponsor with the distinguished Senator Zubiri, to address in the Condominium Act of the Philippines, rather than address it here because it might just create a red herring into the entire thing and it will just complicate matters, *hindi ba*?

THE CHAIRMAN (SEN. ZUBIRI). I also agree with you although I sympathize with them—although we sympathize with them and we feel that many times their rights have been also violated by abusive condominium corporations. However, there are certain things that we have to reconcile. There are certain issues that we have to reconcile with this version.

In the Condominium Code, for example, they just raised a very peculiar situation under the Condominium Code — Condominium Corporation Act. It's five years the proxy, whereas here, it's three years. So there would already be violation or there will be already a problem with their version and our version. *Sino ang matutupad doon*? Will it be our version or their version?

So I agree that has to be studied further. And because they have a law pertaining to the condominium housing units, I personally feel that it would complicate matters if we include them. Although I agree that they should be looked after and their problems be looked into.

Probably we can ask our staff, Your Honor, to come up already with the bill although we have no more time. Hopefully we can tackle this again on the 15th Congress. But I agree with the sentiments and the inputs of the Honorable Chair of the House panel.

May we ask our resource persons to also probably give comments?

Atty. Dayrit.

MR. DAYRIT. Yes I agree with you. There are many, I think, practices in their provisions in the Condominium Law that may be conflicting with this version of ours.

For instance, in the case of, let's say, the condominium, the so-called common areas and/or maybe so called open spaces that they may have, especially common areas, they are usually owned by the condominium corporation. Unlike a subdivision where the open spaces and/or the common areas are not necessarily owned by the association. Because sometimes — generally these are donated to the municipality or to the city. And it is only when the city or municipality gives the approval or the conformity that this is donated to the homeowners' association. But generally, under PD [Presidential Decree] 957, it's donated. In the Condominium Corporation, *hindi. Lahat ng mga* open spaces and common areas like corridors, the function rooms and everything, are owned by the corporation. So that's one main issue that can be conflicting.

THE CHAIRMAN (SEN. ZUBIRI). I'll just ask for a one-minute suspension so we can talk.

THE ACTING CHAIRMAN (REP. ZIALCITA). Unless you want to put a catchall phrase like what we did in the Senior Citizen's Act. Something like, to the extent — *paano ba iyon*? To the extent that it is practicable and applicable, the rights and benefits of the homeowners, are hereby extended to the — *mayroon kaming ginamit na phrase eh*...to the extent that it be practicable and applicable to the unit homeoweners (sic), is hereby extended, something like that. It's a catchall phrase. But then again, it might create a...

MR. JALANDONI. It will become complicated. There will be a lot of conflict of laws between the two laws.

THE ACTING CHAIRMAN (REP. ZIALCITA). *Kaya nga eh. At saka*, I don't know. I think the — *mayroon naman silang* protection *sa ano eh, di ba*? Buyers decree *doon sa* Condominium Act. I'm sure there are provisions there *eh. Huwag na lang, huwag na lang.*

MR. JALANDONI. Mr. Chairman, I think it would be best if your previous comments that you'd be supporting an amendment. I think that would be — Well, that would be the best course of action with all due respect.

THE ACTING CHAIRMAN (REP. ZIALCITA). Yeah. Okay. Thank you. *So iyon na lang final proposal naming 'yung* catchall phrase, "With respect to the..."[32]

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THE CHAIRMAN (SEN. ZUBIRI). xxx And so, what is their final decision on the definition of homeowners?

THE ACTING CHAIRMAN (REP. ZIALCITA). We stick to the original, Mr. Chairman. We'll just open up a whole can of worms and a whole new ball game will come into play. Besides, I am not authorized, neither are you, by our counterparts to include the condominium owners.

THE CHAIRMAN (SEN. ZUBIRI). Basically that is correct. We are not authorized by the Senate nor – because we have discussed this lengthily on the floor, actually, several months on the floor. And we don't have the authority as well for other Bicam members to add a provision to include a separate entity that has already their legal or their established Republic Act tackling on that particular issue. But we just like to put on record, we sympathize with the plight of our friends in the condominium associations and we will just guarantee them that we will work on an amendment to the Condominium Corporation Code. So with that – we skipped, that is correct, we have to go back to homeowners' association definition, Your Honor, because we had skipped it altogether. So just quickly going back to Page 7 because there are amendments to the definition of homeowners. If it is alright with the House Panel, adopt the opening phrase of Subsection 7 of the Senate version as opening phrase of Subsection 10 of the reconciled version.

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[32] Bicameral Conference Committee on the Disagreeing Provisions of SBN 3106 and HBN 50, September 30, 2009, pp. 90-94.

x x x x x x x x x[33]

To be sure, RA 4726 or the Condominium Act was enacted to specifically govern a condominium. Said law sanctions the creation of the condominium corporation which is especially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units.[34] The rights and obligations of the condominium unit owners and the condominium corporation are set forth in the above Act.

Clearly, condominium corporations are not covered by the amendment. Thus, the intra-corporate dispute between petitioner and respondent is still within the jurisdiction of the RTC sitting as a special commercial court and not the HLURB. The doctrine laid down by the Court in *Chateau de Baie Condominium Corporation v. Moreno*[35] which in turn cited *Wack Wack Condominium Corporation, et al. v. CA* [36] is still a good law.

WHEREFORE, we hereby **GRANT** the petition and **REVERSE** the Court of Appeals Decision dated July 10, 2007 and Resolution dated January 25, 2008 in CA-G.R. CV No. 86614. The Complaint before the Regional Trial Court of Makati City, Branch 58, which is not a special commercial court, docketed as Civil Case No. 03-1018 is ordered **DISMISSED** for lack of jurisdiction. Let the case be **REMANDED** to the Executive Judge of the Regional Trial Court of Makati City for re-raffle purposes among the designated special commercial courts.

SO ORDERED.

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

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

[34] *Yamane v. BA Lepanto Condominium Corporation*, 510 Phil. 750, 772 (2005).

[35] G.R. No. 186271, February 23, 2011, 644 SCRA 288.

[36] G.R. No. 78490, November 23, 1992, 215 SCRA 850.

SECOND DIVISION

[G.R. No. 181473. November 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DONEY GADUYON *y* TAPISPISAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE UNDER ARTICLE 266-A OF THE REVISED PENAL CODE (RPC); RAPE CAN BE COMMITTED EITHER THROUGH SEXUAL INTERCOURSE OR THROUGH SEXUAL ASSAULT; EXPOUNDED.— The enactment of Republic Act (RA) No. 8353, otherwise known as the Anti-Rape Law of 1997, reclassified the crime of rape as a crime against persons. It also amended Article 335 of the RPC and incorporated therein Article 266-A x x x. Thus, rape can now be committed either through sexual intercourse or through sexual assault. In rape under paragraph 1 or rape through sexual intercourse, carnal knowledge is the crucial element which must be proven beyond reasonable doubt. This is also referred to as "organ rape" or "penile rape" and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. There must be evidence to establish beyond reasonable doubt that the perpetrator's penis touched the *labia* of the victim or slid into her female organ, and not merely stroked the external surface thereof, to ensure his conviction of rape by sexual intercourse. On the other hand, rape under paragraph 2 of the above-quoted article is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape," or the narrower "homosexual rape."

2. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA NO. 7610); TERMS "SEXUAL ABUSE" AND "LASCIVIOUS CONDUCT," EXPLAINED; CHILD PROSTITUTION AND

OTHER SEXUAL ABUSE UNDER SECTION 5 (B), ARTICLE III OF RA 7610, REQUISITES.— x x x RA 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," defines and penalizes child prostitution and other sexual abuse. "Sexual abuse includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. Lascivious conduct means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person." The Information in Criminal Case No. 6573 against appellant was for violation of Section 5(b), Article III of RA 7610 x x x. In paragraph (b), the following requisites must concur: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female is below eighteen (18) years of age. This paragraph "punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct."

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHERE A VICTIM'S TESTIMONY IS CORROBORATED BY THE PHYSICAL FINDINGS OF PENETRATION, THERE IS SUFFICIENT BASIS FOR CONCLUDING THAT SEXUAL INTERCOURSE DID TAKE PLACE.—** We agree with the observation of the lower courts that the testimony of "AAA" is worthy of credence. She positively identified appellant as her abuser. She did not waver on the material points of her testimony and maintained the same even on cross-examination. Indeed, her statements under oath are sufficient evidence to convict appellant for the crimes alleged in the Informations. Moreover, "AAA's" testimony is corroborated by the result

of her medical examination which showed the presence of a deep healed laceration in her private part. This finding is consistent with her declaration that appellant inserted his penis and finger into her vagina. "Where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place."

4. ID.; ID.; ID.; ACCUSED'S BARE ASSERTION, EVEN IF CORROBORATED BY HIS MOTHER, DOES NOT DESERVE ANY WEIGHT SINCE COURTS FROWN UPON THE CORROBORATIVE TESTIMONY OF AN IMMEDIATE MEMBER OF THE FAMILY OF AN ACCUSED AND TREAT IT WITH SUSPICION.— Appellant seeks to discredit "AAA's" testimony by insisting that he could not have raped the latter in the evening of August 22, 2002 since the whole family was in their house that day. This assertion is undeserving of credence due to our constant pronouncement that a bare assertion cannot prevail over the categorical testimony of a victim. Even if corroborated by appellant's mother, the same does not deserve any weight since courts usually frown upon the corroborative testimony of an immediate member of the family of an accused and treat it with suspicion. The close filial relationship between the witness and the accused casts a thick cloud of doubt upon the former's testimony.

5. CRIMINAL LAW; RAPE; THE PRESENCE OF OTHER PEOPLE IS NOT A DETERRENT TO THE COMMISSION OF RAPE.— Even assuming that appellant was not alone with "AAA" on August 22, 2002, the presence of other people is not a deterrent to the commission of rape. This observation is apparent from the rape by sexual assault committed on October 9, 2002 while the entire family was in the residence. As aptly held by the RTC and the CA, rape indeed does not respect time and place.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FOR A DISCREPANCY OR INCONSISTENCY IN THE TESTIMONY OF A WITNESS TO SERVE AS A BASIS FOR ACQUITTAL, IT MUST REFER TO THE SIGNIFICANT FACTS INDISPENSABLE TO THE GUILT OR INNOCENCE OF THE APPELLANT FOR THE CRIME CHARGED.— Appellant impugns the credibility of "AAA" by emphasizing that she gave conflicting accounts on the manner she was raped. He also

stresses the contradictions in the testimony of "AAA" and the other prosecution witnesses on the events that transpired after the alleged rape and regarding the disclosure by "AAA" of her ordeal. We are not persuaded. Our review of the transcript of stenographic notes of the testimonies of the prosecution witnesses reveals that these inconsistencies refer to inconsequential matters "that [do] not bear upon the elements of the crime of rape. The decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the appellant for the crime charged. As the inconsistencies alleged by the appellant had nothing to do with the elements of the crime of rape, they cannot be used as [grounds] for his acquittal."

7. ID.; ID.; ID.; AN ERRORLESS RECOLLECTION OF A HARROWING EXPERIENCE CANNOT BE EXPECTED OF A WITNESS, ESPECIALLY WHEN SHE IS RECOUNTING DETAILS FROM AN EXPERIENCE AS HUMILIATING AND PAINFUL AS RAPE.— With regard to the inconsistencies on the part of "AAA," it bears stressing that "victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, an errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience as humiliating and painful as rape. Furthermore, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation." Verily, in this case, minor inconsistencies in the testimony of "AAA" are to be expected because (1) she was a minor child during her defloration; (2) she was to testify on a painful and humiliating experience; (3) she was sexually assaulted several times; and, (4) she was examined on details and events that happened almost six months before she testified.

8. CRIMINAL LAW; QUALIFIED RAPE THROUGH SEXUAL INTERCOURSE; PROPER PENALTY.— The RTC imposed upon appellant the penalty of death for committing the crime of qualified rape through sexual intercourse in Criminal Case No. 6572. The Information in this case alleged the qualifying circumstances of relationship and minority. Appellant is the

father of "AAA" and he admitted this filial bond between them during the pre-trial conference and trial. "[A]dmission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim." Also, "AAA's" birth certificate was submitted as proof of her age. This document suffices as competent evidence of her age. "In view, however, of the passage of R.A. No. 9346, which prohibits the imposition of the penalty of death, the penalty of *reclusion perpetua,* without eligibility for parole, should be imposed." Appellant is thus sentenced to *reclusion perpetua* without eligibility for parole for the crime of qualified rape committed through sexual intercourse in Criminal Case No. 6572.

9. ID.; SEXUAL ABUSE UNDER SECTION 5, ARTICLE III OF RA 7610; PROPER PENALTY.— With regard to the crime of sexual abuse under RA 7610, the penalty provided for violation of Section 5, Article III thereof is *reclusion temporal* in its medium period to *reclusion perpetua*. "As the crime was committed by the father of ["AAA,"] the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating." With the presence of this aggravating circumstance and no mitigating circumstance, the penalty in Criminal Case No. 6573 shall be applied in its maximum period – *reclusion perpetua*.

10. ID.; RAPE BY SEXUAL ASSAULT; PROPER PENALTY.— xxx [*P*]*rision mayor* is the penalty prescribed for rape by sexual assault under Article 266-B of the RPC. The penalty is increased to *reclusion temporal* if the rape is committed with any of the 10 aggravating/qualifying circumstances mentioned in [said] article. Just like in Criminal Case No. 6572, the qualifying circumstances of relationship and minority are sufficiently alleged and proven in this case. The penalty therefore is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, the trial court and the CA correctly imposed the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months and (1) day of *reclusion temporal,* as maximum in Criminal Case No. 6574.

11. ID.; QUALIFIED RAPE THROUGH SEXUAL INTERCOURSE, SEXUAL ABUSE UNDER RA 7610, AND RAPE BY SEXUAL ASSAULT; CIVIL LIABILITY OF APPELLANT.— In line with prevailing jurisprudence, the award of damages to "AAA" in Criminal Case No. 6572 must be increased as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages. She is further awarded civil indemnity of ₱20,000.00, moral damages and a fine at ₱15,000.00 each in Criminal Case No. 6573. In Criminal Case No. 6574, the awards of civil indemnity and moral damages at ₱30,000.00 each are maintained but the award of exemplary damages is increased to ₱30,000.00. "AAA" is also entitled to an interest on all the amounts of damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Eufracio Segundo C. Pagunuran for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

This is a case of a father defiling his 12-year old daughter on three separate occasions.

On appeal is the Decision[1] dated July 31, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02511 that affirmed *in toto* the January 18, 2006 Decision[2] of the Regional Trial Court (RTC), Branch 76, San Mateo, Rizal, in Criminal Case Nos. 6572-74, finding appellant Doney Gaduyon *y* Tapispisan (appellant) guilty beyond reasonable doubt of qualified rape,[3]

[1] CA *rollo*, pp. 213-227; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario.

[2] Records, Vol. 1, pp. 315-331; penned by Judge Josephine Zarate Fernandez.

[3] Under Art. 266-A, par. 1(a), in relation to Art. 266-B, par. 5(1) of the Revised Penal Code.

qualified object rape[4] and sexual abuse[5] committed against his own daughter "AAA."[6]

Factual Antecedents

Three Informations were filed against appellant, the relevant portions of which read as follows:

In Criminal Case No. 6572 for Qualified Rape

That on or about the 22nd day of August 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and ascendancy and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of one "AAA," a minor, 12 years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstances of relationship and minority, the said accused being the parent of the said victim, a 12[-]year old minor daughter of the accused thereby raising the crime to Qualified Rape which is aggravated by the circumstance of Treachery, Abuse of Superior Strength, Nighttime and Dwelling.

CONTRARY TO LAW.[7]

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[4] Under Art. 266-A, par. 2, in relation to Art. 266-B, par. 10 and par. 5(1) of the Revised Penal Code.

[5] Violation of Sec. 5(b), 1st phrase of Republic Act No. 7610 [or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act] in relation to Sec. 31(c) of the same Act and in further relation to Sec. 5, par. j of Republic Act No. 8369 [Family Courts Act of 1997].

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

[7] Records, Vol. I, p. 1.

In Criminal Case No. 6573 for Sexual Abuse

That on or about the 21st day of August 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and ascendancy being the parent of the victim "AAA," with lewd design x x x and intent to debase, degrade or demean said victim, did then and there willfully, unlawfully and knowingly commit lascivious conduct on the said "AAA," a minor, 12 years of age, by then and there touching her breast and rubbing her arms, against her will and without her consent thereby constituting SEXUAL ABUSE which is prejudicial to her normal growth and development with attendant aggravating circumstance of RELATIONSHIP increasing the penalty of the offense to its maximum period.

CONTRARY TO LAW.[8]

In Criminal Case No. 6574 for Qualified Object Rape

That on or about the 9th day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and ascendancy and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously insert his finger into the genital orifice of "AAA," a minor, 12 years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstances of relationship and minority, the said accused being the parent of the said victim, a 12[-]year old minor daughter of the accused thereby raising the crime to qualified object rape which is aggravated by the circumstance of Treachery, Abuse of Superior Strength, Nighttime and Dwelling.

CONTRARY TO LAW.[9]

Appellant pleaded not guilty to all the charges. Upon termination of the pre-trial conference, trial ensued.

Version of the Prosecution

Appellant is married to the mother of "AAA" with whom he

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[8] Records of Criminal Case No. 6573 (attached at the back of the records, Vol. I), pp. 1-2.

[9] Records of Criminal Case No. 6574 (attached at the back of the records, Vol. I), pp. 1-2.

has three daughters. Their eldest child is "AAA," who at the time material to this case was only 12 years old.

On August 21, 2002, the mother and sisters of "AAA" attended the wake of her auntie in Caloocan City. "AAA" and her father, the appellant, were thus the only ones left in the family residence in San Mateo, Rizal. At around 9:00 p.m. of the said date, "AAA" was lying in her bed in the family room located at the upper portion of their house when appellant fondled her breasts and touched her arms.[10] Appellant threatened "AAA" not to tell her mother about the incident or else something bad might happen to the latter.[11]

At around 11:00 p.m. of the following day, August 22, 2002, and while her mother and sisters were still in Caloocan City, "AAA" was awakened when appellant lowered her shorts and panty.[12] Appellant spread her legs and inserted his penis into her vagina.[13] "AAA" felt pain but could do nothing but cry.[14] Appellant pulled out his penis and inserted it again into "AAA's" vagina. When he was done, appellant put her shorts and panty back on and again threatened "AAA."[15]

After more than a month or on October 9, 2002, at about 10:30 p.m. and while "AAA" was sleeping in a double-deck bed and her sister was in the lower portion thereof, "AAA" was suddenly awakened. She noticed that her short pants had been lowered while appellant was already lying beside her.[16] Appellant then inserted his index finger into "AAA's" vagina. "AAA" only cried upon feeling the pain. After his deplorable act, appellant reiterated his previous threat to "AAA."[17]

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[10] TSN, March 5, 2003, pp. 6-7.

[11] *Id*. at 7.

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

[13] *Id*. at 9.

[14] *Id*.

[15] *Id*. at 10.

[16] *Id*. at 12.

[17] *Id*. at 12 and 14.

After a few minutes, "AAA's" mother entered the room where her daughters were sleeping. She noticed that "AAA" was covered with pillows, except for her head and feet.[18] Upon approaching "AAA," she saw that her legs were spread apart and her panty was slightly lowered and inserted at the center of her genitals.[19] The mother then suspected that her husband did something bad to "AAA" since only she and her husband were awake at that time. However, she opted to remain silent and just pray.[20]

When "AAA" went to school the following day, she was asked by her religion teacher if her father did something bad to her.[21] "AAA" who was teary-eyed did not answer.[22] Later, "AAA's" class adviser called her.[23] They ate in the canteen and thereafter proceeded to the adoration chapel to pray.[24] After praying, the teacher asked "AAA" the same question propounded by the religion teacher.[25] This time, "AAA" replied that her father did something bad to her twice but did not reveal the details surrounding the same.[26] "AAA's" mother then came and asked her daughter if appellant did something bad to her. "AAA" answered "Yes. It happened twice."[27] Thus, "AAA" and her mother went to the police station and reported the incidents of her defilement.[28] A physical examination done upon "AAA" revealed that she was in a non-virgin physical

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[18] TSN, September 11, 2003, p. 7.

[19] *Id*. at 11.

[20] *Id*. at 10-12.

[21] TSN, March 5, 2003, p. 15; TSN, July 7, 2005, pp. 3-4.

[22] TSN, July 7, 2005, pp. 4-5.

[23] TSN, March 5, 2003, p. 16.

[24] *Id*.

[25] *Id*. at 17.

[26] *Id*.

[27] *Id*.; TSN, October 1, 2003, p. 5.

[28] *Id.* at 6.

state but that there are no signs of any form of trauma.[29] A psychiatric evaluation likewise revealed that "AAA" was suffering from Post-traumatic Stress Disorder with Depressed Mood.[30]

Version of the Defense

Appellant denied the accusations against him and instead advanced the following version of events.

From August 21, 2002 until 9:00 a.m. of August 22, 2002, his wife and their two younger daughters attended the wake of his wife's sister in Caloocan City.[31] While he admitted that only he and "AAA" were left in their house, he denied mashing her breast.[32] He claimed that at the time of the alleged incident on August 21, 2002, he was overseeing their computer shop.[33] He also denied raping "AAA" the following day since his wife and his youngest daughter were already home by then and they all slept in their house in the evening of that day.[34]

Anent what transpired on October 9, 2002, appellant claimed that he closed their computer shop at around 10:00 p.m.[35] He then proceeded upstairs and saw his wife feeding their youngest daughter.[36] She asked him to take over so she could go to the bathroom downstairs.[37] At 10:25 p.m., his wife returned.[38] Appellant then heard a noise from the outside. After a while, his *kumpare* called him to report that his brother threw stones

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[29] Exhibit "N", Records, Vol. II, p. 377.

[30] Records, Vol. I, pp. 121-124.

[31] TSN, April 4, 2005, p. 5.

[32] *Id*. at 6.

[33] *Id*. at 4.

[34] *Id*. at 11.

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

[36] *Id*. at 13.

[37] *Id*.

[38] *Id*.

at the house of his *kumpare's* father.[39] Appellant immediately went outside.[40] There was therefore no truth to the claim of "AAA" that he inserted his finger inside her vagina that night.[41]

The defense believed that "AAA" was just induced by appellant's wife to make false accusations against him.[42] This was due to his wife's infidelity which was confirmed when his wife confessed that she went out with another man[43] and when their younger daughter saw his wife kissing another man.[44] Despite this, appellant claimed that he already forgave his wife for the sake of their children.[45]

Appellant's mother corroborated his story. According to her, appellant's family was in their house in the morning of August 22, 2002.[46] She even talked to the wife of appellant at around 6:00 p.m. and was told that she went home with her youngest daughter so they could rest since they have no place to stay in the wake they attended in Caloocan City.[47] The next day, "AAA," her mother and sister went back to the wake.[48]

Appellant's sister-in-law testified that after "AAA," her mother and sister went to the wake on August 23, 2002, she, together with her son, mother-in-law, and appellant followed that evening.[49] She observed that there seemed to be nothing wrong with "AAA" since she was serving food in the wake and playing with her cousins.[50]

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[39] *Id*.

[40] *Id*. at 14.

[41] *Id*. at 16.

[42] *Id*. at 19.

[43] TSN, August 31, 2005, p. 5.

[44] *Id*.

[45] *Id*. at 7.

[46] TSN, March 3, 2005, p. 4.

[47] *Id*. at 4-7.

[48] *Id*. at 8.

[49] TSN, May 19, 2004, pp. 5-6.

[50] *Id*.

Ruling of the Regional Trial Court

In its January 18, 2006 Decision,[51] the RTC gave more weight to "AAA's" positive testimony as against appellant's bare denials since her testimony was candid, straightforward and free from material contradictions. Her testimony was complemented by the findings of the medico-legal officer who examined "AAA." In fact, "AAA" suffered intense psychological stress and depression as a result of the abuses.

On the other hand, the RTC found that appellant's denials were not substantiated by clear and convincing evidence. It also found unacceptable his attempt to malign the reputation of his wife and daughter in order to exculpate himself. According to the said court, this evasive attitude of appellant cannot prevail over "AAA's" testimony.

Accordingly, the RTC disposed of the criminal cases thus:

WHEREFORE, premises considered judgment is hereby rendered as follows:

(a) In [C]riminal [C]ase No. 6572, for the rape committed on August 22, 2002, accused Doney Gaduyon *y* Tapispisan is hereby sentenced to suffer the penalty of DEATH and to pay the victim "AAA," the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000.00 as exemplary damages.

(b) In [C]riminal [C]ase No. 6573, for the sexual abuse committed on August 21, 2002, accused Doney Gaduyon *y* Tapispisan is hereby sentenced to an indeterminate penalty of One (1) year and One (1) month of *Prision Correcional* as minimum to Two (2) years, Eleven (11) months of *Prision Correccional* in its medium period as maximum.

(c) In [C]riminal [C]ase No. 6574, for the rape committed on October 9, 2002, accused Doney Gaduyon *y* Tapispisan is hereby sentenced to suffer the penalty of DEATH and to pay the victim "AAA" the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000.00 as exemplary damages.

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[51] *Supra* note 2.

SO ORDERED.[52]

On September 4, 2006, the RTC, however, partially modified the above judgment[53] insofar as the penalty imposed in Criminal Case No. 6574 is concerned, *viz*:

The aforesaid judgment is hereby partially modified x x x to read, as follows:

"WHEREFORE, premises considered, the judgment is hereby rendered, as follows:

(a) x x x

(b) x x x

(c) In Criminal Case No. 6574, for the rape committed on October 9, 2002, accused Doney Gaduyon *y* Tapispisan **is hereby sentenced to suffer the indeterminate penalty of imprisonment of 6 years and 1 day of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal, as maximum and to pay the victim "AAA," the amount of ₱30,000.00, as civil indemnity, ₱30,000.00, as moral damages and ₱15,000.00, as exemplary damages.**

SO ORDERED."[54]

Ruling of the Court of Appeals

On appeal, the appellate court sustained appellant's conviction. Like the RTC, it stressed that appellant's bare assertions cannot overcome the categorical testimony of the victim. It brushed aside the inconsistencies on the part of "AAA" as pointed out by appellant and concluded, after a careful evaluation of the facts and evidence on record, that appellant's guilt was proven beyond reasonable doubt.

Hence, the dispositive portion of the CA's July 31, 2007 Decision:[55]

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[52] *Id*. at 330-331.

[53] See Partial Modification of Judgment, *id*. at 352D-352E.

[54] *Id*. at 352E. Emphasis in the original.

[55] *Supra* note 1.

WHEREFORE, the appealed Decision is AFFIRMED *in toto*.

SO ORDERED.[56]

Assignment of Errors

Still insisting on his innocence, appellant prays for the reversal of the CA's appealed Decision and adopts the same assignment of errors he advanced before the said court, *viz*:

THE LOWER COURT ERRED IN NOT ACCORDING TO THE ACCUSED THE PRESUMPTION OF INNOCENCE TO WHICH HE IS ENTITLED IN CRIMINAL CASES AND FOR CONVICTING HIM OF THE OFFENSES CHARGED WITHOUT THE BENEFIT OF PROOF BEYOND REASONABLE DOUBT DESPITE THE EVIDENCE SHOWING THAT –

A. THE CLAIM OF THE PROSECUTION THAT THE ACCUSED AND HIS DAUGHTER WERE ALONE AT THEIR SAN MATEO RESIDENCE IN THE EVENING OF 22 AUGUST 2002, THE DATE WHEN THE ALLEGED PENILE PENETRATION TOOK PLACE IS A BRAZEN LIE;

B. "AAA" DID NOT MANIFEST OVERT PHYSICAL SIGNS THAT SHE WAS RAPED;

C. "AAA" GAVE FOUR CONFLICTING ACCOUNTS ON HOW SHE WAS RAPED;

D. "AAA" GAVE THREE CONFLICTING ACCOUNTS ON HOW SHE WAS "FINGERED" BY HER FATHER IN THE EVENING OF 9 OCTOBER 2002;

E. X X X THE MOTHER OF THE ALLEGED VICTIM, CONCOCTED THE 9 OCTOBER 2002 INCIDENT;

F. THERE IS NO SPONTANEOUS DISCLOSURE. "AAA" WAS PRESSURED TO ACCUSE HER FATHER;

G. "AAA" IS SUSCEPTIBLE TO PRESSURE AND MANIPULATION;

H. "AAA" BESTOWED [ON] HER FATHER A WARM SMILE WHEN SHE IDENTIFIED HIM IN COURT, WHICH IS

[56] *Id.* at 227.

UNEXPECTED IF SHE HAD IN FACT BEEN RAPED AND MOLESTED BY HER OWN FATHER;

I. THE DEMEANOR OF "AAA" X X X IN THE COURSE OF THE COURT PROCEEDINGS IS FAR FROM INSPIRING;

J. "AAA" [GAVE] FOUR CONFLICTING VERSIONS OF WHAT TRANSPIRED AFTER THE ALLEGED RAPE;

K. "AAA" IS CONSISTENT IN GIVING INCONSISTENT STATEMENTS;

L. THE STATEMENT OF "AAA" THAT HER FATHER DID BAD THINGS TO HER TWICE CONTRADICTS HER CLAIM THAT SHE WAS SEXUALLY MOLESTED THRICE;

M. "AAA" GAVE CONFLICTING ACCOUNTS ON HOW SHE FINALLY DISCLOSED HER ORDEAL;

N. THE WITNESSES FOR THE PROSECUTION GAVE CONFLICTING ACCOUNTS OF HOW "AAA" MADE THE DISCLOSURE;

O. X X X THE CLASS ADVISER OF "AAA" AND A WITNESS FOR THE PROSECUTION, COULD NOT BE BELIEVED WITH SAFETY;

P. THE CLAIM THAT THE ACCUSED "FINGERED" HIS DAUGHTER IN THE EVENING OF 9 OCTOBER 2002 IS INCREDIBLE;

Q. FROM HER TESTIMONY, IT APPEARS THAT "AAA" IS [SUBCONSCIOUSLY] SENDING SUBTLE HINTS TO THE COURT TO RECEIVE HER TESTIMONY WITH CAUTION;

R. THE PARENTS OF "AAA" ARE NOT GETTING ALONG WELL;

S. THE CLINICAL FINDING OF THE PSYCHIATRIST IS FAULTY AND INCONCLUSIVE; AND

T. THE MEDICAL EVIDENCE IS NOT CONCLUSIVE OF RAPE.[57]

In fine, appellant contends that the prosecution failed to establish by proof beyond reasonable doubt that he committed

[57] *Id*. at 45-47.

the crimes attributed to him.[58] He argues that his alibi and denial deserve greater weight in evidence than the testimony of the prosecution witnesses.[59]

Our Ruling

The appeal is unmeritorious.

The crime of rape under Article 266-A of the Revised Penal Code (RPC)

The enactment of Republic Act (RA) No. 8353, otherwise known as the Anti-Rape Law of 1997, reclassified the crime of rape as a crime against persons.[60] It also amended Article 335 of the RPC and incorporated therein Article 266-A which reads:

> Art. 266-A. *Rape, When and How Committed*. – Rape is committed-
>
> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat or intimidation;
>
> b. When the offended party is deprived of reason or is otherwise unconscious;
>
> c. By means of fraudulent machination or grave abuse of authority;
>
> d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;
>
> 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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[58] *Id*. at 56-127.

[59] *Id*. at 127-132.

[60] *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 701-702.

Thus, rape can now be committed either through sexual intercourse or through sexual assault. In rape under paragraph 1 or rape through sexual intercourse, carnal knowledge is the crucial element which must be proven beyond reasonable doubt.[61] This is also referred to as "organ rape" or "penile rape"[62] and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. There must be evidence to establish beyond reasonable doubt that the perpetrator's penis touched the *labia* of the victim or slid into her female organ, and not merely stroked the external surface thereof, to ensure his conviction of rape by sexual intercourse.[63]

On the other hand, rape under paragraph 2 of the above-quoted article is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape," or the narrower "homosexual rape."[64]

The crime of sexual abuse under Republic Act No. 7610

On the other hand, RA 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," defines and penalizes child prostitution and other sexual abuse. "Sexual abuse includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. Lascivious conduct means the intentional touching, either directly or through clothing, of the genitalia,

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[61] *People v. Brioso*, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 493.

[62] *People v. Abulon*, *supra* note 62 at 702.

[63] *People v. Brioso*, *supra* note 63 at 495.

[64] *People v. Abulon*, *supra* note 62 at 702.

anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person." [65]

The Information in Criminal Case No. 6573 against appellant was for violation of Section 5(b), Article III of RA 7610, which pertinently provides:

> SEC. 5. *Child Prostitution and Other Sexual Abuse*. - Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, **indulge in sexual intercourse or lascivious conduct**, are deemed to be **children exploited in** prostitution and **other sexual abuse**.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) **Those who commit the act of sexual intercourse or lascivious conduct with a child** exploited in prostitution or **subjected to other sexual abuse**: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x. (Emphasis supplied)

In paragraph (b), the following requisites must concur: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in

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[65] *People v. Sumingwa*, G.R. No. 183619, October 13, 2009, 603 SCRA 638, 654-655, citing Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of Republic Act No. 7610.

prostitution or subjected to other sexual abuse; and (3) the child, whether male or female is below eighteen (18) years of age.[66] This paragraph "punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct."[67]

Appellant is guilty of the two kinds of rape under Art. 266-A of the RPC and of sexual abuse under RA 7610.

Our examination of the testimony of "AAA" reveals that there was carnal knowledge or sexual intercourse through force, threat and intimidation on August 22, 2002. Appellant also committed rape by sexual assault when he inserted his finger into the genitalia of "AAA" on October 9, 2002. He also subjected "AAA," a minor at 12 years of age, to sexual abuse by means of lascivious conduct through intimidation or influence, when he mashed her breasts and stroked her arms on August 21, 2002. "AAA" gave detailed accounts of these acts of perversion, *viz*:

Q: Last August 21, 2002, at around 9:00 o'clock in the evening where were you?
A: I was in our house, sir.

x x x x x x x x x

Q: At such time, place and date do you recall any unusual incident that happened?
A: There was, sir.

Q: What was that?
A: I saw my daddy fondling my breasts and holding my arms, sir.

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[66] *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656-657.

[67] *Id.* at 657-658.

Q: And where were you in the house when your father did that to you?
A: I was in the room, sir.

Q: Where in the room?

x x x x x x x x x

A: [In] the bed, sir.

ATTY. SAN JOAQUIN:
Q: What were you doing in bed?
A: I was lying, sir.

Q: And you said that your father, while you were [in] bed in the room, touched your breasts, would you please demonstrate to the court how your father touched your breasts?
A: Like this, sir.

ATTY. SAN JOAQUIN:
Witness [cupping] with her two (2) palms her breasts x x x.

x x x x x x x x x

ATTY. SAN JOAQUIN:
Q: You also said that your father touched your arms, would you please demonstrate to the court how your father touched your arms?
A: Like this, sir.

ATTY. SAN JOAQUIN
Witness demonstrating with her right palm placed on her left shoulder and the left palm placed on her right shoulder and then moving them downwards.

Q: When your father did that to you, what did you do?
A: I was crying, sir.

Q: And did you say anything to your father?
A: None, sir.

Q: Did your father say anything to you?
A: Yes, sir.

Q: What was that?
A: He told me not to tell anything to my mother because in case I would tell something to my mother, something will happen to her, sir.

ATTY. SAN JOAQUIN:
May we manifest, your Honor, that the witness, while saying the words she had just said, had teary eyes and [was] wiping her tears with her handkerchief.

Q: When that was done to you by your father, who were in the house?
A: Only the two (2) of us, sir.

Q: Where was your mother?
A: She was in the wake of my aunt, sir.

Q: Where was your sister "CCC"?
A: Also at the wake, sir.

Q: How about your sister "DDD"?
A: Also at the wake of my aunt, sir.

Q: What time was that again?
A: 9:00 o'clock, sir.

Q: Daytime or nighttime?
A: Evening, sir.

x x x x x x x x x

Q: "AAA," while you are testifying now, what do you feel?
A: I am afraid (*natatakot po*), sir.

ATTY. SAN JOAQUIN:
May we manifest that while the witness answers "*natatakot po*" she is crying and wiping her eyes with her handkerchief.

Q: At about 11 o'clock in the evening after August 22, 2002, where were you?
A: I was in the house, sir.

Q: What house?
A: The house of my grandmother, sir.

Q: Where is that?
A: "YYY," San Mateo, Rizal, sir.

Q: At that time, date and place, do you recall an unusual incident that happened?
A: There was, sir.

Q: What was that?
A: While I was sleeping I was suddenly awakened, sir.

Q: Why were you suddenly awakened from sleep?
A: Because my dad was lowering my shorts, sir.

Q: How did you know that your daddy was lowering your shorts?
A: I saw it, sir.

Q: Was your daddy able to lower your shorts?
A: Yes, sir.

Q: What else did he do after lowering your shorts?
A: He lowered my panty, sir.

Q: Was your daddy able to lower your panty?
A: Yes, sir.

Q: What were you doing when your daddy was lowering your shorts and then panty, what were you doing?
A: I was crying, sir.

Q: After your daddy has lowered your shorts and panty what happened next?
A: He separated my legs (*ibinuka niya po ang hita ko*), sir.

Q: After your daddy separated your legs, what happened next?
A: He inserted his penis into my vagina, sir.

Q: You said he inserted his penis into your vagina, was he able to insert his penis into your vagina?
A: Yes, sir.

Q: When your daddy inserted his penis into your vagina, what did you feel?
A: It was painful, sir.

x x x x x x x x x

Q: When the penis of [your] father was already inserted into your vagina, what happened next?
A: He pulled it out and then inserted it again (*hinugot niya tapos ay ipinasok niya uli*), sir.

Q: How many times did that happen that your daddy pulled out his penis from you and then inserted it, how many times?
A: Two (2) times, sir.

Q: Then afterwards what happened?
A: He pulled it out again then he returned my panty, sir.

Q: What else?
A: He also returned my shorts, sir.

Q: Did you say anything to your daddy when he did that to you?
A: No, sir.

Q: How about your daddy, did he tell you anything?
A: Yes, sir.

Q: What was that?
A: Not to tell anything to my mother because something will happen to her if I tell anything to her, sir.

Q: Who [were] in the house when your father did that to you?
A: Only the two (2) of us, sir.

Q: Where was your mother?
A: She was still in the wake of my aunt, sir.

Q: How about your sister "CCC"?
A: She was also in the wake, sir.

x x x x x x x x x

Q: What time was that when it happened?
A: At 11:00 o'clock, sir.

Q: Daytime or nighttime?
A: Nighttime, sir.

x x x x x x x x x

Q: "AAA," I am asking you this question, at about 10:30 o'clock in the evening of October 9, 2002, where were you?
A: I was in the house, sir.

Q: What house?
A: "YYY," San Mateo, Rizal, sir.

Q: At such time, date and place, do you recall any unusual incident that happened?
A: There was, sir.

Q: What was that?
A: When I saw my shorts under my feet and my dad was already lying beside me, sir.

Q: How do you know that your daddy was beside you?

A: I saw him, sir.

Q: Where were you at that time, what place in the house?
A: In the room, sir.

Q: Where in the room?
A: x x x my bed, sir.

Q: What are you doing [in] bed?
A: I was sleeping, sir.

Q: Now, you said that you found out that your shorts was no longer being worn by you, what happened next?
A: My daddy inserted his finger in my vagina, sir.

Q: Which finger of your daddy was inserted at that time into your vagina?
A: The index finger, sir.

x x x x x x x x x

Q: "AAA," when your father inserted his finger into your vagina, what did you feel?
A: It was painful, sir.

Q: What did you do when your father inserted his finger into your vagina?
A: I just cried, sir.

Q: Did you tell your father anything?
A: None, sir.

Q: How about your father, did he tell you anything?
A: Yes, there was, sir.

Q: What was that?
A: Not to tell anything to my mother, sir.

Q: Now, who were in the house when that happened?
A: My sisters "CCC" and "DDD" and also my mother, sir.

Q: Where was your mother when your father was inserting his finger into your vagina, where was your mother?
A: I do not know, sir.

Q: How about your sister "CCC"?
A: At the lower portion of the double-deck, sir.

Q: What was "CCC" doing there at the lower portion of your double-deck bed?
A: She was sleeping, sir.

Q: How about "DDD"?
A: She was on the mattress, sir.

Q: What time was that in the evening?
A: At about 10:30, sir.[68]

We agree with the observation of the lower courts that the testimony of "AAA" is worthy of credence. She positively identified appellant as her abuser. She did not waver on the material points of her testimony and maintained the same even on cross-examination. Indeed, her statements under oath are sufficient evidence to convict appellant for the crimes alleged in the Informations.[69]

Moreover, "AAA's" testimony is corroborated by the result of her medical examination which showed the presence of a deep healed laceration in her private part.[70] This finding is consistent with her declaration that appellant inserted his penis and finger into her vagina. "Where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place."[71]

Appellant seeks to discredit "AAA's" testimony by insisting that he could not have raped the latter in the evening of August 22, 2002 since the whole family was in their house that day. This assertion is undeserving of credence due to our constant pronouncement that a bare assertion cannot prevail over the

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[68] TSN, March 5, 2003, pp. 5-15.

[69] *People v. Nachor*, G.R. No. 177779, December 14, 2010, 638 SCRA 317, 330-331.

[70] Records, Vol. I, p. 11 and Vol. II, p. 377.

[71] *People v. Alcazar*, G.R. No. 186494, September 15, 2010, 630 SCRA 622, 634.

categorical testimony of a victim.[72] Even if corroborated by appellant's mother, the same does not deserve any weight since courts usually frown upon the corroborative testimony of an immediate member of the family of an accused and treat it with suspicion. The close filial relationship between the witness and the accused casts a thick cloud of doubt upon the former's testimony.

Even assuming that appellant was not alone with "AAA" on August 22, 2002, the presence of other people is not a deterrent to the commission of rape. This observation is apparent from the rape by sexual assault committed on October 9, 2002 while the entire family was in the residence. As aptly held by the RTC and the CA, rape indeed does not respect time and place.

Appellant impugns the credibility of "AAA" by emphasizing that she gave conflicting accounts on the manner she was raped. He also stresses the contradictions in the testimony of "AAA" and the other prosecution witnesses on the events that transpired after the alleged rape and regarding the disclosure by "AAA" of her ordeal.

We are not persuaded. Our review of the transcript of stenographic notes of the testimonies of the prosecution witnesses reveals that these inconsistencies refer to inconsequential matters "that [do] not bear upon the elements of the crime of rape. The decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the appellant for the crime charged. As the inconsistencies alleged by the appellant had nothing to do with the elements of the crime of rape, they cannot be used as [grounds] for his acquittal."[73]

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[72] *People v. Cachapero*, G.R. No. 153008, May 20, 2004, 428 SCRA 744, 757.

[73] *People v. Escoton*, G.R. No. 183577, February 1, 2010, 611 SCRA 233, 246.

With regard to the inconsistencies on the part of "AAA," it bears stressing that "victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, an errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience as humiliating and painful as rape. Furthermore, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation."[74] Verily, in this case, minor inconsistencies in the testimony of "AAA" are to be expected because (1) she was a minor child during her defloration; (2) she was to testify on a painful and humiliating experience; (3) she was sexually assaulted several times; and, (4) she was examined on details and events that happened almost six months before she testified.[75]

Anent appellant's other assigned errors, we quote the following findings of the CA:

> The argument that "AAA" did not manifest overt physical signs of having been raped since she acted and walked normally the following day cannot justify the reversal of appellant's conviction. How a person goes about the day after the happening of a horrid event is not a tell-tale sign of the truth or [falsity] of an allegation. The workings of the human mind placed under a great deal [of] emotional and psychological stress are unpredictable and different people react differently. Furthermore, under the circumstances of this case, overt physical manifestations cannot be expected since "AAA" did not put up any form of resistance. The threat of harm to be inflicted on her mother was sufficient intimidation for her to succumb to her father's lust out of fear. The pattern of instilling fear, utilized by the perpetrator in incestuous rape to intimidate his victim into submission, is evident in virtually all cases. It is through this fear that the perpetrator hopes to create a climate of extreme psychological terror which would, he hopes, numb his victim into silence and force her to submit to repeated acts of rape over a period of time. The relationship of the victim to the perpetrator magnifies

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[74] *Id*.

[75] *Id*. at 246-247.

this terror, because the perpetrator is a person normally expected to give solace and protection to the victim.

Appellant would also want to impress upon this Court that the accusation of his daughter was concocted by his wife because of their marital problems. This contention is preposterous. It is unnatural for a mother to sacrifice her own daughter, a child of tender years, and subject her to the rigors and humiliation of a public trial for rape if she was not driven by an honest desire to have her daughter's transgressor punished accordingly.

Neither can it be said that there was no spontaneous disclosure by "AAA" of the incident. Appellant threatened "AAA." The humiliation caused by the rape by her own father in addition to the burden of being responsible should her mother be harmed are sufficient to prevent any child from freely disclosing her ordeal. We must be reminded that the crime of rape by itself attaches much humiliation and more so if the loss is caused by her father. Delay and the initial reluctance of a rape victim to make public the assault on her virtue is neither unknown [nor] uncommon. That there was no spontaneous disclosure does not mean that appellant is innocent of the crimes. "AAA" was apparently a terrified young child who was completely at the mercy of her shameless father. Thus, "AAA's" hesitation may be attributed to her age, the moral ascendancy of the accused over her, and his threats against her.

On the other hand, neither should the smile of "AAA" while identifying her father in court be given any malicious significance. While appellant puts much importance to said smile, which could be a way of concealing her nervousness, he ignored the fact that "AAA" cried while testifying on the details of the incidents. In fact, during her testimony, she categorically stated that she was afraid and ashamed. The candid and straightforward narration of how she was abused and the tears that accompanied her story are earmarks of credibility and must be given full faith and credit.

With respect to appellant's contention that the clinical finding of Dr. Joven Ignacio, the psychiatrist, [is] faulty and not conclusive because she appeared to be biased, it is noteworthy that even without said psychiatric test, the finding of the trial court would still be affirmed considering that the sole testimony of the victim is sufficient basis for conviction in rape, which is a crime usually committed in seclusion.

Indeed, We are convinced that "AAA" had no reason to falsely incriminate her own father in view of the fact that the accusation would surely deny her mother the companionship of a husband and the protection of a father [for] her younger sisters. It has been consistently held that the testimony of a rape victim as to who abused her is credible where she has no motive to testify against the accused.[76]

On the other hand, what appellant offered for his defense were mere denials which, as aptly observed by the RTC, are unsupported by clear and convincing evidence.

Given the foregoing circumstances, the CA correctly affirmed the Decision of the RTC finding appellant guilty of the crimes charged.

The Proper Penalty

The RTC imposed upon appellant the penalty of death for committing the crime of qualified rape through sexual intercourse in Criminal Case No. 6572. The Information in this case alleged the qualifying circumstances of relationship and minority. Appellant is the father of "AAA" and he admitted this filial bond between them during the pre-trial conference[77] and trial. "[A]dmission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim."[78] Also, "AAA's" birth certificate was submitted as proof of her age. This document suffices as competent evidence of her age.[79]

"In view, however, of the passage of R.A. No. 9346, which prohibits the imposition of the penalty of death, the penalty of *reclusion perpetua*, without eligibility for parole, should be imposed."[80] Appellant is thus sentenced to *reclusion perpetua*

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[76] CA *rollo*, pp. 224-226.

[77] Records, Vol. 1, p. 26.

[78] *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 397.

[79] *Id.* at 397-398.

[80] *People v. Nachor*, *supra* note 71 at 334.

without eligibility for parole for the crime of qualified rape committed through sexual intercourse in Criminal Case No. 6572.

With regard to the crime of sexual abuse under RA 7610, the penalty provided for violation of Section 5, Article III thereof is *reclusion temporal* in its medium period to *reclusion perpetua*. "As the crime was committed by the father of ["AAA,"] the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating."[81] With the presence of this aggravating circumstance and no mitigating circumstance, the penalty in Criminal Case No. 6573 shall be applied in its maximum period – *reclusion perpetua*.[82]

On the other hand, *prision mayor* is the penalty prescribed for rape by sexual assault under Article 266-B of the RPC. The penalty is increased to *reclusion temporal* if the rape is committed with any of the 10 aggravating/qualifying circumstances mentioned in [said] article.[83] Just like in Criminal Case No. 6572, the qualifying circumstances of relationship and minority are sufficiently alleged and proven in this case. The penalty therefore is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, the trial court and the CA correctly imposed the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months and (1) day of *reclusion temporal*, as maximum in Criminal Case No. 6574.

The Damages

In line with prevailing jurisprudence, the award of damages to "AAA" in Criminal Case No. 6572 must be increased as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and

[81] *People v. Sumingwa, supra* note 67 at 655.

[82] *Id.* at 655-656.

[83] Art. 266 B, par. 10 of the RPC.

₱30,000.00 as exemplary damages.[84] She is further awarded civil indemnity of ₱20,000.00, moral damages and a fine at ₱15,000.00 each in Criminal Case No. 6573.[85] In Criminal Case No. 6574, the awards of civil indemnity and moral damages at ₱30,000.00 each are maintained but the award of exemplary damages is increased to ₱30,000.00.[86] "AAA" is also entitled to an interest on all the amounts of damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.[87]

WHEREFORE, the July 31, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02511 which affirmed *in toto* the Decision of the Regional Trial Court of San Mateo, Rizal, Branch 76 finding appellant Doney Gaduyon *y* Tapispisan guilty beyond reasonable doubt of the crimes charged is **AFFIRMED with MODIFICATIONS** in that:

1. In Criminal Case No. 6572, appellant Doney Gaduyon *y* Tapispisan is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay "AAA" ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages;

2. In Criminal Case No. 6573, appellant Doney Gaduyon *y* Tapispisan is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay "AAA" ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages and a fine of ₱15,000.00;

3. In Criminal Case No. 6574, appellant Doney Gaduyon *y* Tapispisan is ordered to pay "AAA" ₱30,000.00 as exemplary damages.

"AAA" is entitled to an interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

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[84] *People v. Masagca*, G.R. No. 184922, February 23, 2011, 644 SCRA 278, 286.

[85] *Garingarao v. People*, G.R. No. 192760, 654 SCRA 243, 255.

[86] *People v. Alfonso*, G.R. No. 182094, August 18, 2010, 628 SCRA 431, 452.

[87] *People v. Flores*, G.R. No. 177355, December 15, 2010, 638 SCRA 631, 643.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184266. November 11, 2013]

APPLIED FOOD INGREDIENTS COMPANY, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUNDS OR CREDITS; STRICTLY CONSTRUED AGAINST THE TAXPAYERS, WHO HAS THE BURDEN OF PROVING STRICT COMPLIANCE WITH THE CONDITIONS FOR THE GRANT THEREOF.— Our VAT Law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, this Court explained that "the VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports." For zero-rated or effectively zero-rated sales, although the sellers in these transactions charge no output tax, they can claim a refund of the VAT that their suppliers charged them. At the outset, bearing in mind that tax refunds or credits – just like tax exemptions – are strictly construed against taxpayers, the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.

2. REMEDIAL LAW; COURTS; JURISDICTION; THE ISSUE OF JURISDICTION OVER THE SUBJECT MATTER MAY, AT ANY TIME, BE RAISED BY THE PARTIES OR CONSIDERED BY THE COURT *MOTU PROPRIO*.— Section 112 of the NIRC of 1997 laid down the manner in which the refund or credit of input tax may be made x x x. This Court finds it appropriate to first determine the timeliness of petitioner's claim in accordance with the above provision. Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*. Therefore, the jurisdiction of the CTA over petitioner's appeal may still be considered and determined by this Court.

3. TAXATION; TAX REFUNDS OR CREDITS; PRESCRIPTIVE PERIOD; A VAT-REGISTERED PERSON WHOSE SALES ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED MAY APPLY FOR THE ISSUANCE OF A TAX CREDIT CERTIFICATE OR REFUND OF CREDITABLE INPUT TAX WITHIN TWO YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN THE SALES WERE MADE; COMPLIED WITH.— [S]ection 112(A) provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made, within which a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax. In this case, petitioner claims that from April 2000 to December 2000 it had zero-rated sales to which it attributed the accumulated input taxes it had incurred from September 1998 to December 2000. Applying Section 112(A), petitioner had until 30 June 2002, 30 September 2002 and 31 December 2002 – or the close of the taxable quarter when the zero-rated sales were made – within which to file its administrative claim for refund. Thus, we find sufficient compliance with the two-year prescriptive period when petitioner filed its claim on 26 March 2002 and 28 June 2002 covering its zero-rated sales for the period April to September 2000 and October to December 2000, respectively.

4. ID.; ID.; ID.; THE COMMISSIONER OF INTERNAL REVENUE HAS ONE HUNDRED TWENTY (120) DAYS FROM THE DATE OF SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF THE APPLICATION WITHIN WHICH TO DECIDE THE ADMINISTRATIVE CLAIM; FAILURE TO COMPLY WITH THE MANDATORY 120-DAY WAITING PERIOD PRIOR TO

FILING A JUDICIAL CLAIM BEFORE THE COURT OF TAX APPEALS VIOLATES THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RENDERS THE PETITION PREMATURE AND THUS WITHOUT A CAUSE OF ACTION, WARRANTING A DISMISSAL THEREOF INASMUCH AS NO JURISDICTION WAS ACQUIRED BY THE COURT OF TAX APPEALS.— The Commissioner of Internal Revenue (CIR) had one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. In relation thereto, absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively. Counting 120 days from 26 March 2002, the CIR had until 24 July 2002 within which to decide on the claim of petitioner for an input VAT refund attributable to the its zero-rated sales for the period April to September 2000. On the other hand, the CIR had until 26 October 2002 within which to decide on petitioner's claim for refund filed on 28 June 2002, or for the period covering October to December 2000. Records, however, show that the judicial claim of petitioner was filed on 24 July 2002. Petitioner clearly failed to observe the mandatory 120-day waiting period. Consequently, the premature filing of its claim for refund/credit of input VAT before the CTA warranted a dismissal, inasmuch as no jurisdiction was acquired by the CTA. In *San Roque*, this Court, held thus: "Failure to comply with the 120-day waiting period violates a mandatory provision of law. It 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. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles."

5. ID.; ID.; ID.; ID.; WITHOUT A DECISION OR "AN INACTION DEEMED A DENIAL" ON THE PART OF THE COMMISSIONER OF INTERNAL REVENUE, THE COURT OF TAX APPEALS HAS NO JURISDICTION TO ENTERTAIN

CLAIMS FOR REFUND OR CREDIT OF CREDITABLE INPUT TAX.— [T]he CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. Section 7 of R.A. 1125, as amended by R.A. 9282, specifically provides: SEC. 7. Jurisdiction. — The CTA shall exercise: (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: x x x (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, where the National Internal Revenue Code provides a specific period of action, **in which case the inaction shall be deemed a denial**; x x x. "Inaction by the CIR" in cases involving the refund of creditable input tax, arises only after the lapse of 120 days. Thus, prior thereto and without a decision of the CIR, the CTA, as a court of special jurisdiction, has no jurisdiction to entertain claims for the refund or credit of creditable input tax. "The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review."

6. ID.; ID.; ID.; ID.; THE PERIOD OF 120 DAYS IS A PREREQUISITE FOR THE COMMENCEMENT OF THE 30-DAY PERIOD TO APPEAL TO THE COURT OF TAX APPEALS (CTA); PRIOR TO THE ISSUANCE OF BIR RULING NO. DA-489-03, THE FAILURE OF THE TAXPAYER TO OBSERVE THE 120+30 DAY MANDATORY PERIODS IS FATAL TO ITS JUDICIAL CLAIM FOR TAX REFUND OR CREDIT AND RENDERS THE CTA DEVOID OF JURISDICTION OVER THE SAME.— Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional. Failure to observe 120 days prior to the filing of a judicial claim is not a mere non-exhaustion of administrative remedies, but is likewise considered jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders

a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material. 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 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.** In accordance with *San Roque*, and considering that petitioner's judicial claim was filed on 24 July 2002, when the 120+30 day mandatory periods were already in the law and BIR Ruling No. DA-489-03 had not yet been issued, petitioner does not have an excuse for not observing the 120+30 day period. Failure of petitioner to observe the mandatory 120-day period is fatal to its claim and rendered the CTA devoid of jurisdiction over the judicial claim.

APPEARANCES OF COUNSEL

Cabrera Lavadia & Associates and *Aytona Law Office* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Applied Food Ingredients, Company, Inc. (petitioner). The Petition assails the Decision[2] dated 4 June 2008 and Resolution[3] dated 26

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[1] *Rollo*, pp. 41-71.

[2] *Id*. at 8-26; penned by Associate Justice Olga Palanca-Enriquez, and concurred in by Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta dissenting.

[3] *Id*. at 139 -140.

August 2008 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB No. 359. The assailed Decision and Resolution affirmed the Decision[4] dated 13 June 2007 and Resolution[5] dated 16 January 2008 rendered by the CTA First Division in C.T.A. Case No. 6513 which denied petitioner's claim for the issuance of a tax credit certificate representing its alleged excess input taxes attributable to zero-rated sales for the period 1 April 2000 to 31 December 2000.

THE FACTS

Considering that there are no factual issues in this case, we adopt the findings of fact of the CTA *En Banc*, as follows:

> Petitioner is registered with the Regional District Office (RDO) No. 43 of the BIR in Pasig City (BIR-Pasig) as, among others, a Value-Added Tax (VAT) taxpayer engaged in the importation and exportation business, as a pure buy-sell trader.
>
> Petitioner alleged that from September 1998 to December 31, 2000, it paid an aggregate sum of input taxes of ₱9,528,565.85 for its importation of food ingredients, as reported in its Quarterly Vat Return.
>
> Subsequently, these imported food ingredients were exported between the periods of April 1, 2000 to December 31, 2000, from which the petitioner was able to generate export sales amounting to ₱114,577,937.24. The proceeds thereof were inwardly remitted to petitioner's dollar accounts with Equitable Bank Corporation and with Australia New Zealand Bank-Philippine Branch.
>
> Petitioner further claimed that the aforestated export sales which transpired from April 1, 2000 to December 31, 2000 were "zero-rated" sales, pursuant to *Section 106(A (2)(a)(1) of the N1RC of* 1997.
>
> Petitioner alleged that the accumulated input taxes of ₱9,528,565.85 for the period of September 1, 1998 to December 31, 2000 have not been applied against any output tax.
>
> On March 26, 2002 and June 28, 2002, petitioner filed two separate applications for the issuance of tax credit certificates in the amounts

[4] *Id*. at 75-109; penned by Associate Justice Lovell R. Bautista, and concurred in by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta dissenting.

[5] *Id*. at 100-109.

of ₱5,385, 208.32 and ₱4,143,357.53, respectively.

On July 24, 2002, in view of respondent's inaction, petitioner elevated the case before this Court by way of a Petition for Review, docketed as C.T.A. Case No. 6513.

In his Answer filed on August 28, 2002, respondent alleged by way of special and affirmative defenses that the request for tax credit certificate is still under examination by respondent's examiners; that taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable; petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit or the issuance of a certificate thereto; petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in *Sections 204(C) and 229 of the Tax Code, as amended*.[6]

Trial ensued and the CTA First Division rendered a Decision on 13 June 2007. It denied petitioner's claim for failure to comply with the invoicing requirements prescribed under Section 113 in relation to Section 237 of the National Internal Revenue Code (NIRC) of 1997 and Section 4.108-1 of Revenue Regulations No. 7-95.

On appeal, the CTA *En Banc* likewise denied the claim of petitioner on the same ground and ruled that the latter's sales for the subject period could not qualify for VAT zero-rating, as the export sales invoices did not bear the following: 1) the imprinted word "zero-rated"; 2) "TIN-VAT"; and 3) BIR's permit number, all in violation of the invoicing requirements.

THE ISSUES

Petitioner raises this sole issue for the consideration of this Court:

WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE OR REFUND OF THE AMOUNT OF ₱9,528,565.85 REPRESENTING CREDITABLE INPUT TAXES INCURRED FOR THE PERIOD OF SEPTEMBER 1, 1998 TO DECEMBER 31, 2000 WHICH ARE ATTRIBUTABLE TO ZERO-

[6] *Id*. at 113-115.

RATED SALES FOR THE PERIOD OF APRIL 1, 2000 TO DECEMBER 31, 2000.[7]

THE COURT'S RULING

The Petition has no merit.

Our VAT Law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales.

In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[8] this Court explained that "the VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports."

For zero-rated or effectively zero-rated sales, although the sellers in these transactions charge no output tax, they can claim a refund of the VAT that their suppliers charged them.[9]

At the outset, bearing in mind that tax refunds or credits – just like tax exemptions – are strictly construed against taxpayers,[10] the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.

Section 112 of the NIRC of 1997 laid down the manner in which the refund or credit of input tax may be made, to wit:

SEC. 112. Refunds or Tax Credits of Input Tax. –

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[7] *Id*. at 46.

[8] G.R. No. 178090, 8 February, 2010, 612 SCRA 28, 33, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 332 (2005).

[9] *Id* at 34.

[10] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp*., G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549; *La Carlota Sugar Central v. Jimenez*, 112 Phil. 232 (1961).

(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 of 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

(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.

This Court finds it appropriate to first determine the timeliness of petitioner's claim in accordance with the above provision.

Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*.[11] Therefore, the

[11] *Namuhe v. Ombudsman*, 358 Phil. 782 (1998), *citing* Section 1, Rule 9, 1997 Rules of Civil Procedure (formerly Section 2, Rule 9); *Fabian v. Desierto*, 356 Phil. 787 (1998).

jurisdiction of the CTA over petitioner's appeal may still be considered and determined by this Court.

Although the *ponente* in this case expressed a different view on the mandatory application of the 120+30 day period as prescribed in the above provision, with the advent, however, of this Court's pronouncement on the consolidated tax cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue*[12] (hereby collectively referred as *San Roque*), we are constrained to apply the dispositions therein to similar facts as those in the present case.

To begin with, Section 112(A) provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made, within which a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax.

In this case, petitioner claims that from April 2000 to December 2000 it had zero-rated sales to which it attributed the accumulated input taxes it had incurred from September 1998 to December 2000.

Applying Section 112(A), petitioner had until 30 June 2002, 30 September 2002 and 31 December 2002 – or the close of the taxable quarter when the zero-rated sales were made – within which to file its administrative claim for refund. Thus, we find sufficient compliance with the two-year prescriptive period when petitioner filed its claim on 26 March 2002[13] and 28 June 2002[14] covering its zero-rated sales for the period April to September 2000 and October to December 2000, respectively.

The Commissioner of Internal Revenue (CIR) had one hundred twenty (120) days from the date of submission of complete

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[12] G.R. Nos. 187485, 196113, 197156, 12 February 2013.

[13] CTA *rollo*, pp. 28-29, Annex H.

[14] *Id*. at 31-32, Annex I.

documents in support of the application within which to decide on the administrative claim.

In relation thereto, absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively.

Counting 120 days from 26 March 2002, the CIR had until 24 July 2002 within which to decide on the claim of petitioner for an input VAT refund attributable to the its zero-rated sales for the period April to September 2000.

On the other hand, the CIR had until 26 October 2002 within which to decide on petitioner's claim for refund filed on 28 June 2002, or for the period covering October to December 2000.

Records, however, show that the judicial claim of petitioner was filed on 24 July 2002.[15] Petitioner clearly failed to observe the mandatory 120-day waiting period. Consequently, the premature filing of its claim for refund/credit of input VAT before the CTA warranted a dismissal, inasmuch as no jurisdiction was acquired by the CTA.[16]

In *San Roque*, this Court, held thus: "Failure to comply with the 120-day waiting period violates a mandatory provision of law. It 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. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles."[17]

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[15] *Id*. at 1-7, Petition for Review.

[16] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, 6 October 2010, 632 SCRA 422.

[17] *Supra* note 11.

Furthermore, the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[18] Section 7 of R.A. 1125,[19] as amended by R.A. 9282,[20] specifically provides:

SEC. 7. Jurisdiction. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of 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;

(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, where the National Internal Revenue Code provides a specific period of action, **in which case the inaction shall be deemed a denial**; x x x.(Emphases supplied)

"Inaction by the CIR" in cases involving the refund of creditable input tax, arises only after the lapse of 120 days. Thus, prior thereto and without a decision of the CIR, the CTA, as a court of special jurisdiction, has no jurisdiction to entertain claims for the refund or credit of creditable input tax. "The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or

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[18] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 24 April 2007, 522 SCRA 144, 150.

[19] "An Act Creating the Court of Tax Appeals."

[20] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as amended, otherwise known as 'The Law Creating the Court of Tax Appeals,' and for other purposes."

inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review."[21]

Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional. Failure to observe 120 days prior to the filing of a judicial claim is not a mere non-exhaustion of administrative remedies, but is likewise considered jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material.

This Court further ruled:

> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System 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 credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> 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 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.**[22] (Emphasis supplied)

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[21] *Supra* note 11.

[22] *Id*.

In accordance with *San Roque*, and considering that petitioner's judicial claim was filed on 24 July 2002, when the 120+30 day mandatory periods were already in the law and BIR Ruling No. DA-489-03 had not yet been issued, petitioner does not have an excuse for not observing the 120+30 day period. Failure of petitioner to observe the mandatory 120-day period is fatal to its claim and rendered the CTA devoid of jurisdiction over the judicial claim.

The Court finds, in view of the absence of jurisdiction of the Court of the Tax Appeals over the judicial claim of petitioner, that there is no need to discuss the other issues raised.

WHEREFORE, premises considered, the instant Petition is **DENIED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 188526. November 11, 2013]

CENTURY CHINESE MEDICINE CO., MING SENG CHINESE DRUGSTORE, XIANG JIAN CHINESE DRUG STORE, TEK SAN CHINESE DRUG STORE, SIM SIM CHINESE DRUG STORE, BAN SHIONG TAY CHINESE DRUG STORE and/or WILCENDO TAN MENDEZ, SHUANG YING CHINESE DRUGSTORE, and BACLARAN CHINESE DRUG STORE, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and LING NA LAU,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; THE RULES ON THE ISSUANCE OF THE SEARCH AND SEIZURE IN CIVIL ACTIONS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS (A.M. NO. 02-1-06-SC) IS NOT APPLICABLE WHERE THE SEARCH WARRANTS WERE NOT APPLIED BASED THEREON, BUT IN ANTICIPATION OF CRIMINAL ACTIONS FOR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS UNDER THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (RA 8293).—** The applications for the issuance of the assailed search warrants were for violations of Sections 155 and 168, both in relation to Section 170 of Republic Act (RA) No. 8293, otherwise known as the *Intellectual Property Code of the Philippines*. Section 155, in relation to Section 170, punishes trademark infringement; while Section 168, in relation to Section 170, penalizes unfair competition. x x x. [W]e agree with the CA that A.M. No. 02-1-06-SC, which provides for the Rules on the Issuance of the Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights, is not applicable in this case as the search warrants were not applied based thereon, but in anticipation of criminal actions for violation of intellectual property rights under RA 8293. It was established that respondent had asked the NBI for assistance to conduct investigation and search warrant implementation for possible apprehension of several drugstore owners selling imitation or counterfeit TOP GEL T.G. & DEVICE OF A LEAF papaya whitening soap. Also, in his affidavit to support his application for the issuance of the search warrants, NBI Agent Furing stated that "the items to be seized will be used as relevant evidence in the criminal actions that are likely to be instituted." Hence, Rule 126 of the Rules of Criminal Procedure applies.

2. **ID.; ID.; ID.; ABSENT THE ELEMENT OF PERSONAL KNOWLEDGE BY THE APPLICANT OR HIS WITNESSES OF THE FACTS UPON WHICH THE ISSUANCE OF A SEARCH WARRANT MAY BE JUSTIFIED, THE WARRANT IS DEEMED NOT BASED ON PROBABLE CAUSE AND IS A NULLITY, ITS ISSUANCE BEING, IN LEGAL CONTEMPLATION, ARBITRARY; PROBABLE CAUSE, EXPLAINED.—** A core requisite before a warrant shall validly issue is the existence

of a probable cause, meaning "*the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched.*" And when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present. Absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, its issuance being, in legal contemplation, arbitrary. The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.

3. ID.; ID.; ID.; THE REGISTERED OWNER OF A TRADEMARK IS ENTITLED TO BE PROTECTED BY THE ISSUANCE OF THE SEARCH WARRANTS WHERE THERE EXISTS A PROBABLE CAUSE FOR VIOLATION OF ITS INTELLECTUAL PROPERTY RIGHTS; ISSUANCE OF THE SEARCH WARRANTS IN CASE AT BAR, PROPER.— To inform the public of the issuance of the writ of preliminary injunction, respondent's counsel had the dispositive portion of the Order published in *The Philippine Star* newspaper on October 30, 2005. Thus, it was clearly stated that Yu, doing business under the name and style of MCA Manufacturing, his agents, representatives, dealers and distributors and all persons acting in his behalf, were to cease and desist from using the trademark "TOP GEL & DEVICE OF A LEAF" or any colorable imitation thereof on Papaya Whitening soaps they manufacture, sell and/or offer for sale. Petitioners, who admitted having derived their TOP GEL products from Yu, are, therefore, notified of such injunction and were enjoined from selling the same. Notwithstanding, at the time of the application of the search warrants on November 21, 2005, and while the injunction was in effect, petitioners were still selling the alleged counterfeit products bearing the trademark TOP GEL T.G. & DEVICE OF

A LEAF. There exists a probable cause for violation of respondent's intellectual property rights, which entitles her as the registered owner of the trademark TOP GEL and DEVICE OF A LEAF to be protected by the issuance of the search warrants. x x x. Therefore, respondent, as owner of such registered trademark has the right to the issuance of the search warrants.

4. ID.; ID.; ID.; CONFISCATION OF ALL THE ARTICLES, OBJECT OF THE VIOLATION OF THE RESPONDENT'S INTELLECTUAL PROPERTY RIGHTS, NOT JUST A SAMPLE THEREOF, WARRANTED IN ORDER TO PROTECT THE RIGHT THEREOF AS THE REGISTERED OWNER OF THE TRADEMARK; RULING IN SUMMERVILLE CASE (G.R. NO. 158767, JUNE 26, 2007), NOT APPLICABLE.— Anent petitioners' claim that one or two samples of the Top Gel products from each of them, instead of confiscating thousands of the products, would have sufficed for the purpose of an anticipated criminal action, citing our ruling in *Summerville General Merchandising Co. v. Court of Appeals*, is not meritorious. x x x. The factual milieu of the two cases are different. In *Summerville*, the object of the violation of Summerville's intellectual property rights, as assignee of Royal playing cards and Royal brand playing cards case, was limited to the design of Summerville's Royal plastic container case which encased and wrapped the Crown brand playing cards. x x x. We said x x x that since what was in dispute was the design of the Royal plastic cases/containers of playing cards and not the playing card *per se*, a small number of Crown brand playing cards would suffice to examine them with the Royal plastic cases/containers. And the return of the playing cards would better serve the purposes of justice and expediency. However, in this case, the object of the violation of respondent's intellectual property right is the alleged counterfeit TOP GEL T.G. & DEVICE OF A LEAF papaya whitening soap being sold by petitioners, so there is a need to confiscate all these articles to protect respondent's right as the registered owner of such trademark.

APPEARANCES OF COUNSEL

Icaonapo Litong & Associates Law Office for petitioners.
The Solicitor General for public respondent.
Raymund Fortun Law Offices for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* which seeks to reverse and set aside the Decision[1] dated March 31, 2009 of the Court of Appeals in CA-G.R. CV No. 88952 and the Resolution[2] dated July 2, 2009, which denied reconsideration thereof. The CA reversed the Order[3] dated September 25, 2006 of the Regional Trial Court (RTC), Branch 143, Makati City, quashing Search Warrants Nos. 05-030, 05-033, 05-038, 05-022, 05-023, 05-025, 05-042 and 05-043, and the Order[4] dated March 7, 2007 denying reconsideration thereof.

The antecedent facts are as follows:

Respondent Ling Na Lau, doing business under the name and style Worldwide Pharmacy,[5] is the sole distributor and registered trademark owner of TOP GEL T.G. & DEVICE OF A LEAF papaya whitening soap as shown by Certificate of Registration 4-2000-009881 issued to her by the Intellectual Property Office (IPO) for a period of ten years from August 24, 2003.[6] On November 7, 2005, her representative, Ping Na Lau, (Ping) wrote a letter[7] addressed to National Bureau of Investigation (NBI) Director Reynaldo Wycoco, through Atty. Jose Justo Yap and Agent Joseph G. Furing (Agent Furing), requesting assistance for an investigation on several drugstores which were selling counterfeit whitening papaya soaps bearing the general appearance of their products.

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[1] Penned by Associate Justice Isaias Dicdican, with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Marlene Gonzales-Sison, concurring; *rollo*, pp. 46-62.

[2] *Id.* at 9-14.

[3] Per Judge Zenaida T. Galapate-Laguilles; *rollo*, pp. 66-71.

[4] Records, Vol. III, pp. 732-736.

[5] Records, Vol. II, p. 275.

[6] Records, Vol. I, pp. 97-98.

[7] *Id.* at 75.

Agent Furing was assigned to the case and he executed an affidavit[8] stating that: he conducted his own investigation, and on November 9 and 10, 2005, he, together with Junayd Esmael (Esmael), were able to buy whitening soaps bearing the trademark "TOP-GEL," "T.G." & "DEVICE OF A LEAF" with corresponding receipts from a list of drugstores which included herein petitioners Century Chinese Medicine Co., Min Seng Chinese Drugstore, Xiang Jiang Chinese Drug Store, Tek San Chinese Drug Store, Sim Sim Chinese Drug Store, Ban Shiong Tay Drugstore, Shuang Ying Chinese Drugstore, and Baclaran Chinese Drug Store; while conducting the investigation and test buys, he was able to confirm Ping's complaint to be true as he personally saw commercial quantities of whitening soap bearing the said trademarks being displayed and offered for sale at the said drugstores; he and Esmael took the purchased items to the NBI, and Ping, as the authorized representative and expert of Worldwide Pharmacy in determining counterfeit and unauthorized reproductions of its products, personally examined the purchased samples, and issued a Certification[9] dated November 18, 2005 wherein he confirmed that, indeed, the whitening soaps bearing the trademarks "TOP-GEL," "T.G." & "DEVICE OF A LEAF" from the subject drugstores were counterfeit.

Esmael also executed an affidavit[10] corroborating Agent Furing's statement. Ping's affidavit[11] stated that upon his personal examination of the whitening soaps purchased from petitioners bearing the subject trademark, he found that the whitening soaps were different from the genuine quality of their original whitening soaps with the trademarks "TOP-GEL," "T.G." & "DEVICE OF A LEAF" and certified that they were all counterfeit.

On November 21, 2005, Agent Furing applied for the issuance of search warrants before the Regional Trial Court (RTC),

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[8] *Id*. at 73-74.

[9] Records, Vol. I, pp. 83-84.

[10] *Id*. at 96.

[11] *Id*. at 88-89.

Branch 143, Makati City, against petitioners and other establishments for violations of Sections 168 and 155, both in relation to Section 170 of Republic Act (RA) No. 8293, otherwise known as the *Intellectual Property Code of the Philippines*. Section 168, in relation to Section 170, penalizes unfair competition; while Section 155, in relation to Section 170, punishes trademark infringement.

On November 23, 2005, after conducting searching questions upon Agent Furing and his witnesses, the RTC granted the applications and issued Search Warrants Nos. 05-030, 05-033, and 05-038 for unfair competition and Search Warrants Nos. 05-022, 05-023, 05-025, 05-042 and 05-043 for trademark infringement against petitioners.

On December 5, 2005, Agent Furing filed his Consolidated Return of Search Warrants.[12]

On December 8, 2005, petitioners collectively filed their Motion to Quash[13] the Search Warrants contending that their issuances violated the rule against forum shopping; that Benjamin Yu (Yu) is the sole owner and distributor of the product known as "TOP-GEL"; and there was a prejudicial question posed in Civil Case No. 05-54747 entitled *Zenna Chemical Industry v. Ling Na Lau, et al.*, pending in Branch 93 of the RTC of Quezon City, which is a case filed by Yu against respondent for damages due to infringement of trademark/tradename, unfair competition with prayer for the immediate issuance of a temporary restraining order and/or preliminary prohibitory injunction.

On January 9, 2006, respondent filed her Comment/Opposition[14] thereto arguing the non-existence of forum shopping; that Yu is not a party- respondent in these cases and the pendency of the civil case filed by him is immaterial and irrelevant; and that Yu cannot be considered the sole owner and distributor of

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[12] *Id.* at 172-175.

[13] Records, Vol. II, pp. 239-259.

[14] *Id.* at 611-620.

"TOP GEL T.G. & DEVICE OF A LEAF." The motion was then submitted for resolution in an Order dated January 30, 2006.

During the pendency of the case, respondent, on April 20, 2006, filed a Submission[15] in relation to the Motion to Quash attaching an Order[16] dated March 21, 2006 of the IPO in IPV Case No. 10-2005-00001 filed by respondent against Yu, doing business under the name and style of MCA Manufacturing and Heidi S. Cua, proprietor of South Ocean Chinese Drug Stores for trademark infringement and/or unfair competition and damages with prayer for preliminary injunction. The Order approved therein the parties' Joint Motion To Approve Compromise Agreement filed on March 8, 2006. We quote in its entirety the Order as follows:

The Compromise Agreement between the herein complainant and respondents provides as follows:

1. Respondents acknowledge the exclusive right of Complainant over the trademark TOP GEL T.G. & DEVICE OF A LEAF for use on papaya whitening soap as registered under Registration No. 4-2000-009881 issued on August 24, 2003.

2. Respondents acknowledge the appointment by Zenna Chemical Industry Co., Ltd. of Complainant as the exclusive Philippine distributor of its products under the tradename and trademark TOP GEL MCA & MCA DEVICE (A SQUARE DEVICE CONSISTING OF A STYLIZED REPRESENTATION OF A LETTER "M" ISSUED " OVER THE LETTER "CA") as registered under Registration No. 4-1996-109957 issued on November 17, 2000, as well as the assignment by Zenna Chemical Industry Co., Ltd. to Complainant of said mark for use on papaya whitening soap.

3. Respondents admit having used the tradename and trademark aforesaid but after having realized that Complainant is the legitimate assignee of TOP GEL MCA & MCA DEVICE and the registered owner of TOP GEL T.G. & DEVICE OF A LEAF, now undertake to voluntarily cease and desist from using the aforesaid tradename and

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[15] *Id.* at 624-628.

[16] Per Bureau of Legal Affairs Director Estrellita Beltran-Abelardo; *id.* at 629-632.

trademark and further undertake not to manufacture, sell, distribute, and otherwise compete with Complainant, now and at anytime in the future, any papaya whitening soap using or bearing a mark or name identical or confusingly similar to, or constituting a colorable imitation of, the tradename and trademark TOP GEL MCA & MCA DEVICE and/or TOP GEL T.G. & DEVICE OF A LEAF as registered and described above.

4. Respondents further undertake to withdraw and/or dismiss their counterclaim and petition to cancel and/or revoke Registration No. 4-2000-009881 issued to Complainant. Respondents also further undertake to pull out within 45 days from approval of the Compromise Agreement all their products bearing a mark or name identical or confusingly similar to, or constituting a colorable imitation of, the tradename and trademark TOP GEL MCA & MCA DEVICE and/or TOP GEL T.G. & DEVICE OF A LEAF, from the market nationwide.

5. Respondents finally agree and undertake to pay Complainant liquidated damages in the amount of FIVE HUNDRED THOUSAND (Php500,000.00) PESOS for every breach or violation of any of the foregoing undertakings which complainant may enforce by securing a writ of execution from this Office, under this case.

6. Complainant, on the other hand, agrees to waive all her claim for damages against Respondents as alleged in her complaint filed in the Intellectual Property Office only.

7. The Parties hereby agree to submit this Compromise Agreement for Approval of this Office and pray for issuance of a decision on the basis thereof.

Finding the Compromise Agreement to have been duly executed and signed by the parties and/or their representatives/counsels and the terms and conditions thereof to be in conformity with the law, morals, good customs, public order and public policy, the same is hereby **APPROVED**. Accordingly, the above-entitled case is **DISMISSED** as all issues raised concerning herein parties have been rendered **MOOT AND ACADEMIC**.

SO ORDERED.[17]

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[17] *Id.* at 631-632. (Emphasis in the original)

On September 25, 2006, the RTC issued its Order[18] sustaining the Motion to Quash the Search Warrants, the dispositive portion of which reads as follows:

> WHEREFORE, finding that the issuance of the questioned search warrants were not supported by probable cause, the Motion to Quash is GRANTED. Search warrants nos. 05-030, 05-033, 05-038, 05-022, 05-023, 05-025, 05-042, 05-043 are ordered lifted and recalled.
>
> The NBI Officers who effected the search warrants are hereby ordered to return the seized items to herein respondents within ten (10) days from receipt of this Order.
>
> So Ordered.[19]

In quashing the search warrants, the RTC applied the Rules on Search and Seizure for Civil Action in Infringement of Intellectual Property Rights.[20] It found the existence of a prejudicial question which was pending before Branch 93 of RTC Quezon City, docketed as Civil Case No. 05-54747, on the determination as to who between respondent and Yu is the rightful holder of the

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[18] *Rollo*, pp. 66-71

[19] *Id*. at 71.

[20] SECTION 6. *Grounds for the issuance of the order*. - Before the Order can be issued, the evidence proffered by the applicant and personally evaluated by the judge must show that:

(a) he is the right holder or his duly authorized representative;

(b) there is probable cause to believe that the applicant's right is being infringed or that such infringement is imminent and there is a *prima facie* case for final relief against the alleged infringing defendant or expected adverse party;

(c) damage, potential or actual, likely to be caused to the applicant is irreparable;

(d) there is demonstrable risk of evidence that the alleged infringing defendant or expected adverse party may destroy, hide or remove the documents or articles before any application *inter partes* can be made; and

(e) the documents and articles to be seized constitute evidence of the alleged infringing defendant's or expected adverse party's infringing activity or that they infringe upon the intellectual property right of the applicant or that they are used or intended to be used as means of infringing the applicant's intellectual property right.

intellectual property right over the trademark TOP GEL T.G. & DEVICE OF A LEAF; and there was also a case for trademark infringement and/or unfair competition filed by respondent against Yu before the IPO which was pending at the time of the application for the search warrants. It is clear, therefore, that at the time of the filing of the application for the search warrants, there is yet no determination of the alleged right of respondent over the subject trademark/tradename. Also, the RTC found that petitioners relied heavily on Yu's representation that he is the sole owner/distributor of the Top Gel whitening soap, as the latter even presented Registration No. 4-1996-109957 from the IPO for a term of 20 years from November 17, 2000 covering the same product. There too was the notarized certification from Zenna Chemical Industry of Taiwan, owner of Top Gel MCA, with the caveat that the sale, production or representation of any imitated products under its trademark and tradename shall be dealt with appropriate legal action.

The RTC further said that in the determination of probable cause, the court must necessarily resolve whether or not an offense exists to justify the issuance of a search warrant or the quashal of the one already issued. In this case, respondent failed to prove the existence of probable cause, which warranted the quashal of the questioned search warrants.

On November 13, 2006, respondent filed an Urgent Motion to Hold in Abeyance the Release of Seized Evidence.[21]

Respondent filed a motion for reconsideration, which the RTC denied in its Order[22] dated March 7, 2007.

Respondent then filed her appeal with the CA. After respondent filed her appellant's brief and petitioners their appellee's brief, the case was submitted for decision.

On March 31, 2009, the CA rendered its assailed Decision, the dispositive portion of which reads:

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[21] Records, Vol. III, pp. 639-644.

[22] *Id.* at 733-737.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the appeal filed in this case and **SETTING ASIDE** the Order dated March 7, 2007 issued by Branch 143 of the Regional Trial Court of the National Capital Judicial Region stationed in Makati City in the case involving Search Warrants Nos. 05-030, 05-033, 05-038, 05-022, 05-023, 05-025, 05-042, 05-043.[23]

In reversing the RTC's quashal of the search warrants, the CA found that the search warrants were applied for and issued for violations of Sections 155 and 168, in relation to Section 170, of the Intellectual Property Code and that the applications for the search warrants were in anticipation of criminal actions which are to be instituted against petitioners; thus, Rule 126 of the Rules of Criminal Procedure was applicable. It also ruled that the basis for the applications for issuance of the search warrants on grounds of trademarks infringement and unfair competition was the trademark TOP GEL T.G. & DEVICE OF A LEAF; that respondent was the registered owner of the said trademark, which gave her the right to enforce and protect her intellectual property rights over it by seeking assistance from the NBI.

The CA did not agree with the RTC that there existed a prejudicial question, since Civil Case No. 05-54747 was already dismissed on June 10, 2005, *i.e.*, long before the search warrants subject of this appeal were applied for; and that Yu's motion for reconsideration was denied on September 15, 2005 with no appeal having been filed thereon as evidenced by the Certificate of Finality issued by the said court.

Petitioners' motion for reconsideration was denied by the CA in a Resolution dated July 2, 2009.

Hence, this petition filed by petitioners raising the issue that:

(A) THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN REVERSING THE FINDINGS OF THE REGIONAL TRIAL COURT AND HELD THAT THE LATTER APPLIED THE

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[23] *Rollo*, p. 62. (Emphasis in the original)

RULES ON SEARCH AND SEIZURE IN CIVIL ACTIONS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.[24]

(B) THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT BASED ITS RULING ON THE ARGUMENT WHICH WAS BROUGHT UP FOR THE FIRST TIME IN RESPONDENT LING NA LAU'S APPELLANT'S BRIEF.[25]

Petitioners contend that the products seized from their respective stores cannot be the subject of the search warrants and seizure as those Top Gel products are not fruits of any crime, infringed product nor intended to be used in any crime; that they are legitimate distributors who are authorized to sell the same, since those genuine top gel products bore the original trademark/tradename of TOP GEL MCA, owned and distributed by Yu. Petitioners also claim that despite the RTC's order to release the seized TOP GEL products, not one had been returned; that one or two samples from each petitioner's' drugstore would have sufficed in case there is a need to present them in a criminal prosecution, and that confiscation of thousands of these products was an overkill.

Petitioners also argue that the issue that the RTC erred in applying the rules on search and seizure in anticipation of a civil action was never raised in the RTC.

The issue for resolution is whether or not the CA erred in reversing the RTC's quashal of the assailed search warrants.

We find no merit in the petition.

The applications for the issuance of the assailed search warrants were for violations of Sections 155 and 168, both in relation to Section 170 of Republic Act (RA) No. 8293, otherwise known as the *Intellectual Property Code of the Philippines.* Section 155, in relation to Section 170, punishes trademark infringement; while Section 168, in relation to Section 170, penalizes unfair competition, to wit:

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[24] *Id.* at 32.

[25] *Id.* at 39.

Sec 155. *Remedies; Infringement.* – Any person who shall, without the consent of the owner of the registered mark:

155.1 Use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

While

Sec. 168. *Unfair Competition, Rights, Regulation and Remedies.* -

xxx x x x xxx

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

And

SEC. 170. *Penalties*. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00) shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155 [Infringement], Section 168 [Unfair Competition] and Subsection 169.1 [False Designation of Origin and False Description or Representation].

Thus, we agree with the CA that A.M. No. 02-1-06-SC, which provides for the Rules on the Issuance of the Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights, is not applicable in this case as the search warrants were not applied based thereon, but in anticipation of criminal actions for violation of intellectual property rights under RA 8293. It was established that respondent had asked the NBI for assistance to conduct investigation and search warrant implementation for possible apprehension of several drugstore owners selling imitation or counterfeit TOP GEL T.G. & DEVICE OF A LEAF papaya whitening soap. Also, in his affidavit to support his application for the issuance of the search warrants, NBI Agent Furing stated that "the items to be seized will be used as relevant evidence in the criminal actions that are likely to be instituted." Hence, Rule 126 of the Rules of Criminal Procedure applies.

Rule 126 of the Revised Rules of Court, which governs the issuance of the assailed Search Warrants, provides, to wit:

SEC. 3. *Personal property to be seized.* - A search warrant may be issued for the search and seizure of personal property:

(a) Subject of the offense;
(b) Stolen or embezzled and other proceeds or fruits of the offense; or
(c) Used or intended to be used as the means of committing an offense.

SEC. 4. *Requisites for issuing search warrant.* - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

SEC. 5. *Examination of complainant; record.* - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with the affidavits submitted.

A core requisite before a warrant shall validly issue is the existence of a probable cause, meaning "*the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched.*"[26] And when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present. Absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, its issuance being, in legal contemplation, arbitrary.[27] The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits.[28] As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man,[29] not the exacting calibrations of a judge after a full-blown trial.[30]

The RTC quashed the search warrants, saying that (1) there exists a prejudicial question pending before Branch 93 of the RTC of Quezon City, docketed as Civil Case No. 05-54747, *i.e.*, the determination as to who between respondent and Yu is the rightful holder of the intellectual property right over the trademark TOP GEL T.G. & DEVICE OF A LEAF; and there was also a case for trademark infringement and/or unfair

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[26] *Sony Music Entertainment (Phils.), Inc. v. Español*, 493 Phil. 507, 517 (2005), citing *People v. Aruta*, G.R. No. 120915, April 3, 1998, 288 SCRA 626.

[27] *Id.*, citing *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 918 (1996), citing 79 CJS, Search and Seizures, Section 74, 862.

[28] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 566 (2004).

[29] *Id.* at 566-567, citing *People v. Sy Juco*, 64 Phil. 667 (1937).

[30] *Id.* at 567.

competition filed by respondent against Yu pending before the IPO, docketed as IPV Case No. 10-2005-00001; and (2) Yu's representation that he is the sole distributor of the Top Gel whitening soap, as the latter even presented Registration No. 4-1996-109957 issued by the IPO to Zenna Chemical Industry as the registered owner of the trademark TOP GEL MCA & DEVICE MCA for a term of 20 years from November 17, 2000 covering the same product.

We do not agree. We affirm the CA's reversal of the RTC Order quashing the search warrants.

The affidavits of NBI Agent Furing and his witnesses, Esmael and Ling, clearly showed that they are seeking protection for the trademark "TOP GEL T.G. and DEVICE OF A LEAF" registered to respondent under Certificate of Registration 4-2000-009881 issued by the IPO on August 24, 2003, and no other. While petitioners claim that the product they are distributing was owned by Yu with the trademark TOP GEL MCA and MCA DEVISE under Certificate of Registration 4-1996-109957, it was different from the trademark TOP GEL T.G. and DEVICE OF A LEAF subject of the application. We agree with the CA's finding in this wise:

x x x It bears stressing that the basis for the applications for issuances of the search warrants on grounds of trademark infringement and unfair competition is the trademark TOP GEL T.G. & DEVICE OF A LEAF. Private complainant-appellant was issued a Certificate of Registration No. 4-2000-009881 of said trademark on August 24, 2003 by the Intellectual Property Office, and is thus considered the lawful holder of the said trademark. Being the registrant and the holder of the same, private complainant-appellant had the authority to enforce and protect her intellectual property rights over it. This prompted her to request for assistance from the agents of the NBI, who thereafter conducted a series of investigation, test buys and inspection regarding the alleged trademark infringement by herein respondents-appellees. Subsequently, Ping Na Lau, private complainant-appellant's representative, issued a certification with the finding that the examined goods were counterfeit. This prompted the NBI agents to apply for the issuances of search warrants against the respondents-appellees. Said applications for the search warrants were granted after by Judge

Laguilles after examining under oath the applicant Agent Furing of the NBI and his witnesses Ping Na Lau and Junayd R. Ismael.

Based on the foregoing, it is clear that the requisites for the issuance of the search warrants had been complied with and that there is probable cause to believe that an offense had been committed and that the objects sought in connection with the offense were in the places to be searched. The offense pertains to the alleged violations committed by respondents-appellees upon the intellectual property rights of herein private complainant-appellant, as holder of the trademark TOP GEL T.G. & DEVICE OF A LEAF under Certificate of Registration No. 4-2000-009881, issued on August 24, 2003 by the Intellectual Property Office.[31]

Notably, at the time the applications for the issuance of the search warrants were filed on November 21, 2005, as the CA correctly found, Civil Case No. Q-05-54747, which the RTC found to be where a prejudicial question was raised, was already dismissed on June 10, 2005,[32] because of the pendency of a case involving the same issues and parties before the IPO. Yu's motion for reconsideration was denied in an Order[33] dated September 15, 2005. In fact, a Certificate of Finality[34] was issued by the RTC on January 4, 2007.

Moreover, the IPO case for trademark infringement and unfair competition and damages with prayer for preliminary injunction filed by respondent against Yu and Heidi Cua, docketed as IPV Case No. 10-2005-00001, would not also be a basis for quashing the warrants. In fact, prior to the applications for the issuance of the assailed search warrants on November 21, 2005, the IPO had issued an Order[35] dated October 20, 2005 granting a writ of preliminary injunction against Yu and Cua, the dispositive portion of which reads:

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[31] *Rollo*, pp. 60-61.

[32] Records, Vol. III, pp. 670-671; per Judge Apolinario D. Bruselas, Jr.

[33] *Id*. at 672; per pairing Judge Samuel H. Gaerlan.

[34] *Id*. at 731; per Atty. Cecilia L. Cuevas-Torrijos, Clerk of Court of RTC, Branch 93, Quezon City.

[35] *Id*. at 674-681; per Hearing Officer Adoracion R. Umipig, Bureau of Legal Affairs, concurred in by Director Estrellita Beltran-Abelardo.

WHEREFORE, the **WRIT OF PRELIMINARY INJUNCTION** is hereby issued against Respondent, Benjamin Yu, doing business under the name and style of MCA Manufacturing and Heidi S. Cua, Proprietor of South Ocean Chinese Drug Store, and their agents, representatives, dealers and distributors and all persons acting in their behalf, to cease and desist using the trademark "TOP GEL T.G. & DEVICE OF A LEAF" or any colorable imitation thereof on Papaya whitening soaps they manufacture, sell, and/or offer for sale, and otherwise, from packing their Papaya Whitening Soaps in boxes with the same general appearance as those of complainant's boxes within a period of **NINETY (90) DAYS**, effective upon the receipt of respondent of the copy of the COMPLIANCE filed with this Office by the Complainant stating that it has posted a CASH BOND in the amount of **ONE HUNDRED THOUSAND PESOS** (Php100,000.00) together with the corresponding Official Receipt Number and date thereof. Consequently, complainant is directed to inform this Office of actual date of receipt by Respondent of the aforementioned COMPLIANCE.[36]

To inform the public of the issuance of the writ of preliminary injunction, respondent's counsel had the dispositive portion of the Order published in *The Philippine Star* newspaper on October 30, 2005.[37] Thus, it was clearly stated that Yu, doing business under the name and style of MCA Manufacturing, his agents, representatives, dealers and distributors and all persons acting in his behalf, were to cease and desist from using the trademark "TOP GEL & DEVICE OF A LEAF" or any colorable imitation thereof on Papaya Whitening soaps they manufacture, sell and/or offer for sale. Petitioners, who admitted having derived their TOP GEL products from Yu, are, therefore, notified of such injunction and were enjoined from selling the same.

Notwithstanding, at the time of the application of the search warrants on November 21, 2005, and while the injunction was in effect, petitioners were still selling the alleged counterfeit products bearing the trademark TOP GEL T.G. & DEVICE OF A LEAF. There exists a probable cause for violation of respondent's intellectual property rights, which entitles her as the registered owner of the trademark TOP GEL and DEVICE

[36] *Id.* at 681.

[37] *Id.* at 682.

OF A LEAF to be protected by the issuance of the search warrants.

More importantly, during the pendency of petitioners' motion to quash in the RTC, respondent submitted the Order dated March 8, 2006 of the IPO in IPV Case No. 10-2005-00001, where the writ of preliminary injunction was earlier issued, approving the compromise agreement entered into by respondent with Yu and Cua where it was stated, among others, that:

1. Respondents acknowledge the exclusive right of Complainant over the trademark TOP GEL T.G. & DEVICE OF A LEAF for use on papaya whitening soap as registered under Registration No. 4-2000-009881 issued on August 24, 2003.

2. Respondents acknowledge the appointment by Zenna Chemical Industry Co., Ltd. of Complainant as the exclusive Philippine distributor of its products under the tradename and trademark TOP GEL MCA & MCA DEVICE (A SQUARE DEVICE CONSISTING OF A STYLIZED REPRESENTATION OF A LETTER "M" OVER THE LETTER "CA") as registered under Registration No. 4-1996-109957 issued on November 17, 2000, as well as the assignment by Zenna Chemical Industry Co., Ltd. to Complainant of said mark for use on papaya whitening soap.

3. Respondents admit having used the tradename and trademark aforesaid, but after having realized that Complainant is the legitimate assignee of TOP GEL MCA & MCA DEVICE and the registered owner of TOP GEL T.G. & DEVICE OF A LEAF, now undertake to voluntarily cease and desist from using the aforesaid tradename and trademark, and further undertake not to manufacture, sell and distribute and otherwise compete with complainant, now and at anytime in the future, any papaya whitening soap using or bearing a mark or name identical or confusingly similar to, or constituting a colorable imitation of the tradename and trademark TOP GEL MCA & MCA DEVICE and/or TOP GEL T.G. & DEVICE OF A LEAF as registered and described above.[38]

Hence, it appears that there is no more controversy as to who is the rightful holder of the trademark TOP GEL T.G. & DEVICE OF A LEAF. Therefore, respondent, as owner of

[38] Records, Vol. II, pp. 631-632.

such registered trademark has the right to the issuance of the search warrants.

Anent petitioners' claim that one or two samples of the Top Gel products from each of them, instead of confiscating thousands of the products, would have sufficed for the purpose of an anticipated criminal action, citing our ruling in *Summerville General Merchandising Co. v. Court of Appeals*,[39] is not meritorious.

We do not agree.

The factual milieu of the two cases are different. In *Summerville*, the object of the violation of Summerville's intellectual property rights, as assignee of Royal playing cards and Royal brand playing cards case, was limited to the design of Summerville's Royal plastic container case which encased and wrapped the Crown brand playing cards. In the application for the search warrant which the RTC subsequently issued, one of the items to be seized were the Crown brand playing cards using the copyright plastic and Joker of Royal brand. Thus, numerous boxes containing Crown playing cards were seized and upon the RTC's instruction were turned over to Summerville, subject to the condition that the key to the said warehouse be turned over to the court sheriff. Respondents moved for the quashal of the search warrant and for the return of the seized properties. The RTC partially granted the motion by ordering the release of the seized Crown brand playing cards and the printing machines; thus, only the Royal plastic container cases of the playing cards were left in the custody of Summerville. The CA sustained the RTC order. On petition with us, we affirmed the CA. We found therein that the Crown brand playing cards are not the subject of the offense as they are genuine and the Crown trademark was registered to therein respondents' names; that it was the design of the plastic container/case that is alleged to have been utilized by respondents to deceive the public into believing that the Crown brand playing cards are the same as those manufactured by Summerville. We then said

[39] G.R. No. 158767, June 26, 2007, 525 SCRA 602.

that assuming that the Crown playing cards could be considered subject of the offense, a sample or two are more than enough to retain should there have been a need to examine them along with the plastic container/case; and that there was no need to hold the hundreds of articles seized. We said so in the context that since what was in dispute was the design of the Royal plastic cases/containers of playing cards and not the playing card *per se*, a small number of Crown brand playing cards would suffice to examine them with the Royal plastic cases/containers. And the return of the playing cards would better serve the purposes of justice and expediency.

However, in this case, the object of the violation of respondent's intellectual property right is the alleged counterfeit TOP GEL T.G. & DEVICE OF A LEAF papaya whitening soap being sold by petitioners, so there is a need to confiscate all these articles to protect respondent's right as the registered owner of such trademark.

Petitioners next contend that the CA's ruling on the applicability of Rule 126 of the Rules of Court that the search warrants were issued in anticipation of a criminal action was only based on respondent's claim which was only brought for the first time in her appellant's brief.

We are not persuaded.

We find worth quoting respondent's argument addressing this issue in its Comment, thus:

> In the assailed Decision, the Court of Appeals found that the Rule correctly applicable to the subject search warrants was Rule 126 of the Rules of Court. Petitioners fault the appellate court for ruling that the Regional Trial Court incorrectly applied the Rules on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights on the basis of an argument that private respondent brought up for the first time in her Appellant's Brief.
>
> A cursory perusal of the Appellant's Brief shows that the following issues/errors were raised, that: (1) the Honorable Trial Court erred in holding that the "Rules on Search and Seizure for Infringement of Intellectual Property Rights" apply to the search warrants at bar; (2) x x x.

It must be remembered that there was no trial on the merits to speak of in the trial court, and the matter of the application of the wrong set of Rules only arose in the Order dated 25th September 2006 which sustained the Motion to Quash. ***A thorough examination of the Appellee's Brief filed by petitioners (respondents-appellees in the Court of Appeals) reveals, however, that petitioners NEVER assailed the first issue/error on the ground that the same was raised for the first time on appeal.*** **It is only now,** ***after the appellate court rendered a Decision and Resolution unfavorable to them,*** **that petitioners questioned the alleged procedural error. Petitioners should now be considered in *estoppel* to question the same.**[40]

Indeed, perusing the appellee's (herein petitioners) brief filed with the CA, the matter of the non-applicability of the rules on search and seizure in civil action for infringement of intellectual property rights was never objected as being raised for the first time. On the contrary, petitioners had squarely faced respondent's argument in this wise:

Appellant (herein respondent) contends that the rule (SC Adm. Memo 1-06, No. 02-1-06, Rule on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights) does [not] apply to the search warrants in the [case] at bar, for the reason that the search warrants themselves reveal that the same were applied for and issued for violations of "Section 155 in relation to Section 170 of RA 8293" and violations of "Section 168 in relation to Section 170 of RA 8293," and that a perusal of the records would show that there is no mention of a civil action or anticipation thereof, upon which the search warrants are applied for.

Appellees (herein petitioners) cannot agree with the contention of the appellant. Complainant NBI Agent Joseph G. Furing, who applied for the search warrants, violated the very rule on search and seizure for infringement of Intellectual Property Rights. The search warrants applied for by the complainants cannot be considered a criminal action. There was no criminal case yet to speak of when complainants applied for issuance of the search warrants. There is distinction here because the search applied for is civil in nature and no criminal case had been filed. The complaint is an afterthought after the respondents-appellees filed their Motion to Quash Search Warrant before the Regional Trial Court of Manila, Branch 24. The

[40] *Rollo,* p. 154.

grounds enumerated in the rule must be complied with in order to protect the constitutional mandate that "no person shall be deprived of life liberty or property without due process of law nor shall any person be denied the equal protection of the law." Clearly, the application of the search warrants for violation of unfair competition and infringement is in the nature of a civil action.[41]

WHEREFORE, the petition for review is **DENIED**. The Decision dated March 31, 2009 and the Resolution dated July 2, 2009 of the Court of Appeals, in CA-G.R. CV No. 88952, are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192183. November 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANDY ZULIETA *a.k.a.* "Bogarts",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; WILL NOT PROSPER WHERE THE APPELLANT FAILED TO PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE PRESENT AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION.— Appellant's alibi, being inherently weak, deserves no credence at all especially when measured up against the positive identification by the prosecution witness, Bryan Pascua (Pascua), pointing to appellant as the perpetrator of the crime. Besides, nobody corroborated appellant's alibi other

[41] CA *rollo,* pp. 116-117.

than his wife who is obviously biased in his favor thus making her testimony self-serving. Moreover, appellant failed to prove that it was physically impossible for him to be present at the crime scene at the time of its commission. As observed by the CA, Cagayan de Oro City could be traversed from Gingoog City within two hours; hence, it is not physically impossible for appellant to commit the crime in Cagayan de Oro City and still go home to Gingoog City after its commission.

2. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE THEREOF IS AN UNEXPECTED AND SUDDEN ATTACK WHICH RENDERS THE VICTIM UNABLE AND UNPREPARED TO PUT UP A DEFENSE.— We likewise affirm the findings of both the RTC and the CA that treachery attended the killing. "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape." Otherwise stated, an unexpected and sudden attack which renders the victim unable and unprepared to put up a defense is the essence of treachery. In this case, the victim Labando was totally unaware of the threat. He was merely sitting on the bench in front of a *sari-sari* store eating bananas when appellant, without any provocation or prior argument, suddenly stabbed him on his chest, piercing the right ventricle of his heart thus causing his instantaneous death. The stabbing was deliberate, unexpected, swift and sudden which foreclosed any escape, resistance or defense coming from the victim. This is a classic example of treachery.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AND ITS ASSESSMENT ON THE CREDIBILITY OF WITNESSES DESERVE UTMOST RESPECT BY THE COURT.— Settled is the rule that factual findings of the trial court and its assessment on the credibility of witnesses deserve utmost respect by this Court. In this case, we find no reason to deviate from the findings or assessment of the trial court there being no showing that it

has overlooked or mis-appreciated some facts which if considered would materially impact on or change the outcome of the case. On the contrary, we find that the trial court meticulously studied the case and properly weighed the evidence presented by the parties.

4. **CRIMINAL LAW; MURDER; PROPER PENALTY.—** Article 248 of the Revised Penal Code provides that the penalty for the crime of murder is *reclusion perpetua* to death. Both the trial court and the CA correctly found appellant guilty of murder and imposed upon him the penalty of *reclusion perpetua*, the lower of the two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.

5. **ID.; ID.; CIVIL-LIABILITY OF APPELLANT.—** When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages." Both the RTC and the CA properly awarded civil indemnity to the heirs of the victim but the same must be increased to ₱75,000.00 in line with prevailing jurisprudence. The heirs of the victim are likewise entitled to moral damages which the trial court and the CA properly awarded in the amount of ₱50,000.00. The award of exemplary damages in view of the aggravating circumstance of treachery is likewise correct however the same must be increased to ₱30,000.00 in line with prevailing jurisprudence. "Moreover, while actual damages cannot be awarded since there was no evidence of actual expenses incurred for the death of the victim, in lieu thereof, the sum of ₱25,000.00 may be granted, as it is hereby granted, by way of temperate damages as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved." In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the August 13, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00568-MIN which affirmed with modification the October 24, 2007 Judgment[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 38, finding appellant Andy Zulieta *a.k.a.* "Bogarts" guilty beyond reasonable doubt of the crime of Murder.

Factual Antecedents

On July 21, 2006, an Information[3] was filed charging appellant with the crime of Murder, the accusatory portion of which reads:

> That on June 13, 2006, at around 10:00 o'clock in the evening, more or less, at Sto. Niño, Lapasan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously stab one Armand Labando, with the use of a Batangas knife, hitting on the chest x x x the latter thereby inflicting mortal wounds which [caused] his immediate death.
>
> Contrary to Art. 248 of the Revised Penal Code, in relation to RA 7659, as amended.

When arraigned on November 3, 2006, appellant pleaded not guilty.[4] During the pre-trial, no stipulation of facts was made hence trial on the merits ensued.[5]

Summary of Facts

The facts as summarized by the trial court are as follows:

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[1] CA *rollo*, pp. 77-95; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson.

[2] Records, pp. 77-83; penned by Judge Maximo G.W. Paderanga.

[3] *Id.* at 3.

[4] *Id.* at 24.

[5] *Id.* at 27.

The first witness for the prosecution was SPO1 Apolinario Ubilas who testified that on June 13, 2006, at about 10:00 o'clock in the evening, Police Precinct Commander Police Inspector Ladao directed him to verify and investigate x x x a stabbing incident x x x which took place in Sto. Niño, Lapasan, Cagayan de Oro City. [The victim was no longer at the crime scene] as [he] was reportedly brought to the Northern Mindanao Medical Center (NMMC) so he made inquiries as to possible witnesses of the incident and learned that Bryan Pascua witnessed the incident. He then proceeded to NMMC and saw the body of the victim, which was declared dead-on-arrival. Per order of their Precinct Commander, [a police team] conducted a pursuit operation and was able to arrest, on the following day, Jonathan Zaporteza and Rey Sabado, companions of the accused Andy Zulieta.

The next witness was Bryan Pascua who testified that on June 13, 2006, at about 10:30 in the evening, he and deceased Armand Labando[,] Jr. were outside their boarding house, seated at the bench just outside the store of Jimmy Saura. While they were eating bananas, Bogarts, Rey and Tantan approached them. Bogarts, who had with him a pitcher, dropped it in front of them so they immediately stood up. He then heard Tantan shout, "*birahi na na*" (hit him now), then saw Bogarts pull a batangas knife and stab the deceased, hitting him on his chest. He ran towards their boarding house, afraid that he will be attacked next.

The next witness for the prosecution was Dr. Francisco Romulo C. Villaflor, a Medico-Legal Officer of the Philippine National Police, who testified that he conducted an autopsy of the deceased Armand Labando[,] Jr. and found that the stab wound was inflicted on the anterior chest hitting the most vital organ of the body, the right ventricle of the heart. Based on his analysis, the instrument used in inflicting the wound [was] a bladed, pointed instrument, which could be a knife and by the location of the wound, the assailant was in front of the victim.

After the testimony of Dr. Villaflor, the prosecution offered their exhibits: Exhibit "A", the Death Certificate of Armand Labando[, Jr.] and Exhibit "B", the Autopsy Report of Dr. Villaflor, which were admitted by the defense. The prosecution then rested its case.

Accused set up denial and alibi as [his] defense claiming that on June 13, 2006 at 10:00 o'clock in the evening, he was asleep in his house in Gingoog City with his wife and in-laws. Sometime in November, 2006, he was arrested by Police Officer Radam and

companions at his house in Gingoog City for being accused of killing the deceased Armand Labando[,] Jr. Accused claimed that he does not know the deceased Armand Labando[,] Jr., Rey Sabando, Jonathan Zaporte[z]a or witness Bryan Pascua. When cross-examined by the Court, accused claimed that his nickname is Andy as his real name is Zandy and he is not known in Sto. Niño as Bogarts. He, however, admitted that he was born in Sto. Niño, Lapasan, Cagayan de Oro City in 1985, lived and stayed with his parents in Sto. Niño, Lapasan, until he got married in x x x 2005. He then transferred residence with his own family [to] Gingoog.

The next witness for the defense was Maryflor Mamba Zulieta, wife of the accused, who testified that she married the accused [o]n August 28, 2005 in Nazareno Parish, Cagayan de Oro City. They resided in Gingoog City from the time they got married until the day that her husband was arrested. Her husband works at the farm of Mr. Lugod, in Cabuyuan, Gingoog City, planting, weeding and harvesting rice, from 7:00 o'clock in the morning until 4:00 o'clock in the afternoon, but goes home at noontime to eat lunch. On July 13, 2006, at around 10:00 o'clock in the evening, they were asleep in their house in Gingoog City. Sometime in October or November, 2006, at around 4:00 o'clock in the morning, while they were still sleeping, they were surprised when some men entered their house, went upstairs and handcuffed [her] husband as [he] is said to be under arrest.[6]

Ruling of the Regional Trial Court

On October 24, 2007, the RTC rendered its Judgment finding appellant guilty of killing the victim Armand Labando, Jr. (Labando) with the attendant qualifying circumstance of treachery. The dispositive portion of the Judgment reads as follows:

Accordingly, the Court finds accused Andy Zulieta guilty beyond reasonable doubt of the crime of murder and he is hereby sentenced to suffer the penalty of *reclusion perpetua*, with accessory penalties provided by law. He is also liable to pay the heirs of Armand Labando[, Jr.] civil damages in the amount of Php50,000.00, moral damages of Php50,000.00 and costs of suit.

SO ORDERED.[7]

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

[7] *Id.* at 83.

Aggrieved, appellant filed his Notice of Appeal[8] which was approved by the RTC.

Ruling of the Court of Appeals

In its Decision dated August 13, 2009, the CA affirmed with modification the Judgment of the RTC, *viz*:

> WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 38 in Cagayan de Oro City finding appellant Andy Zulieta guilty beyond reasonable doubt of Murder, is AFFIRMED WITH MODIFICATION, in that appellant is further ORDERED to pay the heirs of Armand Labando, Jr., the amount of ₱25,000.00 as exemplary damages, in addition to the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.
>
> SO ORDERED.[9]

Hence, this present appeal.

Assignment of Error

Appellant seeks his acquittal by assigning the lone error that:

> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[10]

Appellant insists on his alibi that on June 13, 2006, at around 10 o'clock in the evening, he was sleeping at his house in Gingoog City. He argues further that even assuming his presence at the scene of the crime at Sto. Niño, Lapasan, Cagayan de Oro City, and that he killed Labando, the killing could not have been attended by the qualifying circumstance of treachery. He posits that the prosecution failed to show that he employed means or methods to ensure that Labando would not be able to defend himself.

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[8] *Id.* at 85.

[9] CA *rollo*, p. 72.

[10] *Id.* at 16.

Our Ruling

The appeal lacks merit.

Appellant's alibi, being inherently weak, deserves no credence at all especially when measured up against the positive identification by the prosecution witness, Bryan Pascua (Pascua), pointing to appellant as the perpetrator of the crime. Besides, nobody corroborated appellant's alibi other than his wife who is obviously biased in his favor thus making her testimony self-serving. Moreover, appellant failed to prove that it was physically impossible for him to be present at the crime scene at the time of its commission. As observed by the CA, Cagayan de Oro City could be traversed from Gingoog City within two hours;[11] hence, it is not physically impossible for appellant to commit the crime in Cagayan de Oro City and still go home to Gingoog City after its commission.

Aside from having been positively identified by prosecution witness Pascua, appellant failed to impute any ill motive to Pascua. Thus, the trial court correctly lent credence to Pascua's testimony:

> The testimony of witness Bryan Pascua is clear, spontaneous and straightforward when he said that accused Andy Zulieta stabbed the deceased. When asked if he can identify the accused, the witness pointed his finger at the accused Andy Zulieta who was in the courtroom. Asked how he knew of such fact, he categorically said that he knew the accused long before the incident, recognized his face that night because the place was lighted and at the time of the stabbing incident, he was one (1) meter away from the assailant and the victim. He further testified that he was surprised when the accused, together with his companions, approached them, dropped the pitcher in front of them and suddenly stabbed the deceased on his chest when in fact there was no prior heated argument or statement made by deceased Armand Labando[,] Jr. which could have caused the ire of accused Andy Zulieta.[12]

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[11] *Id.* at 86.

[12] Records, p. 80.

We likewise affirm the findings of both the RTC and the CA that treachery attended the killing. "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[13] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."[14] Otherwise stated, an unexpected and sudden attack which renders the victim unable and unprepared to put up a defense is the essence of treachery. In this case, the victim Labando was totally unaware of the threat. He was merely sitting on the bench in front of a *sari-sari* store eating bananas when appellant, without any provocation or prior argument, suddenly stabbed him on his chest, piercing the right ventricle of his heart thus causing his instantaneous death. The stabbing was deliberate, unexpected, swift and sudden which foreclosed any escape, resistance or defense coming from the victim. This is a classic example of treachery.

Settled is the rule that factual findings of the trial court and its assessment on the credibility of witnesses deserve utmost respect by this Court. In this case, we find no reason to deviate from the findings or assessment of the trial court there being no showing that it has overlooked or mis-appreciated some facts which if considered would materially impact on or change the outcome of the case. On the contrary, we find that the trial court meticulously studied the case and properly weighed the evidence presented by the parties. Thus, we stand by its pronouncement that-

> After a careful review and analysis of the evidence for the prosecution and the defense and recalling the mien and manner of testimony by the witnesses, especially the positive testimony and identification by eyewitness Bryan Pascua of the accused, the Court

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

[14] *People v. Jalbonian*, G.R. No. 181281, July 1, 2013, citing *Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

is convinced that it is accused Andy Zulieta *a.k.a.* "Bogarts" who suddenly stabbed the deceased, resulting in his instantaneous death.[15]

Article 248 of the Revised Penal Code provides that the penalty for the crime of murder is *reclusion perpetua* to death. Both the trial court and the CA correctly found appellant guilty of murder and imposed upon him the penalty of *reclusion perpetua*, the lower of the two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.[16]

"When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages."[17] Both the RTC and the CA properly awarded civil indemnity to the heirs of the victim but the same must be increased to ₱75,000.00 in line with prevailing jurisprudence.[18] The heirs of the victim are likewise entitled to moral damages which the trial court and the CA properly awarded in the amount of ₱50,000.00. The award of exemplary damages in view of the aggravating circumstance of treachery is likewise correct however the same must be increased to ₱30,000.00 in line with prevailing jurisprudence.[19] "Moreover, while actual damages cannot be awarded since there was no evidence of actual expenses incurred for the death of the victim, in lieu thereof, the sum of ₱25,000.00 may be granted, as it is hereby granted, by way of temperate damages as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved."[20] In addition, all damages awarded shall earn interest

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[15] Records, p. 80.

[16] *People v. Jalbonian*, *supra* note 14.

[17] *People v. Dela Rosa*, G.R. No. 201723, June 13, 2013. Citations omitted.

[18] *People v. Jalbonian*, *supra* note 14.

[19] *Id*.

[20] *Id*.

at the rate of 6% *per annum* from date of finality of this Decision until fully paid.[21]

WHEREFORE, the August 13, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00568-MIN is **AFFIRMED with MODIFICATIONS** as follows: a) the award of civil indemnity is increased to ₱75,000.00; b) the award of exemplary damages is increased to ₱30,000.00; c) temperate damages in the amount of ₱25,000.00 is awarded in lieu of actual damages; and d) 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.

THIRD DIVISION

[G.R. No. 199067. November 11, 2013]

NISSAN GALLERY-ORTIGAS, *petitioner, vs.* **PURIFICACION F. FELIPE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INSTITUTION OF CRIMINAL AND CIVIL ACTIONS; IN CRIMINAL ACTIONS FOR VIOLATION OF THE BOUNCING CHECKS LAW (BP 22), THE CORRESPONDING CIVIL ACTION IS DEEMED INCLUDED AND THAT A RESERVATION TO FILE SUCH SEPARATELY IS NOT ALLOWED.— Well-settled is the rule

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[21] *Id.*

that a civil action is deemed instituted upon the filing of a criminal action, subject to certain exceptions. Section 1, Rule 111 of the Rules of Court specifically provides that: **SECTION 1.** *Institution of criminal and civil actions.* — (a) When a criminal action is instituted, the civil action for the recovery of **civil liability arising from the offense charged** shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action x x x. (b) The criminal action for **violation of Batas Pambansa Blg. 22** shall be *deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.* x x x. As can be gleaned from (Section 1, (b), Rule III of the Rules of Court), with respect to criminal actions for violation of BP 22, it is explicitly clear that the corresponding civil action is deemed included and that a reservation to file such separately is not allowed.

2. ID.; ID.; ID.; EVERY ACT OR OMISSION PUNISHABLE BY LAW HAS ITS ACCOMPANYING CIVIL LIABILITY; IF THE JUDGMENT IS CONVICTION OF THE ACCUSED, THE NECESSARY PENALTIES AND CIVIL LIABILITIES ARISING FROM THE CRIME SHALL BE IMPOSED; ON THE CONTRARY, IF THE JUDGMENT IS OF ACQUITTAL, THE IMPOSITION OF THE CIVIL LIABILITY WILL DEPEND ON WHETHER OR NOT THE ACT OR OMISSION FROM WHICH IT MIGHT ARISE EXISTS.— The rule is that every act or omission punishable by law has its accompanying civil liability. The civil aspect of every criminal case is based on the principle that every person criminally liable is also civilly liable. If the accused, however, is not found to be criminally liable, it does not necessarily mean that he will not likewise be held civilly liable because extinction of the penal action does not carry with it the extinction of the civil action. This rule more specifically applies when (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted. The civil action based on the delict is extinguished if there is a finding in the final judgment in the criminal action that the act or omission from which the civil liability may arise did not

exist or where the accused did not commit the acts or omission imputed to him. It can, therefore, be concluded that if the judgment is conviction of the accused, then the necessary penalties and civil liabilities arising from the offense or crime shall be imposed. On the contrary, if the judgment is of acquittal, then the imposition of the civil liability will depend on whether or not the act or omission from which it might arise exists.

3. CRIMINAL LAW; BOUNCING CHECKS LAW (BP22); ESSENTIAL ELEMENTS OF THE OFFENSE IN VIOLATION THEREOF; THE PRESUMPTION OF KNOWLEDGE OF INSUFFICIENCY OF FUNDS ARISES ONLY AFTER IT IS PROVED THAT THE ISSUER HAD RECEIVED A WRITTEN NOTICE OF DISHONOR AND THAT WITHIN FIVE (5) DAYS FROM RECEIPT THEREOF, HE FAILED TO PAY THE AMOUNT OF THE CHECK OR TO MAKE ARRANGEMENTS FOR ITS PAYMENT.— Purificacion was charged with violation of BP 22 for allegedly issuing a worthless check. The essential elements of the offense of violation of BP 22 are the following: (1) The making, drawing, and issuance of any check to apply for account or for value; (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment. Here, the first and third elements were duly proven in the trial. Purificacion, however, was acquitted from criminal liability because of the failure of the prosecution to prove the fact of notice of dishonor. Of the three (3) elements, the second element is the hardest to prove as it involves a state of mind. Thus, Section 2 of BP 22 creates a presumption of knowledge of insufficiency of funds which, however, arises only after it is proved that the issuer had received a written notice of dishonor and that within five (5) days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.

4. ID.; ID.; ID.; THE ACQUITTAL OF THE ACCUSED FROM THE CRIMINAL CHARGE OF VIOLATION OF BP 22 FOR FAILURE TO ESTABLISH THE ELEMENT OF NOTICE OF

DISHONOR WILL NOT RELIEVE HER OF THE CORRESPONDING CIVIL LIABILITY FOR ISSUING OR MAKING A WORTHLESS CHECK.— Purificacion was acquitted because the element of notice of dishonor was not sufficiently established. Nevertheless, the act or omission from which her civil liability arose, which was the making or the issuing of the subject worthless check, clearly existed. Her acquittal from the criminal charge of BP 22 was based on reasonable doubt and it did not relieve her of the corresponding civil liability. x x x The Court is also one with the CA when it stated that the liability of Purificacion was limited to her *act of issuing a worthless check*. The Court, however, does not agree with the CA when it went to state further that by her acquittal in the criminal charge, there was no more basis for her to be held civilly liable to Nissan. The acquittal was just based on reasonable doubt and it did not change the fact that she issued the subject check which was subsequently dishonored upon its presentment.

5. ID.; ID.; IN VIOLATION OF BP 22, THE ACCUSED, REGARDLESS OF HER INTENT, REMAINS CIVILLY LIABLE BECAUSE THE INTENT IN ISSUING A CHECK IS IMMATERIAL FOR THE ONLY INQUIRY IS WHETHER THE LAW HAS BEEN BREACHED.— The Court shall not be belabored with the issue of whether or not Purificacion was an accommodation party because she was not. Granting that she was, it is with more reason that she cannot escape any civil liability because Section 29 of the Negotiable Instruments Law specifically bounds her to the instrument. The crux of the controversy pertains to the civil liability of an accused despite acquittal of a criminal charge. Such issue is no longer novel. In cases like violation of BP 22, a special law, the intent in issuing a check is immaterial. The law has made the mere act of issuing a bad check *malum prohibitum*, an act proscribed by the legislature for being deemed pernicious and inimical to public welfare. Considering the rule in *mala prohibita* cases, the only inquiry is whether the law has been breached. The lower courts were unanimous in finding that, indeed, Purificacion issued the bouncing check. Thus, regardless of her intent, she remains civilly liable because the act or omission, *the making and issuing of the subject check*, from which her civil liability arises, evidently exists.

APPEARANCES OF COUNSEL

Pastelero Law Office for petitioner.
Benito F. Ambrosio for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to review, reverse and set aside the June 30, 2011 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 120100,[2] and its October 21, 2011 Resolution,[3] for being issued in a manner not in accord with law and jurisprudence.

This case stemmed from a criminal complaint for violation of Batas Pambansa Blg. 22 *(BP 22)* filed by petitioner Nissan Gallery-Ortigas *(Nissan)*, an entity engaged in the business of car dealership, against respondent Purificacion F. Felipe *(Purificacion)* with the Office of the City Prosecutor of Quezon City. The said office found probable cause to indict Purificacion and filed an Information before the Metropolitan Trial Court, (raffled to Branch 41), Quezon City *(MeTC)*, for her issuance of a postdated check in the amount of ₱1,020,000.00, which was subsequently dishonored upon presentment due to "STOP PAYMENT."

Purificacion issued the said check because her son, Frederick Felipe *(Frederick)*, attracted by a huge discount of ₱220,000.00, purchased a Nissan Terrano 4x4 sports and utility vehicle *(SUV)* from Nissan. The term of the transaction was Cash-on-Delivery and no downpayment was required. The SUV was delivered on May 14, 1997, but Frederick failed to pay upon delivery.

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[1] *Rollo*, p. 10.

[2] Erroneously docketed by the CA as CA-G.R. CR No. 32606, *id*. at 26, 54-55.

[3] *Id*. at 21.

Despite non-payment, Frederick took possession of the vehicle.[4]

Since then, Frederick had used and enjoyed the SUV for more than four (4) months without paying even a single centavo of the purchase price. This constrained Nissan to send him two (2) demand letters, on different dates, but he still refused to pay. Nissan, through its retained counsel, was prompted to send a final demand letter. Reacting to the final demand, Frederick went to Nissan's office and asked for a grace period until October 30, 1997 within which to pay his full outstanding obligation amounting to ₱1,026,750.00. Through further negotiation, the amount was eventually reduced to ₱1,020,000.00.[5]

Frederick reneged on his promise and again failed to pay. On November 25, 1997, he asked his mother, Purificacion, to issue the subject check as payment for his obligation. Purificacion acceded to his request. Frederick then tendered her postdated check in the amount of ₱1,020,000.00. The check, however, was dishonored upon presentment due to "STOP PAYMENT."[6]

A demand letter was served upon Purificacion, through Frederick, who lived with her. The letter informed her of the dishonor of the check and gave her five (5) days from receipt within which to replace it with cash or manager's check. Despite receipt of the demand letter, Purificacion refused to replace the check giving the reason that she was not the one who purchased the vehicle. On January 6, 1998, Nissan filed a criminal case for violation of BP 22 against her.[7]

During the preliminary investigation before the Assistant City Prosecutor, Purificacion gave ₱200,000.00 as partial payment to amicably settle the civil aspect of the case. Thereafter, however, no additional payment had been made.

After trial, the MeTC rendered its judgment acquitting Purificacion of the charge, but holding her civilly liable to Nissan.

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[4] *Id*. at 31.

[5] *Id*. at 48.

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

[7] *Id*. at 49.

The dispositive portion of the judgment states that:

> WHEREFORE, judgment is hereby rendered ACQUITTING accused PURIFICACION FELIPE of the crime of Violation of Batas Pambansa 22. However, accused PURIFICACION FELIPE is ordered to pay private complainant Nissan Gallery Ortigas the amount of SIX HUNDRED SEVENTY FIVE THOUSAND PESOS (₱675,000.00) with legal interest per annum, from the filing of the information until the finality of this decision.
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> SO ORDERED.[8]

Purificacion appealed to the Regional Trial Court *(RTC)*. Branch 105 thereof affirmed the MeTC decision on December 22, 2008. The RTC ruled that Purificacion was estopped from denying that she issued the check as a "show check" to boost the credit standing of Frederick and that Nissan agreed not to deposit the same.[9] Further, the RTC considered Purificacion to be an accommodation party who was "liable on the instrument to a holder for value even though the holder at the time of taking the instrument knew him or her to be merely an accommodation party."[10]

Purificacion moved for a reconsideration, but her motion was denied.

The CA, before whom the case was elevated via a petition for review, granted the petition on May 20, 2009. In so deciding, the CA reasoned out that there was no privity of contract between Nissan and Purificacion. No civil liability could be adjudged against her because of her acquittal from the criminal charge. It was Frederick who was civilly liable to Nissan.[11]

It added that Purificacion could not be an accommodation party either because she only came in after Frederick failed to pay the purchase price, or six (6) months after the execution

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[8] CA *rollo*, MeTC Judgment, p. 34.

[9] *Id*., RTC Decision, p. 25.

[10] *Id*. at 25.

[11] *Rollo*, p. 52.

of the contract between Nissan and Frederick. Her liability was limited to her act of issuing a worthless check, but by her acquittal in the criminal charge, there was no more basis for her to be held civilly liable to Nissan.[12] Purificacion's act of issuing the subject check did not, by itself, assume the civil obligation of Frederick to Nissan or automatically made her a party to the contract.[13] Thus, the decretal portion of the judgment reads:

> **WHEREFORE,** finding merit therefrom, the instant petition is **GIVEN DUE COURSE** and is hereby **GRANTED**. The Decision and Order dated December 22, 2008 and May 20, 2009, respectively, of the Regional Trial Court (RTC), Branch 105, Quezon City, in Crim. Case No. Q-08-151734, affirming the Judgment of the Metropolitan Trial Court (MeTC), Branch 41, Quezon City, for Violation of B.P. 22, acquitting petitioner of the crime charged but ordering the latter to pay respondent the amount of Six Hundred Seventy Five Thousand Pesos (₱675,000.00) with 12% legal interest, is **SET ASIDE** and petitioner is **EXONERATED** from any civil liability by reason of her issuance of the subject check.
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> x x x x x x x x x
>
> SO ORDERED.[14]

Nissan filed a motion for reconsideration, but it was later denied.

Hence, this petition, with Nissan presenting the following

GROUNDS
A.

BOTH THE METROPOLITAN TRIAL COURT AND THE REGIONAL TRIAL COURT CONCURRED THAT THE ISSUANCE BY RESPONDENT PURIFICACION OF THE SUBJECT BOUNCED CHECK WAS FOR AND IN PAYMENT OF HER SON'S OUTSTANDING OBLIGATION TO NISSAN GALLERY ORIGINATING FROM HIS PURCHASE OF THE SUBJECT MOTOR

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[12] *Id*. at 53.

[13] *Id*.

[14] *Id*. at 54.

VEHICLE, NOT MERELY AS A "SHOW CHECK", HENCE, EVEN IF PURIFICACION IS NOT A PARTY TO THE SALES TRANSACTION BETWEEN NISSAN GALLERY, AS SELLER, AND FREDERICK, AS BUYER, PURIFICACION, AS THE ONE WHO DREW THE BOUNCED CHECK AS AND IN PAYMENT OF THE LONG-UNPAID MOTOR VEHICLE PURCHASED BY HER SON, COULD NOT ESCAPE LIABILITY ON THE CIVIL ASPECT OF THE CASE.

B.

WHILE IT MAY BE TRUE THAT RESPONDENT PURIFICACION MAY BE ACQUITTED OF THE CRIME CHARGED (VIOLATION OF B.P. 22), ONLY BECAUSE THE PROSECUTION FAILED TO PROVE THAT RESPONDENT PURIFICACION WAS PROPERLY NOTIFIED OF THE DISHONOR OF THE SUBJECT BOUNCED CHECK, IT IS NOT CORRECT TO EXONERATE HER FROM THE CIVIL ASPECT OF THE CASE.[15]

Ultimately, the question presented before the Court is whether or not Purificacion is civilly liable for the issuance of a worthless check despite her acquittal from the criminal charge.

Ruling of the Court

The Court rules in the affirmative.

Well-settled is the rule that a civil action is deemed instituted upon the filing of a criminal action, subject to certain exceptions. Section 1, Rule 111 of the Rules of Court specifically provides that:

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

x x x x x x x x x.

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

(b) The criminal action for **violation of Batas Pambansa Blg. 22** shall be *deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.*

x x x x x x x x x.

As can be gleaned from the foregoing, with respect to criminal actions for violation of BP 22, it is explicitly clear that the corresponding civil action is deemed included and that a reservation to file such separately is not allowed.

The rule is that every act or omission punishable by law has its accompanying civil liability. The civil aspect of every criminal case is based on the principle that every person criminally liable is also civilly liable.[16] If the accused, however, is not found to be criminally liable, it does not necessarily mean that he will not likewise be held civilly liable because extinction of the penal action does not carry with it the extinction of the civil action.[17] This rule more specifically applies when (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[18] The civil action based on the delict is extinguished if there is a finding in the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.[19]

It can, therefore, be concluded that if the judgment is conviction of the accused, then the necessary penalties and civil liabilities arising from the offense or crime shall be imposed. On the contrary, if the judgment is of acquittal, then the imposition of

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[16] Art. 100, Revised Penal Code.

[17] Sec. 2, Rule 111, Revised Rules of Court.

[18] *Alferez v. People*, G.R. No. 182301, January 31, 2011, 641 SCRA 116, 125.

[19] *Sanchez v. Far East Bank and Trust Company*, 511 Phil. 540, 558 (2005), citing *Manantan v. Court of Appeals*, 403 Phil. 308 (2001).

the civil liability will depend on whether or not the act or omission from which it might arise exists.

Purificacion was charged with violation of BP 22 for allegedly issuing a worthless check. The essential elements of the offense of violation of BP 22 are the following:

> (1) The making, drawing, and issuance of any check to apply for account or for value;
>
> (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
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> (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[20]

Here, the first and third elements were duly proven in the trial. Purificacion, however, was acquitted from criminal liability because of the failure of the prosecution to prove the fact of notice of dishonor. Of the three (3) elements, the second element is the hardest to prove as it involves a state of mind.[21] Thus, Section 2 of BP 22 creates a presumption of knowledge of insufficiency of funds which, however, arises only after it is proved that the issuer had received a written notice of dishonor and that within five (5) days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.[22]

Purificacion was acquitted because the element of notice of dishonor was not sufficiently established. Nevertheless, the act or omission from which her civil liability arose, which was the making or the issuing of the subject worthless check, clearly existed. Her acquittal from the criminal charge of BP 22 was

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[20] *Resterio v. People*, G.R. No. 177438, September 24, 2012, 681 SCRA 592, 596-597.

[21] *Alferez v. People*, *supra* note 18, at 122.

[22] *San Mateo v. People*, G.R. No. 200090, March 6, 2013.

based on reasonable doubt and it did not relieve her of the corresponding civil liability. The Court cannot agree more when the MeTC ruled that:

> A person acquitted of a criminal charge, however, is not necessarily civilly free because the quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence). In order to be completely free from civil liability, a person's acquittal must be based on the fact he did not commit the offense. **If the acquittal is based merely on reasonable doubt, the accused may still be held civilly liable since this does not mean he did not commit the act complained of. It may only be that the facts proved did not constitute the offense charged.**[23]

The Court is also one with the CA when it stated that the liability of Purificacion was limited to her *act of issuing a worthless check*. The Court, however, does not agree with the CA when it went to state further that by her acquittal in the criminal charge, there was no more basis for her to be held civilly liable to Nissan. The acquittal was just based on reasonable doubt and it did not change the fact that she issued the subject check which was subsequently dishonored upon its presentment.

Purificacion herself admitted having issued the subject check in the amount of ₱1,020,000.00 *after* Frederick asked her to do it as payment for his obligation with Nissan. Her claim that she issued the check as a mere "show check" to boost Frederick's credit standing was not convincing because there was no credit standing to boost as her son had already defaulted in his obligation to Nissan. Had it been issued *prior* to the sale of the vehicle, the "show check" claim could be given credence. It was not, however, the case here. It was clear that she assumed her son's obligation with Nissan and issued the check to pay it. The argument that it was a mere "show check" after her son was already in default is simply ludicrous.

The Court shall not be belabored with the issue of whether or not Purificacion was an accommodation party because she

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

was not. Granting that she was, it is with more reason that she cannot escape any civil liability because Section 29[24] of the Negotiable Instruments Law specifically bounds her to the instrument. The crux of the controversy pertains to the civil liability of an accused despite acquittal of a criminal charge. Such issue is no longer novel. In cases like violation of BP 22, a special law, the intent in issuing a check is immaterial. The law has made the mere act of issuing a bad check *malum prohibitum*, an act proscribed by the legislature for being deemed pernicious and inimical to public welfare. Considering the rule in *mala prohibita* cases, the only inquiry is whether the law has been breached.[25] The lower courts were unanimous in finding that, indeed, Purificacion issued the bouncing check. Thus, regardless of her intent, she remains civilly liable because the act or omission, *the making and issuing of the subject check*, from which her civil liability arises, evidently exists.

WHEREFORE, the petition is **GRANTED**. The June 30, 2011 Decision and the October 21, 2011 Resolution of the Court of Appeals are hereby **SET ASIDE.** The Decision of the Regional Trial Court, Branch 105, Quezon City, in Criminal Case No. Q-08-151734, dated December 22, 2008, affirming the Judgment of the Metropolitan Trial Court, Branch 41, Quezon City, for Violation of B.P. 22 is **REINSTATED with MODIFICATION** with respect to the legal interest which shall be rduced to 6% *per annum* from finality of this judgment until its satisfaction.[26]

SO ORDERED.

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

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[24] Sec. 29. *Liability of accommodation party.* - An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

[25] *Palana v. People*, 560 Phil. 558, 569 (2007), citing *Cueme v. People*, 390 Phil. 294 (2000).

[26] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013.

THIRD DIVISION

[G.R. No. 205180. November 11, 2013]

RYAN VIRAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS.— The crime charged against petitioner is theft qualified by grave abuse of confidence. In this mode of qualified theft, this Court has stated that the following elements must be satisfied before the accused may be convicted of the crime charged: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and 6. That it be done with grave abuse of confidence. As pointed out by both the RTC and the CA, the prosecution had proved the existence of the first four elements enumerated above beyond reasonable doubt.

2. ID.; ID.; WHERE THE ACCUSED HAD NEVER BEEN VESTED PHYSICAL ACCESS TO, OR MATERIAL POSSESSION OF, THE STOLEN GOODS, IT MAY NOT BE SAID THAT HE EXPLOITED SUCH ACCESS OR MATERIAL POSSESSION THEREBY COMMITTING SUCH GRAVE ABUSE OF CONFIDENCE IN TAKING THE PROPERTY.— This Court is inclined to agree with the CA that the taking committed by petitioner cannot be qualified by the breaking of the door, as it was not alleged in the Information. However, we disagree from its finding that the same breaking of the door constitutes the qualifying element of grave abuse of confidence to sentence petitioner Viray to suffer the penalty for qualified theft. Instead, We are one with the RTC that private complainant did not repose on Viray "confidence" that the latter could have abused to commit qualified theft. The very fact that petitioner "forced open" the main door and screen because he was denied access to private complainant's house negates the presence of such confidence in him by private complainant. Without ready access to the interior of the house and the properties that were the

subject of the taking, it cannot be said that private complainant had a "firm trust" on petitioner or that she "relied on his discretion" and that the same trust reposed on him facilitated Viray's taking of the personal properties justifying his conviction of qualified theft. To warrant the conviction and, hence, imposition of the penalty for qualified theft, there must be an allegation in the information and proof that there existed between the offended party and the accused such high degree of confidence or that the stolen goods have been entrusted to the custody or vigilance of the accused. In other words, where the accused had never been vested physical access to, or material possession of, the stolen goods, it may not be said that he or she exploited such access or material possession thereby committing such grave abuse of confidence in taking the property.

3. ID.; ID.; THAT THE OFFENDER IS A LABORER OF THE OFFENDED PARTY DOES NOT BY ITSELF, WITHOUT MORE, CREATE THE RELATION OF CONFIDENCE AND INTIMACY REQUIRED BY LAW FOR THE IMPOSITION OF THE PENALTY PRESCRIBED FOR QUALIFIED THEFT.— The allegation in the information that the offender is a laborer of the offended party does not by itself, without more, create the relation of confidence and intimacy required by law for the imposition of the penalty prescribed for qualified theft. Hence, the conclusion reached by the appellate court that petitioner committed qualified theft because he "enjoyed the confidence of the private complainant, being the caretaker of the latter's pets" is without legal basis. The offended party's very own admission that the accused was never allowed to enter the house where the stolen properties were kept refutes the existence of the high degree of confidence that the offender could have allegedly abused by "forc[ing] open the doors of the same house."

4. ID.; SIMPLE THEFT; ABSENT GRAVE ABUSE OF CONFIDENCE AND THE ALLEGATION IN THE INFORMATION OF THE USE OF FORCE IN BREAKING THE DOOR, THE ACCUSED CAN ONLY BE HELD ACCOUNTABLE FOR THE CRIME OF SIMPLE THEFT; PROPER PENALTY FOR THE CRIME OF SIMPLE THEFT WHERE THE VALUE OF THE STOLEN PROPERTY WAS NOT ESTABLISHED BY THE PROSECUTION.— Without the circumstance of a grave abuse

of confidence and considering that the use of force in breaking the door was not alleged in the Information, petitioner can only be held accountable for the crime of **simple theft** under Art. 308 in relation to Art. 309 of the RPC. As for the penalty, We note with approval the observation made by the appellate court that the amount of the property taken was **not** established by an independent and reliable estimate. Thus, the Court may fix the value of the property taken based on the attendant circumstances of the case or impose the minimum penalty under Art. 309 of the RPC. In this case, We agree with the observation made by the appellate court in accordance with the rule that "if there is no available evidence to prove the value of the stolen property or that the prosecution failed to prove it, the corresponding penalty to be imposed on the accused-appellant should be the minimum penalty corresponding to theft involving the value of ₱5.00." Accordingly, We impose the prescribed penalty under Art. 309(6) of the RPC, which is *arresto mayor* in its minimum and medium periods. The circumstance of the breaking of the door, even if proven during trial, cannot be considered as a generic aggravating circumstance as it was not alleged in the Information. Thus, the Court finds that the penalty prescribed should be imposed in its medium period, that is to say, from two (2) months and one (1) day to three (3) months of *arresto mayor*.

5. ID.; ID.;REPARATION OF THE STOLEN GOODS CANNOT BE AWARDED ABSENT SUFFICIENT EVIDENCE TO ESTABLISH THE VALUE OF THE PROPERTY TAKEN.—[W]e delete the order for the reparation of the stolen property. Art. 2199 of the Civil Code is clear that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him, as he has duly proved." Since, as aforesaid, the testimony of the private complainant is not sufficient to establish the value of the property taken, nor may the courts take judicial notice of such testimony, We cannot award the reparation of the stolen goods.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 to reverse and set aside the August 31, 2012 Decision[1] and January 7, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 33076, which affirmed with modification the Decision of the Regional Trial Court of Cavite City, Branch 16 (RTC), in Criminal Case No. 66-07.

The factual backdrop of this case is as follows:

An Information for **qualified theft** was filed against petitioner Ryan Viray before the RTC, which reads:

> That on or about 19 October 2006, in the City of Cavite, Republic of the Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, then being employed as a helper of ZENAIDA VEDUA *y* SOSA with intent to gain and **with grave abuse of confidence**, did then and there, willfully, unlawfully and feloniously steal, take and carry away several pieces of jewelry, One (1) Gameboy, One (1) CD player, One (1) Nokia cellphone and a jacket with a total value of ₱297,800.00 belonging to the said Zenaida S. Vedua, without the latter's consent and to her damage and prejudice in the aforestated amount of ₱297,800.00.
>
> CONTRARY TO LAW.[3]

When arraigned, the accused pleaded "not guilty."[4] At the pre-trial, the defense proposed the stipulation, and the prosecution admitted, that the accused was employed as a dog caretaker of private complainant ZenaidaVedua (Vedua) and **was never**

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[1] *Rollo*, pp. 83-98. Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

[2] *Id*. at 39-40; 108-109.

[3] *Id*. at 10, 26-27, 39-41, 61, 84.

[4] *Id*. at 11, 27.

allowed to enter the house and he worked daily from 5:00 to 9:00 in the morning.[5]

During trial, the prosecution presented evidence to prove the following:

Private complainant Vedua maintains seventy-five (75) dogs at her compound in Caridad, Cavite City.[6] To assist her in feeding the dogs and cleaning their cages, private complainant employed the accused who would report for work from 6:00 a.m. to 5:30 p.m.[7] On October 19, 2006, at around 6:30 in the morning, accused arrived for work. Half an hour later or at 7 o'clock, private complainant left for Batangas. Before leaving, **she locked the doors of her house**, and left the accused to attend to her dogs. Later, at around 7:00 in the evening, private complainant arrived home, entering through the back door of her house. As private complainant was about to remove her earrings, she noticed that her other earrings worth PhP 25,000 were missing. She then searched for the missing earrings but could not find them.[8]

Thereafter, private complainant also discovered that her jacket inside her closet and her other pieces of jewelry (*rositas*) worth PhP 250,000 were also missing. A Gameboy (portable videogame console), a compact disc player, a Nokia cellular phone and a Nike Air Cap were likewise missing. The total value of the missing items supposedly amounted to PhP 297,800. Private complainant immediately checked her premises and discovered that **the main doors of her house were destroyed**.[9] A plastic bag was also found on top of her stereo, which was located near the bedroom. The plastic bag contained a t-shirt and a pair of shorts later found to belong to accused.[10]

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[5] *Id*. at 40.

[6] *Id*. at 27, 41, 62-63. 84.

[7] *Id*. at 11, 27-28, 41, 63, 84.

[8] *Id*. at 11, 28, 42, 63, 84.

[9] *Id*. at 11, 64, 85.

[10] *Id*. at 11, 64, 85.

Witness Nimfa Sarad, the laundrywoman of Vedua's neighbor, testified seeing Viray at Vedua's house at 6:00 a.m. By 11:00 a.m., she went out on an errand and saw Viray with an unidentified male companion leaving Vedua's house with a big sack.[11]

Another witness, Leon Young, who prepares official/business letters for Vedua, testified that he went to Vedua's house between 10:00 and 11:00 am of October 19, 2006 to retrieve a diskette and saw petitioner with a male companion descending the stairs of Vedua's house. He alleged that since he knew Viray as an employee of private complainant, he simply asked where Vedua was. When he was told that Vedua was in Batangas, he left and went back three days after, only to be told about the robbery.[12]

Prosecution witness Beverly Calagos, Vedua's stay-out laundrywoman, testified that on October 19, 2006, she reported for work at 5:00 a.m. Her employer left for Batangas at 7:00 am leaving her and petitioner Viray to go about their chores. She went home around 8:30 a.m. leaving petitioner alone in Vedua's house. Meanwhile, petitioner never reported for work after that day.[13]

For his defense, Viray averred that he did not report for work on the alleged date of the incident as he was then down with the flu. His mother even called up Vedua at 5:30 a.m. to inform his employer of his intended absence. Around midnight of October 20, 2006, Vedua called Viray's mother to report the loss of some valuables in her house and alleged that Viray is responsible for it. Petitioner's sister and aunt corroborated his version as regards the fact that he did not go to work on October 19, 2006 and stayed home sick.[14]

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[11] *Id*. at 11-12, 29, 43, 65, 85.

[12] *Id*. at 12, 29, 44, 64, 85.

[13] *Id*. at 12, 29-30, 45-46, 65

[14] *Id*. at 12-13, 30, 46-49, 65, 85-86.

After the parties rested their respective cases, the trial court rendered a Decision dated December 5, 2009,[15] holding that the offense charged should have been **robbery** and not qualified theft as there was an actual breaking of the screen door and the main door to gain entry into the house.[16] Similarly, Viray cannot be properly charged with qualified theft since he was not a domestic servant but more of a laborer paid on a daily basis for feeding the dogs of the complainant.[17]

In this light, the trial court found that there is sufficient circumstantial evidence to conclude that Viray was the one responsible for the taking of valuables belonging to Vedua.[18] Hence, the RTC found petitioner Viray **guilty** beyond reasonable doubt of **robbery** and sentenced him, thus:

> WHEREFORE, in view of the foregoing considerations, the Court finds the accused RYAN VIRAY *GUILTY* beyond reasonable doubt for the crime of robbery and hereby sentences him to suffer the indeterminate imprisonment ranging from FOUR (4) years, TWO (2) months and ONE (1) day of *prision correccional*, as minimum, to EIGHT (8) years of *prision mayor*, as maximum.
>
> SO ORDERED.[19]

Aggrieved, petitioner elevated the case to the CA.

The appellate court found that the Information filed against Viray shows that the prosecution failed to allege one of the essential elements of the crime of robbery, which is "the use of force upon things." Thus, to convict him of robbery, a crime not necessarily included in a case of qualified theft, would violate the constitutional mandate that an accused must be informed of the nature and cause of the accusation against him.[20]

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[15] *Id*. at 39-56.

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

[17] *Id*. at 51.

[18] *Id*. at 5-56.

[19] *Id*. at 13, 27, 56, 62, 86-87.

[20] *Id*. at 90.

Nonetheless, the CA held that a conviction of the accused for qualified theft is warranted considering that Viray enjoyed Vedua's confidence, being the caretaker of the latter's pets. Viray committed a grave abuse of this confidence when, having access to the outside premises of private complainant's house, he forced open the doors of the same house and stole the latter's personal belongings.[21] In its assailed Decision, the appellate court, thus, modified the ruling of the trial court holding that the accused is liable for the crime of **qualified theft**.

As to the penalty imposed, considering that there was no independent estimate of the value of the stolen properties, the CA prescribed the penalty under Article 309(6)[22] in relation to Article 310[23] of the Revised Penal Code (RPC).[24] The dispositive portion of the assailed Decision reads, *viz*:

> WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. The appealed *Decision* of the court *a quo* is hereby AFFIRMED with MODIFICATION that the accused-appellant be convicted for the crime of QUALIFIED THEFT and is hereby sentenced to suffer indeterminate imprisonment of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum. The appellant is also ordered to return the pieces of jewelry and other personal belongings taken from private complainant. Should restitution be no longer possible, the accused appellant must pay the equivalent value of the unreturned items.
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> SO ORDERED.[25]

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[21] *Id*. at 92.

[22] *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

[23] Art. 310. Qualified theft.—The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article x x x.

[24] *Rollo*, pp. 95-96.

[25] *Id*. at 14, 96-97.

When the appellate court, in the adverted Resolution of January 7, 2013,[26] denied his motion for reconsideration,[27] Viray interposed the present petition asserting that the CA committed a reversible error in finding him guilty. Petitioner harps on the supposed inconsistencies of the testimonies of the prosecution witnesses in advancing his position that the evidence presented against him fall short of the quantum of evidence necessary to convict him of qualified theft.[28]

In the meantime, in its Comment[29] on the present petition, respondent People of the Philippines asserts that the alleged inconsistencies in the testimonies of the prosecution witnesses are so insignificant and do not affect the credibility and weight of their affirmation that petitioner was at the crime scene when the crime was committed.[30] In fact, these minor inconsistencies tend to strengthen the testimonies because they discount the possibility that they were fabricated.[31] What is more, so respondent contends, these positive testimonies outweigh petitioner's defense of denial and alibi.[32]

In resolving the present petition, We must reiterate the hornbook rule that this court is not a trier of facts, and the factual findings of the trial court, when sustained by the appellate court, are binding in the absence of any indication that both courts misapprehended any fact that could change the disposition of the controversy.[33]

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[26] *Id*. at 107-109.

[27] *Id*. at 99-105.

[28] *Id*. at 15-19.

[29] *Id*. at 116-125.

[30] *Id*. at 121-122.

[31] *Id*. at 122.

[32] *Id*. at 123.

[33] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 288; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512; *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651-652.

In the present controversy, while the CA modified the decision of the trial court by convicting petitioner of qualified theft rather than robbery, the facts as found by the court *a quo* were the same facts used by the CA in holding that all the elements of qualified theft through grave abuse of confidence were present. It is not, therefore, incumbent upon this Court to recalibrate the evidence presented by the parties during trial.

Be that as it may, We find it necessary to modify the conclusion derived by the appellate court from the given facts regarding the crime for which petitioner must be held accountable.

Art. 308 in relation to Art. 310 of the RPC describes the felony of qualified theft:

> Art. 308. *Who are liable for theft.*– Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.
>
> x x x x x x x x x
>
> Art. 310. *Qualified Theft.* – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, **or with grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation, fish taken from a fishpond or fishery or property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)

The crime charged against petitioner is theft qualified by grave abuse of confidence. In this mode of qualified theft, this Court has stated that the following elements must be satisfied before the accused may be convicted of the crime charged:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;

5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and

6. That it be done with grave abuse of confidence.[34]

As pointed out by both the RTC and the CA, the prosecution had proved the existence of the first four elements enumerated above beyond reasonable doubt.

First, it was proved that the subjects of the offense were all personal or movable properties, consisting as they were of jewelry, clothing, cellular phone, a media player and a gaming device. *Second*, these properties belong to private complainant Vedua. *Third*, circumstantial evidence places petitioner in the scene of the crime during the day of the incident, as numerous witnesses saw him in Vedua's house and his clothes were found inside the house. He was thereafter seen carrying a heavy-looking sack as he was leaving private complainant's house. All these circumstances portray a chain of events that leads to a fair and reasonable conclusion that petitioner took the personal properties with intent to gain, especially considering that, *fourth*, Vedua had not consented to the removal and/or taking of these properties.

With regard to the fifth and sixths elements, however, the RTC and the CA diverge in their respective Decisions.

The RTC found that the taking committed by petitioner was not qualified by grave abuse of confidence, rather it was qualified by the use of force upon things. The trial court held that there was no confidence reposed by the private complainant on Viray that the latter could have abused. In fact, Vedua made sure that she locked the door before leaving. Hence, Viray was compelled to use force to gain entry into Vedua's house thereby committing the crime of robbery, not theft.

The CA, on the other hand, opined that the breaking of the screen and the door could not be appreciated to qualify petitioner's crime to robbery as such use of force was not alleged in the

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[34] *People v. Puig*, G.R. Nos. 173654-765, August 28, 2008, 563 SCRA 564.

Information. Rather, this breaking of the door, the CA added, is an indication of petitioner's abuse of the confidence given by private complainant. The CA held that "[Viray] enjoyed the confidence of the private complainant, being the caretaker of the latter's pets. He was given access to the outside premises of private complainant's house which he gravely abused when he forced open the doors of the same house and stole the latter's belongings."[35] Committing grave abuse of confidence in the taking of the properties, petitioner was found by the CA to be liable for qualified theft.

This Court is inclined to agree with the CA that the taking committed by petitioner cannot be qualified by the breaking of the door, as it was not alleged in the Information. However, we disagree from its finding that the same breaking of the door constitutes the qualifying element of grave abuse of confidence to sentence petitioner Viray to suffer the penalty for qualified theft. Instead, We are one with the RTC that private complainant did not repose on Viray[']s] "confidence" that the latter could have abused to commit qualified theft.

The very fact that petitioner "forced open" the main door and screen because he was denied access to private complainant's house negates the presence of such confidence in him by private complainant. Without ready access to the interior of the house and the properties that were the subject of the taking, it cannot be said that private complainant had a "firm trust" on petitioner or that she "relied on his discretion"[36] and that the same trust reposed on him facilitated Viray's taking of the personal properties justifying his conviction of qualified theft.

To warrant the conviction and, hence, imposition of the penalty for qualified theft, there must be an allegation in the information and proof that there existed between the offended party and

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[35] *Rollo*, p. 92.

[36] *BLACK'S LAW DICTIONARY*, 9th ed., for the iPhone/iPad/iPod touch. Version 2.1.1 (B12136), p. 339.

the accused such high degree of confidence[37] or that the stolen goods have been entrusted to the custody or vigilance of the accused.[38] In other words, where the accused had never been vested physical access to,[39] or material possession of, the stolen goods, it may not be said that he or she exploited such access or material possession thereby committing such grave abuse of confidence in taking the property. Thus, in *People v. Maglaya*,[40] this Court refused to impose the penalty prescribed for qualified theft when the accused was not given material possession or access to the property:

> Although appellant had taken advantage of his position in committing the crime aforementioned, **We do not believe he had acted with grave abuse of confidence and can be convicted of qualified theft, because his employer had never given him the possession of the machines involved in the present case or allowed him to take hold of them, and it does not appear that the former had any special confidence in him**. Indeed, the delivery of the machines to the prospective customers was entrusted, not to appellant, but to another employee.
>
> Inasmuch as the aggregate value of the machines stolen by appellant herein is ₱13,390.00, the crime committed falls under Art. 308, in relation to the first subdivision of Art.309 of the Revised Penal Code, which prescribes the penalty of *prisión mayor* in its minimum and medium periods. No modifying circumstance having attended the commission of the offense, said penalty should be meted out in its medium period, or from 7 years, 4 months and 1 day to 8 years and 8 months of *prisión mayor*. The penalty imposed in the decision appealed from is below this range. (Emphasis and underscoring supplied.)

The allegation in the information that the offender is a laborer of the offended party does not by itself, without more, create the relation of confidence and intimacy required by law for the

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[37] *People v. Koc Song*, 63 Phil. 369 (1936).

[38] *People v. Maglaya*, No. L-29243, November 28, 1969, 30 SCRA 606.

[39] See *People v. Anabe*, G.R. No. 179033, September 6, 2010, 630 SCRA 10.

[40] *Supra* note 38.

imposition of the penalty prescribed for qualified theft.[41] Hence, the conclusion reached by the appellate court that petitioner committed qualified theft because he "enjoyed the confidence of the private complainant, being the caretaker of the latter's pets" is without legal basis. The offended party's very own admission that the accused was never allowed to enter the house[42] where the stolen properties were kept refutes the existence of the high degree of confidence that the offender could have allegedly abused by "forc[ing] open the doors of the same house."[43]

Without the circumstance of a grave abuse of confidence and considering that the use of force in breaking the door was not alleged in the Information, petitioner can only be held accountable for the crime of **simple theft** under Art. 308 in relation to Art. 309 of the RPC.

As for the penalty, We note with approval the observation made by the appellate court that the amount of the property taken was **not** established by an independent and reliable estimate. Thus, the Court may fix the value of the property taken based on the attendant circumstances of the case or impose the minimum penalty under Art. 309 of the RPC.[44] In this case, We agree with the observation made by the appellate court in accordance with the rule that "if there is no available evidence to prove the value of the stolen property or that the prosecution failed to prove it, the corresponding penalty to be imposed on the accused-appellant should be the minimum penalty corresponding to theft involving the value of ₱5.00."[45] Accordingly, We impose the prescribed penalty under Art. 309(6) of the RPC, which is *arresto mayor* in its minimum and medium periods. The circumstance

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[41] Reyes, Luis B., *THE REVISED PENAL CODE*: CRIMINAL LAW 710 (15th ed., 2001).

[42] *Rollo*, p. 40.

[43] *Id*. at 92.

[44] See *People v. Dator*, G.R. No. 136142, October 24, 2000, 344 SCRA 222; see also *Lozano v. People*, G.R. No. 165582, July 9, 2010.

[45] *People v. Dator*, *id*. at 236.

of the breaking of the door, even if proven during trial, cannot be considered as a generic aggravating circumstance as it was not alleged in the Information.[46] Thus, the Court finds that the penalty prescribed should be imposed in its medium period, that is to say, from two (2) months and one (1) day to three (3) months of *arresto mayor*.

Lastly, We delete the order for the reparation of the stolen property. Art. 2199 of the Civil Code is clear that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him, as he has duly proved." Since, as aforesaid, the testimony of the private complainant is not sufficient to establish the value of the property taken, nor may the courts take judicial notice of such testimony, We cannot award the reparation of the stolen goods.[47]

WHEREFORE, the CA Decision of August 31, 2012 in CA-G.R. CR No. 33076 is **AFFIRMED** with **MODIFICATION**. Petitioner Ryan Viray is found **GUILTY** beyond reasonable doubt of **SIMPLE THEFT** and is sentenced to suffer the penalty of imprisonment for two (2) months and one (1) day to three (3) months of *arresto mayor*. Further, for want of convincing proof as to the value of the property stolen, the order for reparation is hereby **DELETED**.

SO ORDERED.

Abad, Perez, Mendoza, and *Leonen, JJ.*, concur.

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[46] *People v. Perreras*, G.R. No. 139622, July 31, 2001, 362 SCRA 202; *People v. Legaspi*, G.R. Nos. 136164-65, April 20, 2001.

[47] *Francisco v. People*, 478 Phil. 167 (2004).

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— Under the nature of the controversy test, the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. *(Id.)*

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Conjugal partnership of gains — Liable for the loan contracted by the wife where the proceeds thereof redounded to the benefit of the family. (Ting Ting Pua *vs*. Sps. Benito Lo Bun Tiong and Caroline Siok Ching Teng, G.R. No. 198660, Oct. 23, 2013) p. 511

TAX REFUND/TAX CREDIT

Applicable law — Section 112 of the NIRC applies to all cases involving an application for the issuance of a Tax Credit Certificate or refund of unutilized input VAT. (Commissioner of Internal Revenue *vs*. Visayas Geothermal Power Co., Inc., G.R. No. 181276, Nov. 11, 2013) p. 710

— The Commissioner of Internal Revenue has 120 days from the date of the submission of the complete documents in support of the application for tax refund or tax credit to act on the said application and failure of the taxpayer to wait for the decision of the Commissioner or the lapse of the 120-day period renders the filing of the judicial claim with the Court of Tax Appeals premature. *(Id.)*

Claim for — A taxpayer must prove not only its entitlement to a refund but also his compliance with the prescribed procedure. (Applied Food Ingredients Co., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 184266, Nov. 11, 2013) p. 782

— 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. *(Id.)*

— The 120-day and 30-day period are not merely directory but mandatory and jurisdictional. *(Id.)*

(Commissioner of Internal Revenue *vs*. Visayas Geothermal Power Co., Inc., G.R. No. 181276, Nov. 11, 2013) p. 710

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Tenancy relationship — All the requisite conditions for its existence must be proven, to wit: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent by the landowner; (4) the purpose is agricultural production, (5) there is personal cultivation; and (6) there is sharing of harvest. (Heirs of Florentino Quilo *vs*. Dev't. Bank of the Phils., G.R. No. 184369, Oct. 23, 2013) p. 414

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